

**STATE OF MAINE
ONE HUNDRED AND NINETEENTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Thursday
April 6, 2000

Senate called to order by President Mark W. Lawrence of York County.

Prayer by Jon Dillinger, Minister of the Church of Christ in Kittery.

MINISTER DILLINGER: Mr. President and men and women of the Senate, thank you very much for the privilege that I have to be here with you this morning. Would you bow with me please in order of prayer.

Our Father who art in Heaven hallowed is Thy name. We're so grateful for all of the blessings that You give to each of us. We're grateful for the prayers that You have answered, for the many talents and gifts that You have given to each of us and for guiding, yes by Your hand, in each of our lives. Now Father, I come to You in the name of Your son, Jesus Christ, asking that You bless each one here today. Please Father, grant unto these, Thy servants, wisdom to make decisions that are right in Your sight, decisions that are just to the citizens of Maine and decisions that will bring glory to You. I ask that when all of these men and women are about their duties today that they will do all that brings glory and honor to You and that they will honor the people of the great State of Maine. And now Father as these Thy servants conduct the business of the day, oh Father, hold each of them securely in the very hallow of Your hand. May You grant unto each one of them the deepest desires of their heart so that they might find ease of frustration and anxiety as they do their work. Please be with their families while they are apart from them and grant unto them the special needs that only You know. Be merciful and grant unto them fulfillment of those needs. May Your servants of this great Senate put bills and laws and amendments into place that all of the needs of the people of this great State of Maine may be met. May decisions made here today make Maine a better place to live. Thank You for Your son and for the forgiveness of our sins through obedience to You. In the name of Jesus, I pray. Amen.

Reading of the Journal of Wednesday, April 5, 2000.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Protect Maine Jobs and Natural Resources"
(EMERGENCY)

S.P. 1072 L.D. 2674

Committee on **NATURAL RESOURCES** suggested and ordered printed.

In Senate, April 4, 2000, **REFERRED** to the Committees on **LABOR** and **NATURAL RESOURCES**.

Comes from the House, **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed, in **NON-CONCURRENCE**.

Senator **RAND** of Cumberland moved the Senate **RECEDE** and **CONCUR**.

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

Senator **LIBBY:** Mr. President, I stood up a few days ago regarding this Bill and asked that it be referred to both the Committee on Natural Resources and the Labor Committee and there was a reason that I did that. The reason is that, as you read the Bill, it really seems to pertain to labor issues. I guess I was a little bit disappointed with some of the events that have taken place between the time that it left this Body and the time it came back. And so, I still have that disappointment. I'm on the Natural Resources Committee, so I don't mind hearing this Bill. But I really have some general concerns. I want to make sure that I stated them in the record. The issue comes into my backyard and affects some things that are going on in the Town of Hollis. I'm concerned about that. I guess I don't understand the emergency nature of this, because that issue is off in the future. But, I guess if we have to hear it, I guess we will. I certainly don't believe that this issue is really, in any way, solely an issue in natural resources. This is a labor issue and I've been spoken to by labor representatives and I guess I'm disappointed if this goes forward without being jointly referred. Thank you.

On motion by Senator **RAND** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

Non-Concurrent Matter

Bill "An Act to Revise the Funding of the Ground Water Oil Clean-up Fund"

H.P. 1731 L.D. 2437
(C "A" H-877)

In Senate, March 22, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-877)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-877) AS AMENDED BY HOUSE AMENDMENT "A" (H-1049)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **RAND** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

COMMUNICATIONS

The Following Communication: H.C. 419

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333**

April 5, 2000

Honorable Joy J. O'Brien
Secretary of the Senate
119th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely postponed Bill "An Act to Limit the Issuance of Concealed Firearms Permits" (H.P. 1771) (L.D. 2484)

Sincerely,

S/Joseph W. Mayo
Clerk of the House

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committees on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **TRANSPORTATION** on Bill "An Act to Provide Temporary Relief from the Excise Tax on Diesel Fuel" (EMERGENCY)

H.P. 1832 L.D. 2568

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-901)**.

Signed:

Senators:

MICHAUD of Penobscot
HARRIMAN of Cumberland
O'GARA of Cumberland
PARADIS of Aroostook
CASSIDY of Washington

Representatives:

KNEELAND of Easton
WINSOR of Norway
BRUNO of Raymond
NASS of Acton
BOUFFARD of Lewiston
FISHER of Brewer
WHEELER of Eliot
SANBORN of Alton
SAVAGE of Union
CAMERON of Rumford
WHEELER of Bridgewater
COLLINS of Wells

The Minority of the same Committees on the same subject reported that the same **Ought Not to Pass**.

Signed:

Senator:

CATHCART of Penobscot

Representatives:

TOWNSEND of Portland
STEVENS of Orono
BERRY of Livermore
MAILHOT of Lewiston
POWERS of Rockport
TESSIER of Fairfield
JABAR of Waterville
LINDAHL of Northport

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901) AS AMENDED BY HOUSE AMENDMENT "A" (H-912)** thereto.

Reports **READ**.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Amend the Right of Entry Clauses"

H.P. 1363 L.D. 1961

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

Signed:

Senators:

LONGLEY of Waldo
TREAT of Kennebec

Representatives:

THOMPSON of Naples
BULL of Freeport
LaVERDIERE of Wilton
MITCHELL of Vassalboro
NORBERT of Portland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-981)**.

Signed:

Senator:

BENOIT of Franklin

Representatives:

JACOBS of Turner
PLOWMAN of Hampden
MADORE of Augusta
WATERHOUSE of Bridgton
SCHNEIDER of Durham

Comes from the House with the Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.

Reports **READ**.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Amend the Control of the Revenue Generated by Games of Chance at the Agricultural Fairs"
H.P. 1756 L.D. 2462

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1045)**.

Signed:

Senators:

DAGGETT of Kennebec
FERGUSON of Oxford
CAREY of Kennebec

Representatives:

LABRECQUE of Gorham
CHIZMAR of Lisbon
MAYO of Bath
O'BRIEN of Lewiston
HEIDRICH of Oxford
McKENNEY of Cumberland
FISHER of Brewer

GAGNE of Buckfield

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

Signed:

Representatives:

TUTTLE of Sanford
PERKINS of Penobscot

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**.

Reports **READ**.

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

On motion by Senator **MILLS** of Somerset, **TABLED** until Later in Today's Session, pending motion by Senator **DAGGETT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

Divided Report

The Majority of the Committee on **NATURAL RESOURCES** on Bill "An Act to Provide Assistance in the Cleanup of the Plymouth Waste Oil Site"

H.P. 1672 L.D. 2339

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1040)**.

Signed:

Senators:

TREAT of Kennebec
NUTTING of Androscoggin

Representatives:

JOY of Crystal
COWGER of Hallowell
McKEE of Wayne
ETNIER of Harpswell
CLARK of Millinocket
DUPLESSIE of Westbrook
CAMERON of Rumford
DAIGLE of Arundel
TOBIN of Windham
MARTIN of Eagle Lake

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1041)**.

Signed:

Senator:

LIBBY of York

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)**.

Reports **READ**.

Senator **TREAT** of Kennebec moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report, in concurrence.

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Establish Criteria for Tax Incentive Programs"

H.P. 1754 L.D. 2460

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1021)**.

Signed:

Senator:

MILLS of Somerset

Representatives:

GAGNON of Waterville
GREEN of Monmouth
DAVIDSON of Brunswick
COLWELL of Gardiner
STANLEY of Medway
LEMOINE of Old Orchard Beach
LEMONT of Kittery
BUCK of Yarmouth
CIANCHETTE of South Portland
MURPHY of Berwick

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "B" (H-1022)**.

Signed:

Senator:

RUHLIN of Penobscot

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1021)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1021) AS AMENDED BY HOUSE AMENDMENT "A" (H-1055)** thereto.

Reports **READ**.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

Senate

Ought to Pass As Amended

Senator RUHLIN for the Committee on **TAXATION** on Bill "An Act Concerning Technical Changes to the Tax Laws" (EMERGENCY)
S.P. 981 L.D. 2524

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-641)**.

Report **READ** and **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-641) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-641)**.

(See action later today.)

Divided Report

10 members of the Committee on **LABOR** on Bill "An Act Regarding Length of Service for Retirement Benefits for State Police Officers"

S.P. 911 L.D. 2363

Reported in Report "A" That the same **Ought to Pass as Amended by Committee Amendment "A" (S-643)**.

Signed:

Senator:

DOUGLASS of Androscoggin

Representatives:

HATCH of Skowhegan
MUSE of South Portland
GOODWIN of Pembroke
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay
DAVIS of Falmouth
MacDOUGALL of North Berwick
TREADWELL of Carmel

Two members of the same Committee on the same subject reported in Report "B", that the same **Ought to Pass as Amended by Committee Amendment "B" (S-644).**

Signed:

Senators:

MILLS of Somerset
LaFOUNTAIN of York

One member of the same Committee on the same subject reported in Report "C", that the same **Ought to Pass as Amended by Committee Amendment "C" (S-645).**

Signed:

Representative:

MACK of Standish

Reports **READ.**

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF ANY REPORT.**

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

ENACTORS

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

Emergency Measure

An Act to Extend the Time Period for Municipalities to Make Recommendations Concerning Great Pond Surface Use Restrictions

H.P. 1680 L.D. 2346
(S "A" S-571 to C "A" H-883)

This being an Emergency Measure and having received the affirmative vote of 25 Members of the Senate, with no Senators having voted in the negative, and 25 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act to Implement the Recommendations of the Joint Standing Committee on Marine Resources Relating to the Review of the Maine Sardine Council Under the State Government Evaluation Act

H.P. 1883 L.D. 2618
(H "A" H-1033 to C "A" H-963)

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with no Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Off Record Remarks

Emergency Measure

An Act to Enter Into the International Emergency Management Assistance Compact

S.P. 1058 L.D. 2648
(C "A" S-631)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

Emergency Measure

An Act to Implement the Recommendations of the Commission to Propose an Alternative Process for Forensic Examinations for Sexual Assault Victims

H.P. 1927 L.D. 2673

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

Emergency Resolve

Resolve, to Create the Committee to Study the Governance of the Unorganized Territories of Maine

H.P. 221 L.D. 299
(S "A" S-559 to C "A" H-782)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Emergency Resolve

Resolve, Regarding Legislative Review of Chapter (Unassigned):
Rules Governing Maine Milk and Milk Products, Major
Substantive Rules of the Department of Agriculture, Food and
Rural Resources

H.P. 1860 L.D. 2595
(C "A" H-1013)

This being an Emergency Measure and having received the
affirmative vote of 24 Members of the Senate, with 2 Senators
having voted in the negative, and 24 being two-thirds of the entire
elected Membership of the Senate, was **FINALLY PASSED** and
having been signed by the President, was presented by the
Secretary to the Governor for his approval.

Emergency Resolve

Resolve, to Establish the Commission to Study Domestic
Violence

H.P. 1906 L.D. 2651
(C "A" H-1017)

On motion by Senator **CATHCART** of Penobscot, placed on the
SPECIAL APPROPRIATIONS TABLE, pending **FINAL
PASSAGE**, in concurrence.

Mandate

An Act to Require the Training of School Personnel Who
Administer Medications

S.P. 424 L.D. 1261
(C "A" S-634)

This being a Mandate, in accordance with the provisions of
Section 21 of Article IX of the Constitution, having received the
affirmative vote of 25 Members of the Senate, with no Senators
having voted in the negative, and 25 being more than two-thirds
of the entire elected Membership of the Senate, was **PASSED TO
BE ENACTED** and having been signed by the President, was
presented by the Secretary to the Governor for his approval.

Mandate

An Act to Authorize School Administrative Units to Utilize
Alternative Delivery Methods for a Limited Range and Number of
School Construction Projects, Including the use of an Owner's
Representative for Certain School Construction Projects

S.P. 892 L.D. 2311
(H "A" H-1036 to C "A" S-623)

This being a Mandate, in accordance with the provisions of
Section 21 of Article IX of the Constitution, having received the
affirmative vote of 25 Members of the Senate, with no Senators
having voted in the negative, and 25 being more than two-thirds
of the entire elected Membership of the Senate, was **PASSED TO
BE ENACTED** and having been signed by the President, was
presented by the Secretary to the Governor for his approval.

**Pursuant to Constitution
Public Land**

Resolve, Authorizing a Land Transaction by the Bureau of Parks
and Lands

S.P. 1048 L.D. 2638
(C "A" S-627)

In accordance with the provisions of Article IX, Section 23 of the
Constitution, this requires the affirmative vote of two-thirds of the
entire elected Membership of the Senate, 25 Senators having
voted in the affirmative and no Senators having voted in the
negative, and 25 being more than two-thirds of the entire elected
Membership of the Senate, was **FINALLY PASSED** and having
been signed by the President, was presented by the Secretary to
the Governor for his approval.

Acts

An Act to Exempt Certain Law Enforcement Officers from the Full
Course of Training at the Maine Criminal Justice Academy

H.P. 404 L.D. 546
(C "A" H-1016)

An Act Regarding Water Quality Testing for Property Abutting a
Special Waste Landfill

H.P. 852 L.D. 1209
(C "A" H-1028)

An Act to Encourage Educational Options

H.P. 1420 L.D. 2027
(C "A" H-1020)

An Act to Ensure Civil Rights and Prevent Discrimination

S.P. 840 L.D. 2239
(C "A" S-624)

An Act to Amend the Laws Governing Paternity Establishment

H.P. 1634 L.D. 2286
(C "A" H-1032)

An Act to Establish a Targeted Need Teacher Certificate

S.P. 886 L.D. 2301
(C "A" S-610)

An Act Relating to Underground Facility Plants

H.P. 1721 L.D. 2427
(C "A" H-1025)

An Act to Permit the Attorney General, a Deputy Attorney General or a District Attorney to Request Records of Internet Service Providers and Mobile Telecommunications Service Providers
H.P. 1730 L.D. 2436
(H "A" H-1026 to C "A" H-982)

An Act to Restrict Passengers in the Vehicle of a Newly Licensed Driver
H.P. 1744 L.D. 2450
(H "B" H-904 & S "D" S-609 to
C "A" H-847)

An Act to Promote the Safe Conduct of Fireworks Displays in the State of Maine
H.P. 1760 L.D. 2466
(C "A" H-1031)

An Act to Ensure Cost Effective and Safe Highways in the State
S.P. 992 L.D. 2550
(C "A" S-622)

An Act to Promote Microbreweries and Wineries
H.P. 1835 L.D. 2571
(C "A" H-1006)

An Act to Allow Registration of Low-speed Vehicles on Certain Islands
H.P. 1904 L.D. 2649
(C "A" H-1010)

An Act to Implement Recommendations of the Joint Standing Committee on Transportation Relating to the Review of the Department of the Secretary of State, Bureau of Motor Vehicles under the State Government Evaluation Act
H.P. 1921 L.D. 2667

An Act to Create a Heating Oil Emergency Management Program
H.P. 1922 L.D. 2668

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

An Act to Exempt Capital Gains from the Maine Income Tax
H.P. 219 L.D. 297
(C "A" H-890)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Implement the Recommendations of the 118th Legislative Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators
S.P. 111 L.D. 308
(C "B" S-621)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act Concerning the Formation of the Central Maine Regional Public Safety Communication Center
H.P. 1542 L.D. 2196
(H "A" H-980 to C "A" H-945)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Expand Eligibility for the Veterans' Property Tax Exemption
H.P. 1662 L.D. 2331
(C "A" H-882)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Expand Educational Opportunities for Elderly Persons
H.P. 1692 L.D. 2398

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Increase the Penalty for Leaving the Scene of a Motor Vehicle Accident
S.P. 942 L.D. 2472
(C "A" S-615)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Promote Safe Mobility for Maine's Aging Population through Education and Community-based, Economically Sustainable Alternative Transportation
H.P. 1796 L.D. 2521
(C "A" H-933)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Implement the Recommendations of the Task Force to Study the Operation of and Support for the Board of Environmental Protection

H.P. 1814 L.D. 2547
(C "A" H-1027)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Repeal the Sales Tax on Snack Food Except Candy and Confections

I.B. 6 L.D. 2602
(C "A" H-1014)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Implement the Tax Policy Recommendations of the Task Force Created to Review Smart Growth Patterns of Development

H.P. 1923 L.D. 2669

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

Resolves

Resolve, to Recognize Veterans of the Vietnam War in the State House Hall of Flags

H.P. 1765 L.D. 2471
(H "A" H-1037 to C "A" H-837)

Resolve, to Improve the Services Provided by the Emergency Services Communication Bureau

H.P. 1885 L.D. 2624
(C "A" H-1012)

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

Resolve, to Provide Adequate Reimbursement for Speech and Language Pathologists and Audiologists and a Study of Medicaid Reimbursement

S.P. 889 L.D. 2308
(C "C" S-633)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Resolve, to Provide Medicaid Reimbursement for Hospice Care
H.P. 1748 L.D. 2454
(H "A" H-1023 to C "A" H-971)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Resolve, to Improve Access to Technical Education and Ensure a Skilled Work Force

S.P. 973 L.D. 2519

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

On motion by Senator **RUHLIN** of Penobscot, the Senate **RECONSIDERED** whereby it **PASSED TO BE ENGROSSED AS AMENDED** the following:

Bill "An Act Concerning Technical Changes to the Tax Laws" (EMERGENCY)

S.P. 981 L.D. 2524
(C "A" S-641)

(In Senate, April 6, 2000, **READ TWICE** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-641).**)

On further motion by same Senator, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-641).**

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (3.23/00) Assigned matter:

JOINT ORDER - relative to recognizing the Bangor High School Boys Basketball Team on the occasion of winning the Class A 2000 State Championship

SLS 459

Tabled - March 23, 2000, by Senator **RUHLIN** of Penobscot.

Pending - motion by Senator **MURRAY** of Penobscot to **PASS**

(In Senate, March 23, 2000, **READ.**)

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, it's indeed a pleasure, again today, to rise before you to recognize a fine group of gentlemen. I can assure you, since this is becoming somewhat of a habit in the last few days, recognizing Bangor High School state champions, that this is it at least for the time being. Today we're here to recognize the Bangor High School Boys Basketball team, who, as many of you may know, has accomplished the great feat of being state champions for this year. And I spoke to you briefly, as you recall yesterday, about how well the Bangor High School swim team has done over the years and has, at least in my opinion and I think the opinion of most of us, reached the lofty goal of being called a dynasty. Well, the Boys Basketball Team has perhaps not reached the same numbers as the Swim Team in state championship numbers, but in addition to the great accomplishment this year, have in fact in the last 7 years, got 4 state championships under their belt. Which at least in my book, if it isn't a dynasty, it's certainly an accomplishment worth recognizing, in addition to this year's accomplishments. I noted to the team players earlier and I note to all of you that I particularly appreciated their efforts this year, because it resulted in me being able to have a fine dinner. Thanks to the great graces of the good Senator from Cumberland and Westbrook, Senator O'Gara, who just happened to place a friendly wager on how the outcome of the basketball game would happen this year. And fortunately for me and the citizens of Bangor. I was on the receiving end of this one and the good Senator was oh so gracious in giving me that lunch. I want to urge all of you to join with me in supporting this recognition and sentiment, because this is a great group of kids. They did a wonderful job. They're a credit to our area and the entire State of Maine and I urge you to join me in recognizing their efforts.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator O'Gara.

Senator **O'GARA:** Thank you Mr. President. Ladies and gentlemen of the Senate, as if it weren't bad enough that I had to sit at the Civic Center and see this fine team of athletes, coached by a fine gentlemen beat, Westbrook. And as if it weren't bad enough that I had to take the Senator out to lunch as a result of a wager that he claims we made, and I'm not so sure we did. But at any rate, it's even worse that I was just stepping out of the Chamber to have a copy made and he came chasing after me to say, you can't leave. And then I greeted these young men and their coaches. It was a fine ball game. And while all the team played, obviously, their hearts out to win that game, I as a former basketball player and coach myself, really, and I don't know their names and I don't know which two they are, or whoever, but certainly some members of that team accepted a tremendous challenge from their coach who assigned them to guard our high scorer, the vinyl trophy of the Western Maine tournament. He ended up being high scorer of the game, young Brian Wall, but he was hurried and harassed, I thought, unsportsman like. But being a person who loves defense and thinks defense is what it's all about, I want to say that I admired them for the job that they did and the determination in which they took it. Unfortunately, I would have admired their defense even better had Westbrook won. But,

at any rate, I do want to congratulate the boys and their coaches. It was a very fine effort. Thank you.

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

Senator **MACKINNON:** Thank you Mr. President. Men and women of the Senate, I rise to congratulate Bangor High School. For 38 years ago, Bangor was a runner-up in a state game to a Morse High team, which I was very happy to be playing on. Of course at that time, they had another person on there that we went on to elect as a Governor, and another player went on to the University of Cincinnati. And I also have chaired the basketball committee when they played the longest game in overtime in the Cumberland County Civic Center of five overtimes. I have known their principal for years and congratulate them and wish them the best.

PASSED.

Sent down for concurrence.

THE PRESIDENT: The Sergeant-At-Arms will escort the Bangor High School Boys Basketball Team to the well of the Chamber.

Senate at Ease.

Senate called to order by the President.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

ENACTORS

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

Act

An Act to Provide for Statewide Standards for Timber Harvesting in Shoreland Areas and to Modify Regulation of Stream Crossings
H.P. 1919 L.D. 2665

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

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 Amend the Nutrient Management Laws to Include the Regulation of the Discharge from Fish Hatcheries Except for Aquaculture" (EMERGENCY)

S.P. 1052 L.D. 2642
(C "A" S-629)

In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-629).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-629) AS AMENDED BY HOUSE AMENDMENT "A" (H-1051)** thereto, in **NON-CONCURRENCE.**

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION.**

Non-Concurrent Matter

Bill "An Act Regarding Lifetime Hunting and Fishing Licenses" (EMERGENCY)

H.P. 1924 L.D. 2670

In Senate, April 4, 2000, **PASSED TO BE ENGROSSED**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1064)**, in **NON-CONCURRENCE.**

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION.**

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/4/00) Assigned matter:

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act to Eliminate the Requirement that a Person Provide a Social Security Number to Obtain or Renew a Driver's License"

H.P. 1869 L.D. 2605

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-996)** (9 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - April 4, 2000, by Senator **O'GARA** of Cumberland.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**

(In House, April 3, 2000, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, April 4, 2000, Reports **READ**.)

On motion by Senator **O'GARA** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in **NON-CONCURRENCE.**

READ ONCE.

Committee Amendment "A" (H-996) **READ** and **ADOPTED.**

Under suspension of the Rules, **READ A SECOND TIME.**

On motion by Senator **O'GARA** of Cumberland, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-996).

On further motion by same Senator, Committee Amendment "A" (H-996) **INDEFINITELY POSTPONED.**

On further motion by same Senator, Senate Amendment "A" (S-640) **READ.**

On motion by Senator **AMERO** of Cumberland, **TABLED** until Later in Today's Session, pending motion by Senator **O'GARA** of Cumberland to **ADOPT** Senate Amendment "A" (S-640).

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later (4/4/00) Assigned matter:

Bill "An Act to Amend the Franchise Law" S.P. 681 L.D. 1931
(C "A" S-554)

Tabled - April 4, 2000, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, March 22, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-554).**)

(In House, April 4, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-554) AS AMENDED BY HOUSE AMENDMENT "A" (H-990)** thereto, in **NON-CONCURRENCE.**)

On motion by Senator **KONTOS** of Cumberland, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-554).**

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED** Committee Amendment "A" (S-554).

House Amendment "A" (H-990) to Committee Amendment "A" (S-554) **READ**.

Senate at Ease.

Senate called to order by the President.

On motion by Senator **KONTOS** of Cumberland, House Amendment "A" (H-990) to Committee Amendment "A" (S-554) **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

On further motion by same Senator, Senate Amendment "A" (S-642) to Committee Amendment "A" (S-554) **READ**.

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

Senator **KONTOS:** Thank you Mr. President. Men and women of the Senate, just so you'll understand what we've just done. We had an amendment added in the other Body which we needed to change in terms of appointments to members of the commission. Those changes were made and we needed, first, to remove the other Body's amendment in order to add this new one. The composition of the commission that's identified in the amendment remains the same. The appointments were altered in the amendment. I ask you to join me in supporting it.

On further motion by same Senator, Senate Amendment "A" (S-642) to Committee Amendment "A" (S-554) **ADOPTED**.

Committee Amendment "A" (S-554) as Amended by Senate Amendment "A" (S-642) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-554) AS AMENDED BY SENATE AMENDMENT "A" (S-642) thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later (3/27/00) Assigned matter:

SENATE REPORTS - from the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Provide an Angling Season for Atlantic Salmon" (EMERGENCY)

S.P. 1011 L.D. 2579

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-590)** (5 members)

Tabled - March 27, 2000, by Senator **KILKELLY** of Lincoln.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, March 27, 2000, Reports **READ**.)

Off Record Remarks

On motion by Senator **RUHLIN** of Penobscot, **TABLED** until Later in Today's Session, pending motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

Senate at Ease.

Senate called to order by the President.

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

HOUSE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Amend the Control of the Revenue Generated by Games of Chance at the Agricultural Fairs"

H.P. 1756 L.D. 2462

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1045)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - April 6, 2000, by Senator **MILLS** of Somerset.

Pending - motion by Senator **DAGGETT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, April 5, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**.)

(In Senate, April 6, 2000, Reports **READ**.)

On motion by Senator **DAGGETT** of Kennebec, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1045) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME.**

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1045)**, in concurrence.

Off Record Remarks

Senator **PINGREE** of Knox was granted unanimous consent to address the Senate off the Record.

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

Senator **PARADIS** of Aroostook was granted unanimous consent to address the Senate off the Record.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication: S.P. 1075

119TH MAINE LEGISLATURE

April 6, 2000

Senator Carol Kontos
Representative Gary O'Neal
Chairpersons
Joint Standing Committee on Business and Economic
Development
119th Legislature
Augusta, Maine 04333

Dear Senator Kontos and Representative O'Neal:

Please be advised that Governor Angus S. King, Jr. has withdrawn his nomination of M. Kelly Matzen of Auburn for appointment as a member of the Maine Educational Loan Authority.

Pursuant to 20-A, M.R.S.A. §11415, this nomination is currently pending before the Joint Standing Committee on Business and Economic Development.

Sincerely,

S/Mark W. Lawrence S/G. Steven Rowe
President of the Senate Speaker of the House

READ and **REFERRED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.

Sent down for concurrence.

ORDERS OF THE DAY

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

Bill "An Act to Amend the Nutrient Management Laws to Include the Regulation of the Discharge from Fish Hatcheries Except for Aquaculture" (EMERGENCY)

S.P. 1052 L.D. 2642
(C "A" S-629)

Tabled - April 6, 2000, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 3, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-629).**)

(In House, April 5, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-629) AS AMENDED BY HOUSE AMENDMENT "A" (H-1051)** thereto, in **NON-CONCURRENCE.**)

On motion by Senator **PINGREE** of Knox, the Senate **RECEDED** and **CONCURRED**.

Off Record Remarks

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

SENATE REPORTS - from the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Provide an Angling Season for Atlantic Salmon" (EMERGENCY)

S.P. 1011 L.D. 2579

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-590)** (5 members)

Tabled - April 6, 2000 by Senator **RUHLIN** of Penobscot.

Pending - motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, March 27, 2000, Reports **READ**.)

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

Senator **RUHLIN:** Thank you Mr. President. Mr. President and ladies and gentlemen of the Senate, I would like to discuss this issue briefly with you this afternoon. It's an issue that involves Maine's reputation worldwide as an Atlantic salmon angling or fishing state. It involves, just in the Bangor, Brewer, Orono, Old Town area, what's been truly identified as \$14 million a year industry. That year exists May through June. The same thing happens in other areas of the state, but that's not what we're going to talk about here today. The figures have been truly identified, thoroughly researched, and were presented in a federal hearing process where they did say there were 20,000 fishing user days in the Penobscot River during the months of May and June and that those people expended an average of over \$100 a day each and that generated an immediate \$14 million to a Maine economy that needs that \$14 million. Now, what has happened here? We reconstituted, and I must say in retrospect and wisely, the Atlantic Salmon Commission a year or so ago. And that commission was supposed to have 3 members. Two of them were appointed by the Governor and approved by the Senate in the advise and consent process. Without waiting for a third to be sworn in and officially start their duties, they voted to close all the rivers in the State of Maine, regardless of any scientific reasons, to Atlantic salmon fishing. Let's examine, if we will a moment, that decision. First of all, that decision was based on the expectation that the federal government may, in fact, list 7 rivers, not all the rivers of Maine by the way, in the Endangered Species Act. I don't believe that's the right way to go. I think Maine has a salmon management plan. That it can manage its own resources better than big brother can. But, I do feel that we should have a cooperative attitude. I think to take all the rivers of Maine, many of them not included, I really stress that, not even under consideration, as we stand here today, in the federal government Endangered Species Act. Let's examine why they aren't under consideration. It's because there are 2 types of rivers. Those rivers where wild, natural runs of Atlantic salmon occur and, due to habitat spoilage over the years and in the high seas, including over fishing commercially, the populations have gone down to a point where they're severely endangered. However, there is one

more class of river, 3 of which are named in this Bill. Those are the Penobscot, the St. Croix, and the Saco Rivers. There are hatchery operated, artificial, if you will, runs of Atlantic salmon. That means that eggs are taken from the Atlantic salmon, they're brought to juvenile stage by the hatchery, they're released into the river, they go to sea, and they come back. Now, why do we do that? We do it because we recognize these rivers as the native runs for Atlantic salmon, which were extinct some 40 or 50 years ago due to dams and pollution. This is an attempt to restore those rivers, in the long term. That's why they're called restoration rivers. That hatchery program is there in recognition that we, as a state with our tax money, have spent hundreds of billions of dollars to clean up these rivers. And in so doing, we should partake of certain benefits under the belief that if you use the resource once it's cleaned, you will appreciate that river. And if you appreciate that river, you will not backslide into the old ways of polluting the river so it cannot be used. That was the principle behind the 1968 Clean Rivers Act, which established the Green Lake Federal Hatchery, which was built with federal dollars to bring about a recreational, I stress that, a recreational Atlantic salmon fishery on the Penobscot River, as well as other rivers. To take and deny the use of the recreational resource without good scientific reasoning is, first of all, beyond my comprehension. It's also beyond good salmon management. And I'll tell you why. Because those people, those very users who are there, number one, are not, and I emphasize are not, hurting the resource. That hatchery needs 500 adult Atlantic salmon returning to the Penobscot River annually to sufficiently give the seed, or the eggs, that the hatchery needs to grow to juvenile state for release. The Penobscot River has not had a run of less than 500 and it's been 25 years. There are more Atlantic salmon returning to run those rivers now than there were 25 years ago. Important fact. Last year, on the Penobscot River, there were twice as many Atlantic salmon returning to the river as was necessary to provide seed to the hatcheries. So there is no scientific reason. And I, personally, asked the Acting Director of the Salmon Commission why they proposed to list the Penobscot. What was the scientific basis for that? I was told, in public directly, that the only reason was because the other fishermen in the other rivers would feel left out, and it was a political decision. That answer was given at a public meeting. I'm prepared to give the date and the time. Now there are those, including members of the Salmon Commission, who will say: "well that's fine, Dick". There's really no reason, scientifically, for this. But it's a message. It's the wrong message that we'll be sending. I'll tell you something right now, so much for messages. I would like to put, if I may Mr. President, with permission, into the record of the Senate from the federal register, Volume 64, Number 221, dated Wednesday, November 17, 1999, on page 62629, the following comments from the federal government. This is the federal proposal to lift the endangered species in the State of Maine. I now will quote to the Senate, directly, directly from the federal register. And I quote, "The population in the Maine stem of the Penobscot River, which is within the DPS range," that's the geographical range, "is not, not included in the DPS at this time, because of the lack of a comprehensive genetic survey of this stock that includes hatchery and wild returns". It's right there. It's not even under federal consideration. Who are you sending a message to when they're not even considering closing the river. There is no proposal to close that river and it's clearly stated in the federal register that there is no proposal, presently existing, to close that river. What kind of a message are you sending to them

to say well, we're going to close it any way. Not because of any scientific reason, but because we don't want the other rivers that are being closed to feel lonely. Well thank you very much. I think the message we should send them, is no thank you. We understand our rivers. We know our rivers. We do want to cooperate with you. We have no reason to close this river. You have not proposed closing it. It's not under debate. Let us, therefore, allow that recreational use that generates economic benefits to the area of \$14 million that we just can't replace. Let's allow that to go on. Let's keep the people on the river so that they can appreciate the river and so they will protect the river. I say to you, what this Salmon Commission has done is nothing more than a wrong step since they started a year ago. They're demanding that 11,000 adult salmon be killed. These are 11,000 undiseased Atlantic salmon that were raised from specialty rivers, those wild run rivers. The eggs are taken from them, given to the aquaculture industry. The aquaculture industry said we want to be good friends. We want to be good neighbors. We want to be good citizens. We will take and raise these fish for you to adulthood, and then we release them into those endangered rivers. They did that. They spent hundreds of thousands of dollars, raising 11,000 salmon to adulthood. Now this commission has said there was a diseased fish 5 miles away in Canadian water. The fact that these fish had been tested and found disease free won't matter. Doesn't count! There's a fish 5 miles away. We are going to order the destruction of these, the future seed of the rivers, and you'll kill 11,000 salmon, officially. But don't go fishing for them. Don't ever catch and release one unharmed, because that's wrong. But I want you to go kill 11,000 of them. Right now! I'll tell you what that is. That's a turf war. That's a turf war, pure and simple. It's a turf war to protect jobs and protect bureaucracy. It's such a turf war that the head biologist of the State of Maine today announced his resignation from the Salmon Commission. So when you get ready to vote today, I think you should keep those things under consideration. Recognize that we know the Atlantic salmon. We are the only state in the nation that has fishable runs of Atlantic salmon. It is a feather in our cap. Let us keep that feather in our cap. Let us keep those motels who will be hurt, the campgrounds that will be hurt, the sporting goods stores, that money that filters out into community. Let us also keep them in mind and we'll move forward. Please do not accept the majority Ought Not to Pass report. But go on and allow people to fish in these 3, 3 out of 17 rivers. Before I finish, one of those 3 I'm going to single out for a moment. The Saco River, I've talked a lot about Penobscot. Let's take a second one. The Saco River, too many dams, too much pollution, runs gone extinct. Finally, clean it up and they came to the State of Maine, the very same Salmon Commission, and said we would like to try to restore the river. Years ago there were runs here. And the State of Maine said no, we don't have the resources. We don't have the interest, have too much to do already. Not interested. The fishermen, the users of the river, raised \$150,000 of their own money to build a hatchery themselves. And the State of Maine wouldn't give them eggs. They had to go to the federal hatchery to get eggs to help in a private restoration of a river in the State of Maine that had been a salmon river. I say, shame on the Salmon Commission. But, they did it. It was the users of the resource, the people who enjoy the resource, who worked in a responsible manner. The conservationist, as they have always proven themselves to be, who stepped forward and, when the state failed, stepped right up to the plate. So I hope you will reject the Ought Not to Pass

report so that we can go on to pass the Ought to Pass. Thank you.

The President requested the Sergeant-At-Arms escort the Senator from Knox, Senator **PINGREE** to the rostrum where she assumed the duties as President Pro Tem.

The President retired from the Chamber.

The Senate called to order by President Pro Tem **CHELLIE PINGREE** of Knox County.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Kilkelly.

Senator **KILKELLY:** Thank you Madam President. Men and women of the Senate, I'd like to approach this issue by addressing the comments of the previous speaker one at a time and starting with the issue of a closed season. Closing any kind of a season is a very serious matter, and certainly, issues have been raised about the fact that the Atlantic Commission did, in fact, close the season without a public member. What I'd like to also let you know is that on Thursday, March 2, in a publicly noticed hearing of the Maine Atlantic Salmon Board, with all 3 members present, they did, in fact, discuss LD 2579, an "Act to Provide an Angling Season for Atlantic Salmon", and unanimously voted to oppose the Bill. It is something that all 3 members of the board do, in fact, oppose. So now we've got the season closed and now we need to look at why we are doing this. What is the real problem here? Minutes of a meeting of November 17th in Bangor with the Atlantic Salmon Commissioners and staff, a public hearing was held to discuss this proposal. I'd like to read the statement from Ed Balm, presented as to why we needed to do this, and it's from the record. "Throughout North America, fishery scientists use the term MBAL, minimum biological acceptable level, or this means the absolute minimum number of salmon per river. This number has been calculated for 557 salmon rivers in Canada and 21 salmon rivers in New England, 16 in Maine, 16 rivers in Maine. The total MBAL that we do not want to fall below in North America is 180,000 Atlantic salmon. However, the current estimate of Atlantic salmon in North America is 75,000 or less than 50% of the minimum biologically acceptable level. The Maine goal is 18,000 in all 16 rivers and the goal for the Penobscot River is approximately 8,300. This year's run in the Penobscot is around 900 for 1999. This is less than 10% of the minimum biologically acceptable level, or the absolute minimum number of salmon per river, in order to continue salmon in that river. Most of the Downeast rivers are between 5% and 10% of the MBAL. Overall, the numbers in Maine are probably the lowest they have ever been in our history". It wasn't done without thought. It wasn't done without facts. It was, in fact, done with facts. On one of the handouts that I've given you there are 2 graphs and I'd like to draw your attention to the bottom page of the second sheet talking about Atlantic salmon returns to the Penobscot. Atlantic salmon returns to the Penobscot River, approximately 968 in 1999. We're 20% lower than in the previous year, 1998, where the return was 1,210, and 31% and 50% lower than in the

previous 5 and 10-year averages respectively. The returns, in fact, are decreasing, as the graph shows and as this report shows. This report is the 1999 USA Atlantic Salmon Stock Status and Restoration Program Report, which is a working paper of the North Atlantic Salmon group and it was presented by Ed Balm.

Catch and release has long been an issue. The sense is that if you do catch and release the animals are then unharmed. They return to the water. There's not a problem. We've heard a lot of numbers about what the mortality rate is in a catch and release fishery. Some will say that it's very, very low. Others will say it's about 5% or 10% and then it gets higher. One of the issues about catch and release, and because we don't have a fisher education program the way we have a hunter education program, means that anyone who wishes to purchase a license, in season, could in fact go out and fish for salmon. They may not understand that the temperature of the water has a lot to do with whether or not that fish will survive being caught and released. Whether the length of time that that fish is on the line and played on the line has an impact on whether that fish survives catch and release. How much water is running has an impact on that fish. There are a number of issues that impact the mortality of catch and release fisheries and this fishery, according to the Atlantic Salmon Federation and the other handout that I gave you, the mortality associated with catch and release fishing is approximately 3% to 5%, according to their scientists. The population is simply too vulnerable to allow any mortality associated with angling. That's from the Atlantic Salmon Federation. Those are important issues. Another aspect of that has to do with condensing the number of people that may, in fact, be interested in salmon fishing on fewer and fewer rivers. In 1999 there were approximately 900 licenses sold. So if you take those 900 license holders and you move them down 3 rivers, as opposed to up to 17 rivers, then that means there's going to be more and more impact on the number of salmon that are, in fact, in those rivers. The chance of not only fish being caught and released once with a possible, say on the low side, 3% mortality, a high side maybe a 10% mortality. What about fish that are repeatedly hooked, repeatedly caught and released. And what about the mortality there, it has to go up. It has to go up because the fish, in fact, is going to be tired repeatedly. It's going to be brought out of the water repeatedly. It's going to be handled repeatedly. So the impact of catch and release, when you reduce the number of rivers, is going to be significantly higher. When we talk about what rivers are going to be included in the potential listing, a listing that I oppose by the way. I'd like to read to you another paragraph from the Federal Register around this listing issue. In fact, it's on the same page as was previously read. "The population in the Maine stem Penobscot River, which is within the DPS range, the distinct population segment range, is not included in the DPS at this time because of a lack of comprehensive genetic survey of this stock that includes both hatchery and wild returns". So they're acknowledging that there are, in fact, wild returns in the Penobscot River. "It would be premature to determine the status of the Penobscot population in relationship to the Gulf of Maine DPS without comprehensive genetic data. Sample collections, genetic analysis and biological information are still being collected by the Fish and Wildlife Service and will be analyzed to make a final determination of the status of the Penobscot River population relative to the coastal Atlantic salmon populations of the Gulf of Maine DPS. Samples were collected in October of 1999 and analysis of this data should be completed in early 2000. The tributaries of the lower

Penobscot estuary downstream of the Veazie dam are considered within the DPS range, but the existence of naturally reproducing Atlantic salmon with historic river specific characteristics must be confirmed before additional tributary populations can be included in the DPS. Population in Cold Brook tributary to the lower Penobscot River is already included in this DPS." They are also surveying a number of other rivers that may, or may not, be added to the list. They go on to the next page to say: "The best available scientific data supports the advice of technical experts in Maine that no directed recreational catch and release fishery should be carried out given existing stock conditions. Continuation of the existing directed catch and release fishery poses a threat of mortality or injury to the Gulf of Maine DPS of Atlantic salmon". Catch and release is an issue because it does create mortality among the fish. I believe it does send a message to the federal government that we are not, in fact, concerned about that particular kind of mortality and that it may, in fact, send them a message that because we're not concerned, they ought to be concerned and they ought to move more quickly to, in fact, broaden the number of rivers that they are talking about. I'm very concerned that if this Bill passes it, in fact, will send a message that they better get in here and they better do something about it because we aren't dealing with it. Madam President, I request a roll call when the vote is taken and I urge you to go with the majority of the Committee on Inland Fish and Wildlife to, in fact, support the Ought Not to Pass report on this Bill. Thank you.

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Ruhlín.

Senator **RUHLIN:** Thank you Madam President. First of all, I'd like to clear up some things. But before I do that, I don't want to get into dueling federal reports. I just want to thank the gracious Senator from Lincoln for reading additionally into the record that which confirms what I said in the first place. And to sum up, in full context, what it means without going back and boring you again by reading the whole thing, It says the Penobscot River is not included, period. The Penobscot River is not included in any proposals to list as endangered species the Atlantic salmon. It's here, you've heard it from one proponent, now you here from another proponent. It's in full context this time. The other thing I would like to say; a comment was made that the Salmon Commission, with 3 members present, opposed this particular legislative proposal. I would say to you clearly when the Bill, the original Bill, was brought before you, it largely included all the rivers of Maine. There was a reason for that, which I'm not going to get into a lot of detail today other than to say; I hold that it will be determined at a future date that the Atlantic Salmon Commission overstepped its bounds, got into the territory of the legislature by closing all the rivers. They made a major substantive change and law in the State of Maine without coming back to the legislature, which they are suppose to do, which is clearly stated, and which I have an opinion from the Attorney General on. But we'll get to that at a future time. Let's stay right tuned in to this particular Bill. That same Salmon Commission, the third public member, the one person at large who's suppose to have some expertise with salmon, who represents the public,

was asked specifically at a hearing held in this building what he thought about closing restoration rivers such as the Penobscot and the Saco River to recreational fishing. He clearly stated, in front of the Inland Fish and Wildlife Committee of all people, clearly stated unambiguously, that "had I been a Commissioner at that time, I would not have voted to close those restoration rivers, including the Penobscot, Saco, and St. Croix". And I don't want put words his mouth, I'm not sure exactly what he said. He said, "the restoration rivers, including the Penobscot". He would not have voted to close those to recreational angling. So, let's put that in its whole context. Now go back to these hearings that were discussed. I think to go back to full context, we should also consider that 90% of the people who gave testimony, citizens, your neighbors, the people who participate, who were trying to protect the river and protect the species, 90% of them testified that they did not feel that the restoration rivers, I'm talking about restoration rivers now. If you want to take the Saco or take the Penobscot. The Penobscot is the one that has the most fish runs. So let's use the Penobscot as an example. 90% of them said those rivers should not be closed to angling. In spite of that, 2 bureaucrats, serving as bureaucrats in this state, voted to close them, to ignore public opinion. Now the other thing, you were presented a graph. A most interesting graph, that shows you how graphs could be misleading. What I did, rather than rely upon a graph, I went and got the trap reports dated March 21, 2000, the latest thing, dating back to the year 1970. It says here some interesting figures. More salmon were returned last year then a full third of all of the other years. About 8,000 salmon. A peak year, which is what you call a bump year in a cycle, which almost doubled all others except for one year, was 4,000. Last year it as nearly 1,000 and the trap was inoperative for 2 weeks. So, let's look at figures and account them for what they really are. 1999 had 968, 1983 had 800. We didn't list them endangered in 1983, did we? We didn't close it to angling in 1983. We could have closed to angling, I guess 1979 only 768 that year, the cycle of fish. How about 1994, 40 more fish in 1994. We didn't close it to angling that year. That's what the figures really are. Beware of graphs that mislead. You know the Atlantic Salmon Report is a management report. If it's so important to close all of these rivers, let me finally ask you just one question. Why is it, in response to the endangered listing proposal, Maine did not generate, and does not have to this day, a management plan? A conservation management plan for the Penobscot River. Oh, don't have one for the Penobscot River. How about the Saco River? Don't have that either. Oh, they must not be endangered rivers. Well if they're not endangered rivers, why close them? Simple as that, case rested.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KILKELLY:** Thank you Madam President. I've been working on Atlantic salmon restoration and protection efforts so long that I feel like I'm the tail trying to wag the dog. And I don't seem to ever be getting anywhere in the State of Maine. The rivers in question in Maine certainly have to be divided into 2 separate elements. The rivers that are designated as restoration river, and the rivers that are being proposed for Atlantic salmon listing under the endangered species act as a native run of Atlantic salmon. Clearly, again, here we are with one size fits all. And once again, it just doesn't fit all. There are 2 different elements here of rivers. I can go back to 1993 when this very

legislature established and passed a joint resolution supporting efforts to restore Atlantic salmon to the Aroostook River, a river up in my area. That goes on to say: "Resolve that we, as members of the 116th Legislature, now assembled recognize the Aroostook River as a restoration river commonly known for its Atlantic salmon and support and encourage by the Atlantic Sea Run Salmon Commission, the United States Fish and Wildlife Service, and other interested parties to stock Atlantic salmon in the Aroostook River. But we recognize and support the efforts of the Canadian Government in stocking portions of the Aroostook River and that we pledge to work cooperatively with the Canadian officials and the United States Fish and Wildlife service, and interested parties in the restoration of salmon to the Aroostook River." I'm reading that because I think it's important to see how much influence that had on what our biologists have done here in the State of Maine. When this Bill was first introduced, it was to include the Aroostook River. And, after giving it some consideration, I said no. We don't want the Aroostook included because our fish come up the St. John through Canada. It's the only way they can get there. I've never seen any walking over land. Three years ago, in cooperation with the Canadians, we stopped fishing the Aroostook River. They stopped fishing the St. John and things have worked very well. I was very disappointed when I received this packet some time ago that came out of the, it doesn't say where it came from, but I guess it came out of the Atlantic Salmon Board. It shows a map here of watersheds of the Maine Atlantic Salmon Rivers, very colorfully done. The only problem is the river that had the second highest return of Atlantic salmon last year, which was the Aroostook, isn't even on the map. Two years ago we met with John Ritter, who is the Chief Biologist from Halifax for Fisheries and Oceans for the Scotia Fundy Region in New Brunswick and Nova Scotia. Our biologists asked at that time about the eggs that we receive from the Canadians, and we had been promised to receive them for free after we built a hatchery in Northern Maine, a new state-of-the-art hatchery that will handle 2 million eggs at a time. They agreed to supply us with eggs free of charge. Our biologists at that time requested that they, in turn, isolate these hen salmon, female salmon, down to Mactaquac when they were trapped there. That those eggs be stripped from those salmon and that they be isolated in individual pails. After 2 years, this was the first year that the Canadians had agreed to this. They trapped 56 adult female salmon for us. They isolated the eggs, treated them with iodine, they lethally sampled the fish. That means they killed them, took their heads and sent them away to be tested. Out of the 56, 2 of them came back with a disease that the Canadians don't even test for. So we said "fine". We certainly don't want any diseased eggs coming into Maine. So just send us the eggs from the other 54. Well they said "we can't do that either because these fish came up the same river that the two diseased fish came up". Well that sounded pretty good except for we had 80 fish come back to our trap and leftover to tinker, free swimming up the river, and they were taken out of the trap and put around the dam and came up the same river, but those were okay. Now if that doesn't show that there's a turf issue here, I just don't know what's any plainer than that. With the distinction being made between the 2 types of rivers, and there clearly is one, I really can't see any problem with having a catch and release season on these 3 rivers in question. Not including our river, because we are voluntarily keeping it closed. I can't see what harm it would do and it possibly can do some good. Sometimes fishermen are very protective of what's in these rivers and by having some

fishermen out there, we might keep some poachers from jigging some of these salmon. So I wish you would oppose the pending motion and support the minority report on this particular issue. I don't see any harm to it and until I see a whole lot more effort on behalf of our own state and restoration efforts, I'm sort of a doubting Thomas. I have an article here to show you what some other areas are doing in regard to restoration of fish. At Shasta Lake City in California they had a dam that was blocking the chilly water from running down the water. I believe this is a little overkill, to say it quite simply. They bolted on a huge \$80 million temperature control system to Shasta dam. Now, the spokesmen for this group said this was a substantial effort for natural resource commitment and it says indeed measured in the terms of the 2,000 endangered salmon recorded in the recent count, the price comes to a formidable \$40,000 a fish. Now I don't think we have to go to that point, but I do think our efforts have been dastardly in our attempt to restore Atlantic salmon. Thank you, Madam President.

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

Senator **GOLDTHWAIT:** Ladies and gentlemen of the Senate, I try to stay with salt water issues because I know them better, but I just wanted to offer two comments. One is that regardless of the reassurances about this sort of 2 river system, I continue to be a bit worried about that since, when I attended the federal hearing on the salmon issues, that distinction was not being made. It may well have evolved from that point. But after 6 years now of working with federal fisheries management issues, I wouldn't have the confidence to say that anything is decided, practically after it's written in stone, and certainly not before. So, I do have a concern about this. Also, one of the members of the commission, namely the Commissioner of Marine Resources, shares that concern. He is a gentleman who has worked for the federal government itself in fisheries management. He worked for an interstate commission in which he ran the interstate fisheries management program and worked with the federal government on a daily basis. He is quite worried about the impact that a decision, such as this, might have on the proposal for the listing of the salmon as an endangered species. I'm not entirely sure that there's logic to this, is what I'm trying to say. But unfortunately, sometimes it is not logic that carries the day in these debates. And right now it seems to me inevitable with fish. We don't entirely understand the dynamics of this. We are not 100% sure why fish are not coming, or not going, or whatever it is they're not doing. And it seems to me that it is not unreasonable to think that a ban on any taking of salmon is appropriate until we have this issue in a bit better perspective and understand more fully the implications. I don't know whether it's safe to extrapolate, but I do know that the mortality in the catch and release recreational fishery per stripe bass exceeds the entire commercial catch of that species on the Atlantic seaboard. So catch and release mortality can be a significant issue and, yes, that percentage can vary greatly depending on what the conditions are and how experienced the fishermen, and so on. But the significant point to me is that it's not zero. If we are even considering an endangered species listing, and there could be any interaction between this decision and that decision, I believe that the safer thing to do is to accept the majority report for the time being and reevaluate that as this situation evolves, and I would hope that you would agree. Thank you.

The President Pro Tem requested the Sergeant-At-Arms escort the Senator from York, Senator **LAWRENCE** to the rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Knox, Senator **PINGREE** to her seat on the floor.

Senate called to order by the President.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Kilkelly

Senator **KILKELLY:** Thank you Mr. President. Men and women of the Senate, just a reminder before we vote on this Bill. We need to look at the fact of when 5% is too much. As I read from the rationale for closing this fishery, we heard that the minimum biological acceptable levels had been established. That's the absolute minimum number of salmon per river. The 18,000 goal for Maine was for 16 rivers. For the Penobscot it's 8,300. The Penobscot run in 1999 was 900, which is less than 10% of the minimum biological acceptable level. If you are already 90% below the absolute minimum number of salmon that can repopulate the river, 5%, 3%, 1% mortality from a very successful, skillful catch and release program is still too much. Thank you very much.

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

Senator **RUHLIN:** Thank you Mr. President. Mr. President, I'd rather hesitate for a moment, I think I will ask for permission to speak a third time. Some of this is in response to questions. However, I wouldn't want to step over the line. So I would ask, therefore, permission to speak for a third time.

THE PRESIDENT: The Senator from Penobscot, Senator Ruhlin, asks leave of the Senate to speak a third time on this matter. Is this the pleasure of the Senate? The Senator may proceed.

Senator **RUHLIN:** The gentle Senator from Lincoln just raised a point, which I never thought of. It's an excellent point. Say you want to have an 8,000 minimum run in the Penobscot River. I know that river well. I grew up on the banks of that river. I fish it often. The family, going back a few generations, have fished it often. There are 7 dams on the Maine stem of the Penobscot River. I ask you to join me in some very simple math. At the very best, the very best scientifically researched fishway, the mortality of failure of passage at each dam, at each fishway, the best they have is 80%. You can do math just as well as I can. If you have 7 dams and you lose 20% of your run at the first run, then you lose 20% of the remaining, and so forth up through, you're not going to have very much left when you get to the top. And once you get to the top and they lay their eggs, they become native run fish and they want to run out. They have to run back into all those dams, creeks, and ponds behind them. Great pickerel water and bass water. They love those little baby salmon about that size. But those that get away from that, they want to flush them through

the turbines. I'm going to tell you, there's not much left when you get done. So if you want 8,000 salmon in the Penobscot River, I'll tell you what you better do. You better get busy building an awful lot of fish hatcheries, because that's the only place they are going to come from. It's not a native run river. It's not a natural run river, nor will it be in the foreseeable future. Now, one other point, I really would like to mention is when we have a representative to the federal fisheries, sports fisheries, I think they should know the issue. The issue here is Maine has had a policy of identifying 2 types of salmon rivers and that policy has been in place, and I refer anybody who wants to the Cushing Report of 1959 where I first found that policy. It may have existed before that. The policy was clearly enunciated that once we got a restoration of the rivers, the clean water and some working fishways in, that we should then have a policy, one policy for those restoration rivers. And that's where the term came from. That's when it was first used, in 1959, not 6 months ago. I make 1959 to be 41 years ago. That's a big difference from 6 months ago. If we have a representative from Marine Fisheries that doesn't know it, I apologize. That's the way it is. And so then the thing with me is about the mortality of striped bass. That's one of the things we're talking about here. One of the good things the good Senator from Aroostook mentioned. You have Atlantic salmon fishing, conservationists with single hook, down there carefully catching and releasing unharmed Atlantic salmon with a single hook. The mortality by the way, peer review, scientific research in water temperatures under 70°, and they're cold water fish. That's usually where it is. Your mortality is 1% or less. That's accepted peer review for the Department of Fisheries in Canada. Not the Americas most respected and recognized scientific data gathering organization. However, if you close those rivers to Atlantic salmon angling, allow the striped bass, where you have a high mortality that we just heard about, that mortality will shoot up. And why will it shoot up? It will shoot up because striped bass fishermen don't fish with single pointed lures. They fish with a spinning lure. They have a great big gang hook on them. Sometimes they even have 3 sets of gang hooks on them. You get about 9 or 10 of those hooks into a salmon and you're not going to release that fish unharmed. Your mortality will skyrocket. That's exactly what's going to happen when you remove the salmon anglers from the rivers of Maine. You run that danger. So I just thought that perhaps the Senate would be interested in those facts. Thank you and I hope you will defeat this motion of Ought Not to Pass and go on and protect the Atlantic salmon in the State of Maine and protect a viable \$14 million a year income in the Penobscot area alone, in just 2 months. I hope you'll recognize the economic impact. The impact of that on the store owners, the motel owners, the campground owners, the restaurant owners. I hope you'll keep that in mind, also. Allow recreation, maintain an economic benefit, and protect the Atlantic salmon. A chance to do all by voting, ultimately, Ought to Pass on this. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Lincoln, Senator Kilkelly to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#338)

YEAS: Senators: **BENNETT, DAGGETT, GOLDTHWAIT, HARRIMAN, KILKELLY, LAFOUNTAIN, MILLS, PENDLETON, PINGREE, RAND, SMALL, TREAT**

NAYS: Senators: **ABROMSON, AMERO, BENOIT, BERUBE, CAREY, CASSIDY, CATHCART, DAVIS, DOUGLASS, FERGUSON, KIEFFER, KONTOS, LIBBY, LONGLEY, MACKINNON, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE**

12 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

The Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-590) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-590)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

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

SENATE REPORTS - from the Committee on **LABOR** on Bill "An Act Regarding Length of Service for Retirement Benefits for State Police Officers"

S.P. 911 L.D. 2363

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-643)** (10 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (S-644)** (2 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (S-645)** (1 member)

Tabled - April 6, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF ANY REPORT**(In Senate, April 6, 2000, Reports **READ**.)

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-643)**.

Senator **MILLS** of Somerset requested a Division.

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

Senator **MILLS:** Mr. President, if I may speak to this issue for a few moments. Men and women of the Senate, several years ago the Labor Committee became quite concerned that we had differential retirement benefits for different categories of state employees. The Maine State Police had their own special plan, which allowed them to retire after 25 years of service provided they had achieved the age of 55. All other employees were under a rule that said you had to work until age 62. This system includes not only all Maine State employees, but all teachers. The problem that was presented to us includes the notion that under current law since 1993, when someone wants to retire early, they must take a very substantial percentage discount on the monthly annuity they acquire or achieve under the pension system. So, the whole problem of early retirement for state employees and for teachers is a very significant personnel problem confronting the state at the present time. And the cost of possibly fixing it or changing it could be very, very substantial. We are now in a position where we are, if not forcing it, certainly coercing it. Third grade teachers remain in the classroom teaching little kids until they're 62 years old. I'll say it again, until they are 62 years old. In any case, we had presented to us this year a Bill in which the Maine State Police came to us and said that they would like to be included in a very special plan. Not just the special plan that was created for them in the 1980's, but a plan that would give them the right to retire after 25 years of service with no minimum age requirement. Now to back up just for a moment. A couple of years ago, the Maine State Police were the only members of state employees who had access to a special retirement plan. We had very powerful presentations from the warden service, IF&W, from the marine wardens' service, from the prison guards and from many others who were in at, that time, an age 62 plan. After very careful deliberation during the summer and fall between sessions, we came up with a system of allowing these other folks to join a special plan that was very similar to what the Maine State Police had, but with somewhat lesser benefits, because we didn't have the money to pick these people up to give them full parity with Maine State Police, by any means. So we have this system now called the 1998 special plan that includes at present, the Maine State Police who have been in it for many, many years, but also now, the warden service, who made a very compelling case that there is a strong requirement to remain physically vigorous while remaining in the warden service. After all, searching through the woods for lost children, and climbing up and down mountains, and running around in search of alcoholics driving snowmobiles, and the like, does require a certain vigor to a certain capacity. So we included the wardens, both warden services. We included the prison guards who are constantly in physical contact with some very dangerous people.

And we enlarged this special plan from about 300 police officers up to well over 1,000 Maine State employees. All of whom have jobs that are physically demanding. Then came this year and the troopers came to us and said, well, the special plan that includes these 1,000 people or so, isn't appropriate for us. We want a very special plan that will allow us to retire after only 25 years of service. And you can create that plan for us and fund it fully for all people presently in the Maine State Police for a cost \$2.7 million. So that is the Bill. That is one element of the Bill that lies before you in the majority report. It is, first of all, a request by the Maine State Police to fund \$2.7 million to create a new retirement system for them that will then set them apart, once again, from the marine wardens, from the IF&W wardens, from the prison guards, and from everybody else that we have funded to put into this special plan as it currently exists. You have to ask yourself, is this good for the morale of the other people who are not being included in this special Bill. I suggest to you that it is not. The case that has been made to us is that the Maine State Police have some special problem recruiting new members. When we looked into the numbers of people that are applying for the academy, we found that there are approximately 20 slots open for each academy class. The last time they had an academy class, they had 800 applications for those 20 positions. Of course, not all of them were well qualified, but in any case they had a surfeit of applications available. We also had the case made to us that the Maine State Police are now suffering from some attrition, that once and a while someone is leaving because they can get a better job elsewhere, or pension benefits in another location are superior. We found, upon examination, that they are losing, out of the 330 people who worked with them, roughly 3 or 4 per year for purposes other than retirement. That's an attrition rate of just over 1%. The attrition rate for Maine State employees, on average, is roughly 10%. So they have roughly the lowest attrition rate of any bargaining group, I think, in the state. Now there's something else that needs to be addressed. We have been told that their pay is non-competitive with that available from some municipalities in other states. And while I'm not prepared to address whether their general pay scale is lower or higher than that which is available from other organizations that they might be employed by. Their contract is so complicated that they get paid not only for regular salary, but they also get paid something called availability pay, some of them do. Some of them get call-out pay. Many of them get comp time pay. Many of them get court time, practically all of them get some sort of court time, extra pay, special detail pay, nonstandard work week pay for many of them, Holiday pay and longevity pay. These are categories that are entered into the payroll schedule of all the Maine State Police Officers. I asked that the payroll for the Maine State Police for last year be given to me so I would have some idea what they make. Some of them are making as much as \$70,000, \$80,000, and in one instance \$90,000 a year with overtime and all of these other categories of special pay. There is also the rule that they abide by that when overtime is made available, it is always the senior person within the troop or category who gets to turndown that specific overtime opportunity. It isn't something that is rotated through the entire troop. It goes first, every single overtime opportunity, goes to the trooper who is senior in the troop or in the category that is eligible to take that overtime. And there's a fair amount of overtime offered every year. What does that mean? That means that when you're in your final few years of service, building up something called your average final compensation, which is the last 3 years of your pay averaged out,

that you have the opportunity, under the current union contract system, to build up your average final compensation to horrendous levels, in some instances. I have forwarded around to you a sheet of paper that is simply marked Maine State Police that has in it the actual retirement amounts that are currently being paid or were being paid upon initiation to the last 12 or 15 people who retired from the Maine State Police force. It also has their average rates of final compensation. They range anywhere from \$40,000 to \$60,000. So their pensions on average are \$24,000 last year, \$25,000 and change this year. It seems to me that before we send to the table a \$2.7 million request to add to this pension system that the internal workings of it through the union contract and other elements of it need to be looked at with great care by the administration, because this is the most expensive pension system right now. This is the most expensive bargaining group for pension purposes that the state administers, by far. And the Bill that is before you today; if it passes, will add greatly, not only to the current expense, but to future expense every year from here on out. And other groups, who have just as compelling a case to make for retiring at an earlier age, will be left out. And it's even more expensive to include those groups, if we should choose to do so in later years.

There's another element to this committee report "A" that needs to be addressed and it has nothing to do with the Maine State Police officers. It's a wholly different subject. So, I want to shift gears. The Bill also includes adding 3 new categories of people who are not represented by the Maine State Police Union, but are represented by MSEA. Three other categories of people to the current special plan, the one that allows you to retire at age 55 after serving 25 years of service. Some of the people, I would suggest, that are included here are probably deserving of that special category. I must say to you, that in my own observation, a number of them that were included were not. We don't have time this afternoon to go into all the reasons why that might be true or not true. But I have to say that I think from a tactical perspective, I think these 3 other groups were added to the majority report to give it added force on the appropriations table. My own view is this should have been an entirely separate piece of legislation. Adding new groups to the special plan should be done on a case-by-case basis, after very careful consideration of each one standing on its own. The minority report, which 2 Senators have signed, suggests that this entire subject of the special plans and of early retirement and of the costs associated with creating special plans, maintaining them, and adding groups to them, that this entire issue ought to be looked at with great care between now and next January and the that the Labor Committee should study it. It should be authorized and directed to study the situation very carefully in conjunction with the union representatives who represent these various groups to see what we can come up with for a more rational system of addressing the very genuine need for early retirement, which crops up with many of these bargaining groups. I think, personally, that we need a system that yields much greater flexibility. These systems that we have now, there are some locked-in systems. You have to reach certain categories. If you don't stay right to the day of the service required of you, you default and you don't get anything of the special benefit. You have to stay until age 62. There should be much greater flexibility in our current pension system than we presently have. And indeed, the union leaders agree with that wholeheartedly. We've had very good verbal support for the notion that we ought to be studying, carefully, how to create more flexibility for individual

troopers, individual members of the warden service, individual teachers for that matter. And the Study Commission that is part of the minority report, signed by 2 of us in the Senate, would address just those issues. In any case, I would urge voting against the majority report at this juncture, because it's ill advised for all of the reasons that I've articulated. Thank you.

Off Record Remarks

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

Senator **DAVIS:** Thank you very much Mr. President. Good afternoon ladies and gentlemen of the Senate. I thank you, Mr. President, very much for this time and I compliment the previous speaker, the good Senator from Somerset, Senator Mills. As most of you know, I'm a retired Maine State Police Officer. It was my great honor and pleasure to wear the blue uniform of the Maine State Police for 23 years. And it was an honor and a pleasure, I can assure you. And I thought today I would tell you a little bit about what it was like to do that. I will try to give you a few figures of my own, and some of the reasons why I think this Bill should be passed. During my time with the Maine State Police, I spent many, many, many lonely nights all by myself. In fact, during the early 70's, myself and another officer were all the law enforcement there was in Franklin County. We worked all the time. We had 24-hour call and that type of thing, back in those days. Our yearly duties varied, but usually we could count on arresting 30 to 50 drunken drivers. These were usually at night, and usually young men, usually a long, long ways from any back up or any type of help. We would have all sorts of crime to investigate and rarely did a very long period pass but we had domestic violence to look at, which of course today is on the front burner of everything. To give you an idea of what it was like, I remember one year serving eight death notices. Imagine it if you can. Going to peoples' homes and telling them that their children are dead, or that their husbands are dead, or their wives are dead. I can remember one evening going to a farmhouse. I drove to the farmhouse. An old lady looked out the window and she came out and met me in the shed, and she was screaming at the top of her lungs, "He's dead, he's dead, I know he's dead!" And, she was right. And the ironic part of that story is a person that is here in the State House a lot, Dale Hannington, was the trooper that found her husband dead on the Maine Turnpike. I had the glorious opportunity to advise her of that, way up in the town of Sebec. Working that way all those years, as I said, it was a privilege and it wasn't all bad, by any means. I did a lot of things. I had coffee with the Vice President of the United States one day, and, for you folks that might be interested, I had a chance to meet Bill and Hillary once. I'm sure they don't remember it, but I do. It was in Portland at the Holiday Inn, we were going up the elevator. We didn't have too long to talk, but it was interesting. The one thing we did have was an excellent retirement plan. Back then, it was 20 years and you could retire. Straight 50%, 20 years and you were out. It was a good deal, and retire I did, Mr. President. And I can tell you, the State of Maine was a wonderful employer and I get a wonderful paycheck every month in retirement and I really appreciate it. It was great!

But, I can tell you one other certain thing, law enforcement, especially in a rural state like the State of Maine, is a young person's job. It was a young person's job in my time and it is still today. Today's society demands much more than yesterdays' on police officers. Our laws today are so much more complicated than what they were 10 or 15 years ago. We have special units now, as the good Senator from Somerset spoke of. They get a little added bonus for doing glorious things like investigating child abuse and domestic violence. We have a special homicide squad that investigates murders. Today's media, and if you don't believe this, I'm telling you, you don't know what you're talking about. Today's media is far more focused today than it was even 10 or 15 years ago. Today the live eye makes it to an accident scene quite often before the trooper gets there. If you're called to an accident and the barracks are telling you all sorts of things about what's going on, then you get to the accident, you have to wade through 2 or 3 television cameras before you can administer first-aid or whatever it takes. And then on top of that, if any type of force results in someone being seriously hurt or killed by the police, they're scrutinized. And I'm not saying that they shouldn't be. I think they should be. But it's scrutinized under a microscope very, very carefully. Sometimes this scrutinization can last for months and even years. But at the time of the incident, just brief seconds were available to make decisions. Again, I'll tell you, law enforcement is a young person's job.

Now the good Senator from Somerset made reference to the special plan that was created in 1984. Well, let me tell you about that special plan. At that time, the Maine State Police had a 20-year and out plan. The special plan they got was 25 years, age 55. It was special all right. Gone was the 20-year plan. And the good Senator is correct. Other law enforcement in the State of Maine didn't pay anywhere near as well, and there is a good case to be made for them. And I don't dispute that a bit and I would assure the good Senator that if I am a member of this body next year, there will be a chance to study it, because I don't intend to stay behind on this. The Maine State Police, and you've all seen the young troopers in the hall, the young men and women, and they've made me very proud. They have put on a good case, I feel. They've laid it out and they've done a good job. I feel they deserve better than what they're getting right now. The good Senator from Somerset made reference, also, to the pay that some are getting and some aren't getting. The reference was made to the issue of overtime and the older people getting it all. I was there when that occurred. A vote was taken according to the union rules and those folks decided that's the way they wanted it. They can revoke. It's within their union to do that, if that's what they want to do. Maine is the only state that doesn't have a 20-year and out plan in New England. I know that's been told to you a number of times.

There are some other things that I have learned in the last few weeks. I've learned about where the Maine State Police standing is in reference to people getting killed in the line of duty in state government. Since 1980, there have been 6 officers that have been killed in the line of duty. One of them could be debated. He was kicked in the chest. A few days later they were putting a pacemaker into him and he died of a coronary. Now that could be debated whether he would have died anyway. So you can safely say there are 5 who have died, 4 since 1984 when the law was changed. I'm not trying to tell you that a change in the law would have made any difference one way or the other. What I'm trying to tell you is that these people deserve a little better retirement than what they're getting. Should

we not give our troopers the same retirement that Auburn, Augusta, Brewer, Cumberland, Fairfield, Lewiston, Millinocket, Portland, Scarborough, Skowhegan, South Portland, Waterville, and Westbrook has? Should we not give them as good of a retirement as those communities give their police officers? Even the Federal Bureau of Investigation has a 20-year and age 50 plan. I've known many of the troopers that died. Tom Merry died up in Palmyra, Maine. He was a personal friend. I went to his house and talked with his wife, I looked at his body. Mike Veilleux, I didn't know him, but I knew his dad. His dad was a lieutenant in the State Police. Giles Landry was murdered investigating a child abuse case. Jeff Parola was from Dexter. The last call that I received after 23 years of service, the last call in November of 1994 that I got as a State Trooper was to go tell this boy's mother that he was dead. That was the last call I got in the Maine State Police, duty call that is. This is the highest rate of any agency in state government. The closest has had 1 killed since 1980. Maine State Police has had 6 or 7, depending on how you look at it. And again, I don't blame the retirement plan for this, but I feel we should realize the facts as they are. The Maine State Police are also number one in another area. They're number one in on-the-job injuries. They have the highest workers compensation cases of any agency in state government. I was asked if some of this is caused by fatigue and this type of thing. Well, sometimes it is. I never got tired of being shot at. I never cared much for it period. Whether I was tired or well rested, I never thought it was much fun. This all occurred in 1984 when the change took place and everybody was demoralized and they got over it after a while, as you do. And it's true. People stay and they work. And if this Bill doesn't go through, probably a lot of people won't leave. But I think we should do it. I think it's a reward. I'm not trying to compare the State Police to other agencies or say that other agencies shouldn't have better. Although our teachers don't do better, I think they should. You heard the figure that there were 800 applicants that applied last year. Well if my memory serves me right, in 1969 when I applied, there were 2,000. Something has changed. I could stand here, Mr. President, and tell you stories all day. I can even make you laugh, Mr. President, and I bet I could make you cry too. But, you're too nice a guy to make cry. I'd rather see your smile. Maybe someday I'll write a book. If I do, I'll send you and the good Senator from York, Senator Libby, a copy because he's writing one anyway. I'll let the facts speak for themselves and I'm going to sit down. And I'll just say that I believe that Maine's troopers deserve a little better retirement plan. Just a little bit better, this isn't a big jump. It's just a little better than what they've got now. Thank you very much, Mr. President.

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

Senator DOUGLASS: Mr. President and men and women of the Senate, I'd like to do something very brief in the way of explaining this Bill. I think that you've already heard quite a lot and we did each discuss the matter, I'm sure, in our respective caucuses. For the majority that recommended that you ought to pass this Bill, I can say that we heard testimony that caused us to believe that the job of a State Trooper is a job that involves a lot of danger. It involves the need for physical stamina, and it also involves quite a good deal of training. We heard that because some of the compensation and benefits of the troopers, and the retirement issues that we're talking about exist, some troopers,

quite a number, have left the force. We were provided with information on what type of training they had. I hadn't thought about all the training that a trooper goes through and the cost to our state. So, I'm just going to give you a brief reading of some of the things that they do. They're trained in traffic radar operation, first responder course, stingers, spikes, mat system, OUI detection, at scene traffic accident investigations, intoxilizer; and I should mention as a former prosecutor that there are a variety of intoxication measures that have to be very precisely performed in order for a conviction to stick in court; search and seizure, and I'm not going to go any further, because you've heard a lot. But as I looked at the list, and I think as the rest of the committee looked, we thought we have an investment in our troopers. We want to make sure that investment gets a good return. Then we looked at just the basic figures of retirement packages that exist for some of our municipal police departments. I think Senator Davis from Piscataquis gave you a long list. But I noticed that Auburn, my constituent base, has a 25-year provision for retirement for their law enforcement. And if you received the handout that they have, I'm sure you can read through the list and see how many, many of our municipal departments have the same type of retirement package that these troopers are asking for here. We also were given information about the retirement packages in nearby states, and again, Maine's was not comparable. We are behind the times. We require our troopers to work longer. So all and all, that was the reasoning behind this component of the Bill.

I also want to speak just briefly to three other areas of the Bill. One is for the oil and hazardous gas materials workers at the Department of Environmental Protection. This is a group of about 25 individuals who go to a scene when there's a hazardous waste spill. Some of these individuals have suffered from exposure to dangerous chemicals and the job is stressful. They have to wear about 40 pounds of equipment as protective gear when they go in response to these. For that reason we were quite convinced, and I hope you will be, that they ought to be treated as we treat the rest of our law enforcement personnel for the state, our correction officers, by going into what's called the 98 special plan, which is a plan at which someone can retire with 25 years of service or at age 55. Now this Bill suggests that those workers go into this retirement plan as of August 6, 2000. So this Bill does combine a variety of retirement package measures. We also were presented with the cause of mental health workers at the Augusta Mental Health Institute who work with everyone from those who are simply mentally ill, if that's a diagnosis, to those who have adjudged criminally insane. We were given information about the types of dangers that those people face. And the 11 members of the committee, bipartisan majority, felt that those workers, also, were under the same kind of mental stress that correction officers are under and ought to be included in the 98 special plan, which is that plan of having 25 years creditable service and retirement at age 55. Also included in the measure was Capitol Security. That was an interest of a particular member of the committee. I have to say that the evidence presented to us was very strong that this is a needed provision and a good one for the people of Maine. I do want to say, prior to this matter, I had been under the impression that the Maine State Troopers, or troopers in general, were sort of the elite, highly paid police force of the state that got a little bit more than the local departments. Well I was disabused of that notion. It was clear to me that we just haven't kept pace with what's happened in local departments and that's a great part of my

individual desire to see you pass this Bill. I'll end there and hope that you will pass the majority report.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, the colleagues who have spoken previously to me have eloquently and accurately portrayed the facts surrounding the way our State Troopers are treated and what we expect of them as they perform the duties of preserving and protecting the citizens of Maine. I think you've already heard, in ways that I could not elaborate on, my good friend from Piscataquis, Senator Davis, described the expectations that Maine citizens have on our State Troopers. They're expected to cover this entire state, to be able to respond at a moments' notice to any crisis. Whenever their phone rings, it isn't just to say hello, it's to say help. And they respond with professionalism, integrity, and they do us proud. I really didn't have much of an opportunity to understand how our State Troopers are treated, from an employee benefit point of view, until I had the opportunity to know some of the members of the 38th Training Troop, who you may recall, we addressed in our last session. They were the first class that were caught in the middle, to speak, of the change in the law that has previously been mentioned. And so understanding where they had been, I was particularly interested in the proposal that is before us now when it came into this session. I've learned a number of things, not the least of which is that we expect a lot from the men and women who wear the blue uniform of the Maine State Police. And, yes, it is indeed predominantly a young person's job. So I'm pleased to stand up and speak up this afternoon in hopes that you will join me in supporting the pending motion so that we can consider this Bill in the mix of others that are before the Appropriations Committee. I thank you, Mr. President.

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

Senator **LAFOUNTAIN:** Thank you Mr. President. Men and women of the Senate, although I appear on the minority report with the good Senator from Somerset, Senator Mills, I do share many of the concerns echoed by those who support the majority report who have spoken today. However, my concern comes with the title of the Bill and the majority amendment title, which is "An Act Regarding Length of Service for Retirement Benefits for State Police Officers". If you take a close look at the 14 page amendment coming from the majority, you will see that not only does it include State Police, but it includes 3 other groups of state employees. One being direct care workers at the Department of Mental Health and Mental Retardation. The second is hazardous material responders from the DEP. And the third is capitol security officers. Now, 2 of these groups, the direct care workers and the hazardous material responders from DEP, actually had Bills in considering them for eligibility for the 1998 special retirement plan. However, the third group, capitol security officers, I still scratch my head wondering how they were included on this Bill. I recall no presentation from anyone, whether it be from a member of this chamber or the other chamber or from a capitol security officer, asking to be included on the majority amendment. Once they were added to the majority amendment it was like the door slammed shut to the committee room and those

who lined up, like shoppers at a deli who wanted to be included and pick their number to be included on this amendment, were shut out. There was a presentation from a member of the other chamber relative to marine patrol officers who wish to be included under a special retirement plan, but they were not included. We also heard directly from a warden from the Department of Fish and Game who wished that his unit be included, but they were not. We heard also from fire inspectors, state airplane pilots, state prison guards and prison employees, but they were also not included. There was another Bill that we heard, that I believe is coming out of the committee with the majority Ought to Pass, which includes special consideration for rangers at Baxter State Park. Somehow included on that Bill is an investigator from the AG's Office. I foresee what's going to happen in the 120th Legislature. Every unit out there is going to be lining up, wanting to be considered for what was granted to either the State Police or to the direct care workers, to the hazardous material responders, or to the capitol security officers and that special consideration in the 1998 plan, or directly the plan that the State Police will have under this proposed amendment. There was another Bill that the committee heard, which was LD 2364, which the committee voted out Ought Not to Pass. What that considered was developing a plan for early retirement for teachers. And in its wisdom, the committee rolled that over into LD 835 and created a study to study the issue of the state retirement plan and take a global approach. I suggest here that what is the best course of action is a global approach for all state employees. We've heard debate about the aging work force out there, but I submit that State Police, or the other three groups, are not the only ones who age. There's an aging population throughout the entire state of state employees. The issue of recruitment and retention is not unique to the Maine State Police. One need only walk into the Department of Human Services and ask for a child protective worker who was working there three years ago and you probably would not find them there today. As the good Senator from Somerset said, at the state employee level there is about a 10% attrition rate. Perhaps then, in its wisdom, this legislature should take a global approach and look at all the units out there, all the employees, and discuss issues such as aging, recruitment, retention, and maybe not only look at retirement, but look at the wages, the working conditions, and the state of our economy. Perhaps a look at the entire benefit package would be best suited to discussing retirement issues in the future. I also was left wondering, after the majority report was reported out, why one of the units was considered for special treatment with a retroactive provision while the 3 other groups were left with a prospective situation. That was never clearly addressed by the committee. There seems to be no rhyme nor reason why we differentiate it. I think what we are doing also is setting up a system, by allowing some into the 1998 special retirement plan, of discouraging people from seeking promotions within their unit. If you will now qualify for the 1998 special plan and you're a direct care worker, it would be to your disadvantage to seek any sort of promotion at DMHMR, because what would happen, essentially, you would be removed from the 1998 special plan and placed in the regular state plan creating a situation where you probably have to work an additional few years or age a few more years before you will be eligible for retirement. So I ask you to vote against the majority report so that we can go on and support the minority position that will take a global approach to the entire retirement situation so that each one of us next session

won't be asked to sponsor a retirement Bill for some special unit or special group of employees in the State of Maine. Thank you.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, when I think of the Maine State Police, in my experience, two words come to mind, respectful and responsible. When I think of words that describe how I'd like to do my job, or words I'd like on my tombstone, if I have one, they would be those two words: respectful and responsible. There have been times, I told of an incident a few nights ago, where they came and helped. There have been other times where I was getting harassing calls that threatened my life and I got that same kind of help. It was very appreciated. I have a lot of respect and I find them to be very responsible. In working this Bill, I've gotten very courteous calls from people who seem to understand how many balls I have up in the air. They give me their information and they write me their notes, and respectful and responsible are two words that come to mind. And so, as I try to decide how to be both responsible and respectful in return, the responsible pieces are, I think, figuring out a way that we have a fair system for everyone and making sure that we're distributing money out of the public purse in a fair and responsible way. That says I should follow the study plan. And the people who spoke to that, I think, made a very good case for that. If I want to be respectful, I would vote for the piece that says okay, I understand it was like a deli line and people were picking out numbers, and the first 3 at the door got in. Everyone after that didn't get anything. But I did see the troopers come forward first. I want to help them out and I see one of those amendments that immediately helps them out. So, I'm faced with the quandary, how to be both responsible and respectful in return to a group that I see being both of those ideals. And I think that, as somebody who in some respects holds the purse strings, is what I'm elected to do and to be very careful. I see a study that's going forward, that's going to try to pull in all the facts and figure out how to go forward in a responsible way respectful of the ways state employees do their jobs and I'm leaning towards that. But, it isn't an easy decision. 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, I don't dispute a single word that has been said regarding the merits of this proposal, particularly related to the issues having to do with the State Police. I'm not quite as familiar with some of the other specialized units that are also covered in the Bill. However, I do have a question, Mr. President, if I may pose it.

THE PRESIDENT: The Senator may pose her question.

Senator **GOLDTHWAIT:** Thank you Mr. President. Having been on patrol with the Marine Patrol, having observed the extremely dangerous nature of their activities, being out on a patrol boat in the middle of the night boarding fishing boats in not exactly calm seas and the skills that that takes and the total lack of back-up in that situation. Once you're out on the water, there's nobody to come to your aid, regardless of what the situation is. And my

question for, I hope, the Chair of the Committee, is on what basis was it decided to include some law enforcement people in this provision and exclude others?

THE PRESIDENT: The Senator from Hancock, Senator Goldthwait poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Mr. President, I want to confirm that I remember the question as it was asked. How was it decided that some law enforcement personnel would be included and not others. Is that correct?

THE PRESIDENT: The Chair would answer in the affirmative.

Senator **DOUGLASS:** My answer is that certain groups had special Bills presented to us. Those already went through this body under the Ought Not to Pass hammer because we merged the retirement issues which we were presented. Some other groups came forward. I can't tell you how they knew that retirement issues were under discussion, but we did have half the warden force at our public hearing on this matter. We also had a number of Marine Patrol persons. So really the basis of distinction was, those for whom there was an advocate, I guess I would say.

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

Senator **DAVIS:** Thank you Mr. President. I would just like to point out three things, two that have already been talked about. The State Police being number one, and worker's compensation cases number two, and the rate of death. And I would like to point out that the figures that the good Senator from Somerset eluded to in his handout are based on the plan that I worked under. Given that they have a 1999 year of retirement on these people and the current plan was established in 1984, it would be real difficult to get 25 years in in that period of time. Thank you very much.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#339)

YEAS: **Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CASSIDY, CATHCART, DAGGETT, DAVIS, DOUGLASS, FERGUSON, HARRIMAN, KIEFFER, KILKELLY, KONTOS, LIBBY, LONGLEY, MACKINNON, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: **Senators: GOLDTHWAIT, LAFOUNTAIN, MILLS**

32 Senators having voted in the affirmative and 3 Senators having voted in the negative, the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-643), PREVAILED.**

READ ONCE.

Committee Amendment "A" (S-643) **READ** and **ADOPTED.**

LATER TODAY ASSIGNED FOR SECOND READING.

The Chair laid before the Senate the following Tabled and Later (4/5/00) Assigned matter:

SENATE REPORTS - from the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Prohibit Persons Under 21 Years of Age from Purchasing Handguns"

S.P. 1005 L.D. 2573

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-611)** (6 members)

Tabled - April 5, 2000, by Senator **DAGGETT** of Kennebec.

Pending - motion by same Senator to **RECONSIDER whereby the Senate ACCEPTED** the Majority **OUGHT NOT TO PASS** Report

(In Senate, April 5, 2000, motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report **FAILED.** Subsequently, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED.**)

Senator **BENNETT** of Oxford requested a Division.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, as you may recall, this is the Bill we spoke about yesterday that would deal with the issue of juveniles and handguns and making Maine laws conform with the federal law with regard to the prohibition of the sale and transfer of handguns. What I would hope you would do, in supporting the motion to reconsider, is give us an opportunity to present an amendment that deals with the clarification that was brought to my attention after the vote yesterday, that focuses and clarifies one of the exceptions. I can get into a great deal more detail about the amendment if we're in a posture where we can talk about that amendment. And that's what I would propose doing if we have the opportunity to back this up and hear about the amendment. I would hope you would vote in favor of the motion to reconsider so we can do that and clarify, what I think is, an improvement to the Bill and a strengthening of the exceptions, exemptions, that we

talked about briefly, for the type of conduct that would still be allowed with regard to the sale of these handguns to juveniles. So, I hope you would at least support the motion to reconsider so that we can take up the proposed amendment and consider this further.

At the request of Senator **BENNETT** of Oxford a Division was had. 22 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **DAGGETT** of Kennebec to **RECONSIDER** whereby the Senate **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Senate at Ease.

Senate called to order by the President.

Senator **DAGGETT** of Kennebec moved the Senate **RECONSIDER** whereby it **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

At the request of Senator **BENNETT** of Oxford a Division was had. 19 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **DAGGETT** of Kennebec to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

Senator **MURRAY** of Penobscot moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

Senate at Ease.

Senate called to order by the President.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending motion by Senator **MURRAY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

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

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Amend the Right of Entry Clauses"

H.P. 1363 L.D. 1961

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-981)** (6 members)

Tabled - April 6, 2000, by Senator **RAND** of Cumberland.

Pending - motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In House, April 5, 2000, Reports **READ** and Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, April 6, 2000, Reports **READ**.)

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

Senator **LONGLEY:** Thank you Mr. President. Very quickly. First off, thank you to the Senator who stood up and asked that this be tabled. That was a mistake on my part to not request that this morning. I apologize. And, secondly, I'd just like to quickly say what this Bill does. It's basically a right of entry Bill. Most of us on the committee decided the Ought Not to Pass. I urge you to follow our lead. I understand there will be somebody to stand and speak in opposition to that. But simply what the amendment that we're saying we don't want on that would do is, basically, say that before any government official could enter anybody's land, they would have to have a warrant. This would be even if it was somebody to investigate environmental issues. If they did not have a warrant, they would have to have had consent. One would get consent by applying for any sort of permit, that would be implied consent. The real catch, in my opinion, is that you can post your land and on the posting say you need a warrant to come on this land. I urge you to vote for the pending motion. Thank you for your time.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. I want to express my appreciation to the good Senator from Waldo, Senator Longley, for a note earlier in the day concerning a failure, I guess, to table this. It ended up being tabled and I appreciated that given that I am not on the majority report. I want to express appreciation on top of that for the remarks that she has just made and I want to apologize to the remainder of the chamber for this delay situation, I guess, that I'm responsible for. I'm on the minority report. The reason that I am is that I have some constituents in my district who are very much opposed to present law in this area. That is of state agents from the Land Use Regulation Commission, the Forestry Service and Bureau of Parks and Lands and so forth going onto property, pursuant to existing statute and often doing so without the consent of the landowner or without having acquired a warrant. So on behalf of my constituents, I cast my vote in committee for the minority report and did not end up on the majority side of things. I'm satisfied that present law is adequate. That if, in fact, this Ought Not to Pass report, or something else that might be moved that dispenses with the issue, it will not be a sad state of affairs from my point of view, but perhaps will be from some of the points of view of some of my constituency, which are minority views. I'm down here to represent the majority views of my constituency. The majority view on this Bill is Ought Not to Pass. The minority is otherwise. Thank you, Mr. President.

On motion by Senator **BENNETT** of Oxford, Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

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

HOUSE REPORTS - from the Committees on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and **TRANSPORTATION** on Bill "An Act to Provide Temporary Relief from the Excise Tax on Diesel Fuel" (EMERGENCY)

H.P. 1832 L.D. 2568

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-901)** (17 members)

Minority - **Ought Not to Pass** (9 members)

Tabled - April 6, 2000, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 5, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901) AS AMENDED BY HOUSE AMENDMENT "A" (H-912)** thereto.)

(In Senate, April 6, 2000, Reports **READ**.)

On motion by Senator **O'GARA** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-901) **READ**.

House Amendment "A" (H-912) to Committee Amendment "A" (H-901) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-901) as Amended by House Amendment "A" (H-912) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME.**

Senator **RAND** of Cumberland requested a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#340)

YEAS: **Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CASSIDY, DAVIS, FERGUSON, GOLDTHWAIT, HARRIMAN, KIEFFER, KILKELLY, KONTOS, LIBBY, MACKINNON, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: CATHCART, DAGGETT, DOUGLASS, LAFOUNTAIN, LONGLEY, MILLS, PINGREE, RAND, TREAT

26 Senators having voted in the affirmative and 9 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-901) AS AMENDED BY HOUSE AMENDMENT "A" (H-912)** thereto, in concurrence.

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

HOUSE REPORTS - from the Committee on **NATURAL RESOURCES** on Bill "An Act to Provide Assistance in the Cleanup of the Plymouth Waste Oil Site"

H.P. 1672 L.D. 2339

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-1040)** (12 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-1041)** (1 member)

Tabled - April 6, 2000, by Senator **TREAT** of Kennebec.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report, in concurrence

(In House, April 5, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)**.)

(In Senate, April 6, 2000, Reports **READ**.)

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, it gives me a great deal of pleasure to know that the phones are close by. I just came into the Senate a little bit late and I apologize for that. The Bill in front of us today is a 12 to 1 report, so I'm not going to take too much time talking about why I believe the 12 may be in error. But, I'll take a little bit of time. First of all, I think it's important that we just do a quick bit of background on the Plymouth waste oil site. It's a difficult and complex problem, without a doubt. But in Plymouth, there's been an unfortunate occurrence of a contamination problem and it's of a great magnitude. It has to do with the fact that it's one of several waste oil sites that were used as kind of an acceptance point for motor oil and some other products that we use in every day life. I know you're familiar with this issue because we dealt with a well site both this year and last year. Unfortunately, there are some people that have been caught up in the whole process of federal law that's being used to clean this site up. The EPA, the Environmental Protection Agency, at the federal level, under the Superfund law, has the major responsibility of dealing with the

clean up of this site. The site, it's anticipated, will cost us maybe as much as \$18 million to clean up. So it's not going to be an easy problem to solve. But the question is, who should pay for the clean up? That's, I think, the underlying question. And the difficulty of that question, the complexity of that question is under the Superfund law at the federal level and some of the other laws involved. The folks who are typically held responsible for the clean up costs in other cases, unfortunately, in this case do not bear the same responsibility. Why do I say that? Why do I believe that the people that contributed waste oil to the Plymouth site are maybe not responsible for the cost of this clean up? I say it for one simple reason, Mr. President, because those people served as, I believe, middle men. They collected waste oil from you and I and then they were told by our own Department of Environmental Protection at the state level to take that waste oil to one of several sites. This one, I believe, was managed by a gentleman by the name of George West. So the middle men serve as a collection point. Some of these are gas stations we're talking about. Some of them are automobile dealerships. We had a taxi company come and testify. And you know what they all said to us, I've got a stack by the way, of letters from these folks that's about as big as this. You know what they said to us. They said to us: A) we're in no way responsible for the cost of this clean up, and they said: B) if you make us pay for the cost of this clean up, we're going to go bankrupt. We don't have the money. If either one of those two things were not true, I would be able to go along with the pending motion, but they are both true. I believe, in order for me to sleep at night, I have to cast my vote with what I think is ethically correct. And the ethics in this case are telling me that we should not be holding people responsible who are simply middle men who have accepted waste oil and then deposited it somewhere else. How is it that they're responsible? It would be different if, for example, we were talking about a piece of property and, I'll back it up, property that was some kind of a lagoon and there was waste oil out there and there was an industry sitting right beside there on that parcel of land and there were three or four owners along the way of that industry, and they had all dumped in that site. Then, sure, go after them. Make them pay. They ought to. But the people involved in this waste oil site, at least for the most part, were nothing more than authorized collection agents, authorized. And if I were to cast my vote for this majority report, I would not be able to go home tonight and sleep. Because, these folks, most of them in the mid-Maine area, have gotten letters from the EPA that say to them, if you don't join, we're going to fine you. Join the PRP, Potentially Responsible Party group. If you don't join, we're going to fine you \$1,000 a day. For these people who actually deposited this waste oil in the 60's, 70's, and early 80's. I'm sorry, but I don't along with using the same logic of law that we have put together for other cases. I don't go along with applying that logic to this case, because it does not apply. I think every single newspaper article that I've read on this issue would back me up in that statement.

We had a tough one last year. We worked on the Wells waste oil site and that was a whole different situation, set of circumstances, in Wells than in Plymouth. First of all, there's a lot less financial responsibility among the parties to really break it down to the simplest component then there is in Plymouth. In Plymouth, simply the cost of the engineering study that we're looking at here, this is just the cost of an engineering study that's in front of us, simply that cost divided by the PRP's that have joined into the group, that's enough to break them. So how are

those companies, how are those individuals who have retired, how are they going to bear this burden? They can't. It's simple. They really can't. And if we were to just pretend that they could, in fact, before we vote maybe we ought to go back there and talk to some of these folks and tell them to their face, we're asking you to take on a loan and take the financial responsibility for this case. You have whatever volume of waste oil you have contributed, a certain volume of waste oil, and now you're responsible not only for that cost, but the cost of the engineering study, and the cost of the people that we can't find. The people we can't find who have either retired, maybe have passed on, dissolved their business. How can we possibly ask that of these small businesses? We can't. I mean we simply can't. We can pass this today and we can put off a real decision, if you want. But the fact of the matter is, Mr. President, that the people that are involved here, about 500 or so potentially responsible parties, of that 500 or so potentially responsible parties, only 95 of them have showed up at the table, 95. Why is that you might ask? I certainly did at a public hearing and the work session and I've got a few letters here from folks who did not join that say exactly why that is. The reason is what difference does it make if I join the PRP group when the financial responsibility is so great it doesn't matter? I'm going out of business or I'm going bankrupt either way. That's the problem. So who cares if they come to the table? That didn't happen in Wells. The financial responsibility was less. There were more PRP's. They just wanted to get that liability off their back. We put \$3.1 million into that to cover that orphan share of people we couldn't find and somehow we got the job done. The ethics I question, but we did what we had to do. The same model won't work in this case and it shouldn't. It shouldn't.

Hey, if we could go back and clean up the Wells site with state money, I guess I would suggest I've learned a lesson. We should do that, because these people are not responsible. And I know that there are members of my committee who I respect greatly who completely disagree with me, but I'm sorry. I wish, or I'm glad, that it's not you. Because if it was you, and you had this bill sent to you after threatening letters from the EPA, of which I'd be glad to distribute, by the way, to this body, if anyone wants to read them. If it were you, you'd be up here knocking on the door and saying wait a minute, who's responsible? Now we've talked about all kinds of different solutions to this. This is tough. We talked about a tax on motor oil. We did have a commission this summer, I served on the commission, and I guess my big problem is I didn't have a whole lot of ideas on how to solve this problem. It's tough. The only idea I can come up with, and it may not be that responsible, is that we should go as far as we can to provide grants for these folks and not just loans and make them pay. So, if we are able to, and I need to speak to this particular motion in front of us, but if we are able to get by it, there'll be an alternative, a fair one. It's just simply a matter of ethics, ethics. These people are not responsible. They are scared to death. They're not constituents of mine. They're constituents of yours. They're not in southern Maine. Most of them are in central and northern, and some eastern. There's a few in southern Maine, but they haven't come banging on my door. I just could not go for this proposal that's in front of you today. And I do not recommend that you vote for it. I know it's 12 to 1, but I don't believe it's the right thing to do. There's an awful lot more to it. The problem is so complex. There are so many issues. We've dealt with it for so long, there's no way I can cover it all in the time that I have here, and we have so many other

issues to deal with. But, I think you get the idea that if you have to go back to your constituents and they're involved in this, you're not going to have anything that you can say to them, unless you vote against the pending motion. Thank you, Mr. President.

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

Senator **TREAT:** Thank you Mr. President. Men and women of the Senate, I would like to clarify what the majority report of the committee is on this matter. The majority report takes \$4 million. It provides no interest loans up to \$50,000 to any potentially responsible party that has been sent a bill to participate in paying for a feasibility study to clean up the Plymouth waste oil site. This is not a question of who is responsible. It's not a question of ethics. It's not a question of not helping people out. It's really a question of how we help people out. What is the most responsible way to do that, knowing what the bill is that we have to pay? You may recall that last year that we had a Bill that dealt with the Wells waste oil site and, in fact, this year we just quickly passed, a correction to that to insure that money got out to parties that were involved in that in a timely fashion. There are four sites of a similar nature. They're in different parts of the state. Some of them involve some of the same parties. This is the second one to come up on the radar screen. It's currently involved in a clean up process under the Superfund law. You first have to do a study to find out what the clean up plan is, how much it costs, find out who the parties are. This case is proceeding along and it has not gotten to the point that the Wells case was at. When the parties involved with the Wells situation came to the legislature, we knew who they were. We knew which ones were lost to be found, who the bankrupt parties were. We knew the universe. We knew what the total bill was going to be. We were able to look at the number of parties, the total bill, divide it up, look at how much money we had in the state coffers and figure out what was a fair payment for them. In this case, we're not at that point yet. We know that there are a number of people involved. We know that other people have not yet been brought to the table. We know that we don't know what the total cost is. In fact, the costs that have been assessed right now are to find out what the total cost will be. This particular situation is not at a point where we are ready to sit down and write out a check. However, the committee is concerned that people are not left high and dry. That they don't go into bankruptcy, that they don't have the financial problems that the good Senator eluded to. Therefore, we have identified \$4 million, which is available in a no-interest loan to those parties that will totally cover their costs until such time that we are able to figure out what the total bill is and come up with a fair apportionment to that. The majority report has in it a procedure for doing that, for coming back to the legislature with legislation that will address the needs of these parties, individuals, these companies at such time when we know what the bill is going to be. In the meantime, they are not hurt. In fact, the fact that this is a divided report has meant that it has delayed substantially the ability for us to get money out to them. Had it sailed through, we would be pretty much doing the emergency regulations right now, which is part of the legislation. It's going to be implemented through FAME. They have some experience with this as they already did that program for the Wells site. We think it's going to work well. We understand that there is concern out there, obviously. But I suggest to you that your phone would be ringing off the hook if the sponsor of this Bill and of the companies that

came to him to put the Bill in were supportive of the other report and did not feel comfortable with the majority report. Our committee is committed to continue to look at this. And I say that to someone who initially opposed the initial payments last year. We had a study over the summer, which the good Senator from York, Senator Libby, was a participant in and so was I. We decided, in the study, that the appropriate way to deal with these costs was to make sure that we had each of these cases at such a point where we knew who the parties were that were settling out the case. We knew what the bill was, and we were able to come up with a fair payment to those parties. I think the majority report makes a great deal of sense. The committee did consider the option being put forward in the minority report and rejected it. We felt quite comfortable going forward with the majority report and I hope you do too. Thank you.

orphan share, whether there's an orphan share associated with the feasibility cost. Is the state picking up that part or are the identified parties going to be responsible as well?

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

Senator **LIBBY:** Thank you Mr. President. I rise for a second time. First of all to compliment the good Senator from Kennebec, Senator Treat, who has done a great job of talking about some of the details of this difficult situation. And also to compliment the good Senator from Kennebec on her decision to continue to move toward a solution to this problem. The issue in front of you, establishing a no-interest loan for folks that are involved in putting together an engineering report, these 95 PRP's, I guess is better than nothing. But for a lot of these folks, unfortunately, it's nothing. Because they can't handle this. Imagine this, imagine if your neighbor was building a house, but you were asked to take the responsibility for the mortgage for that house. That's kind of what you could compare this to because these people will be saddled with, some of them, more than \$100,000 worth of, now, for this engineering study. Not for the clean up. A \$100,000 worth of liability and that reaches the size of a mortgage payment per month. How would you like to be saddled with it when it's not even your responsibility and you're not going to really enjoy the benefits of it? I really do, I sympathize and empathize with the Senator from Kennebec, and I know she's worked really hard on this issue, believe me. But when it came down to making a final decision after all of the 2 years that we spent, 2 ½, working on this problem, I had to say to myself and I hope that you do too, it's not their fault. It's not their problem. It's not their responsibility, in any way. Not even for a study, a study that may cost about \$1.8 million divided by 95 people that are out there. It's too much. Thank you.

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

Senator **MURRAY:** Thank you Mr. President. I would just like to pose a few questions through the chair, if I may?

THE PRESIDENT: The Senator may pose his questions.

Senator **MURRAY:** I guess I'm not clear on the cost and I'd like to have that clarified first. I've heard a figure of a \$4.2 million loan program, but an engineering study that may be 1 point something. So if someone could clarify what that cost is. And I'd also like to have a sense of what the average cost for each of the responsible parties would be and what the length of these loans would be under the proposal. And finally, I wasn't clear with regard to an

THE PRESIDENT: The Senator from Penobscot, Senator Murray poses questions through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you Mr. President. I will attempt to answer the series of questions and if I leave one off, I am sure I will be reminded of that. The cost of the feasibility study is less than the loan fund and the expectation would be, I assume, that if additional monies were left over, that the loan fund ultimately may get paid back. It could end up being loans that are forgiven, if that's what the committee and legislature choose to do at a future time. It's a loan fund that was set up for the Wells program. It has still has \$4 million in it. We decided to continue to use that for the Plymouth site and it does, as you pointed out, exceed the amount of money of the feasibility study, which is the only bill that is now before the potentially responsible parties. With respect to the orphan share, the feasibility study is a somewhat different situation from the Wells site. I'd like to try to explain how it works. The feasibility study is actually being carried out by the potentially responsible parties. It is not being carried out by the Maine DEP or the federal Environmental Protection Agency. If it were being carried out by the EPA or the DEP, they would be paying the costs and then billing all the parties later, including the orphan share. In this case, the potentially responsible parties came forward and they said, well, we think we can do this study cheaper and better, therefore, we're going to go out and front the cost and go forward with that. That is a policy reason why the committee decided not to go with the proposal that's in the minority report that would have just funded that study. The policy is that if the state is going to pay for it, they ought to have some say over how that study is done and what ultimately comes out of it. That is not the case here. This study is being done by the potentially responsible parties. It could have been done by the EPA and then, at the end of the line after all of the costs are assessed, they divide up the pie and see what the total bill is, which would include the feasibility study as well as the cost of the clean-up and remediation. It's a somewhat different situation than the Wells site. In the Wells site we had all the parties that had been grouped together by a private party that decided to do that. They orchestrated the whole thing. They came up with a bill. They organized it. They billed the parties. They were a party that we could negotiate with and talk to and find out what the bill is. This particular site, the Plymouth site, is not in that posture yet. It's simply in the remediation phase. We don't know who all the parties are that would be involved in a final settlement. It's premature to decide how many are involved. We don't have any idea what the final bill is going to be and there's some real policy concerns with paying up front for the feasibility study. The loan program is available. It will be available through, as we understand the term, until some change of policy is carried out by this legislature. The thinking of the committee is that we would like to, essentially, hold harmless all the parties involved in the feasibility study, at least so that they're not out of pocket. We're going to be back in session in the next year and by then, we assume, there'll be more information available as to what the total bill will be, and we can decide, as a legislature, how much to pay each of the potentially responsible parties that are involved in this. But the committee felt that it was premature, at this time, to be fronting the cost for the feasibility study. In addition, there are some real policy concerns, as I mentioned, with the state paying for the cost of a study that they have absolutely no control over

the direction of. We do pay for the studies that we control the direction of and it gets added up in the bill at the end. So, there are some real concerns about that approach as well.

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

Senator **LIBBY:** Thank you Mr. President. Men and women of the Senate, in partial answer to some of the questions that were raised, which were excellent questions. Unfortunately, the cost of each of these PRP's will depend ultimately on how much volume of used motor oil and other products ended up at the site. So, there's a varying amount of overall responsibility for it. I can't give you an exact figure on it. I believe that the cost the engineering study will be around the area of \$1.8 million. I can't give you exact numbers as to how much each of those 95 current PRP's will be paying. But in regards to the question of policy, of whether or not we should be paying up front, which was just recently raised by the last speaker, I fully believe that the state does have 100% control over the direction of this engineering study and what will take place after that. And it's proven and borne out by the fact that we had 100% control over what happened in Wells. We completely, as a committee, directed that whole effort. We didn't do it that well, but we did it better than just allowing the Superfund law to take care of it, because that just simply wouldn't have been fair. By paying up front, what the state would do is keep folks back home from having to bear the responsibility of costs that they should not be incurring in the first place and also buy ourselves another year to work on the problem and policy development to approach the problem. And that is why I'm opposed to the motion that's in front of us right now, because I believe that if the state assumes the responsibility, that they should be assuming anyway, then one year down the road we can continue to work with the EPA, frankly, and to work here at the state level. There would be a new committee on Natural Resources at the state level to address the problems, not just in this site, but in a couple more really large sites and then over 400 really smaller, much smaller, sites. The magnitude and scope of this problem is enormous. I think it's an easy question. Who bears the responsibility? Who bears the responsibility? That's all. That's what this comes down to, whether you're talking about the engineering study or you're talking about the entire volume of product that's in there at the Plymouth site now. 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 try to be brief. The point I'd like to make in support of the pending motion is that we have 4 sites in Maine: Wells, which we dealt with last year, Plymouth, Casco, and Ellsworth. To me, we set a good precedent last year in the way we dealt with Wells. I think we need to deal with Plymouth, Casco, and Ellsworth the same way. With Wells, we did not pay for the feasibility study. But once it was completed, then we helped out people when they actually got their bill and what it was. And to me that's what we need to do with Plymouth, the same. If we treat one site one way, and another site another way, then we've got this whole unfair thing facing us in the face, and potential legislation about that. To me we need to treat Plymouth the way we did with Wells. In order to do that, I urge you to support the pending motion. Thank you.

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

Senator **LIBBY:** Thank you Mr. President. I rise just briefly to point out one fact. One final fact. And that is that this Plymouth site will not be handled in the same way as the Wells site was, because it cannot be, and the proof of that is that only 95 PRP's have come forward so far out of the 500. There's a reason for that. It's the overall liability that they face. Those folks that haven't come forward and there's probably 250 or 300 of them still around in business, they know that the responsibility, the financial responsibility, that they will have to bear is an impossible burden, impossible. And that wasn't the case in Wells. It was a possible burden and it was a burden taken on by an awful lot of folks. Thank you.

The Chair ordered a Division.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#341)

YEAS: Senators: **BERUBE, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, CAREY, CASSIDY, DAVIS, FERGUSON, HARRIMAN, KIEFFER, LIBBY, MITCHELL, SMALL**

ABSENT: Senators: **MACKINNON, PINGREE**

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-1040) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1040)**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (4/4/00) Assigned matter:

An Act to Allow the Towns of Wells and Ogunquit to Withdraw from Their Community School District
S.P. 602 L.D. 1725
(C "A" S-531)

Tabled - April 4, 2000, by Senator **RAND** of Cumberland.

Pending - **ENACTMENT**, in concurrence (Roll Call Ordered)

(In Senate, March 30, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-531)**.)

(In House, April 4, 2000, **PASSED TO BE ENACTED**.)

Senator **SMALL** of Sagadahoc requested a **RULING OF THE CHAIR** regarding Joint Rule 312, Fiscal Notes which reads: "Every bill or resolve that affects state revenues, appropriations or allocations or that requires a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues and that has a committee recommendation other than Ought Not to Pass or Referral to another Committee must include a fiscal note...." The Senator inquired as to whether this Act violates Joint Rule 312 because it includes a fiscal note that only addresses the state's share of the cost but does not mention whether or not there is a local share of the cost.

THE CHAIR MADE THE FOLLOWING RULING:

The Chair answered it is not in violation of the Rules because the Committee had determined, in the Committee's opinion, that it did not require a local unit of government to expand or modify that unit's activities. Any member of the Senate is free to disagree and offer an amendment to do that, but that was apparently the opinion of the Committee.

THE CHAIR RULED THE ACT WAS NOT IN VIOLATION OF JOINT RULE 312.

Senator **SMALL** of Sagadahoc moved to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**.

The President requested the Sergeant-At-Arms escort the Senator from Penobscot, Senator **MURRAY** to the rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **ROBERT E. MURRAY, JR.** of Penobscot County.

Senator **LAWRENCE** of York posed a parliamentary inquiry to the Chair as to whether the motion was a debatable motion.

The Chair **RULED IN THE NEGATIVE, THE MOTION TO SUSPEND THE RULES IS NOT A DEBATABLE MOTION.**

At the request of Senator **LAWRENCE** of York a Division was had. 14 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **SMALL** of Sagadahoc to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION, FAILED.**

The President Pro Tem requested the Sergeant-At-Arms escort the Senator from York, Senator **LAWRENCE** to the rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Penobscot, Senator **MURRAY** to his seat on the floor.

Senate called to order by the President.

Senator **BENNETT** of Oxford rose to a **POINT OF ORDER** as to whether the matter was **PROPERLY BEFORE THE BODY.**

The Chair **RULED THE MATTER WAS PROPERLY BEFORE THE BODY.**

Senator **BENNETT** of Oxford requested a **RULING OF THE CHAIR** as to whether the matter was in violation of Joint Rule 312.

The Chair **RULED THE ACT WAS NOT IN VIOLATION OF JOINT RULE 312.**

Senator **BENNETT** of Oxford **APPEALED** the **RULING OF THE CHAIR.**

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

Senator **BENNETT:** Thank you Mr. President. Beyond the question on which the Bill, the underlying question on which this matter is based, is a fairly significant procedural question. It's actually both a question of procedure here in the Senate under our joint rules, as well as under the constitution of Maine. And it has to do with a question of state mandates. I don't raise the appeal lightly. I also understand that votes may come as they will here. But I do believe that if this matter does not go out from this body with a fiscal note, according to our joint rules, which in turn are suspended by the underpinnings of our constitution, that we could create a grave problem here in the State of Maine with respect to this particular issue, Wells and Ogunquit, as well as other issues coming forward. Joint Rule 312, which is based on the language of the constitution says, as the Senator from Sagadahoc earlier stated, every Bill or resolve that effects state revenues, appropriations, or allocations, or, here's the relevant part, that requires a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues and that as a committee...., must include a fiscal note. This is the language which requires the Office of Fiscal and Program Review, as it says a little later in the rule, that

the Office of Fiscal & Program Review has the sole responsibility of preparing all fiscal notes. This is the language which sustains the constitution and in Section 21 of Article 9, I believe, which states in language mirroring that of our Joint Rules, or in fact our Joint Rules were built upon this constitutional language. And, I'll read this. It says, "for the purpose of more fairly apportioning the cost of government in providing local property tax relief", that's point number one, "the state may require a local unit of government to expand or modify that units' activity so as to necessitate additional expenditures from local revenues unless the state provides annually 90% of the funding of these expenditures from the state funds not previously appropriated to that local unit of government". Familiar issues for those of who were here in the decade of the 90's. I go on and quote, "legislation implementing this section or requiring a specific expenditure in exception to this requirement may be enacted upon the vote of two-thirds of all members elected to each house," and then very importantly, the quote at the end of this section, "this section must be liberally construed". The question before us, in the ruling from the Chair, is whether or not this Bill requires a fiscal note. Whether this is specifically a mandate under the constitution that would require a two-thirds vote. I contend that it is a mandate. I contend that because there are three local units of government involved. One is the town of Wells, one is the town of Ogunquit, and the third is the CSD. And as such, at least one of those local units of government will have to raise additional revenues. It will necessitate additional expenditures by that local unit of government, here the town of Wells, in order for this law to have affect. For that reason, I believe that this is a mandate and requires mandate language and a two-thirds vote of members of each house. And for that reason, I reluctantly appeal the ruling of the Chair. And I would just add, as I close, that there are issues of our rules here, which is the issue currently being debated. But there's also an underlying question of constitutionality. Right now I'm appealing the ruling of the Chair based on our rules. But if we don't deal with this here, we could send out an imperfect Bill, which will be begging a constitutionally based challenge. So I encourage you to construe our rules as well as the constitution liberally and, if we're going to advance this Bill, let's put a fiscal note and do it in proper fashion. Thank you very much.

THE PRESIDENT: The Chair will restate his ruling for the benefit of the chamber. It's the ruling of the Chair, not on the constitutionality of this issue, but whether or not this Bill is in violation of Joint Rule 312, which sets up the process for applying a fiscal note to the body. It's the Chair's ruling that it's not in violation, that the decision of constitutionality lies with the body and must be decided by the body whether or not a Bill is constitutional or not. Joint Rule 312 simply sets up a process for applying that municipal fiscal note to the Bill and sets up who shall do the drafting of that fiscal note.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President. I didn't wish to further challenge your ruling, but to speak on the pending motion that will be coming up, which will be passage to be enacted.

The Chair ordered a Division. 15 Senators having voted in the affirmative and 14 Senators having voted in the negative, the **RULING OF THE CHAIR WAS SUSTAINED.**

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, earlier on you ruled that it was the peruse of every legislator here to make a decision on whether or not this Bill requires a mandate. And each one of them would have to make that decision. I'm sorry I was not afforded the opportunity to offer an amendment that would have allowed the individual Senators to make that decision. But nevertheless, the only option I have now is to try to defeat the motion, because I do believe this is a mandate and it would be unconstitutional to pass it. Earlier on it was mentioned that the committee did not believe that this was a mandate. The committee never discussed whether this was a mandate. Believe me, I was there for all the decisions on this Bill and this was never brought up, because it didn't occur to me until right before enactment that perhaps we had missed something. I talked with the people from the Office of Fiscal and Program Review, and they admitted this one had gotten by them. So, I thought well shouldn't this just go on in Bills in second readings since it got by. Apparently that may be the process for some Bills, but it was not for this one. But I asked them to draft me an amendment that would take care of their concerns and mine. And they did that. These are not my words. This is the Office of Fiscal and Program Review. They said that this Bill changes the funding formula for distribution of the cost for kindergarten through grades twelve within the Well/Ogunquit Community School District, which will increase amounts apportioned to the town of Wells. They do not put that in there. But, it will increase it by a million dollars. We're not talking spare change here, folks, a million dollars. Although this Bill does not clearly require the town of Wells to expand or modify its activities, it does require the town to incur additional expenditures, and consequently, may represent a state mandate pursuant to the constitution of Maine. The additional cost of the potential state mandate cannot be determined as this time. In order to assure that the town of Wells complies with the intent of this Bill, the mandate preamble and the two-thirds vote of all members elected to the houses exempts the state from the constitutional requirement to fund 90% of the additional cost. So they're saying that it's a gray area. But when they have that gray area, they rule on the side of being conservative, or perhaps for those who would prefer, they liberally construe the language in the mandate preamble so that they make sure we don't pass something that's unconstitutional. So they add the mandate preamble and that gives this Body the choice of paying 90% of the cost or passing it simply by a two-thirds margin. They checked with the AG's office. He agreed with their determination on this. So, it's not something that our committee discussed. It's something that got by us. It's something that we picked up at the last moment. If we choose to not deal with this, to go ahead and pass it, it will go to the courts. Some will say, well, let the courts decide. But we're going to

force two towns to incur additional legal expenses to fight this in court when we can take care of it by simply adding a mandate preamble or paying the 90% of the cost that's incurred. What really bothers me is the fact that we have a nonpartisan office down on the 2nd floor that is designed to look at each of these Bills and make a decision. This one, admittedly, went by them and, admittedly, they will say it is not open and shut. It is a gray area. But they agreed that there was enough of a concern here that it warranted this fiscal note with a mandate preamble. So when we vote on this, I hope that you all will consider this before you take your vote. I'm sorry that we didn't have an opportunity to allow you to vote whether or not it was a mandate. All we can do now is vote whether or not we want to pass a million dollar tax increase onto the town of Wells without allowing the two-thirds vote that would be required if we were doing it to any one of your towns. I thank you very much.

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

Senator **LIBBY:** Thank you Mr. President. May I pose a question through the Chair?

THE PRESIDENT: The Senator may pose his question.

Senator **LIBBY:** Thank you Mr. President. I apologize to the body if I'm not up to speed on this issue. My understanding is that current law allows a vote to take place back in the school district, the school unit. I guess I'm wondering if we pass this particular Bill, are other school districts going to come flooding in here and ask for the legislature to make these kind of decisions instead of the district back home. I know I'm not up to speed completely on this, but I just wonder if somebody might answer that question for me.

THE PRESIDENT: The Senator from York, Senator Libby poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from York, Senator MacKinnon.

Senator **MACKINNON:** Thank you Mr. President. Men and women of the Senate, I rise to ask you, please, to remember that, in our wisdom, we are now putting an unfavorable balance on a community. We're asking one community to pay more money. One community's paying less money. We're deciding that. In the agreement that was originally posted, when this thing happened 21 years ago, was that the towns would vote to dissolve this. There was a mechanism put in place. We realize that has not been resolved here prior to this time for the simple reason that it was a contract between communities to allow somebody to go out. I know you've heard this before, but it is an unfair step that we are doing today. Thank you.

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

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, as some of you may remember, I was in opposition to this and I lost. Now we're at the procedural question of does this strike one as a mandate of us picking up 90% of the cost. With all due respect, I don't see it as us picking up 90% of the cost. I see it as us saying that even though, however many years ago, we allowed them to decide on a contract one way, we're now willing

to change that contract and then reallocate among themselves. But in terms of a mandate being us paying 90% of the cost, I don't see that. I didn't think that was any part of anyone's vote for or against. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, I wanted to try to address the good Senator from York, Senator Libby's, question, will this set a precedent? Will this bring others in? We've had a number of Bills that came in after this one. Some are in the similar vein that I believe affect one of the towns in your district and others were a little similar, but still asking the legislature to set up a different funding mechanism for their district. I do know that at least one other member on the committee turned to me and said "if you say I told you so, I will hit you". So, I didn't. But, nevertheless, I felt a real need to because that was one of my concerns, that we're then going to become the arbitrator of all local concerns and decisions over their cost sharing and funding distributions. I think what is a more dangerous precedent than this Bill is determining what is equity for school districts and taxpayers. We've always, pretty much, come to the agreement that equity was determined by local mill rates. This Bill turns that right around and says equity is how much you are paying per pupil. And for some people, that might be okay. For others, that might have a chilling affect. It depends on what the formula is in your district. But the Department of Education has used mill rates as equity and we have identical mill rates in these two towns. That's how the funding agreement was set up, identical mill rates so that each town would always be assessed the same. We are altering that with this and we're going by a state law and not by a local decision. I think that is what's going to set the precedent of how we now look at funding in the future and what is equitable. The next time we deal with a funding formula, we can come in with a whole lot of new criteria that has never been used before. And who knows what'll happen. Maybe even my district will come out ahead for once if we change it from mill rate to whatever else. Thank you.

The President requested the Sergeant-At-Arms escort the Senator from Penobscot, Senator **MURRAY** to the rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **ROBERT E. MURRAY, JR.** of Penobscot County.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President. Members of the Senate, very briefly. I guess I did have a school district within my Senate district that did come to the legislature this year in a dispute over school funding, and it happens a lot. My concern is that that school district that I'm referring to was created by a special act of the legislature as well as this one that we are talking

about today, I believe. And we're under the understanding, back in that school district that I represent, that it must go to a district wide vote in order to change the formula that was established there. Even though the formula is different than the one we're talking about here today. I guess that's why I don't understand how we, at the legislative level, can make this change without expecting a big swamp of other school districts to come in here and ask for the same kind of treatment. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President. Men and women of the Senate, two points, very briefly. First of all, the reason why this is here is this is a unique school district set up by the legislature and can only be changed by the legislature. So to argue that we shouldn't be doing this because it would open the flood gates would mean this district could never be changed. It can only be changed by the legislature and that's the only remedy they have. Second point, I just want to say on the record regarding the mandate question, if this is ever looked at in the future. I sat down and looked at this question. I asked for legal opinion from the counsel to the President. I talked to MMA, who felt this was not a municipal mandate. I talked with the Office of Fiscal and Program Review when they were asked to draft that mandate. They are very unclear. MMA said it is not the legal opinion I received and said, and I concur, that because the mandate is on a local unit, the local unit is the CSD, the consolidate school district. It's not asking the consolidated school district to do anything new, to do anything more, and therefore, it is not a mandate on the CSD. All we're doing is dealing with the formula within the district. And that's why I feel it is not a mandate. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator MacKinnon.

Senator **MACKINNON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I do thank the good Senator from York, Senator Lawrence, for pointing out that the legislature did create this school district. Mr. President, I would like to pose a question through the Chair.

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **MACKINNON:** Within the legislation that we passed when we created this district, did we also put in an escape clause for those people to decide themselves to dissolve this or not or change it in any way?

THE PRESIDENT PRO TEM: The Senator from York, Senator MacKinnon poses a question through the Chair to anyone who may wish to answer.

THE PRESIDENT PRO TEM: The pending question before the Senate is Enactment. 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 (#342)

YEAS: Senators: **BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - ROBERT E. MURRAY JR**

NAYS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, CASSIDY, DAVIS, FERGUSON, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL**

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, was **PASSED TO BE ENACTED**, in concurrence.

Senator **PINGREE** of Knox was granted unanimous consent to address the Senate off the Record.

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

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

COMMUNICATIONS

The Following Communication: H.C. 420

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333**

April 6, 2000

Honorable Joy J. O'Brien
Secretary of the Senate
119th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it accepted the Majority Ought Not to Pass Report of the Committee on Legal and Veterans Affairs on Bill "An Act to Study the Effectiveness of Harness Racing Promotions" (EMERGENCY) (H.P. 1097) (L.D. 1544)

Sincerely,

S/Joseph W. Mayo
Clerk of the House

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

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act to Revise the Law Protecting Farmers' Right to Farm"

H.P. 1861 L.D. 2596

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1069)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1069)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1069) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1069)**, in concurrence.

The Committee on **JUDICIARY** on Bill "An Act to Enhance the Enforcement of Civil and Criminal Violations"

H.P. 182 L.D. 260

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1056)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1056) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1056)**, in concurrence.

The Committee on **NATURAL RESOURCES** on Bill "An Act to Address Nonpoint Source Pollution from Certain Sources"
H.P. 1868 L.D. 2604

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1072)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1072)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1072) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1072)**, in concurrence.

Senate

Ought to Pass As Amended

Senator KONTOS for the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Clarify the Enforcement Authority of the Manufactured Housing Board"
S.P. 1059 L.D. 2650

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-649)**.

Report **READ** and **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-649) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-649)**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, for Laying of the County Taxes and Authorizing Expenditures of Kennebec County for the Year 2000 (EMERGENCY)

H.P. 1934 L.D. 2678

Reported that the same **Ought to Pass**, pursuant to Joint Order (H.P. 1822).

Signed:

Senators:

PENDLETON of Cumberland
GOLDTHWAIT of Hancock
DAVIS of Piscataquis

Representatives:

AHEARNE of Madawaska
BAGLEY of Machias
RINES of Wiscasset
McDONOUGH of Portland
TWOMEY of Biddeford
BUMPS of China
KASPRZAK of Newport
JODREY of Bethel
RICHARDSON of Greenville

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**, pursuant to Joint Order (H.P. 1822).

Signed:

Representative:

GERRY of Auburn

Comes from the House with the Majority **OUGHT TO PASS**, pursuant to Joint Order (H.P. 1822) Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED**.

Reports **READ**.

On motion by Senator **PENDLETON** of Cumberland, the Majority **OUGHT TO PASS**, pursuant to Joint Order (H.P. 1822) Report **ACCEPTED**, in concurrence.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Revise the Salaries of Certain Kennebec County Officers" (EMERGENCY)

H.P. 1933 L.D. 2677

Reported that the same **Ought to Pass**, pursuant to Joint Order (H.P. 1822).

Signed:

Senators:

PENDLETON of Cumberland
GOLDTHWAIT of Hancock
DAVIS of Piscataquis

Representatives:

AHEARNE of Madawaska
BAGLEY of Machias
RINES of Wiscasset
McDONOUGH of Portland
TWOMEY of Biddeford
BUMPS of China
KASPRZAK of Newport
JODREY of Bethel
RICHARDSON of Greenville

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**, pursuant to Joint Order (H.P. 1822).

Signed:

Representative:

GERRY of Auburn

Comes from the House with the Majority **OUGHT TO PASS**, pursuant to Joint Order (H.P. 1822) Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Reports **READ**.

On motion by Senator **PENDLETON** of Cumberland, the Majority **OUGHT TO PASS**, pursuant to Joint Order (H.P. 1822) Report **ACCEPTED**, in concurrence.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **NATURAL RESOURCES** on Bill "An Act to Reduce the Release of Mercury into the Environment from Consumer Products"

S.P. 734 L.D. 2084

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-648)**.

Signed:

Senators:

- TREAT of Kennebec
- NUTTING of Androscoggin
- LIBBY of York

Representatives:

- TOBIN of Windham
- ETNIER of Harpswell
- McKEE of Wayne
- MARTIN of Eagle Lake
- CLARK of Millinocket
- COWGER of Hallowell
- DAIGLE of Arundel
- DUPLESSIE of Westbrook

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

Signed:

Representatives:

- JOY of Crystal
- CAMERON of Rumford

Reports **READ**.

On motion by Senator **TREAT** of Kennebec, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-648) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-648)**.

Sent down for concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution: H.P. 1917

JOINT RESOLUTION RECOGNIZING THE MONTH OF APRIL AS CHILD ABUSE PREVENTION MONTH

WHEREAS, the incidence of child abuse and neglect affects over 3,000,000 children in the United States annually; and

WHEREAS, according to a recent report issued by the Department of Human Services, there are at least 12,000 abused and neglected children in the State; and

WHEREAS, it is of utmost importance that lawmakers, health care providers, parents and every community-minded citizen in the State continue to work to make children safe and to support families in their efforts to care for and protect their children; and

WHEREAS: successful resolution of this serious problem facing thousands of children and families all across Maine requires the commitment of all citizens to recognize the problem and to take necessary steps to reverse the situation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Nineteenth Legislature, now assembled in the Second Regular Session, recognize the month of April as Child Abuse Prevention Month and urge the citizens of the State to use this observance to educate themselves and others on the seriousness of this matter; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to municipal officials of this State for public viewing by the residents of every community in Maine.

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

READ and **ADOPTED**, in concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Clarify the Tuition Waiver Program for Persons Who Resided in Foster Care as Children"

H.P. 1909 L.D. 2657

Reported that the same **Ought to Pass**, pursuant to Joint Order H.P. 1874.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1073)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

House Amendment "A" (H-1073) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1073)**, in concurrence.

Ought to Pass As Amended

The Committee on **JUDICIARY** on Bill "An Act to Restore Federal Protections to Maine State Employees"

H.P. 1803 L.D. 2530

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1076)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1076)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1076) **READ**.

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-1076), in concurrence.

The Committee on **LABOR** on Bill "An Act Concerning Eligibility Requirements for State Employees in the Purchase of Military Service Credits"

H.P. 1649 L.D. 2318

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-1075)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1075)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1075) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1075)**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Amend the Laws Regarding the School Administrative District Budget Approval Process"

H.P. 949 L.D. 1346

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1079)**.

Signed:

Senators:

BERUBE of Androscoggin
MURRAY of Penobscot
SMALL of Sagadahoc

Representatives:

RICHARD of Madison
DESMOND of Mapleton
WESTON of Montville
WATSON of Farmingdale
STEDMAN of Hartland
BRENNAN of Portland
ANDREWS of York
BAKER of Bangor
SKOGLUND of St. George

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

Signed:

Representative:

BELANGER of Caribou

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1079)**.

Reports **READ**.

On motion by Senator **BERUBE** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1079) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1079)**, in concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

Senate As Amended

Bill "An Act Regarding Length of Service for Retirement Benefits for State Police Officers"

S.P. 911 L.D. 2363
(C "A" S-643)

READ A SECOND TIME and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator **BERUBE** for the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Improve School Safety and Learning Environments"

S.P. 298 L.D. 870

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-657)**.

Report **READ** and **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-657) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-657)**.

Sent down for concurrence.

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

Bill "An Act Regarding Lifetime Hunting and Fishing Licenses" (EMERGENCY)

H.P. 1924 L.D. 2670

Tabled - April 6, 2000, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In Senate, April 4, 2000, **PASSED TO BE ENGROSSED**, in concurrence.)

(In House, April 5, 2000, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-1064)**, in **NON-CONCURRENCE**.)

On motion by Senator **PINGREE** of Knox, the Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, until Friday, April 7, 2000, at 9:00 in the morning.