

MAINE STATE LEGISLATURE

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

Volume III

Second Special Session (Continued)
March 22, 2004 to April 30, 2004

Second Confirmation Session
August 25, 2004

Interim Appendix

Senate Legislative Sentiments

Index

Pages 1416 - 1812

Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005" (EMERGENCY)

H.P. 1420 L.D. 1919

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-904)**.

Signed:

Senators:

CATHCART of Penobscot
ROTUNDO of Androscoggin

Representatives:

BRANNIGAN of Portland
MAILHOT of Lewiston
COWGER of Hallowell
DUDLEY of Portland
FAIRCLOTH of Bangor
PINGREE of North Haven

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

Signed:

Senator:

TURNER of Cumberland

Representatives:

ROSEN of Bucksport
MILLS of Cornville
O'BRIEN of Augusta
MILLETT of Waterford

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-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935) AND "V" (H-937)** thereto.

Reports **READ**.

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

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

Senator **TURNER:** Thank you very much, Madame President. First of all I would like to draw your attention to my bow tie. For those of you who don't recognize it, it's a Blenheim tie, named in

honor of the ancestral home of Sir Winston Churchill. Any similarity between Winston Churchill and myself starts and ends with the bow tie.

I want to talk about failure this afternoon, first in the budget process itself and then the product from it. Budgets, to my way of thinking, are intended to best reflect the priorities of the people of Maine. I don't believe what we have before us today in L.D. 1919, as presented by the good Senator from Penobscot, Senator Cathcart, reflects those priorities. I think these things are best done in good faith and are really best done when broadly supported. We've had a legislative tradition, as you well know, of having budgets broadly supported. We seem to be veering further and further from that tradition in the 121st. I think this represents failure and that failure is because arrogance, obstructionism, and lack of leadership. That leadership really comes from both the Executive and the legislature. While some of you may choose to relax when I say those words, frankly it's the Body that fails. We failed broadly because of this. There has been talk in the press about negotiations that went on during this process. In fact, the negotiations were very one-sided. Myself and the other Republican colleagues in the Appropriations Committee refer to them as the 'family squabble'. Mostly the Republicans waited while the members of the majority party squabbled among themselves, trying to decide how to deal with a situation that necessitated strong action by this Body.

The fiscal reality of Maine is one that I'm fond of talking about among my constituents, my friends, and family. It's one that I categorize as having a caviar appetite and a Spam budget. The Spam I'm referring to is not that which shows up in your e-mail account, but rather that which comes in a can and can be bought very inexpensively. The illusion of having an endless flow of revenues that we can spend easily is long gone. We are saddled with significant problems in Medicaid. It started in the dying days of the King administration and is regrettably perpetuated by the current administration. I think you all know that our current Medicaid spending situation is out of control. It has been for some time. It continues to be, even with the product that is before us this afternoon. Looking ahead of us, we have flat revenues. Looking to the next biennium, we have a tsunami, a huge tidal wave that rolls in towards us and will force us to, yet again, reflect on the problems that are facing us.

We have a supplemental '05 that was intended to deal with the Medicaid problems facing us today. Up the street here, at Exit 31, we filled an entire Civic Center with people who came to complain about the approach that was being taken. Frankly, I think we gave them little comfort. It is my prediction that they will be back; 90 days, 120 days, maybe 6 months, maybe even as long as January, but they will be back because of the structural defects that are causing our problems continue with the product that is before us.

Personally, I believe the best solution for us is to face our problems head-on. We are not doing that with L.D. 1919 as presented to us today. I'm reminded of Paul Volcker, who was the Fed Chairman in the early 1980's when we were faced with rampant inflation. Volcker said to the American people, 'It's best to deal with the pain now because if we don't it will get worse.' He pointed to the South American countries, some of which continue to suffer from the same problems they have had for decades, and said 'Because if we don't deal with them now, we'll end up like Argentina.' Volcker had the stomach to do the touchy things. He happened to have a President who stood behind him and inflation was wrestled to the ground.

So L.D. 1919 is not the solution for us today. It relies far too heavily on one-time savings, by my count some \$67 million worth. The largest single piece of that has to do with the consumption of the retiree health trust. Although there is language you will hear about later in this budget that seeks to put salve on that wound, in fact, I think it causes us even greater problems. Looking at the General Fund aspects of this budget, some \$29 million are tied to taxes, fees, and fines; and from a Governor who hates gambling of all sorts, \$9 million from Powerball. If you look to the special revenues area, you see some \$57 million in special purpose taxes. Those particularly trouble me because they have no other purpose, no useful purpose other than to try to maximize a draw down on Medicaid. If you were selling tax shelters, this would qualify as an abuse and you would either be enjoined from offering it for sale, at best, and at worse, end up going to jail.

The lion's share of those taxes will fall on our hospital system. This tax treats those hospitals as a 'monoly', as a single entity, when there are nearly 40 of them. That tax falls very unevenly and their representation here in Augusta said, 'We'll go along with this, what choice do we have? If we don't take the tax, our expectation is our reimbursements from a fee compensation stand-point will be put in place instead and the money will come out of one pocket or the other.' We don't yet know, even though this was passed over the objections of my party in the supplemental '04, whether or not this hospital tax will ultimately be approved. I suspect, with the work being done by the Center of Medicaid and Medicare Services, that it will be found wanting. It is my prediction that we'll be back to deal with that problem.

There is too little Medicaid restructuring in the product before you, \$53 million worth when we should have had close to \$130 million worth. The emphasis should have been on strong prior-authorization, utilization reviews, medical assessments, a consistent fee structure to deal with the mental health challenges of our people, and the use of proven medical models for treatment. We have lip service to some of that, but because we have not embraced it properly, we'll be back dealing with these problems yet again.

There are other major defects in this program that is before you. It seeks to impose, on a voluntary basis, mail order pharmacy. At its best, that will suck out \$100 million of retail pharmaceutical sales out of Maine's economy. So on a go forward basis, those who are recipients of Medicaid drug benefits will find themselves dealing with an \$8 an hour clerk from Bentonville, Arkansas. In case you don't know where that is or who lives there, that's your friendly Wal-Mart, because they will be delivering prescription drugs to your constituents.

Out of concern with respect to the dealing with the AMHI Consent Decree, in the Appropriations Committee we had both court masters, one from AMHI and former Chief Justice Waltham, and for the Pineland Consent Decree we were in conference call with the court master for that operation as well. One thing that Justice Waltham said to us is, 'I need three things; I need peer support, I need social clubs, and I need funding for rental assistance.' None of which ended up in this budget. Not a high enough priority. Requested by a gentleman who has been directed by the courts to get us on the right track, finally, after all these years with our AMHI Consent Decree.

Lastly, while Appropriations unanimously asked the Executive Branch to come forward with a mechanism to deal with the Baxter Compensation Authority and need to provide monies to those who were so severely injured emotionally and physically,

well beyond the statute of limitations, nothing appears in this budget to help fund the Baxter Compensation Authority.

There is not much to like in this. I would urge that you vote against the pending motion so we can begin work to straighten out Maine's budget woes. Thank you very much.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I certainly urge you to support the majority Ought to Pass report on L.D. 1919, the supplemental budget bill. This has been a hard budget, one of the hardest that I've done in my six years on Appropriations. It is always particularly difficult and painful for members of the Appropriations Committee when we cannot reach a unanimous agreement, and indeed, have a partisan division on a budget. In a way you feel like you've tried very hard but you feel like you've failed. In a way we have failed. It was certainly negotiated in good faith by both sides. I do want to thank my colleagues on the committee, the Senator from Cumbercoggin, Senator Rotundo, and the Senator from Cumberland, Senator Turner, for all their hard work.

This budget required us to make some very hard choices. The proposed budget from the Chief Executive, as we have heard, made some extremely painful cuts, particularly to the state's Medicaid program, which we call MaineCare. There was a great public outcry against these cuts. We did, in the end, through much struggle and anguish on the part of committee members, agree in this majority budget to take about \$60 million in cuts in Medicaid. This is a very large and very difficult cut. With the help of the Health and Human Services Committee, who worked very hard, I believe it is crafted so that the cuts are done in a way that avoids arbitrary limits on the services and focuses instead on management of care, making sure that people get what they need but only what they need on an individualized basis. We are using more prior-authorization, utilization review, and the kind of managed care that our private insurance policies now require.

Along with making painful cuts in this budget, however, we have also made some wise investments. We have been able to invest \$15 million more in General Purpose Aide to Education. We left last year disappointed because the total amount for GPA was going to drop from \$730 million in 2004 to only \$725 million in 2005. I think our schools are really going to appreciate the investment that we have been able to make in GPA. We were able to make a small increase in funding for adult education, which I believe all of us recognize as about the best and cheapest way to educate people, particularly when they want to go back to college but they need to finish their GED and get an education so that they can have a more prosperous and satisfying life.

This budget addresses the overcrowding in our correctional system. We all know that, while our crime rate is down, our incarceration rate is up. I, myself, served on the Sentencing Commission last fall which did a lot of good work and this morning we sent the bill from the Criminal Justice Committee, who worked very hard on those recommendations, down to the Appropriations Table. We invested in more guards at our Maine State Prison, where we felt the situation was growing dangerous. We're spending that money. We're investing in some more prison beds so that some inmates can move down to the prison at Windham and have less overcrowding. We also made a really wise investment in community corrections by funding positions for two

resource coordinators so that our corrections department can get more people out on supervised community confinement, having them out in the community working at jobs and earning their own way while they serve the last six months, or up to a year, of their sentence. I believe we are making some really important and wise investments in this budget.

The decisions on how to control the MaineCare spending were truly the most difficult that we had to make. We did reach consensus on initiatives to better manage our healthcare programs with the help of the Health and Human Services Committee. I believe we have done these cuts, or reductions, to healthcare in a way that will do the very least harm to the most vulnerable people, our senior citizens. We tried to protect the funding for the nursing homes so that we won't have nursing homes shutting down the way we did several years ago. We tried to protect, and even added funding in fiscal year 2005, for children's mental health that we had cut last year. We put that funding back.

I feel very positive about the outcome. I'm very sorry that we didn't all get together on this budget. It would make me feel much better going out with my term limit if we had all unanimous budgets during my term as chair, but I feel this is a good solid budget and it's one that we can vote for. I hope that you will all support it. Thank you, Madame President.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. Let me first begin by agreeing with some of the remarks of the good Senator from Cumberland, Senator Turner. The thing that strikes me right now, and actually struck me when I first saw what was happening in the Appropriations Committee, that it is the first time in my memory and to my knowledge that the minority does not have a proposal to present to us. We don't know what the plan would be or could be. We have no idea of what proposals could be made for us to look at. This is, in effect, an historical moment. One that I hope never happens again. To me, we learn from the process. We learn from one another. We learn from another's ideas. This we do not have today. It's true, we have what is the consensus of the majority of the committee and of one party. This is not what we really ought to have. That is, what is the thinking of the other party. I'll leave that at that and I hope never to see it again.

To the point I want to raise, that is on Medicaid. Frankly, we are known around the country as having one of the best-administered programs to date on Medicaid. Our cost for operation runs about 4%. I might point out that the best insurance company in the world is somewhere around 12.5%. Let us not forget through all of this, we knew we were going to get a \$35 million cut from the federal government on the Medicaid budget. The cut we got was \$70 million. When you take a look at what was our shortfall on the Medicaid budget, if we had gotten what we should be getting from the federal government, we wouldn't have had much money left to cut. That is something over which, unfortunately, this legislature and this Governor had nothing to do with. Unfortunate, but the facts. Just take a look. Take a look at the federal proposed budget that starts in October and you will see it.

Finally, I guess, we should not forget the economy. I'm not even going to talk it about because we all know what it is. That's where we are. Do you think I like this budget? Absolutely not.

Do I have anything to compare it with? I do not. Am I going to vote for it? I'm not sure.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame President, men and women of the Senate. I rise to urge you to vote in favor of the Ought to Pass report. I do want to emphasize the work that the Appropriations Committee has done in balancing this budget. The committee worked hard to create a balance between the responsible management of services while, at the same time, maintaining medically necessary healthcare services for our most vulnerable people, including the working poor, elderly, and physically disabled. The committee worked with the administration, healthcare providers and consumers in developing proposals that helped to reshape our healthcare programs to minimize cuts to services and healthcare providers. In the end, services were restored and initiatives to more responsibly better manage those services and reshape our healthcare programs were recommended. At the same time, we were able to increase funding for other priority areas such as GPA. We did attempt to address areas of importance such as the Baxter Compensation Fund. I must say that I was disappointed that our Republican colleagues didn't come forward with a minority report so that we could see how they would address these issues. I was disappointed that it felt like they weren't concerned enough about those issues to come forward with a report.

Once again, this budget is a balance between more responsible management, cost controls, and wise investments. I urge you to support the Ought to Pass report. Thank you.

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

Senator **TURNER:** Thank you, Madame President. I do want to make a few comments with respect to the things that have just been recently said in the chamber. First of all, with respect to what we would do. I think you get a strong indication of that on the amendments that we will bring forward after the majority report is accepted.

It is true that the Medicaid match that comes to our General Fund side of our Medicaid spending is going down. It is also important that you reflect and understand that it temporarily went up as a result of work done by Senator Collins in an effort to provide relief for Maine and the other states who were struggling with Medicaid. There was a 15 month period when that match went from 66% to 69% and we knew a year ago, when we were putting together the '04-'05 budget, that was a temporary spike and it was to give us an opportunity to fill in some holes and prepare ourselves in an economy that was expected to be repairing itself, as it now is doing. In addition to that, we had \$107 million of monies made available to us to help fill in specific holes in our own General Fund spending. We've talked extensively about that in other venues, more specifically the budget that we dealt with around the supplemental '04. \$107 million of what I like to refer to as the Bush-Collins tax money was sent to Maine and we used half of that to help us launch Dirigo Health, which is scheduled to go July 1st. I think we've understood the financial picture with respect to what the federal government was going to do. I've looked at the specialized tax for PNMI and the hospital tax as the vehicle that we chose to

close that hole. The taxes that I refer to as having no purpose other than try to maximize our draw down from the federal government.

I don't think we have been under a rock, not understanding what was going to be happening with respect to Medicaid matching by the federal government. We've known that for over a year. We've chosen to do something different with a major portion of the monies that were sent to us to help us fill in holes on Medicaid. I could be wrong. There may be others who know better, but we are probably the only state who has been poised to do yet another Medicaid expansion in the environment that we're operating in. Big mistake. We'll talk about that further as we go through the day. Thank you, Madame President.

On motion by Senator **TURNER** of Cumberland, 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 pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Accept the Majority Ought 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 (#382)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-904) **READ**.

House Amendment "Q" (H-932) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

House Amendment "T" (H-935) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

House Amendment "V" (H-937) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **TURNER** of Cumberland, Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904) **READ**.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. The amendment before you would eliminate the eligibility expansion in Medicaid originally scheduled for July 1, 2004 and now deferred in this budget to October 1, 2004. As I said to you earlier this afternoon, Medicaid continues to be the thorn in our side, running at double digit increases. We are poised yet again for an expansion that, in my judgment, should be taken off the books. When and if our financial house is in order and we're in a position to deliver on the three promises of cost, quality, and access, and then we should consider expanding Medicaid at that time. We are a state, as the good Senator from Aroostook, Senator Martin, has pointed out, that has a reputation well earned for the good things that we have done with respect to Medicaid. Those good things can only be done when there are sufficient resources to deliver the promises and that they are properly managed in a way that they can be efficiently delivered in a cost effective manner. We are not in that circumstance today. I don't expect we're going to be in that circumstance for some time to come. By accepting this amendment, I believe we put ourselves in a position to get our fiscal house in order, allow the merger of BDS and DHS to go forward, streamline its operation, and get control of the financial matters that have been short of control for many years, most notably so in the last 12 months. Again, I know of no state that is expanding its Medicaid opportunities for its citizens in the environment that we have just come through and are currently in. I would urge that you vote in favor of this amendment. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904).

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

Senator **CATHCART:** Thank you, Madame President. Just to repeat what I said earlier, we have made a large and difficult cut in our MaineCare program already in this budget. Maine's eligibility levels for Medicaid are right in line with those in the other New England states. Both Massachusetts and Vermont cover adults without children at higher income levels than we do. Vermont and Rhode Island do better at covering the parents of the children on Cub Care than we do. I think that the savings that we have already accepted in the committee report are sufficient. I urge you to indefinitely postpone this amendment. Thank you.

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

Senator **TURNER:** Thank you, Madame President. I know there are some in the chamber who care deeply about Dirigo and the promise it provides to us. My abiding fear on this expansion that is currently before us is that there will be leakage around it. That leakage will be caught by the so-called Medicaid wrap-around Dirigo. The funds that we have set aside for this program will be

eaten quickly and the program will fail. If we take my amendment and accept it, there will be some flow of non-categorical adults into Dirigo on a much more modest basis. Without this expansion, it will allow both a draw down of federal Medicaid monies and I think ensure a proof of concept so we can go forward with this program that could be of vital importance to the people of Maine. Again, for safety reasons and the fact that we know we will be back to deal with Medicaid as it exists today, either as a supplemental or as a major piece of surgery to the '06-'07 that we'll see later in January. I hope you will join me in voting against the motion to indefinitely postpone. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904). 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 (#383)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WESTON** of Waldo, Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. This amendment is an attempt to target the problem. When a family is having difficulty making their mortgage payment, it is not the time to buy a larger house. This amendment is directed especially at a problem, the Medicaid problem that we are having. It does two things to target that problem. It will cap the Medicaid enrollment for non-categorical at \$20,000. We are currently at \$19,000. It doesn't cut it back but it does contain the growth. It also contains the eligibility to 100% of poverty, which is the present level, and keeps it within an

adjusted factor to stay within the funded amount. We target the problem and we also keep a promise, a promise that we are breaking. It takes the savings from the targeted problem and restores \$5 million that was de-appropriated to deal with our mail order pharmacy, keeps that business in our state. It gives \$2 million to the victims of abuse at our Baxter School for the Deaf, a promise that was made. It restores \$2 million in mental health services to three specific areas that our court master said are essential. Again, to fulfill a promise that was made. Those three areas are peer support, social clubs, and housing assistance. I urge you to support this amendment and keep our promise.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. The group that we have expanded our MaineCare coverage to is not really the cause of all of fiscal problems. In fact, in the bigger scheme of Medicaid programs, it is a very small cost. The eligibility expansions of the last six years to children, parents, and childless adults accounted for 15% of MaineCare members but only 6.8% of the MaineCare expenditures. The real cost is treating the people who are elderly and disabled. It has been that way and still is. Surely none of us would want to cut people who are elderly and disabled off MaineCare.

As to the issue of the mental health, we made far smaller reductions in mental health programs than was originally proposed in the budget. I feel comfortable that we will be in compliance. Regarding the Baxter Compensation Authority, we all recognize that we really need to take care of those people who were victimized when the state just turned its back on the deaf students at Baxter. There is a bill that I sent this morning to the Appropriations Table and I intend to propose an amendment that would fund that. Thank you, Madame President.

On further motion by same Senator, 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 Cumberland, Senator Turner.

Senator **TURNER:** Thank you, Madame President. I can't resist putting a few more words into the chamber with respect to non-categorical adults. This is a program that came to life as the result of the good work of the previous speaker in the other chamber. It had an estimated expenditure associated with it of \$24 million. That was going to do the trick. A combination of federal and state monies. We are at \$80 million plus today. The program currently, on the basis of the last report, had 19,000 entrants and growing at 500 to 700 entrants a month. It's important for you to understand that this is a waiver program under which Maine had an opportunity to go as high as 125% of the federal poverty level. In someone's wisdom, they chose to go at 100%. It was capped on a total spending basis in the low 80's.

Then there was a gift from Washington in the form of the prescription drug benefit to Medicare, of all things. When you read that bill, which I have not, more than half of it deals with reforms for Medicaid and Medicare. The cap on this waiver was increased to \$100 million. Trying to use non-categorical expansion beyond 100% will again lead us to further difficulties with respect to Medicaid. While the percentages, as it applies to insurance for those who are low income and poor, are different than the percentages used by the good Senator from Penobscot, Senator Cathcart, you need to be assured that we are up against it with respect to this waiver program. The expenditures in it are such that those who oversee this waiver from the federal government have been making repeated queries to our folks at DHS trying to understand what is going on with this program. What is going on with this program is its utilization is significantly higher than was forecast. That continues to be the case. In spite of the best efforts of those seeking to manage the program and redirect people to the proper coverage, it continues to grow better than 500 people per month on a net basis. I would urge that you vote against the pending motion of indefinite postponement so that we can add this amendment to the budget. Thank you very much.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904). 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 (#384)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. This is an extraordinary

circumstance that we have presented in our budget. The addition of any positions above and beyond what are currently held in state government. This long budgetary process began with over 90 positions suggested. It was pared down to a figure that really is very difficult to get a handle on because we have temporary positions, we have vacant positions, we have filled positions, and we may even have positions positions. I believe that somewhere between zero and 55.8 positions are included in this budget. This amendment seeks to, by the end of the next fiscal year, defund any of those additional positions. It also seems fairly extraordinary to me that in the process of combining two state agencies, BMS and DHS, that we have included additional positions to do so. It would seem, in combining agencies, you might have fewer positions. That is not the case. I'm aware of the arguments and I'm aware of the justifications for the vacant positions and temporary positions. In the budget, which should be seeking to set priorities for that state that would place us in a more secure and stable position, we have added new positions. In my perspective, this does not, in any way, enhance our fiscal stability. Today I'm urging passage of this amendment as a means by which we might enhance the process of fiscal stability for the state. Thank you, Madame President.

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904).

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame President, men and women of the Senate. We were very careful with new positions that were created in this budget. Some were federally funded. Some, as in the case of the Maine Revenue Service positions, will actually generate significant revenue for the state in the future. It is for these reasons that I urge to support indefinite postponement of the amendment. Thank you.

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 PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904). 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 (#385)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **HALL** of Lincoln, Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904) **READ**.

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

Senator **HALL:** Thank you, Madame President, men and women of the Senate. There is a school of thought, particularly in majority caucuses in this and other legislatures, which hold that it is folly to offer amendments to a carefully crafted budget bill. In particular, when it comes to majority budgets, that school of thought extends to holding such behavior to be unsound and treacherous and possibly even wicked. Nevertheless, I'm offering one today in an honest attempt to correct an error that I take personal responsibility for; a mistake, which although it is perhaps shared by my colleagues on the Utilities and Energy Committee, I certainly accept the blame for and which I am trying to put right with this amendment.

If I can explain very briefly, many of you will recall the attempt in the original draft of the budget presented by the Chief Executive to raise a tax of 7¢ per month on telephone bills to raise a little over \$1 million. The Utilities and Energy Committee has worked for many years in a bi-partisan way to attempt to hold the line on supplemental taxes on utility bills. In particular, the committee felt very strongly that it was important to keep the levy of 50¢ on telephone bills, which currently feeds the emergency 911 fund, to just that number and not to either raise it or to impose an additional or separate 7¢. Consequently, we, the committee, and I, particularly as Senate chair of the committee, offered to the Appropriations Committee to make a raid on the cash in that fund. There is approximately \$3 million in that account at the Public Utilities Commission and we offered to simply change that to transfer \$1,430,000 and change to the General Fund, for great and mysterious work I know not. I have subsequently learned, as has the committee, that it is the intent of the Public Utilities Commission to expand E-911 services in the next two years to include wireless telephones. In the course of this year, the number of phone calls in Maine made by cell phones will exceed, for the first time, the number of phone calls made by land lines. I say that simply to indicate the importance of expanding the E-911 coverage to cell phones.

We consequently looked around for alternatives and the following alternative, that you see reflected in Senate Amendment "N" (S-532), revealed itself. What I would like to do is to take that money instead from the Office of Licensing and Registration's Licensing and Enforcement Fund at the Department of Professional and Financial Regulations. There is in that account at present \$10.9 million. In the last ten years, that account has only seen a negative net expenditure from that account on two occasions. The worst such occasion saw a half of a million

dollars being drawn down from that account. Consequently, if my numbers are correct, there is at present a float in that account for the worst possible case of 21.7 years of net expenditures from that account. By taking \$1,430,000 and change from that particular account, we would reduce that float from 21.7 years to a still very conservative 19.6 years of float worst case. I hope you will see that this amendment does not, of course, imbalance the budget in any way. It has a fiscal note that is a very round number and I hope you see fit to support it and to support the committee. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I hope you will support indefinite postponement of this proposed amendment. I appreciate the intent, however the Appropriations Committee made this decision based on the fact that this emergency services communication fund was solvent. We've heard nothing else from them or from the administration to indicate that they would not still remain solvent were we to take this \$1 million and change. We were certainly opposed to adding any more surcharges onto people's telephone bills for E-911. When the Utility Committee members suggested that we take it from this fund instead, we were happy to advantage of that opportunity. I'm reluctant to take money from the Office of Licensing and Registration in the Department of Professional and Financial Regulation. Unfortunately, last year in our budget we were forced to take some of those license fees and the groups that were affected were very perturbed and angry that this had happened because they felt they had paid those fees for a specific purpose. It seems to me better to stick with what is in the budget and I ask that you vote to indefinitely postpone this. Thank you, Madame President.

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

Senator **YOUNGBLOOD:** Thank you, Madame President, ladies and gentlemen of the Senate. I want to just take a moment to urge you to support the position of the good chair of the Utilities and Energy Committee. Emergency services communication in this state is very important. The last place we should be stealing monies from is that emergency services area. E-911 is critical throughout the State of Maine. We have spent a great deal of time in the Utilities and Energy Committee looking at whether that fund could be increased, how those funds could be used, reducing the cost of doing this, and we have not yet found a way to do that. I would urge you very strongly to support the good Senator from Lincoln, Senator Hall, who is the chair of that committee, and vote against this motion to indefinitely postpone. Thank you.

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

Senator **BENNETT**: Thank you, Madame President and fellow members of the Senate. I urge you strenuously to go along with the motion before us today from the Senator from Penobscot, Senator Cathcart, to indefinitely postpone this amendment. I think one of the reasons that this amendment was proposed is the notion that funds are raised for one particular purpose and they are being derailed for another particular purpose. It's the 'robbing Peter to pay Paul' concept that we are all very familiar with. Well, this amendment doesn't do that, doesn't fix that fundamental problem. In fact, it calls on us to rob Patrick so we can pay Peter who will then be robbed to pay Paul. So I strongly urge you to reject this.

Other special revenue accounts, as one who has served on the Appropriations Committee and I know this, are infrequently looked at and they are usually only looked at in a time like we are facing now, when we have budget necessities that present themselves. Suddenly we are desperately looking for cash and we go anywhere we can. This money has not just magically appeared in the other special revenue accounts. People who are licensed in this state, consumers who pay fees in this state, are putting money into this fund for particular purposes, those purposes being consumer protection. We're trying to protect consumers with this money. I hope that it is correct and we're not going to need to use all the money in this account. We don't know that. We don't know when the next scandal in an industry may occur. We had one a few years ago relating to cosmetologists. This money is there for a reason. There were many legislative fights over the appropriate level of fees that are funding those surpluses now that occurred years ago. Now we're coming in here suggesting that we should take those monies and put it to somebody else's favorite purpose and set aside the notion of the important purpose for which they were collected in the first place. I will remind you, this purpose was consumer protection. This money is coming from doctors, plumbers, electricians, and cosmetologists. There is a huge long list of industries and professions that are affected and the people who use the services of those professions who are affected. I can't urge you strongly enough to indefinitely postpone this ill fated amendment.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY**: Thank you, Madame President. I, too, urge you to support the Senator from Penobscot, Senator Cathcart's position on this issue. As a member of the Utilities and Energy Committee and the chair of the Business, Research and Economic Development Committee, I feel compelled to speak on this issue. Though I certainly support the intent behind the amendment, I do want to point out, as the Senator from Oxford, Senator Bennett, did, that these are not General Fund monies. These are monies from licensees who pay for the licensing and the protection of the public with their license fees. Also it is very important to point out that if this amendment goes forward, we will have fee cap increases because the account that this will come from is where all the license fees go. If we take this money out of there, there will be fee cap increases across some of the boards. Ironically, it is the health professions and allied health professions that are most close to their fee caps. Those will be the ones that most likely will be increased. I urge you to support the pending motion. Thank you.

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

Senator **HALL**: Thank you, Madame President. Very briefly, I do want to point out that within the Department of Professional Financial Regulations' other special revenue accounts there is a total of some \$38 million at present. The majority of those funds are in accounts dedicated for particular boards and particular professions. What I am proposing is that we should take this money from the Office of Licensing and Registration's Licensing and Enforcement Fund. The surplus in that fund is such as to make it, I think, only the remotest theoretical possibility that additional fees might have to be raised from any professional or other entity regulated by this department. I would urge members of the Senate to support my amendment. Thank you.

On motion by Senator **CATHCART** of Penobscot, 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 Cumberland, Senator Turner.

Senator **TURNER**: Thank you, Madame President. May I pose a question through the Chair?

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

Senator **TURNER**: It's my understanding that reaching into the E-911 fund runs afoul of some federal statutes. I believe, or at least I've been lead to believe, that is why the members of the Utilities and Energy Committee have suggested an alternative. If that is the case, could somebody speak to that?

THE PRESIDENT PRO TEM: The Senator from Cumberland, Senator Turner poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL**: Thank you, Madame President, men and women of the Senate. What I believe the good Senator is referring to in his question is legislation that has passed the U.S. House of Representatives and is currently tabled in the United State's Senate. What that legislation would do is require that whenever a state uses funds that have been collected for the purpose of E-911 services, takes that money and uses it for any other purpose, that on a dollar-for-dollar basis Homeland Security grants to that states will have that money deducted. That legislation has not yet passed. The committee has been told that if this budget passes with that provision before the U.S. Congress enacts such legislation, there is no retroactivity clause. Certainly I would have tried to use that excellent argument in my remarks earlier if I thought I was on good grounds. Thank you.

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

Senator **CATHCART**: Thank you, Madame President, men and women of the Senate. Not to prolong this, but I did make sure that the administration checked on this federal legislation that is pending. They felt very comfortable that this is not going to cause

any problems or take money away from the State of Maine. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904). 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 (#386)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, PENDLETON, ROTUNDO, SHOREY, STANLEY, WESTON, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: CARPENTER, DAMON, GILMAN, HALL, KNEELAND, LEMONT, MARTIN, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, STRIMLING, TURNER, WOODCOCK, YOUNGBLOOD

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **READ**.

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

Senator **YOUNGBLOOD:** Thank you, Madame President, ladies and gentlemen of the Senate. This is an amendment that doesn't cost a thing. It makes something that works for you and I a little bit better. This is a process that has been two years in the making. At some point in time, it will be a real asset to this chamber. When this was being put in process some two years ago, the then President of the Senate, the good Senator from Penobscot, Senator Michaud, who is now our Congressman, and the Senator Pro Tem at that time, the good Senator from Oxford, Senator Bennett, said, 'If this is good, and we believe it probably is, make this the very best working tool that we can absolutely make it. If we need, as a chamber or as a legislature in total, the ability to have better information to put our arms around, then make it the very best you can make it.' It was on that basis that, in difficult economic times, they made money available for three people from this legislature to do some traveling, to look at different programs, and to gather information. A committee worked for a long time putting that together. Last June, during the closing days of that session, some of that information in that was very good and what many people call the most important piece of legislation that the 120th Legislature ended up passing, got

changed. I was not here during that period of time. This is an attempt to put some of that information back in the statute.

Some of you will remember I spoke to this issue before. Last summer, John Turcotte, who is a recognized professional in this area, was hired by the legislature to come to Maine and put on a program for the then members of the OPEGA Oversight Committee. He did that and produced a very extensive report that was ½" thick with a great deal of data in it. He had four recommendations. These items, in this amendment, are his four recommendations word for word. It restores the ability of the OPEGA Oversight Committee to say it is not only important to look at the items that are run, the budgets that are run, or the programs that are run by our own state agencies; it is important to follow the money, whoever is spending state money. I agree with that assessment.

There is a slight change in the use of the auditor, which was requested by the auditor, that clarifies the language for when there is real audit work to be done as part of that evaluation that our own state auditor be looked at to do that, and only if they were not capable of doing it would this group leave the chambers and go outside.

It clarifies an area of confidentiality. I've said before in this chamber and I'll say it again, this committee, this legislature, with these changes in that particular piece of statute, does not give any of us any ability to get at confidential information. You cannot do your work as an independent research professional unless you have the ability and are sworn to the confidentiality of that it not be passed on. If it does, remunerations against you, obviously, can take place.

It clarifies that the director and the office of OPEGA be non-partisan. If this whole legislation, this entire statute, as put together by the State and Local Government Committee under the able direction of the Senator from Cumberland, Senator Pendleton, saw to it that this be a non-partisan group; that the membership of the oversight committee be equally distributed between the two major parties; that it be equally balanced between those two major parties; and it was also put in that each chamber be equally represented, which was a very good change to the Joint Rules back almost a year ago now. That was the original suggestion that came out of that committee. These are all very important issues.

I set here listening to these budget discussions and nothing could be more difficult for us to get our arms around as we set in our own individual oversight committees. My heartfelt thanks go out to all the work of the Appropriations Committee and all the work that they do trying to decipher what is real and what isn't real. We all lack one thing as oversight committees, whether it is Energy, IF&W, Education, we lack the ability of having somebody that works for us, that we can go to and say, 'We need some real research done on this. Is this law being done out in the community as we gave instructions for it to be done two years ago, ten years ago, whenever it may have been or in fact, through technical rule making, has it substantially changed and is no longer meeting the intent of the legislature? What are we getting for the money that we are spending in all of these programs?' We get antidotal information. We get information from the agencies or the departments that they want us to hear. I did a little research on the internet. I understand you can't believe everything you read on the internet. However, our Governor, when he was in Washington, used the Office of Government Accounting a minimum of 25 times to determine whether data that was coming to him was correct or incorrect. Who do we go to

when we say, 'Here's a report, how do I get my arms around it to say it is right or not right?' This operation will be in effect. There is an oversight committee. They will do their work. We will have an operation. It will be of benefit to all of us. It is very important that, if we are going to have it, it be the very best department that we absolutely can have working for us. I strongly urge your adoption of this amendment.

Same Senator requested a Roll Call.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904).

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I'll be brief on this. It just gives me a sense of déjà vu. I remember speaking against this same language about two years ago, in the middle of the night. When I see language like this, it just really bothers me because what this says is that it authorizes a legislative oversight committee to direct OPEGA, a state entity, to conduct evaluations of local government. When I think of this and hear this, all I can think of is the Town of Burlington, Maine and how they are going to feel when the state moves into Burlington and starts to evaluate their local government. I think there are probably a few hundred other towns in this state that would feel the same way. I urge you to vote to indefinitely postpone. Thank you.

On motion by Senator **GAGNON** of Kennebec, 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 pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinite Postpone Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904). 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 (#387)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, MARTIN, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, HALL, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904), **FAILED**.

On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **ADOPTED**.

On motion by Senator **GAGNON** of Kennebec, the Senate **RECONSIDERED** whereby it **ADOPTED** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904).

On motion by Senator **YOUNGBLOOD** of Penobscot, 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 (#388)

YEAS: Senators: BENNETT, BLAIS, CARPENTER, DAMON, DAVIS, GILMAN, HALL, HATCH, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LAFOUNTAIN, MARTIN, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **YOUNGBLOOD** of Penobscot to **ADOPT** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you very much, Madame President, ladies and gentlemen of the Senate. It's a very straight forward amendment that seeks to change the duties of the State Nuclear Safety Inspector and State Nuclear Safety Advisor and place those duties under the supervision of the Public Utilities Commission. It also seeks to take the monies from the fees imposed on nuclear facility licensees and place them in the General Fund and transfer the funds from the monitoring fees and the power plant licensees to the Public Utilities Commission.

The individual who is currently serving in the capacity of the State Nuclear Safety Inspector and State Nuclear Safety Advisor has a salary and benefits package worth \$92,000. This budget seeks to increase to \$112,000. It is my strong believe that, in this budgetary cycling in which we're now currently addressing, the

Public Utilities Commission should be the rightful place for the duties aforementioned. It is not the time to paying an individual \$112,000 to oversee the nuclear safety and nuclear safety inspection. The Public Utilities Commission is well qualified to undertake these duties. Though I applaud the notions of this office, this inspector, and this advisor, it remains, by my perspective, a duty best served by the Public Utilities Commission. Our budget is in a time of distress. In budgetary times when we are looking to find monies available, this, to me, would be an obvious place to start. Thank you, Madame President.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904).

On further motion by same Senator, 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 Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President, men and women of the Senate. Very briefly, if I could speak wearing perhaps three different hats; first as chair of the Utilities and Energy Committee, second as a member of the State's Advisory Commission on Radioactive Waste, and also as the Senator who represents the now decommissioned nuclear power plant in the state. I just want to briefly speak to why I think it is appropriate to maintain both the Nuclear Safety Advisor and the Nuclear Safety Inspector in their current positions with their current tasks.

First, the position of the Nuclear Safety Inspector is a position that will be going away in the year 2006 following the completion of decommissioning of Maine Yankee in 2005 and the establishing of long term monitoring systems. This is a short life span and I think it is appropriate to leave that position intact, funded, and overseen as present.

With regard to the State Nuclear Advisor, that is a position whose responsibilities changed over time as the position of the Maine Yankee plant has changed. Until the closure of the plant was announced in 1997, that position was held by a physicist of some distinction. In more recent years, the position has been occupied by an attorney who has taken a leading role on behalf of the state in negotiating the arrangements for the medium term storage of nuclear waste at Wiscasset. At present, with the completion of the interim spent fuel storage site in Wiscasset, what the state's predominant interest in the nuclear fuel is in having the federal government live up to its commitments and responsibility to take that fuel away and place it in long term storage in Nevada. The individual who holds the position at present is a person well known to many in this chamber who, in addition to his legislative career, has spent the past eight years in Washington working at the Department of Energy on issues including the Yaka Mountain Nuclear Waste Repository. He is the person in this state with by far the greatest knowledge of the long term disposal issues and in a position to assist the state with his knowledge in insuring that Maine Yankee's nuclear waste is moved out as expeditiously as possible. My concern, to be frank with you, is that if Yaka Mountain is completed in the year 2010, we may face a position where the federal government will say that, because Wiscasset has an effective and safe interim storage

facility, we will be the last on the list for our nuclear waste being moved to Nevada. That is what the job of the State's Nuclear Safety Advisor is today, to prevent that from happening and to spend a lot of time negotiating in Washington D.C. with the Department of Energy. I certainly hope you will support the indefinite postponement motion on this. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904). 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 (#389)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904), **PREVAILED.**

On motion by Senator **TURNER** of Cumberland, Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904) **READ.**

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

Senator **TURNER:** Thank you, Madame President. As some in this chamber very well know, our budget documents are very powerful vehicles. Many things show up in them, not all of which have financial implications as embodied in the dollars and cents that flow with the particular budget document. Such is the case with DDDD. My amendment would seek to strike that language from this budget document. If it is not struck then the follow will occur.

For vested and retired employees and their families the following will be in place. Point one, for those folks, at the moment this budget becomes law, their eligibility criteria can be no more restrictive than at the time vested. Point two, the state's contributions as a percent of coverage can be no less than provided at the time of vestment. Point three, plans between retirees and active employees will be the same or substantially so.

What makes this language particular for us is something known as a solemn contractual commitment. I needed legal

advice to understand the implications of that. You would think that a law couldn't fall prey to the notwithstanding provisions of a future legislature. Not the case with a solemn contractual commitment. Once enacted, the three provisions that I have mentioned to you remain in place for those who are vested, active and retired. Can't change it. I know of no organization in this country or any place else that provides such guarantees to its employees. Not the federal government. Not major multi-national corporations, such as GE, IBM, or the like. It would be an unprecedented action, should this language be allowed to stand.

You will be given, I presume, some comfort by being told that this language, in DDDD, makes reference to the ancillary benefits language of the Maine Constitution. In fact, the language in the budget does do that. That ancillary benefit language is specific to our obligations to fully fund, on an actuarially sound basis later in this century, our retirement system not the health care of employees and retirees. You know that in the taking that we've done in this budget to take the health care trust to zero, the Executive Branch said, 'Well, why not do that.' Our actuarially hole associated with putting benefits for retirees on a sound actuary footing is huge. It's \$900 million plus. It is my contention, and those of the other members of Appropriations who are Republicans, that by accepting this language and letting DDDD stand, you are, in effect, creating a contractual commitment to \$630 million of benefits on a go forward basis for those people who are currently vested or already retired. That will be the case if the day after this budget happens to be approved with the current language in it if you were to revoke it. You own it forever for those people. You can only change this on a prospective basis for those who will not be vested at the time. It is very bad language. I think it has profound implications for us in terms of bond ratings. I personally believe that those institutions such as Moody's and Standard and Poor's will look at this as a requirement akin to a bond obligation. For that reason, I urge that you adopt and approve the amendment that I have put before you. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

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

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I believe that this Senate Amendment "F" (S-525) is unnecessary. I do want to refer to House Amendment "Q" (H-932) which we adopted earlier this afternoon that clearly makes this amendment unnecessary. House Amendment "Q" (H-932) clarifies that Committee Amendment "A" (H-904) in Part DDDD does not create a contractual commitment on the part of the state to offer group health plans at all nor to continue to offer health insurance coverage for any type of benefit or to offer a specific level of benefit payment, however the state may reduce coverage for retirees only if it makes the same or substantially similar reductions for active employees. House Amendment "Q" (H-932) also correct something that was left out and includes the employees of the Maine Maritime Academy in the list of vested employees who would be eligible to receive health insurance as retirees.

I think that this amendment, that has already been adopted, satisfies the concerns of most people who have been concerned about this. I urge you to vote to indefinitely postpone Senate Amendment "F" (S-525). Thank you, Madame President.

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

Senator **TURNER:** Thank you, Madame President. I, too, have looked at House Amendment "Q" (H-932) and I can assure you that this language gives no comfort to the points that I raised earlier. You further should be aware that in the discussions we had in the Appropriations Committee no actuaries came forward, no attorneys were present, no one other than those on the committee, and no expert witness for or against the language that is before us today came forward. References were made to the Attorney General, that he thinks this is a wonderful idea. I can assure you the Attorney General did not appear before our committee. We did have a couple of his surrogates on the Democratic side of the horseshoe in Appropriations who spoke eloquently on his behalf. However, he chose not to appear himself. I believe this is a serious matter and has serious implications for us, financially. It warrants a full thorough public hearing and the soundness, or lack thereof, of the proposition is what this legislature should be looking at and has had no opportunity. As you listen to the good Senator from Penobscot, Senator Cathcart, and myself, I don't believe either of us have a law background. If there is a shred of doubt in your mind, this can be dealt with at a later time when you have a fuller understanding of its implications than I can provide. With a solemn contractual commitment, done a month from now or two months from now or three months from now, the three points that I elucidated earlier would come into vogue, if you then thought on the opportunity of having more information and time to ponder these matters, you chose to vote for them. I think this is a significant mistake if you chose to go forward and not remove this language. I would urge you to support the amendment. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904). 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 (#390)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904) **READ**.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. This, in effect, borrows \$750,000 from an account in the department. It has not been used in three years. Actually the legislature did dip into it two years ago and took about \$1.5 million. There is actually \$6.5 million left at the present time. None of it is being used. This is a way to fund the bill that is right now going through the process. The committee unanimously reported the bill out of committee from Appropriations without money. Actually it has money. It's from the General Fund, which has no money. This is a way to fund it.

Same Senator requested a Roll Call.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

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

Senator **CATHCART:** Thank you, Madame President. I hope you will vote to indefinitely postpone Senate Amendment "H" (S-527). There is a bill resting on the Appropriations Table, which we hope to get to later tonight, that provides an appropriate vehicle for funding some help and assistance to the potato growers. They had a public hearing on this legislation. They made a very good case and I certainly hope that we can find a better way to give them the assistance than through this mechanism. I urge you to vote to indefinitely postpone. Thank you.

On motion by Senator **CATHCART** of Penobscot, 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 (#391)

YEAS: Senators: BLAIS, BRENNAN, BROMLEY, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, MAYO, NASS, PENDLETON, ROTUNDO, SAWYER, SHOREY, STRIMLING, TURNER, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BRYANT, CARPENTER, DAVIS, GILMAN, HALL, KNEELAND, LEMONT, MARTIN, MITCHELL, SAVAGE, STANLEY, WESTON, WOODCOCK, YOUNGBLOOD

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904) **READ**.

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

Senator **MARTIN:** Thank you, Madame President. This amendment takes care of the two bills that the Appropriations Committee has voted on and has not funded, one being the Baxter Compensation Authority and the other being the potatoes for Aroostook County. I would urge the adoption of it. I won't make the motion to indefinitely postpone because I know that will be made. I'm not going to ask for a roll call at this point because that will follow. I certainly urge you all to vote for the amendment and against the motion to indefinitely postpone when it is made.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904).

On motion by same Senator, 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 Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. While I appreciate the intent of Senate Amendment "O" (S-538), I do ask you to indefinitely postpone it because it is unnecessary. There are the two bills waiting on the Appropriations Table for funding. There is also in the budget we are adopting, from the unappropriated surplus in fiscal year '05, \$3 million for the victims of the Baxter School for the Deaf abuse. Actually I have an amendment that I'm expecting momentarily that would take care of that. As previously stated, the potato growers is resting on the Appropriations Table and we will seek funding for it if we are ever able to take up the Appropriations Table. Thank you, Madame President.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "O" (S-538)

to Committee Amendment "A" (H-904). 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 (#392)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, GILMAN, HALL, HATCH, LAFOUNTAIN, MAYO, MITCHELL, NASS, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, STRIMLING, TURNER, WESTON, YOUNGBLOOD, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: CARPENTER, KNEELAND, LEMONT, MARTIN, STANLEY, WOODCOCK

29 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904), **PREVAILED**.

Off Record Remarks

On motion by Senator **NASS** of York, Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904) **READ**.

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

Senator **NASS:** Thank you, Madame President, men and women of the Senate. This amendment is fairly inexpensive and fairly simple. It simply eliminates the proposed merit pay increases that were due to some state employees for the current year and instead uses that \$250,000 to begin the building of the Veteran's Cemetery in southern Maine.

The budget process, especially supplemental budgets, is notable for certain things. When we are in a period where we need money, or there are holes in the budget, the effort, I think, is notable, particularly for things that we leave in the budget and don't change. I'll give you an example of that. We'll spend, in this bi-annual budget, millions of dollars at the Muskie School. This supplemental budget, because these needs have been well documented in the press and at public hearings, don't touch that. We've chosen, we've made a public policy decision to leave that money alone in spite of all the other cuts that were made. In this particular case this supplemental budget provides a relatively small amount of money, \$250,000, for pay increases but it leaves us liable for almost \$1 million to fund circuit breaker applications that are currently in the hands of the state government, over \$900,000. It does nothing about the Baxter School, which we've talked about today. It does nothing to use a vacant unit at the Maine Correctional Center in Windham when we are apparently about to let some criminals out, or certainly reduce their time. It

does nothing about the vacant unit at the Charlestown Correctional Facility when we are about to let criminals out, or reduce their time. We have the space. We're not using it. This budget does nothing about that. We know there is going to be a short fall in General Assistance payments over the next year. It does nothing about that. These are the priorities we establish in this supplemental budget. I ask that we recognize these; obviously we're going to disagree on priorities, but at least postpone merit pay increases for some state employees in light of what is provided here. Thank you.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

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

Senator **CATHCART:** Thank you, Madame President. Quickly, to say that I think it seems very cruel to take away merit and step increases from state employees who have already been granted those. I hope you will not support this. I do have to correct one error by the Senator from York, Senator Nass. The budget we are adopting does provide funds for opening additional beds in the prison at Windham and the necessary staff to keep security and run that prison with those beds open. Thank you.

On motion by Senator **CATHCART** of Penobscot, 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 pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904). 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 (#393)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904), **PREVAILED**.

Senate at Ease.

Senate called to order by President Pro Tem
SHARON A. TREAT.

Reports **READ.**

On motion by Senator **STANLEY** of Penobscot, the Majority
OUGHT NOT TO PASS Report **ACCEPTED**, in concurrence.

On motion by Senator **GAGNON** of Kennebec, **TABLED** until
Later in Today's Session, pending **ADOPTION** of Committee
Amendment "A" (H-904) as Amended by House Amendments "Q"
(H-932); "T" (H-935); "V" (H-937) AND Senate Amendment "A"
(S-518) thereto, in **NON-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 **TAXATION** on Bill "An Act To
Reinstate a Milk Handling Fee" (EMERGENCY)
H.P. 274 L.D. 345

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

Signed:

Senators:

- STANLEY of Penobscot
- STRIMLING of Cumberland
- NASS of York

Representatives:

- LEMOINE of Old Orchard Beach
- PERRY of Bangor
- McGOWAN of Pittsfield
- SIMPSON of Auburn
- SUSLOVIC of Portland
- CLOUGH of Scarborough
- COURTNEY of Sanford
- McCORMICK of West Gardiner
- TARDY of Newport

The Minority of the same Committee on the same subject
reported that the same **Ought To Pass as Amended by**
Committee Amendment "A" (H-885).

Signed:

Representative:

- LERMAN of Augusta

Comes from the House with the Majority **OUGHT NOT TO PASS**
Report **READ** and **ACCEPTED**.

Off Record Remarks

All matters thus acted upon were ordered sent down forthwith for
concurrence.

Senator **WOODCOCK** of Franklin was granted unanimous
consent to address the Senate off the Record.

Senator **GAGNON** of Kennebec was granted unanimous consent
to address the Senate off the Record.

RECESSED until the sound of the bell.

After Recess

Senate called to order by President Pro Tem
SHARON A. TREAT of Kennebec County.

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. 1469

**JOINT RESOLUTION PROCLAIMING MAY 27TH AS
RACHEL CARSON DAY**

WHEREAS, worldwide exposure to pesticides is greater than
most people realize; and

WHEREAS, more than 3 billion kilograms of pesticides are
spread on the earth annually, exposing both human and wildlife
populations to chemicals, with potentially serious repercussions
for life everywhere if applied inappropriately; and

WHEREAS, more than 40 years ago, the well-known writer,
scientist and ecologist Rachel Carson alerted America and the
world to the potential hazards of pesticides in her landmark book
Silent Spring. Rachel Carson spent many summers here in
Maine. Despite the warning, the quantity of pesticides used in our