

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Tuesday
March 13, 2012

Senate called to order by President Kevin L. Raye of Washington County.

Prayer by Pastor Effie McClain of Oakland-Sidney United Methodist Church.

PASTOR McCLAIN: Would you please pray with me. God, You are ever present with us, even when we fail to acknowledge You. You hear the calls of Your people as they make their petitions before Your throne of grace. You open Your arms to receive even the least of these and call them Your children. Today we ask that the leaders of this space open their hearts and mind to govern Your people with a heart of compassion and eyes focused on justice. Just as You spoke through Your prophet Joel in a proclamation of justice to roll and righteousness to flow, may these aspects of Your light move in these halls today. For the poor, we pray. For the lost, we pray. For the sick, we pray. For the disenfranchised, we pray. For the well, we pray. For the wealthy, we pray. For those in power, we pray. In all of these petitions we know that You care for Your entire creation. With this understanding, we ask, O God, that the focus on all may be effected by decisions made here and may be considered and that the law that You have given to Your people may be upheld by rendering acts of kindness, charity, and grace. We offer this prayer to You, O God, in order that we may live by the power of Your holy spirit. Amen.

Pledge of Allegiance led by Senator Brian D. Langley of Hancock County.

Reading of the Journal of Monday, March 12, 2012.

Off Record Remarks

The Chair noted the absence of the Senator from Knox, Senator **RECTOR** and further excused the same Senator from today's Roll Call votes.

PAPERS FROM THE HOUSE

House Papers

Bill "An Act To Enhance the Protection of Social Service Home Visitors"

H.P. 1375 L.D. 1857

Presented by Representative EVES of North Berwick. Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Bill "An Act To Protect Firearm Ownership during Times of Emergency" (EMERGENCY)

H.P. 1377 L.D. 1859

Presented by Representative SHAW of Standish. Cosponsored by Senator DIAMOND of Cumberland and Senator: LANGLEY of Hancock, Representatives: CEBRA of Naples, CLARK of Millinocket, GRAHAM of North Yarmouth, HANLEY of Gardiner, HARMON of Palermo, PLUMMER of Windham, SARTY of Denmark.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Bill "An Act To Protect Victims of Domestic Violence"

H.P. 1381 L.D. 1867

Presented by Representative CAIN of Orono. (GOVERNOR'S BILL)

Cosponsored by Senator MASON of Androscoggin and Senator: GERZOFISKY of Cumberland, Representatives: BLODGETT of Augusta, BURNS of Whiting, FREDETTE of Newport, HANLEY of Gardiner, HASKELL of Portland, MORISSETTE of Winslow, PLUMMER of Windham.

Come from the House, **REFERRED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** and ordered printed.

REFERRED to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** and ordered printed, in concurrence.

Bill "An Act To Ensure Effective Teaching and School Leadership"

H.P. 1376 L.D. 1858

Presented by Representative RICHARDSON of Carmel. (GOVERNOR'S BILL)

Bill "An Act To Remove Inequity in Student Access to Certain Schools"

H.P. 1379 L.D. 1866

Presented by Representative McCLELLAN of Raymond. (GOVERNOR'S BILL)

Come from the House, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed.

REFERRED to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed, in concurrence.

**Pursuant to Statute
Criminal Law Advisory Commission**

Representative PLUMMER submitted the Report of the **Criminal Law Advisory Commission**, pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2 asked leave to report that the accompanying Bill "An Act To Amend Statutory Post-conviction Review"

H.P. 1378 L.D. 1861

Be **REFERRED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** and ordered printed pursuant to Joint Rule 218.

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

REFERRED to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** and ordered printed pursuant to Joint Rule 218, in concurrence.

**Pursuant to Statute
Revisor of Statutes**

Representative NASS submitted the Report of the **Revisor of Statutes**, pursuant to the Maine Revised Statutes, Title 1, section 94 asked leave to report that the accompanying Bill "An Act To Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY)

H.P. 1383 L.D. 1868

Be **REFERRED** to the Committee on **JUDICIARY** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **JUDICIARY** and ordered printed pursuant to Joint Rule 218.

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

REFERRED to the Committee on **JUDICIARY** and ordered printed pursuant to Joint Rule 218, in concurrence.

Senate at Ease.

Senate called to order by the President.

Joint Resolution

The following Joint Resolution:

H.P. 1382

**JOINT RESOLUTION RECOGNIZING SUNSHINE WEEK,
MARCH 11-17, 2012**

WHEREAS, the basic principles of freedom of speech and freedom of the press guaranteed in the United States Constitution are fundamental to our national heritage; and

WHEREAS, the American Society of Newspaper Editors has initiated Sunshine Week: Your Right to Know as a way of illustrating the importance of open government; and

WHEREAS, Sunshine Week 2012 participation by nonjournalism groups is growing, with national and local forums already planned by civic groups, libraries and open government and freedom of information groups, as well as by student media; and

WHEREAS, Sunshine Week was established to spark a discussion about the importance of open government and public access to government documents and meetings; and

WHEREAS, these issues are important in the State of Maine, where public access issues emerge all the time; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-fifth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to recognize Sunshine Week: Your Right to Know during the week of March 11-17, 2012 and confirm the basic principles of an open and accessible government in a free society, and we urge all citizens to join in this observance.

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

READ.

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

Senator **HASTINGS:** Thank you Mr. President. I just want to speak very briefly and acknowledge that today is Sunshine Week. Looking out, hopefully the sun will be peeking out. Yesterday was certainly a great sunshine day. This is all about the right of the public to know what happens in government. Sunshine Week recognizes that the Right to Know law and the right to access government information is so important to the operation of our government. I wish to commend the American Society of Newspaper Editors, which initiated Sunshine Week. Sometimes we think that they are pests and annoyances, but their work is so important. Mr. President, I am very proud to support this Joint Resolution. Thank you.

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

Senator **HOBBS:** Thank you Mr. President. Men and women of the Senate, I concur with the good Senator from Oxford, Senator Hastings, with his remarks and appreciate his hard work as the Chair of the Right to Know Advisory Committee. I was fortunate enough for the six and a half years of my first term to serve as the Chair of that legislative committee, which has done

hard work since its inception. More than four decades ago the Maine Legislature became the first state in the nation to enact a freedom of access law because we understood the value and importance of access to public records and proceedings. I have always shared the notion and belief that the public must have unfettered access to government and the activities of those in charge. A primary focus during my time as a legislator has been spent on insuring transparency and public access in government. Today I stand before you to recognize a national initiative that promotes the importance of open government and freedom of information. It's call Sunshine Week. It's not because of the anticipated Spring-like weather that is expected and continues this week. The purpose of Sunshine Week is to annually highlight the importance of empowering people to play an active role in their government at all levels and to give them access to information that make their lives better and their communities stronger. The basic principles of our freedom of speech and freedom of press are guaranteed in our Constitution and are fundamental to our national heritage. We know that an open and accessible government is essential to establishing and maintaining the people's trust and confidence in their government and in government's ability to effectively serve them. As we watched some world events unfold before our eyes, it is evident that a free society and a democratic process is desired for many. It is important that our country and our state continue to serve as a role model for the rest of the world and to show that government and the democratic process can be open and accessible to both the public and the press. I am honored to join you this morning to celebrate and recognize Sunshine Week. Thank you very much.

ADOPTED, in concurrence.

COMMUNICATIONS

The Following Communication: S.C. 741

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES**

February 29, 2012

Honorable Kevin L. Raye, President of the Senate
Honorable Robert W. Nutting, Speaker of the House
125th Legislature
State House
Augusta, Maine 04333

Dear President Raye and Speaker Nutting:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Environment and Natural Resources has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1686 An Act To Amend the Process for Issuing State Water Quality Certificates to Hydropower Projects That Withdraw Water from Great Ponds

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. Thomas B. Saviello
Senate Chair

S/Rep. James M. Hamper
House Chair

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

SENATE PAPERS

Bill "An Act To Rename the Maine Jobs Council as the State Workforce Investment Board and Make Changes to Its Structure" S.P. 655 L.D. 1874

Presented by Senator MARTIN of Kennebec. (GOVERNOR'S BILL)
Cosponsored by Representative VOLK of Scarborough and Senator: MASON of Androscoggin, Representative: JOHNSON of Greenville.

On motion by Senator **COURTNEY** of York, **REFERRED** to the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** and ordered printed.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith 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 (3/12/12) Assigned matter:

JOINT RESOLUTION - Recognizing The Justice Action Group's Access To Justice Day S.P. 652

Tabled - March 12, 2012, by Senator **HASTINGS** of Oxford

Pending - **ADOPTION**

(In Senate, March 12, 2012, **READ.**)

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

Senator **HASTINGS:** Thank you Mr. President. Today is Justice Access Day. I hope the whole year becomes Justice Access Year. Today we are here to recognize in this Resolution the Justice Action Group, which is a coalition established back in 1995 to provide coordination when planning for the provision of civil legal aid to low income and elderly Mainers. As you know, we already fund the Indigent Legal Defense Fund that provides legal assistance to indigent people charged with crimes, but those involved in the civil system require representation equally as much, and we do not fund that. We all hear lawyer jokes and we all laugh at them. I know you are all kidding when you tell those. I'm sure you are. I hope you do recognize how important it is to our constituents to be represented when they deal with the civil justice system. The Justice Action Group, this coalition, provides services through many, many venues. I want to point out to you, you've already seen the handout. I can't hold this up. I guess it's a prop. You could see the handout yesterday that had a green sheet that lists all of the available resources to provide legal assistance to your constituents in various legal matters. It is a very helpful list and I hope you'll keep it with you because when you get that call it tells you where you can refer them. Some organized groups are like Pinetree Legal, that we actually assist. Many are just like the Volunteer Lawyer's Project, which farms out many, many cases to our Maine lawyers who have a reputation of taking on a huge amount of pro bono work. As I understand it, Maine is one of the leaders in the nation in the willingness of its bar to take on pro bono work, representing those in need in the civil system. It is my great honor to urge your unanimous support to this Joint Resolution. Thank you very much, Mr. President.

ADOPTED.

Sent down for concurrence.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the chamber the Associate Maine Supreme Court Justice Jon Levy and Federal Magistrate Judge John Rich, Co-Chairs of the Justice Access Group. They are accompanied by colleagues and other members. Would they please rise and accept the greetings of the Maine Senate.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation Birth to Age Twenty, a Major Substantive Rule of the Department of Education (EMERGENCY)

H.P. 1273 L.D. 1724

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-749).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-749).**

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

READ ONCE.

Committee Amendment "A" (H-749) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **ENVIRONMENT AND NATURAL RESOURCES** on Bill "An Act To Provide Funding To Operate the Dolby Landfill in the Town of East Millinocket"

H.P. 1235 L.D. 1683

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-750).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-750).**

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

READ ONCE.

Committee Amendment "A" (H-750) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Require That Law Enforcement Officials Collect DNA Samples from Persons Arrested for Certain Crimes"

H.P. 849 L.D. 1143

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

Signed:

Senator:
GERZOFISKY of Cumberland

Representatives:
PLUMMER of Windham
CLARKE of Bath
HANLEY of Gardiner
HASKELL of Portland
LONG of Sherman
SANDERSON of Chelsea

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "C" (H-738).**

Signed:

Senators:
MASON of Androscoggin
WHITTEMORE of Somerset

Representatives:
BLODGETT of Augusta
BURNS of Whiting
MORISSETTE of Winslow

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

Reports **READ**.

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

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Amend the Law Relating to Concealed Firearms Locked in Vehicles" (EMERGENCY)
H.P. 1212 L.D. 1603

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-739).**

Signed:

Senators:
MASON of Androscoggin
WHITTEMORE of Somerset

Representatives:
PLUMMER of Windham
BURNS of Whiting
HANLEY of Gardiner
LONG of Sherman
MORISSETTE of Winslow
SANDERSON of Chelsea

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-740).**

Signed:

Senator:
GERZOFISKY of Cumberland

Representatives:
BLODGETT of Augusta
CLARKE of Bath
HASKELL of Portland
LAJOIE of Lewiston

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-739)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-739).**

Reports **READ**.

On motion by Senator **MASON** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-739)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-739) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Divided Report

The Majority of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Strengthen the Integrity of Nonresident Concealed Handgun Permits"
H.P. 1278 L.D. 1728

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

Signed:

Senators:
MASON of Androscoggin
GERZOFISKY of Cumberland
WHITTEMORE of Somerset

Representatives:
PLUMMER of Windham
HASKELL of Portland
LAJOIE of Lewiston
LONG of Sherman
MORISSETTE of Winslow
SANDERSON of Chelsea

The Minority of the same Committee on the same subject reported that the same **Ought To Pass**.

Signed:

Representatives:

BLODGETT of Augusta
BURNS of Whiting
CLARKE of Bath
HANLEY of Gardiner

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

Reports **READ**.

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

Divided Report

The Majority of the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Limit Health Care Mandates"
H.P. 649 L.D. 882

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-723)**.

Signed:

Senators:

WHITTEMORE of Somerset
SNOWE-MELLO of Androscoggin

Representatives:

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

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

Signed:

Senator:

BRANNIGAN of Cumberland

Representatives:

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

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-723)**.

Reports **READ**.

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

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

Divided Report

Ten members of the Committee on **ENVIRONMENT AND NATURAL RESOURCES** on Bill "An Act To Make Minor Adjustments to Laws Administered by the Department of Environmental Protection"

H.P. 1283 L.D. 1738

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-752)**.

Signed:

Senators:

SAVIELLO of Franklin
GOODALL of Sagadahoc

Representatives:

HAMPER of Oxford
AYOTTE of Caswell
DUCHESNE of Hudson
INNES of Yarmouth
KNAPP of Gorham
NASS of Acton
PARKER of Veazie
WELSH of Rockport

Two members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass**.

Signed:

Senator:

SHERMAN of Aroostook

Representative:

LONG of Sherman

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 "B" (H-753)**.

Signed:

Representative:

HARLOW of Portland

Comes from the House with Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-752)** READ and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-752)**.

Reports **READ**.

On motion by Senator **SAVIELLO** of Franklin, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-752)** **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-752) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senate

Ought to Pass Pursuant to Joint Order

Senator **LANGLEY** for the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Direct the Commissioner of Education To Adopt a Model Policy Regarding Management of Head Injuries in School Activities and Athletics" (EMERGENCY)

S.P. 654 L.D. 1873

Reported that the same **Ought to Pass**, pursuant to Joint Order 2011, S.P. 644.

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Ought to Pass As Amended

Senator **FARNHAM** for the Committee on **VETERANS AND LEGAL AFFAIRS** on Bill "An Act To Update the Powers and Duties of the Bureau of Maine Veterans' Services"

S.P. 584 L.D. 1719

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-430)**.

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

READ ONCE.

Committee Amendment "A" (S-430) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senator **FARNHAM** for the Committee on **VETERANS AND LEGAL AFFAIRS** on Bill "An Act To Protect Public Safety in the Operation of Casinos" (EMERGENCY)

S.P. 632 L.D. 1828

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-431)**.

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

READ ONCE.

Committee Amendment "A" (S-431) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Divided Report

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Address Research and Teaching in Maine's Institutions of Higher Education by Amending the Laws Governing the Purchase of Goods and Services by the State Involving Institutions of Higher Education"

S.P. 541 L.D. 1631

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-428)**.

Signed:

Senators:

THOMAS of Somerset
COLLINS of York
SULLIVAN of York

Representatives:

COTTA of China
BOLDUC of Auburn
CASAVANT of Biddeford
CEBRA of Naples
GRAHAM of North Yarmouth
HARVELL of Farmington
KAENRATH of South Portland
MOULTON of York
TURNER of Burlington

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-429)**.

Signed:

Representative:
BOLAND of Sanford

Reports **READ**.

On motion by Senator **THOMAS** of Somerset, the Majority
OUGHT TO PASS AS AMENDED BY COMMITTEE
AMENDMENT "A" (S-428) Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-428) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

SECOND READERS

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

House

Bill "An Act To Amend the Uniform Commercial Code Regarding Motor Vehicle Warranties"

H.P. 1236 L.D. 1684

Bill "An Act To Conform the Maine Tax Laws for 2011 to the United States Internal Revenue Code" (EMERGENCY)

H.P. 1289 L.D. 1748

Bill "An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions"

H.P. 1330 L.D. 1804

READ A SECOND TIME and **PASSED TO BE ENGROSSED**, in concurrence.

House As Amended

Bill "An Act To Clarify the Requirements of Income Withholding Orders"

H.P. 1199 L.D. 1594
(C "A" H-746)

Bill "An Act To Clarify the Status of Patients Held under Involuntary Commitment Applications"

H.P. 1240 L.D. 1688
(C "A" H-747)

Resolve, Authorizing the State Tax Assessor To Convey the Interest of the State in Certain Real Estate in the Unorganized Territory

H.P. 1292 L.D. 1751
(C "A" H-748)

Bill "An Act To Prohibit Computer Software Programs Used To Evade Sales Tax"

H.P. 1297 L.D. 1764
(C "A" H-743)

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

Senate

Bill "An Act To Allow the Change of Location of a Licensed Large Game Shooting Area" (EMERGENCY)

S.P. 630 L.D. 1822

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

Sent down for concurrence.

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

Off Record Remarks

ENACTORS

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

Emergency Measure

An Act Regarding Inmates on Public Works Projects

H.P. 1225 L.D. 1635
(C "A" H-731)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Measure

An Act To Clarify Health Insurance Benefits for Disabled Participants in the Maine Public Employees Retirement System

S.P. 550 L.D. 1651
(C "A" S-411)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Measure

An Act Relating to the Calculation of Population for Purposes of the Maine Uniform Building and Energy Code and Public Safety Answering Point Assessments

H.P. 1249 L.D. 1697

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Measure

An Act To Improve the Method of Classifying Shellfish Harvesting Areas and Providing Notification of Changes

S.P. 586 L.D. 1721
(C "A" S-415)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Measure

An Act To Amend Certain Provisions of the Fish and Wildlife Laws

S.P. 592 L.D. 1732
(C "A" S-391)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Resolve

Resolve, Regarding Legislative Review of Portions of Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, a Major Substantive Rule of the Department of Environmental Protection

H.P. 1318 L.D. 1793

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Emergency Resolve

Resolve, To Promote the Expansion of the Maine Maple Sugar Industry

H.P. 1338 L.D. 1814

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 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.

Ordered sent down forthwith.

Acts

An Act Regarding the Writing of Bad Checks
S.P. 321 L.D. 1088
(C "A" S-408)

An Act To Amend the Campaign Finance Laws Regarding Reporting Refunds of Campaign Expenditures
S.P. 528 L.D. 1618
(C "A" S-405)

An Act To Amend the Charter of the Ogunquit Sewer District
S.P. 530 L.D. 1620
(C "A" S-414)

An Act To Clarify the Authority of the Department of Health and Human Services To Impose Administrative Sanctions upon Vendors, Providers and Participants in the Women, Infants and Children Special Supplemental Food Program
S.P. 536 L.D. 1626
(C "A" S-404)

An Act To Protect Gasoline Marketers from Liability for Selling Federally Approved Gasoline

S.P. 557 L.D. 1658
(C "A" S-413)

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

An Act To Amend the Election Laws

S.P. 563 L.D. 1664
(C "A" S-402)

An Act To Conform Maine Law to Federal Law Regarding Payment of Overtime to Truck Drivers and Driver's Helpers

H.P. 1237 L.D. 1685
(H "A" H-744 to C "A" H-732)

An Act To Amend the Circuitbreaker Program To Include Claimants Occupying Property Pursuant to a Trust and To Require Proof of Payment of Rent

S.P. 579 L.D. 1680
(C "A" S-407)

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

An Act To Increase the Membership of the Homeland Security Advisory Council

S.P. 585 L.D. 1720

An Act To Update the Career and Technical Education Laws

S.P. 616 L.D. 1779
(C "A" S-416)

An Act Regarding the Interception of Oral or Wire Communications of Residents of State Correctional Facilities and Jails

H.P. 1282 L.D. 1737

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

An Act To Streamline the Paperwork Requirements of the State's Forest Practices Laws

S.P. 598 L.D. 1741
(C "A" S-409)

Resolves

An Act To Amend Certain Provisions of Law Governing the Department of Corrections

S.P. 602 L.D. 1754

Resolve, To Establish a Stakeholder Group for the Development of a Plan for the Inventory and Proper Care of Veterans' Graves

S.P. 540 L.D. 1630
(C "A" S-403)

An Act To Authorize the Commissioner of Education To Allow Access to Criminal History Record Information to Entities Providing Document Management and To Remove Applicants' Fingerprints from the Fingerprint File

H.P. 1301 L.D. 1767
(C "A" H-730)

Resolve, To Streamline Forester Licensing Requirements

S.P. 613 L.D. 1776
(C "A" S-406)

An Act To Correct an Inconsistency in the Employment Security Law

S.P. 614 L.D. 1777
(S "A" S-399)

Resolve, Directing the Maine Turnpike Authority To Place Signs on Interstate 95 Directing Motorists to the Southern Maine Veterans Memorial Cemetery in Springvale

S.P. 625 L.D. 1807

An Act To Enhance Career Pathways for Adult Learners

S.P. 617 L.D. 1780
(C "A" S-410)

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

Ordered sent down forthwith.

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

Ordered sent down forthwith.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (2/28/12) Assigned matter:

An Act To Clarify Authorization for a Court Facilities Bond

S.P. 566 L.D. 1667
(C "A" S-417)

SENATE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act To Provide Funding to the Department of Transportation for a Feasibility Study of an East-West Highway" (EMERGENCY)

S.P. 570 L.D. 1671

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-398)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - February 28, 2012, by Senator **COLLINS** of York

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

(In Senate, February 28, 2012, Reports **READ**.)

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

Senator **DIAMOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'd like to explain a couple of things about this before we vote. First, the bill, as you see on the report, shows an Emergency L.D., which it now isn't. It is now, because of the amendment, a Resolve. The money in the original bill was going to come from the General Fund and now it is going to come from the Highway Fund. It will be taxpayer dollars, of course, paying for this either way. It was transferred, changed, from the General Fund to the Highway Fund to pay for the study. Mr. President, I would pose two questions through the Chair, if I may.

THE PRESIDENT: The Senator may pose his questions.

Senator **DIAMOND:** Thank you Mr. President. First question, Mr. President, is how much will this cost? Two, this study looks a little unique. What does this study really mean?

THE PRESIDENT: The Senator from Cumberland, Senator Diamond poses questions through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I've been assured by the department they can do this study for \$300,000. What this is is a feasibility study to see if, in fact, a toll road is feasible across Maine.

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

Senator **DIAMOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, unfortunately that's not what the Resolve says. The Resolve simply says that the Department of Transportation will use taxpayer dollars in the Highway Fund to fund the study. It doesn't say \$300,000. In fact, it's an open check. It's a blank check. It tells them to do the study. If the study costs \$400,000 or \$500,000 that's what DOT would have to pay. That's what the Resolve says. What we're asking for here is to write a blank check. That's the first problem. The second problem is this study, as it says in the Resolve, is an independent investment grade traffic revenue analysis. I don't know if that means finding investors, that DOT is going to hire a private firm using taxpayer dollars to find out about investments. I'm not sure what that really means. It's rather unique. I think the taxpayers of Maine are going to ask the question: "Where did this money come from all of a sudden? Why do we have hundreds of thousands of dollars we can now spend on this project?" The Highway Fund is

\$563 million. That's the budget. After the first six months of this fiscal year there is only a \$1 million cushion. I would suggest to you that the Highway Fund is no better off than the General Fund, yet the Highway Fund gets the lucky card and can pay for this. All you need to do is look at the Forecasting Committee's report in March. They reforecasted the income for the Highway Fund. Gasoline tax down \$1 million. Motor vehicle operator fees down. Transcap motor vehicle fees down. Fines, penalties, forfeits are down. Probably the gasoline tax will be more than \$1 million down because of the increase per gallon. Where do the people of Maine get so lucky that they can fund this? Blank check. Private development. All of a sudden we have money in the Highway Fund to do this. That answer is going to be: "Well look at the planning account and you will see the money is there." The trouble is with most big budgets, including the Highway Fund, you need to be able to transfer money from account to another. This is no different. We've had two decades of studies on this issue.

Many of us think that maybe this East-West highway is a good idea. In fact, if you look at the report, there were many people who signed Ought Not to Pass who felt maybe this was a good idea. The question you're being asked to vote for, go on record and vote for, is unlimited funding. There is nothing in that Resolve that says it will be \$300,000. It can go higher. Two, we really don't know what this study entails. I would ask you to look at that very carefully before you go on record and vote for something of this type. Again, this is nothing about the East-West highway and whether it's a good idea. It's whether or not we have the money and do we have enough faith that we're going to simply say pay what it costs to make this study complete. I would ask you to think carefully about that. Maybe they can find another way, they being DOT, to fund this. Maybe we could find another way. Thank you, Mr. President.

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

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

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, first of all let me thank Peter Vigue and the Cianbro Corporation for keeping this opportunity alive all these years and all the work they've done to bring the project this far, and then being willing to turn that work over to the people of the state of Maine, free of charge, knowing full well, once state government became involved, that they'd have to get in line and compete with the rest of the world for any of the work involved. This is a Resolve that directs the Department of Transportation to take money that is already in their budget from projects that are not going to be built, not going to be done, and use that money to do an unbiased investment grade study of a toll highway across Maine from New Brunswick to Quebec. An unbiased study can't be done by a person or a company that would benefit from construction of a road like this. It has to be done by government. State government needs to be involved not just in the study, but for many other reasons, not the least of which is; who's going to enforce the law on a highway like this?

I was a kid when people first started talking about an East-West highway in Maine. We've studied it over and over again because people have always recognized the economic benefits of a highway like this would bring, especially to the part of the state

that I represent, an area that has seen depression level unemployment rates in recent years, in some cases rates that exceed 20% of the workforce. If you take a good look at other highways like this, it will take between 300 and 400 people to maintain the road, plow the snow, and cut the bushes; not counting the thousands of construction jobs. More benefits than a billion dollar highway bond. We're talking about good jobs. We're not talking about minimum wage jobs. We'd have built this road long ago if we could have found a way to afford it, but always before the concept was to follow public roads, buying expensive right-of-ways, and dealing with traffic during construction. This highway will follow existing logging roads to minimize both the cost and the environmental damage a project like this could cause. The project we have before us today finally makes a dream of mothers and fathers doable. Yes, one of the major users will be Canadians, cutting across Maine to save a lot of time and money. For that privilege, they are going to pay the majority of the costs. All the while, this highway will make Detroit, Chicago, and the Western United States hundreds of miles closer to Maine, cutting the shipping costs of potatoes, lumber, and even cloth made here in Maine; making those Maine products competitive in markets that we've never been able to compete in before. This highway will also make some of the raw materials that our manufacturers need to provide jobs for our future, less expensive.

I understand this proposal is not without opposition. When you consider all the good that we can do for the state of Maine, please don't let a political squabble get in the way of this. Thank you.

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

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, what concerns me about this, of course I don't know about the previous studies, is if we've done studies on this already why are we studying it again. I think that, as I talked to people in my district, they are pretty upset with us right now because the roads are falling apart and yet we can fund a new project, a new study. I think that they are going to be a little bit annoyed with us about that. I know what the roads are like, especially this time of year. They are in pretty pathetic shape. Taking money from the Highway Fund, I don't think that they will appreciate that too much. Frankly, keeping our bridges up is good business for the state. It's good for jobs. It's good for business. We're not succeeding in doing that, so we're opening up that. Robbing Peter to pay Paul on this.

The other piece of this that concerns me is why we haven't put specific pieces to the study in the Resolve. Why haven't we been more specific? I guess I pose a question through the Chair, Mr. President, to really outline that.

THE PRESIDENT: The Senator may pose her question.

Senator **SCHNEIDER:** Thank you Mr. President. Why have the specifics of this study not been mapped out in the Resolve?

THE PRESIDENT: The Senator from Penobscot, Senator Schneider poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Sagadahoc, Senator Goodall.

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today not in opposition to the concept of the East-West highway. As the good Senator from Cumberland said, I think many people are hesitant about this, not from the standpoint of promoting the concept of the East-West highway. Frankly, there are many people like myself that think the idea has a lot of merit and we should pursue it to understand if there is an opportunity to have it succeed and be in the best interest of our economy. The question lies, to me, around the funding source, specifically what is the potential cap on the total amount of the study. I did hear the good Senator from Somerset saying it was \$300,000. It seems to me that we should then put that in the legislation. Every dollar is very valuable. In addition to that, I have some concerns about the investment grade study. I definitely understand and respect the fact that we need to have studies at times that resonate with investors so that they know that there is confidence in both the political and regulatory climate in the economy of a state. Here, though, what signal is it going to send if the study is voted on and enactment of the funding source is straight along party lines or a significantly divided vote? Is that something that we want to do here today? I bring that up because it seems to me many of the questions, or concerns, that have come out could be dealt with in committee. I wonder if this would be a proper place to have the bill sent back, thoroughly discussed as well as outlined, before we move forward. At this point I have one question I'd like to pose through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **GOODALL:** Thank you Mr. President. My question has two parts. One, has private funding been looked into as a source for paying for the study, as we have used for other studies with the State facilitating the study? The second part of that would be: what would the potential consequence be to the investors if we took such a route?

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

Senator **COLLINS:** Thank you Mr. President. Ladies and gentlemen of the Senate, the approximate cost of this feasibility study will be around \$300,000. To clarify previous statements, this \$300,000 comes from existing funds within the Maine DOT. They had money allocated for other feasibility studies that, for a host of different reasons, were abandoned. One that comes to mind is the Wiscasset bridge location. That project was abandoned and money was left in the department for studies. That's where the approximate \$300,000 is coming from, existing funds.

Let's talk about the East-West highway briefly. It's been brought to my attention through Mr. Vigue and Cianbro Construction Company that they have a group of private investors who have every intention of building this highway. Here again, the approximate cost of this highway is going to be around \$2 billion. Private funding. Not coming from the taxpayers of Maine. It's coming from private investors who recognize this as a venture to invest in and to get a good return on their investments. Before these investors invest the necessary capital to construct this highway, they want and demand an independent study done by an independent agency, not Cianbro Construction for example.

They would question the authenticity of that if it was brought forward by possibly a company that would be involved in the construction of this proposed East-West highway. They want an independent study. At the present time Maine DOT is going to hire an independent agency to do the study and report that back to the investors. Hopefully they will read the feasibility study, accept it, and go forward with the project. It's a study that is going to be presented to them and, quite frankly, they could simply say that they don't like what they see and the project could end there. Hopefully it won't happen that way, but nevertheless the feasibility study will be brought forward to them, they will review it, and make a business decision to invest \$2 billion in the state of Maine. Two billion dollars in a highway that, again, will cost the taxpayers of Maine only \$300,000 of existing funds within Maine DOT's budget. When you consider what we're getting here, we're getting the possibility of a \$2 billion road for a \$300,000 investment. To me, that's not bad math. I think it's a good investment for Maine. If this project goes forward can you imagine what's going to happen along that interstate highway? There will be new businesses cropping up. Everybody wants to be near a major artery for commerce, to receive goods, and to ship out goods. It will be an economic shot in the arm for that part of Maine that, quite frankly, desperately needs it. I would recommend, strongly recommend, that we vote this in, vote in the affirmative, and move this along. This project has been pending, as outlined by previous statements from colleagues here in the Senate, and kicking around Maine for a long time, probably 50 years. Finally we're seeing some light at the end of the tunnel where possibly this could actually happen. I would suggest very strongly that we move this forward and get the construction started on this major new artery here in Maine. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, however advisable or inadvisable an East-West highway might be for the state of Maine, as we've heard, it's going to be an undertaking and cost billions of dollars. It does not pass the straight face test that parties considering investing billions in a privately funded and privately operated highway would be unwilling to fund the \$300,000 investment grade traffic and revenue analysis. Here we are dealing with funds in the Department of Transportation that happen to be available, but we've got projects that are not getting done. In my own district, the Gut Bridge construction in South Bristol, replacing an aging and failing moving structure that impacts boats and traffic in South Bristol, has been postponed for another year. I'm not convinced that our spending public dollars in support of something which Wall Street financiers making a decision to invest in a private road should be funded by our public dollars. I would also suggest that moving goods in support of commerce is a laudable aim. We certainly need that and we need to help with the economic growth in Downeast. Rail service would be the wiser thing to improve. We have existing rail that runs that corridor. It would be 200 times more cost effective per ton to move in terms of energy and fuel costs. We should be looking to do things in smarter ways, not put public dollars invested in private ventures, however advisable they may be. Thank you.

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, the beauty about the Senate Chamber is that often we have deliberative debates and sometimes we have more substantive conversations here rather than in committee. The challenge is that we can't bring experts before us here to answer our questions; people who know, off the tip of their tongues, the impacts of our actions. I think it's very challenging for some of us to make a decision, not knowing the answers to the questions we're posing or having the questions answered, or attempted to be answered. I still have not received a response in regards to: can this study be funded through a privately funded account that is set aside in escrow and facilitated by the State? What are the potential consequences if we don't get this right? I think we can get this right if we send it back to committee. In addition to that, Mr. President, I would like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **GOODALL:** Thank you Mr. President. My question is: do we even need to take legislative action by having a stand-alone bill in order for this study to go forward?

THE PRESIDENT: The Senator from Sagadahoc, Senator Goodall poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I wish to respond. Yes, we need a stand-alone bill in this sense, there needs to be some State buy in. Would you invest in a project like this if the public wasn't in support of it? If the State of Maine, who has to be involved in this at some point in time, isn't willing to support the concept, isn't willing to supply \$300,000 in a study, would you want to invest in it? Think of all the places where the State is going to have to be involved. I mentioned law enforcement earlier. There are the permits that are going to have to be gotten. There are all kinds of other places where we're going need State involvement. We've got this question. There was a question about this unended or unlimited amount of money being spent on the study. We entrust the Commissioner of the Department of Transportation with hundreds of millions of dollars every year in the budget. Commissioner Bernhardt has done a fantastic job at spending that money and he's saved us millions and tens of millions of dollars that's going to go into next year's Transportation Budget. I believe the total is now \$100 million he's saved from last year. We can't trust him with a measly little study? Of course we can. He'll make sure it gets done and gets done right.

The talk about rail transportation being so much cheaper is exactly right. The problem is rail doesn't always work. Perishable products, you don't want to put them on rail because often times they will be spoiled before they get there. In the state of Maine, if we could improve rail transportation we could probably improve our economy dramatically, but we can't possibly seem to get those private railroads to give Maine businesses the service that they need. It's been a constant battle all the while that I've been on the Transportation Committee to get them to improve service to Maine. Yes, we need an East-West highway and it's more than just the rails. Thank you.

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

Senator **BARTLETT:** Thank you Mr. President. I request permission to pose a question through the Chair?

THE PRESIDENT: The Senator may pose his question.

Senator **BARTLETT:** Thank you Mr. President. What I can't understand is that this seems to be a feasibility study for a privately funded road. In the event that private financing isn't available, would this study be useful in pursuit of federal dollars or other sources of revenue for the road?

THE PRESIDENT: The Senator from Cumberland, Senator Bartlett poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you Mr. President. Men and women of the Senate, every once in a while I find myself thinking that I'm in a version of Alice in Wonderland and this is one of those days. How this could possibly turn into a partisan political issue is completely beyond me. I've learned here in the last year that we don't have enough money to take care of maintaining the roads and bridges we have, let alone build any bold new projects like this one. I've been reading about the East-West highway since I was a kid. It seems like there is no disagreement that there is unquestioned benefit from it. Unquestioned economic benefit. We will never spend \$2 billion of public money to get that done, ever. We can't afford it. Now, I think for the first time, a private developer has come along and said, "We're willing to invest \$2 billion to do one of the most important economic development projects in the state in decades." They are asking there to be, in some minor sense, a public/private partnership. Here's what that partnership is. My calculator doesn't go up to \$2 billion, but I think what they are asking for is that we be responsible for 6/1000 of this project, despite funding the feasibility study. That's a pretty darned good deal. A \$2 billion construction project that will not cost us a penny beyond the initial feasibility study. I've listened carefully to the arguments that I've heard. Are there different ways that this study could possibly be funded? I'm sure there are, if we waited forever. Are there better ways that this study could be funded? Maybe there are. The old saying that the enemy of good is perfect really applies here. This is a good way to get this project going. It's a good bill. We will all be better off and I would hope that party politics plays no role in this discussion. It is sad that it appears that is what happening. Thank you, Mr. President.

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

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, first I'd like to rise and assure the Senator from Kennebec that to me this is not about party politics. This, to me, is about what makes sense. I'd like to respond to my colleague's question regarding whether or not a study can be funded through the State. Over and over, when we have not felt that we can afford to use funds for a study, it's put in legislation that we can certainly get private dollars in a fund that then can be

dispersed for a study such as this. I'm sort of disappointed that we didn't get that answered from the people on the committee, but the fact of the matter is that the answer to that question is absolutely. We can talk until the cows come home about whether or not the East-West highway is something that we should move forward with or not.

What disturbs me is that there is no acknowledgement that we can go ahead, especially given that over and over there has been points made about billions of dollars that are going to be invested and yet we can't somehow find, from private investors, the \$300,000, if that is what it is because it could be \$500,000 or it could be \$700,000 because we don't know, for this study. If they can put up the money to \$2 billion, then for sure they can come up with \$300,000 or \$500,000 to fund the study. As somebody said earlier, it doesn't pass the straight face test. We have done this in the past for other things. I think we should put it into legislation so we can go back to our Senate Districts and say to the people of the state of Maine that we agreed that a feasibility study should be done, but we also made sure that taxpayer dollars are not going to fund a potentially private investor scenario.

Also the other thing I don't get is that if it's such a good deal for private investors to be investing in this great business deal, why aren't we doing it? That doesn't make sense to me. I visited Colorado. I can tell you that anybody who goes to the Denver airport, it's like every half mile you come to a toll. It is a fortune. If we're going to charge people up the ying-yang to travel on a new East-West highway maybe we should start looking at how good of a deal this is for the State of Maine than to be having it undertaken in a private way. Maybe that should be part of this feasibility study, to find out ways that we can make money since we don't have even revenues to do what we're doing now. We don't have enough revenues to pay for upkeep of our roads. Anybody knows that, under the Dome. Why are we giving away the potential if it's such a good investment for billions and billions of dollars to be made on this project? Why aren't we looking at that? The people of Maine deserve better than this. We should not be writing blank checks for any kind of study and when we can get investors to invest their private money in a study we should do it. Especially given the current financial conditions. Thank you.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you Mr. President. I'd like to pose a question through the Chair?

THE PRESIDENT: The Senator may pose her question.

Senator **SNOWE-MELLO:** Thank you Mr. President. Can the Chair tell me how the current Maine Turnpike was originally started? Thank you.

THE PRESIDENT: The Senator from Androscoggin, Senator Snowe-Mello poses a question through the Chair to anyone who

may wish to answer. The Chair recognizes the Senator from York, Senator Collins.

Senator **COLLINS**: Thank you Mr. President. Even though the good Senator from Androscoggin is my seatmate, sometimes we don't communicate that well. However, in regards to the Maine Turnpike, that also was started by private investors. They floated the bonds. They took the risk. Private investors built the Maine Turnpike in phases shortly after World War II. It is kind of the way things have happened here in Maine with these major investments in our infrastructure, new highways. Could we build this on our own and maintain what we have now? It would be extremely difficult. Having private investors step forward, step up to the plate and say, "Ya, I think we can do this, providing we get an independent feasibility study, not paid for by a construction company." An independent source will do the study, but funding will be paid for by existing funds within the department. That is one of the things that these investors are looking for, an independent study. The department will hire an agency to do this independent feasibility study from existing funds within the department.

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

Senator **JACKSON**: Thank you Mr. President. Ladies and gentlemen of the Senate, I agree also with the fact that if they wanted to do the study certainly private money could be given to the department and then the department could go out and get independent people to do the study. For my part, I've heard about this East-West highway for a long time also. I know people said they heard it talked about since they were a kid. I think they have probably heard about the extension of the I-95 project for probably as long, if not longer. I know last session Mr. Vigue came in before the Labor, Commerce, Research and Economic Development Committee and spoke. That was the first time I really had a chance to listen to him. He's a really dynamic man. I was really impressed by everything he had to say. I think he really has a good grasp on a lot of things. This project certainly might be one. I'm not slighting what they might do, but, quite honestly, I've had very few people that I represent ever speak to me about the East-West highway. It's mostly North-South that they are interested in. I don't really see how this is going to help that area as much. I definitely think that it could hurt the state. Somewhat helping Northern Maine, but I actually wonder if this is actually going to cut Northern Maine off even more. That's probably where I come down on this, but the fact is that we don't have roads. That's \$300,000 we could be spending for roads. I think if the project is that good I'm certain that they could get the \$300,000 to do the study. Quite honestly, if it is that good a project, I don't even understand why they have to do another study. That's probably why I won't be supporting it.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON**: Thank you Mr. President. Ladies and gentlemen of the Senate, I'd like to address the suggestion that this is party politics, pointing out that I've been contacted by a number of constituents who are opposed to this expenditure and none in favor of it. That does form my position on this. I would also point out that if we're shipping potatoes, and they are going

to spoil before they get there, that there is a real problem with where those rail cars are parking. Rail is still far more effective, far less expensive in fuel per ton by a factor of 200, than trucking things across the state. A question was raised about whether investors would be willing to invest if they didn't know that the public supported it. If that is the question we're trying to answer today then why don't we put this out to referendum and really know whether the public in Maine supports having an East-West highway? Thank you.

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

Senator **PLOWMAN**: Thank you Mr. President. Men and women of the Senate, I began hearing about the East-West highway in 2002 when I worked on a Congressional campaign. I was amazed when the issue was picked up not only in the state of Maine, but also pushed forward by then Senator Hillary Clinton and Senator Charles Schumer as a way for us to develop this region of the country to be an economic factor and for us to be able to reach out to our neighbors in Canada, who had already gone forward with the understanding that we would one day be part of that system. I've only studied it since about 2002 and it has been studied. It's just about this time of year every year that we start talking about bonds. They are all talked about in private and public partnership language. They have to do with R and D and Transportation and water facilities, sanitation. We always talk about what kind of money our investment is going to pull down in order to drive the economy of the state of Maine. Good arguments are made for each of those. What we have today is a suggestion that an investment of our public dollars will pull down \$2 billion in private money to be used to benefit our economy. When we say the word economy everyone thinks of it as sort of a general thing. When I think of the economy I think of people going to work. I think of them getting paychecks and benefits. I think about the companies that will come in and bid and start buying locally to provide the materials that they need in order to perform that job. The other thing I think about is that it does matter to an investment bank and to brokers who does perform the study and where the source comes from. If I, as a businessperson, want to go out and pay for a study that makes it look like I'm going to do a great job and I'm going to have a very secure way of following through on my business plan, I'm sure the bank is going to want to know how I came across those facts and figures. They are probably going to be very sure that I didn't write it myself without any background or facts to back it up. I see this as an extension of what we already do, and that is to put forward funds in order to draw down investments from people who are willing to take a risk, but they must prove to someone that the risk is viable. I will be supporting this and I hope that you will be supporting it because in the long run there are an awful lot of people in Maine who are waiting to go back to work and this looks like a huge project that will go on for a very long time and have very many benefits for the economy of Maine. Thank you, Mr. President.

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

Senator **BARTLETT**: Thank you Mr. President. I just wanted to make a couple of quick comments. I am inclined to support this concept, the idea of putting a little bit of public money out to do

the study to support the East-West highway. I am a little concerned that a number of questions have been asked and haven't been answered yet. I feel like I can't support it here. My understanding, though, is that if this does pass and gets sent down to the Highway Table, there will be an opportunity for some additional discussion, I hope, by the committee. For example, I'd like to know, when this comes back to us, whether or not this study could be useful, even if this specific developer and this specific proposal that has been put on the table falls through. If there is something that has a little bit broader application and that would have merit even if that deal falls through, I would be more comfortable supporting it. I'd also like to know whether the Maine Turnpike Authority could bid on this project, potentially, when it comes out. Would they have that opportunity? If just a few of these questions and others that have been raised could be aired out, I'd be very happy to support it when it comes back. At this point, until those questions are answered, I am not comfortable supporting it at this time. Thank you.

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

Senator **GOODALL:** Thank you Mr. President. I was going to try and use an analogy because the good Senator from Kennebec always has these great analogies with movies, but I'm not quite so skilled. He's not in the Chamber, but I kind of feel like it's groundhog day again, in essence. I'm rising and asking more questions. I'm not going to ask questions to the Body, instead I'm going to be very similar to what the good Senator from Cumberland just said. I, too, am not going to support the bill today. However, he is absolutely right, meaning that it will go back to the Transportation Committee as part of the Highway Budget. At that time I hope that committee can address certain questions that have been raised. In addition to that, they can look at enlightening us all on what areas the study will actually encompass, from an economic standpoint. The good Senator from Aroostook brought up great point about the impact, potentially, on Aroostook County. We just don't know. Will the study take that into consideration? Will the study truly take into consideration issues concerning rail and our efforts to expand that into the state? In addition to that, what will the implications potentially be, procedurally, for the Department of Transportation if we were to put a cap at \$300,000? Thank you, Mr. President.

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

Senator **DIAMOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, just briefly. I would again remind you that it is not \$300,000. It could be \$400,000 or \$500,000. There is nothing in the Resolve that limits it to that. I would respond to the comments made by the good Senator, and my friend, from Kennebec, Senator Katz, that \$300,000 is 1/6000, or whatever, that is used as part of this overall potential project. What we have to remember is that \$300,000 is a lot of money. We have to ask the communities that have been told by DOT they can't afford to buy any more vans at \$40,000 a piece so the commuting will end. We have to look at other lines in the budget and see how those lines are being depleted and how the Revenue Forecasting Committee has downed again several accounts in the Highway Fund. I would ask you to think about that and I would urge the people of Maine to ask questions as well because this a serious

place we're going. If there was a cap on this to make it more definite and other adjustments, it might be better. At this point it isn't, Mr. President. Thank you very much.

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

Senator **PATRICK:** Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, I stand here to try to make a correction. I think I heard that someone said that this study will draw down \$2 billion like a bond. I think that is a little disingenuous because we really don't know. When you have Highway Bonds, there is a specific amount of money that comes with that which will add to the total amount that we have to put into our roads and bridges. This is a study that may lead to \$2 billion. Dealing with a lot of these bankers from Wall Street, I don't have as much faith and confidence in those guys as to whether or not the deal is going to be satisfied, no matter how much. I've been involved with numerous groups over my years; on school boards, on the golf course, and fraternal clubs. The one thing that I always did when a monetary issue came up is say, "What is the limit?" I think I was going to support this on behalf of my next door neighbor, Allan Archibald, but when I hear that, with the possibility of the study, the department says we can do it within \$300,000. If it's going to be \$700,000 or \$1 million, I don't know. If we had a fixed figure, that the study was going to be \$500,000, I probably could support this issue because I think it's something that, like a lot of people have said, we've been hearing about in our lifetime. I'm having a hard time just writing out a blank check. Being the only moderately conservative liberal here, I want to maintain my standing. Thank you, Mr. President.

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

Senator **SHERMAN:** Thank you Mr. President. Members of the Senate, ladies and gentlemen of the Senate, I truly, truly, truly did not want to get up on this bill. The two things I see. The Canadians look at us from New Brunswick and PEI and Nova Scotia and Newfoundland. They've already done the East-West highway for them. They started a four lane highway a few years ago. St. John. Two hundred and fifty miles north to Northern Maine. Take a left hand turn. Sixty-five miles, or 100 kilometers, to the St. Lawrence. Run down the St. Lawrence and put another 250 to Montreal and Quebec. If you do the numbers versus C.P. Rail that goes across the state of Maine. They really haven't upgraded it, my Canadian friends. It goes through swamps, so they can't get permits for it. They could do a nice rail across Maine in a hurry if they wanted to. We're just out of the loop in lots of ways. I stand here, living in Hodgdon, Maine. I make a joke about my neighbors to the East. Two hundred miles to PEI. They are our biggest potato competition. If I want to go to Newfoundland, and those of you who have gone to Newfoundland, it's about 1,000 from where I sit. It's about 800 miles to the ferry to Nova Scotia. If you go to the eastern shore of Newfoundland, you take that ferry, you see all sorts of oil drilling rigs. The Canadians basically said, "We can go around you." I think they've done that. I talked to Peter Vigue over time about increasing the use of the land we have in Aroostook County. I think we have an opportunity. There are wasted acres up there, basically. In talking to Peter Vigue, I use his name in vain here many times, about the mileage on the East-West highway. You

would open up another 60 million people in the United States and also in Canada. Don't get amused in a way, you wonder with all the many debates this room has had over school consolidation or any number of these. It seems to me that we're always worried about doing something because something's going to happen to us. The \$300,000, we've already heard about that. We had a calculator that wouldn't work. Earl McCormick did it by hand, the old fashion way. It's a small amount of money. It's the surrounding area that's on my mind. We would probably save money on plowing and stuff this Winter for \$300,000. We'll have this debate, and I don't know how this is going to come out. Looks to me down party lines. If we saw more information we could go in some other direction. This started with a lawyer in Bangor many years ago. He kept pounding away on that. He shall remain nameless. I think he's probably gone gray haired in that period of time. I have a Senator giving me a thumbs up on that. Many times I talk about north versus south. Like the other good Senator from Aroostook County, it would seem to me to be a fifty miles from the ocean kind of conversation. Just observations. I'm taking notes. Will go home and talk to my wife about it and if she wants to be amused on some Saturday afternoon we'll go for a ride and I talk about the good Senator Katz and some other things that took place here. Please, please don't be scared to do big thing. Open a big thing for Pete's sake. I'm a little confused at some of the legislation we put through here. We write legislation that is 40 pages long and could be done in a couple of paragraphs. Do we want 500 pages from Senator Collins, the good Senator from York, detailing every little bit that we amend and amend again and talk about again? I think not. I'm going to vote for this. Take a chance. I won't say we'll blow \$300,000, but that will be used next November I'm sure. Let's just do it. It can be done. You don't need to be scared to do something that maybe will get us forward a little bit. Last comment, I go to a place called Big Stop in Houlton. It's an Irving station. Two years ago we saw the trailer trucks coming from Texas, hauling oil drilling pipes. What were they doing clear up here? Well, they are drilling for oil, shale gas, across the border where it isolated and is not connected in some way to the rest of the United States. If I've insulted anyone, forgive me. If I haven't laughed loud enough at some of the other things taken place, forgive me for that. I would offer that it is about time to vote.

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

Senator **MARTIN:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise today not to argue the merits of the East-West highway. I think in the end we will all come together to realize this is the best thing for the state of Maine. I do rise to speak of the bill at hand. As we all know, studies cost money. To put a price tag on a study, I don't think is do due diligence for it. I think what will do diligence is to believe in the people that we put in charge. They have already shown great confidence and competence in the positions that they have. We've seen it in the reduced budgets. I'm sure the Commissioner will do the best he can within the parameters we give him. I don't think we can restrain this study to a certain dollar amount. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Collins to Accept the Majority Ought to Pass as Amended 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 (#369)

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, WOODBURY, THE PRESIDENT - KEVIN L. RAYE

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, SULLIVAN

EXCUSED: Senator: RECTOR

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **COLLINS** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-398) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/6/12) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Protect Homeowners Subject to Foreclosure by Requiring the Foreclosing Entity To Provide the Court with Original Documents"

H.P. 128 L.D. 145

Majority - **Ought to Pass as Amended by Committee Amendment "B" (H-721)** (11 members)

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

Tabled - March 6, 2012, by Senator **COURTNEY** of York

Pending - motion by Senator **HASTINGS** of Oxford to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence (Roll Call Ordered)

(In House, March 1, 2012, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-721).**)

(In Senate, March 6, 2012, Reports **READ.**)

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

Senator **HASTINGS:** Thank you Mr. President. Ladies and gentlemen of the Senate, this bill, L.D. 145, has been in this legislature since last year. Carried over. Probably all of you have heard from somebody on this bill. Let me tell you what this bill is. It is a pretty simple bill, after all that. What this bill does is one thing. In the foreclosure case, when somebody is being foreclosed, it allows the person being foreclosed to request that the lender produce the original promissory note and all of its assignments for inspection. Nothing more than that. Produce it for inspection at a location determined by the lender, either at a lawyer's office, at a bank, or at a courthouse in the county of the foreclosure. That is all it does. Why do we need this bill? Ladies and gentlemen, I want to refer to a recent article. It's in the Maine Bar Journal. An article written by an attorney, a litigator in the foreclosure field. This is what he says, and this is true, "It's elementary that the plaintiff in a mortgage foreclosure case", that would be the bank, "should be the owner of the mortgage and the note." Imagine that, the plaintiff, the bank, should be the owner of the mortgage and the note. "However, the untidiness and sloppiness with which many of the mortgages have been treated is simply breathtaking." That's the premise of this article. We've all been reading about the problems that the large institutional lenders have had in their foreclosures. The sloppiness. The robo signing. All those problems. I want to emphasize to this Body that this is really not a problem brought on by our community banks and certainly not by our credit unions. The problem seems to come from certain very large national banks that are holding thousands and thousands of mortgages and, quite literally, can't find all the paperwork in some cases. As this article goes on to say at another point, "Many borrowers don't even know who owns their mortgage at this point because it's been traded so many times and they are unable to distinguish between the owner and the servicer of the mortgage."

Why do we need this bill then if the banks have to own the note to foreclose? Right now, under the Maine Rules of Court, if you are involved in a foreclosure lawsuit, you can use what is called the discovery procedure. You file a request to have the bank produce certain documents. We had ample testimony at the public hearing that certain banks, and remember these are not our Maine banks, were, for want of a better term, jerking people around. They were not producing the notes. They could not produce the notes or evidence of the chain of notes because what often happens is the note starts off with one bank and they have been traded three or four times throughout the process before the time of foreclosure. The bank has not been able to prove that they own that note and they have been unwilling, in a timely manner, and they have required litigants to go back to court over and over for an order to compel the production of these notes. The banks say, "We have to provide it at trial anyhow." They are right. In the end, if there was a trial on the foreclosure, they could never get a judgment without producing the note that day, or have some good excuse why they don't have it. With the sloppiness

that some of the banks have been displaying in their handling of mortgages, I don't think it's out of line to suggest that the banks be required to produce that note early on in the process if requested, simply to show that they are the owner of it, since that is the very basis of their right to foreclose.

This bill is, in no way, intended to create delay in the foreclosure process. Maine's banks have complained to me that the foreclosure process is too long and I think that I heard it now takes 420 days to foreclose a note, a mortgage. Men and women of the Senate, I don't think that's right. I don't think it should take 420 days. If a person is truly in default and if everything has been done properly, that's too long. That's not what this bill is about in any way, shape, or form; lengthening that process. The possibility that this bill could be used for delay was raised in the hearing and in our work sessions. I want to thank, here and now, Maine's credit unions who stepped forward in the process and made constructive criticism to the bill and suggested ways to ensure that this obligation to produce a note could not be used to further delay the process. The Judiciary Committee incorporated all those changes as suggested by the Maine credit unions. I applaud them for their willingness to work with us on this bill. You may still be receiving some documents from the banks, and perhaps the realtors, that this bill can still be used for delay. I promise I won't talk about the amendment that I might put on later. I'm told I can't do that and I won't. I want the Senate to know this bill is not about delay. It is not about delaying the foreclosure process in any way and we will make sure that it cannot be used for that.

It is important that we work our way through this mortgage crisis and I have great respect for our community banks, our credit unions, and banks in general that do the right thing. It's equally important that we recognize the rights of those who are borrowers. All this bill is about is allowing a borrower, who is about to have his or her home taken away from them, to insist that the bank produce that piece of paper that give the bank the right to do so. Ladies and gentlemen, I urge your support of the pending motion. Thank you very much.

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

Senator **DILL:** Thank you Mr. President. Men and women of the Senate, I would just like to state on the record that I appreciate immensely the effort that my good Chair, Senator Hastings, has put into resolving this issue and bringing this bill to the floor today. It was a true demonstration of leadership. All parties had ample opportunity to weigh in and the committee really drilled down on this issue and came up with what is a responsible, simple, and good solution. I would like to just further read for you, just very briefly, a paragraph from a letter from one of my constituents, and somebody I respect very much, Attorney Gerald Petruccelli, because I think he sort of boils down the point. In his letter he says, "This is not simply a question of evidence law. The question is not whether the copy or the photography or the digital image should suffice as proof that a loan was made, notwithstanding the best evidence rule. It's not a question of modern technology concerning recordkeeping in the computer age. The note is not a record. The promissory note, unlike other documents, is, itself, valuable property." Here is the sort of humorous line. "A photograph of the promissory note is no more valid or sufficient than a photograph of the mortgaged house. If it is sufficient for the bank to produce a photocopy of the note, it

ought to be sufficient for the homeowner to satisfy the foreclosure judgment by producing a photograph of the property. This is the fundamental point." With that I'll sit down. Again, I would just like to really sincerely thank Senator Hastings, as well as Representative Beavers and Mr. Cox, for all the work that's gone into this bill. It's a great solution to an important problem and it's a good demonstration of a bi-partisan effort to really just move things forward for Maine people. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Oxford, Senator Hastings to Accept the Majority Ought to Pass as Amended 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 (#370)

YEAS: Senators: ALFOND, BARTLETT, BRANNIGAN, COLLINS, COURTNEY, CRAVEN, DIAMOND, DILL, FARNHAM, GERZOFSKY, GOODALL, HASTINGS, HILL, HOBBS, JACKSON, JOHNSON, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PATRICK, PLOWMAN, ROSEN, SCHNEIDER, SHERMAN, SNOWE-MELLO, SULLIVAN, THIBODEAU, THOMAS, WOODBURY, THE PRESIDENT - KEVIN L. RAYE

NAYS: Senators: SAVIELLO, WHITTEMORE

EXCUSED: Senator: RECTOR

32 Senators having voted in the affirmative and 2 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **HASTINGS** of Oxford to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED.**

READ ONCE.

Committee Amendment "B" (H-721) **READ.**

On motion by Senator **HASTINGS** of Oxford, Senate Amendment "A" (S-426) to Committee Amendment "B" (H-721) **READ.**

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

Senator **HASTINGS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I didn't allude to this in my prior remarks, but this is an amendment dealing with the L.D. 145. It deals with the issue of delay, which has been raised over and over again. What this amendment does is amend the committee amendment to require that the request to inspect the original promissory note under this statute must be made within 90 days after the service of the complaint and summons. The service of the complaint and summons is when the homeowner first officially becomes aware by the handing of the document by the sheriff that his or her home is under foreclosure. This allows that person to avail themselves of this statute only if they make the request to

see the note within three months after that. Ladies and gentlemen, I do not see how, with this amendment, this bill in any way can be used to delay and extend the foreclosure process beyond that 420 days that the banks tell us it now takes. I do want to add one thing. It was not the intent of this amendment or this bill to in any way replace any other rights that a litigant may have in a foreclosure action under the Maine Rules of Civil Procedure regarding the use of the discovery process or is it intended to in any way negate the requirement that a bank, at a foreclosure trial, must, under the rules of evidence, produce an original promissory note at that time. This amendment is only intended to deal with the right extended under this L.D. 145. Thank you very much.

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

Senator **BARTLETT:** Thank you Mr. President. I'm trying to understand this amendment. I understood the original proposal, which is if a bank is trying to foreclose and you come in to a proceeding that you have to produce that document. If you are going to go to trial you have got to produce the original. That makes good sense. I don't understand why we're now eliminating that request to 90 days. It seems like we're just creating another "got ya" situation. Some unsuspecting defendant gets served. They are trying to figure out what they are doing and they finally get a lawyer. Ninety-one days go by and you're headed to a trial. Bang, you don't have that note. I just don't understand it. The timing is going to be circumscribed by the courts in the proceeding. I don't understand why you need this. There are already regulatory discovery deadlines that are deadlines to turn over exhibits to be used in advance of hearings. It seems to me that the normal scheduling process covers this. Perhaps someone can enlighten me, but I just don't understand. I guess I'll wait for a response.

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

Senator **HASTINGS:** Thank you Mr. President. Senator Bartlett, the Senator from Cumberland, does raise a good point. I had thought that the bill, as initially reported out of the committee, was adequate, but I have been hearing for weeks, and I think we all have been receiving in our slots mailings and information sheets from the banks and from the realtors indicating that they believe that this bill, without some change, as it came out of committee would or could be used as an instrument of delay. That is the farthest thing from my mind, and I do believe from the entire Judiciary Committee's mind. I have put this amendment on for the sole purpose of making clear that if you wish to avail yourself of this particular statute that you must do so early on in the process, otherwise you are left to the same rights you now have under the Maine Rules of Civil Procedure and under the rules of evidence at trial. My intention with this amendment is solely to take the argument of delay off the table. Thank you.

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

Senator **SULLIVAN:** Thank you Mr. President. It is my understanding that there are basically four factions here; the

committee, the credit unions, the banks, and the realtors. I would like to pose a question if I may.

THE PRESIDENT: The Senator may pose her question.

Senator **SULLIVAN:** Thank you Mr. President. To anyone who may care to answer, obviously; are all those factions now on board with this amendment?

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

Senator **HASTINGS:** Thank you Mr. President. I can't say they all are, but what I will say is that it is my understanding that the credit unions are agreeable to this amendment. I did distribute this to the Judiciary Committee at a work session the other day and it is my belief that the Judiciary Committee agrees with this amendment. I can tell you that I have been told by representatives of the banks that they do not support this amendment. I can't speak for the realtors, who have spoken against the bill, but I can't speak for them on this amendment.

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today with concerns about this amendment in regards to the consumer and the potential ability to be time barred if the consumer misses that 90 day window. These are very stressful situations and time periods for consumers. Obviously, they've had great challenges; some of them intentional and some of them not. I think that this amendment could have unintended consequences to the consumer and cause problems as well just procedurally as a matter of fact from the standpoint of the financial institution potentially foreclosing. At this point I still have great concerns. I think we should proceed very cautiously. I'm almost asking to be persuaded otherwise. I'm almost asking, again, why should I vote for this amendment in light of my concerns that I just articulated?

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

Senator **DILL:** Thank you Mr. President. I think everybody would agree that the amendment isn't a full-proof shield that protects consumers, but the point is that Senator Hastings, I think, is making a good faith effort at trying to have a bill that will help consumers pass. This is a way that addresses the concerns that have been raised by the banks, with a solution that is reasonable, perhaps not perfect. In the big scheme of things, for the average consumer, passage of the bill with the amendment is a good thing. It does good. In my view, I would prefer to pass the bill without the amendment. The fact is that the majority of the committee supports the amendment. The credit unions support it. The other constituencies and stakeholders support it. I am going to support it because I think, like I said, considering where we are coming from, passage of the bill with the amendment protects consumers in a situation where they, up until now, really haven't had protection. There has been an unbelievable problem with robo signing and banks not producing original documents. We

heard testimony of people being foreclosed on by two different institutions at the same time because they both had copies of the mortgage. I'm just simply stating on the record that I am supporting the amendment. If next year it has to be revisited and tweaked a little bit more, I encourage the lawmakers at that time to further perfect it. This is, in my view, a step forward. Thank you.

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

Senator **BARTLETT:** Thank you Mr. President. The problem is I guess I should have spent more time with this amendment. What I am trying to understand is; does the person trying to enforce the note have an obligation to tell you in the pleadings whether they have the original or not? I guess what I'm concerned about is that 91 days go by. You realize they don't have the original. If the discovery deadline is further out than 90 days, the discovery is turned over, you find out on the 100th or 120th day that the mortgager doesn't have the original note, but it's too late to request it. It seems to me that if we're going to have a deadline, which I can live with, there needs to be notice to the defendant whether they have the original or not. I don't think you can have it both ways, to say the discover deadline is 121 days out, or whatever the deadline set by the court is, but once you receive the information you are entitled to, your statutory rights have lapsed. I'm hoping that we might get that resolved. I think it's resolvable. I just don't think we can do it at this time.

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

Senator **SULLIVAN:** Thank you Mr. President. I will be quick. I have received an answer to my question on one piece. In addition to what the good Senator from Oxford, Senator Hastings, has said, a statement of we don't love the amendment, but it is better than the bill alone. We are okay with it. That would come from the realtors. Thank you.

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

Senator **HASTINGS:** Thank you Mr. President. I'll be very brief. I simply want to emphasize one thing for the record on this amendment. This amendment and this bill in no way are intended to replace any other right that a party in a foreclosure action has under the Maine Rules of Civil Procedure to use the discovery process to obtain evidence of the note or to require the production of the note at trial. Any suggestion that this bill is intended to replace those rights is not my intent or, I believe, the intention of the Judiciary Committee in that regard. Those rights, that now exist, do remain. Thank you very much.

On motion by Senator **HASTINGS** of Oxford, Senate Amendment "A" (S-426) to Committee Amendment "B" (H-721) **ADOPTED.**

Committee Amendment "B" (H-721) as Amended by Senate Amendment "A" (S-426) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

Bill "An Act To Limit Eligibility under the Municipal General Assistance Program" (EMERGENCY)

S.P. 647 L.D. 1862

Tabled - March 12, 2012, by Senator **McCORMICK** of Kennebec

Pending - **REFERENCE**

(Committee on **HEALTH AND HUMAN SERVICES** suggested and ordered printed.)

Senator **McCORMICK** of Kennebec moved the Bill and accompanying papers be **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT**.

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

Senator **McCORMICK:** Thank you Mr. President. For the record, I'd like to note that the Chairs have reached an understanding that the Health and Human Services Committee will be invited to sit with the State and Local Government Committee through the public hearing. Thank you, Mr. President.

On motion by Senator **McCORMICK** of Kennebec, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT**.

Sent down for concurrence.

Senator **SULLIVAN** of York was granted unanimous consent to address the Senate on the Record.

Senator **SULLIVAN:** Thank you Mr. President. It's sort of ironic that today is Equal Justice Day and we're talking about this bill. It's an important bill, but I think it's an important bill in the fact that it is really having to do with a lot of policy from the Department of Health and Human Services as to what the State policy will be. I don't want to talk about the bill and debate its merits. It hasn't even had a public hearing. Depending if this bill were to go forth, depending where you live can depend on how we take care of our citizens, those that are poor. I am extremely concerned that for people who really need help it should not make a difference what community. We say that about schooling. We say that about everything. It should not make a difference. Public policy says we should be taking care of it. I would have much rather had it a joint reference, understanding the President's request and the Chair's. I am concerned. Please, let's keep in mind that we want to make sure we do not pit one town against another in what we do for our poor. It needs to be uniform, to be equal justice, and equal fairness. Thank you.

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

Bill "An Act To Amend and Clarify the Public Charter School Law" (EMERGENCY)

S.P. 607 L.D. 1762
(C "A" S-422)

Tabled - March 12, 2012, by Senator **COURTNEY** of York

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-422)** (Roll Call Requested)

(In Senate, March 12, 2012, **READ A SECOND TIME.**)

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, it's interesting to be talking about this bill when it says clarifying the public charter school law. I'm going to introduce four things this morning that I just the Body to understand because I think you'll be getting a lot of questions from your constituents.

Number one, financing of public charters. Under current law, and being reinforced by today's bill in front of us, as a public charter you get the statewide EPS pupil cost, which right now is around \$7,000. I know that all of you pay attention to your printouts. You all know what your schools get. If you get under \$7,000, and one of your students decides to leave your public school and go to a public charter, then your community is going to be writing checks. In the city of Portland where we get around \$1,400 per student, now we'll be writing a check for \$5,600 for every student that leaves the Portland public schools to go to a public charter. That's going to happen to every member of this Body if your EPS statewide pupil average is under \$7,000. Just be forewarned, when your school boards start calling you and saying, "I didn't know this. I didn't know that our school, our municipality, our RSU, or our SAD is going to writing checks." Writing out checks and taking money out of the public school system and sending it to the public charter, but the same costs in your public schools still exist. You still have to pay the lights. You still have to pay the transportation. All of those pieces still exist.

Next, I know in this Body we take the public safety of our children and our students very, very seriously. We pay attention to it and we're careful about what we do to students and make sure that they are surrounded by people who have background checks. Let me tell just share with you what is going on in our public charter schools. The public charter school law that passed last year states that all teachers must be fingerprinted and must pass background checks. That sounds fine. That sounds actually very good. That sounds equivalent to what we do in public schools. However, these procedures are currently managed through the teacher certification process that our public schools go through. Since some teachers in these new charter schools will not be certified, what assurances do we have that every teacher will be fingerprinted and will have to submit to a background check? None. We don't. Now we are basically allowing our students, our students that leave our public schools to go to a public charter, to be around adults that have no fingerprint checks and have now no background checks. If

people are comfortable with that, I guess you'll be supporting this bill.

The next thing that I don't think was very carefully crafted, or even thought through, is that we keep calling these public charter schools. In fact they are actually public charter schools that are private employers. Every one of our public charter schools are private employers. What does that mean? It means that all the laws around collective bargaining, educational policy, and, in fact, everything that we have in our statutes around education does not apply. Our public charter schools can do anything they want around educational policies, around bargaining, and it's up to them because they are private employers. Just wanted to make sure you all know what you are voting on.

Finally, teacher certification. The law, as written, allows people to teach our children who may have no experience or training. That should probably concern some of you. You would think you would want to have teachers in the classroom that have some previous training. Well, not for our public charters. In fact, the law states that teachers must either be certified or be certified in three years or have an advanced degree. As long as you fit into one of those categories you can right now teach in our first public charter school. As I've laid out, these public charters could hire anyone off the street and then get them certified within three years, but it's not clear what happens if they don't get certified in three years and it absolutely opens up the door to hire individuals with no experience and no training in any of the subjects that they will be teaching.

This is just a potpourri of four different things that we are doing with our public charter schools. If any of you need any assistance responding to your constituents, I'd be happy to do that because I think there is going to be a lot of questions across the state when public charters open. This is not to mention that if and when a public charter opens in a rural part of our state, when that 5% every year of students leave your schools and that money follows the student, you are not only losing the money that the State sends you, but then also writing checks. What is that going to do to our rural schools? I think it's going to close some of them. As you all know, and as I know growing up in rural Maine, in Dexter, Maine, when your school closes the heart of your community closes. Thank you very much.

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

Senator **LANGLEY:** Thank you Mr. President. Men and women of the Senate, I would like to respond to the good Senator from Portland. I think the points that he brings up are great for the original debate on the charter school legislation. I'm sure we heard those. This particular bill is a further example of how legislation should go through this place. We passed the charter school legislation in the last session, reserving the right to come back, tweak the legislation to make it better when we found some things that maybe needed to be changed, and also the rulemaking came back to us. Our committee has put really due diligence into that. Here's what this particular bill does. It changes the name of the charter school commission from State Charter School Commission to Maine Charter School Commission. It defines a catchment area as the geographic area from which a public charter school expects to draw the majority of its students, something that had been brought up in between the time that we passed the legislation and we implement it. It clarifies the term of a member of the commission who is not a

member of the State Board of Education. Some housekeeping issues. It removes the authority of teachers at a public charter to form a professional group that operates in a structural program. This was a MEA concern. It adds detailed requirements for the auditing of public charter schools to mirror what happens in the public schools for the matter of accountability. It specifies the reimbursement procedures for high cost in district special education placement. Again some issue that were brought up around special ed. It removes a provision regarding access to risk pools for high cost special education services and fiscal emergencies. While I understand the debate which the good Senator has risen, the germaneness to this particular bill doesn't seem to match. Thank you.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **CRAVEN:** Thank you Mr. President. I really need some clarity about the sharing of the costs again. I know Senator Alfond talked about that briefly, but I don't understand the way that it is distributed between the State share and the municipal share. Thank you, Mr. President.

THE PRESIDENT: The Chair is uncertain that the question posed by the Senator is relevant to the provisions of the bill that is before us. The Chair recognizes the Senator from Cumberland, Senator Alfond.

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, I do believe that the question is a germane one because we're talking about catchment areas. We're talking about when a public charter school opens up, they have to define where they are going to draw students in. If that is within 20 miles or if that is the whole state, I think it is important to know where and how it is going to affect our local communities. Essentially, there is a statewide average of a pupil, the EPS formula. It's \$7,000. It doesn't matter if it is local or State. It's \$7,000 and the \$7,000 is what the statewide calculation is for EPS, for pupil average cost. If your community has funds coming in from the State that are under \$7,000 then you are going to be writing a check for that difference. I know everyone loves to talk about Portland schools as well as I, I will again bring up the example that in Portland we get around \$1,400 per student. When a public charter opens up in Portland or somewhere else, if a Portland student leaves the Portland public schools there will be a \$5,600 charge to every taxpayer in Portland to send that public student that's in our public schools to a public charter. If that would happen in Portland we would lose 10% of all the students because we have more than 500 students in the district. Any schools that are under 500 could lose 5% of the students each year. It's a major, major issue that I don't believe was vetted very carefully when we passed the original bill and I think it is germane to this bill. Thank you, Mr. President.

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

THE PRESIDENT: The pending question before the Senate is Passage to be Engrossed as Amended by Committee Amendment "A" (S-422). 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 (#371)

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, WOODBURY, THE PRESIDENT - KEVIN L. RAYE

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, SULLIVAN

EXCUSED: Senator: RECTOR

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being excused, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-422)**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

Mandate

An Act To Provide for School Enrollment and an Appeal Process in Specific Cases in Which Students Do Not Reside with Parents
H.P. 722 L.D. 978
(C "A" H-720)

Tabled - March 12, 2012, by Senator **ALFOND** of Cumberland

Pending - **ENACTMENT**, in concurrence

(In Senate, March 6, 2012, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-720)**, in concurrence.)

(In House, March 8, 2012, **PASSED TO BE ENACTED**.)

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

Senator **HASTINGS:** Thank you Mr. President. Ladies and gentlemen of the Senate, this bill is a heavily negotiated bill dealing with the placement of children in problem situations in their home with kinship parents rather than the State. This bill

came out of the study done by the Task Force on Kinship Families. As you probably know, it has been the goal of the department to reduce the number of endangered children that are now in the custody of the State towards placement with other family members, or even non-family members. That's the big picture. What this bill was all about was: where do those kids go to school? The concern was that they be able to go to school in the district in which the family they were living with resides. That's all well and good, but the people drafting the bill, while that was their goal, drafted a bill that went far beyond that. Ladies and gentlemen, if we had adopted the bill as originally enacted we would have just enacted school choice in Maine because it simply allowed anyone to have their child live with any other family that they wanted and the school district would be required to take that child. As I mentioned to my friend from Kennebec, if I wanted my 6' 6" son to play basketball for Cony, I could have, under the bill, given him this power of attorney and sent my son over to live with Senator Katz and then he could have enrolled in the local basketball team. That's not what the Kinship Family group is after. They were trying to get by some roadblocks they sense were existing in school districts in allowing children that were in these sorts of kinship relationships to go to school. Maine School Management and the other stakeholders came forward, and to our great relief in committee, brokered an entire rewrite of the bill. It all has to do with the school superintendents having to get involved in this early on when there is a request for a child in a kinship type relationship to go to the school, and to investigate and make sure it is for the right reason and not for the basketball team. The reason I think this may have been tabled is because there is a Mandate on this. The bill, as negotiated, did create a municipal Mandate. It requires some additional work by school superintendent offices, essentially. Ladies and gentlemen, I want to read to you a note that has been given to me by Maine School Management Association, which, as you know, represents the school boards of Maine. "Maine School Management Association, which represents school boards and superintendents, worked on this bill with other stakeholders and believes it represents the best compromise for all involved." I believe that Maine School Management and the school boards of Maine are not opposed to our adoption of this bill. I urge your support of the bill. Thank you.

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

Senator **CRAVEN:** Thank you Mr. President. Men and women of the Senate, I actually served on the task force, the Kinship Care Task Force. I want to thank Senator Hastings for his work with this bill. We had a lot of input from kinship families, whether they were permanent placements or just temporary placements, about how cumbersome it was to get the child that they were caring for enrolled in their local school. This is really an excellent bill and I ask for your support of the bill. Thank you, Mr. President.

This being a Mandate, in accordance with the provisions of Section 21 of Article IX of the Constitution, having received the affirmative vote of 33 Members of the Senate, with no Senators having voted in the negative, and 33 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

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

An Act To Codify the Review Practice of Certain Changes in the Application of the Sales and Use Tax Law

H.P. 448 L.D. 590
(C "C" H-718)

Tabled - March 12, 2012, by Senator **ALFOND** of Cumberland

Pending - **ENACTMENT**, in concurrence

(In Senate, March 6, 2012, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-718)**, in concurrence.)

(In House, March 8, 2012, **PASSED TO BE ENACTED**.)

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

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

An Act To Permit Financial Institutions To Share Certain Information for the Purpose of Preventing Electronic Bank Card Losses and Other Fraud

H.P. 1227 L.D. 1637
(C "A" H-717)

Tabled - March 12, 2012, by Senator **ALFOND** of Cumberland

Pending - **ENACTMENT**, in concurrence

(In Senate, March 6, 2012, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-717)**, in concurrence.)

(In House, March 8, 2012, **PASSED TO BE ENACTED**.)

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

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

Senate at Ease.

Senate called to order by the President.

Senator **PLOWMAN** of Penobscot was granted unanimous consent to address the Senate off the Record.

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

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

RECESSED until 4:00 in the afternoon.

After Recess

Senate called to order by the President.

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

Emergency Measure

An Act Concerning Copying Fees for Users of County Registries of Deeds

S.P. 526 L.D. 1616

Tabled - March 12, 2012, by Senator **COURTNEY** of York

Pending - **ENACTMENT**, in concurrence

(In Senate, February 29, 2012, **PASSED TO BE ENGROSSED**.)

(In House, March 8, 2012, **PASSED TO BE ENACTED**.)

The Chair noted the absence of the Senator from Kennebec, Senator **MARTIN** and further excused the same Senator from today's Roll Call votes.

On motion by Senator **WOODBURY** of Cumberland, supported by a Division of 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 (#372)

YEAS: Senators: ALFOND, BRANNIGAN, COLLINS, COURTNEY, CRAVEN, DIAMOND, FARNHAM, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, KATZ, LANGLEY, MASON, MCCORMICK, PATRICK, PLOWMAN, ROSEN, SAVIELLO, SCHNEIDER, SHERMAN, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT - KEVIN L. RAYE

NAYS: Senators: BARTLETT, DILL, GERZOFISKY, HASTINGS, SNOWE-MELLO, WOODBURY

ABSENT: Senator: SULLIVAN

EXCUSED: Senators: MARTIN, RECTOR

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with 6 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.

Ordered sent down forthwith.

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Regarding Legislative Review of Portions of Chapter 64: Maine School Facilities Program and School Revolving Renovation Fund, a Major Substantive Rule of the Department of Education and the Maine Municipal Bond Bank (EMERGENCY)

H.P. 1313 L.D. 1788

Majority - **Ought to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-741)** (5 members)

Tabled - March 12, 2012, by Senator **LANGLEY** of Hancock

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 8, 2012, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED**.)

(In Senate, March 12, 2012, Reports **READ**.)

On motion by Senator **LANGLEY** of Hancock, the Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in **NON-CONCURRENCE**.

READ ONCE.

Committee Amendment "A" (H-741) **READ**.

On motion by Senator **LANGLEY** of Hancock, Senate Amendment "A" (S-436) to Committee Amendment "A" (H-741) **READ**.

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

Senator **LANGLEY:** Thank you Mr. President. Men and women of the Senate, just a quick summary of what's happened here. This was part of a larger rules bill. What this amendment does is remove language that required the rule governing the School Revolving Renovation Fund to be amended by restoring the priority list categories. You may remember seeing that. Where the issue came was we have a set of priorities; health and safety for school renovations, energy, and other categories. In the past, money came to the State that was directed at schools for energy projects, but because of the statutes it had to go to the top priority, which was health and safety. This amendment removes that language and then allows the Commissioner of Education to approve funding for renovations projects as an exception to the priority, one to priority five funding, if categories specific funds become available from sources other than the principle and interest received from repayment of loans, etcetera. It just allows the State to use funds that come in for a specified purpose, allows the Commissioner to put them where they need to be. Thank you.

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, I urge everyone to support this amendment. I'm going to give a real case example of why we needed this two years ago. There was all kinds of stimulus funds, IRA funds, to help schools across the country do energy improvements, energy efficiency investments. This money was sitting here in Maine, but we had no way to actually use it using the revolving fund because we didn't have this language in effect. I and others on the committee was concerned and the Department of Education, with this amendment, now ensures that if any more stimulus money comes around energy efficiency, public health and safety, or whatever in any of our one through five priorities, we can use that specific money, that's outside of the revolving fund that replenishes itself, in an appropriate way. I fully support this amendment and I encourage the Body to also. Thank you, Mr. President.

On motion by Senator **LANGLEY** of Hancock, Senate Amendment "A" (S-436) to Committee Amendment "A" (H-741) **ADOPTED**.

Committee Amendment "A" (H-741) as Amended by Senate Amendment "A" (S-436) thereto, **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/8/12) Assigned matter:

HOUSE REPORT - from the Committee on **TRANSPORTATION** on Resolve, To Create a License Plate To Recognize the 2014 World Acadian Congress

H.P. 1220 L.D. 1611

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-742)**

Tabled - March 8, 2012, by Senator **COURTNEY** of York

Pending - **ACCEPTANCE OF REPORT**, in concurrence

(In House, March 7, 2012, Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-742)**.)

(In Senate, March 8, 2012, Report **READ**.)

Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-742) **READ**.

On motion by Senator **COLLINS** of York, Senate Amendment "A" (S-437) to Committee Amendment "A" (H-742) **READ**.

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

Senator **COLLINS:** Thank you Mr. President. This simply changes the language that is commemorating this special plate, which has an expiration date on it. It's in French. I tried to do some homework on this, this morning, with Senator Plowman. "Comite organisateur du Congres mondial acadien 2014". Is that close? Good. That's what this amendment does.

On motion by Senator **COLLINS** of York, Senate Amendment "A" (S-437) to Committee Amendment "A" (H-742) **ADOPTED**.

Committee Amendment "A" (H-742) as Amended by Senate Amendment "A" (S-437) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/7/12) Assigned matter:

HOUSE REPORTS - from the Committee on **VETERANS AND LEGAL AFFAIRS** on Bill "An Act To Strengthen Maine's Election Laws by Requiring Photograph Identification for the Purpose of Voting"

H.P. 176 L.D. 199

Majority - **Ought to Pass as Amended by Committee Amendment "B" (H-733)** (7 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - March 7, 2012, by Senator **COURTNEY** of York

Pending - motion by Senator **PATRICK** of Oxford to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE** (Roll Call Requested)

(In House, March 6, 2012, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-733)**.)

(In Senate, March 7, 2012, Reports **READ**. Senator **FARNHAM** of Penobscot moved to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.)

On motion by Senator **PATRICK** of Oxford, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **BARTLETT:** Thank you Mr. President. I rise in support of the pending motion of Indefinite Postponement. I think a lot has happened since this bill was originally introduced in the Legislature. Several states have passed laws that would require photo IDs for voting. Those laws are now under review and some have been suspended. Just the other day the Department of Justice issued an order suspending the voter ID law in Texas and, following that, the courts in Wisconsin suspended implementation of that law because they feel that they violate core constitutional rights. Indeed, Maine's own Constitution makes it very clear that every citizen of the United States of the age of 18 years and upwards shall be an elector for Senators and Representatives, a Governor, and so on. That is a fundamental right. The courts and the Department of Justice have concluded that voter ID laws infringe upon that core constitutional right. Given all that has happened, we think, I think, that this bill should be Indefinitely Postponed. I understand that there are concerns that have been raised about voter fraud, but those have been looked at by the Secretary of State, reports have been produced, and the Secretary of State always has the power to come before us with evidence of voter fraud and recommendations of specific changes. We need not take any action for the Secretary of State to fulfill his core constitutional role. We simply feel that continuing this discussion, and particularly under this legislation, would be inappropriate given that studies have concluded that voter ID laws, photo ID laws for voting, make it harder for minorities to

vote, have a disproportionate impact, and in many cases could lead to having people who are eligible under the Constitution to vote on a given day be prevented from doing so. It is for those reasons I think that this legislation ought to be indefinitely postponed. Thank you, Mr. President.

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

Senator **FARNHAM:** Thank you Mr. President. I would encourage the members of this Body to oppose the Indefinite Postponement motion to allow for the discussion to take place on the report of the Veterans and Legal Affairs Committee.

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

Senator **PATRICK:** Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, I rise today in support of the Indefinite Postponement of L.D. 199, An Act to Strengthen Maine's Election Laws by Requiring Photographic Identification for the Purpose of Voting. I ask this bill and all its accompanying papers be indefinitely postponed because the bill, on the jacket, has the date of January 27, 2011. If we remember that date, that was one of the dates that started the divisiveness of the election law battle that raged here last year. This bill, and its sister bill, the same day voter registration, caused an awful lot of angst, consternation, and problems with the State of Maine from the standpoint of how our election process was going to move forward. I, myself, was pretty disappointed and I think this bill was actually voted down at one time in this Body. It was voted on its merits last year, but then it was voted to send it back to committee. I guess I'm a little bit upset with the process because, like I said before, my whole Senatorial career has been in the Minority and I really don't know how things happen in the Majority from the standpoint of a Senator. I have heard of things that have happened in the process. I will kind of explain what I have heard does happen sometimes in the Majority, either now or maybe in the past if I can look at a different legislative career.

This bill had numerous groups testify just how bad it was. We had the MCLU. Bob Talbot from Bangor, a person who has been before the Legal and Veterans Affairs Committee numerous times and has seen an awful lot in his life. He is a resident of Bangor and was here to testify against L.D. 199; "Because it is unnecessary and unwise. I serve on the Board of Directors for the Maine Civil Liberties Union. I'm a veteran and I fought for my country and for my Constitution. One of the most fundamental constitutional rights is the right to vote. Voting is the cornerstone of our democracy. We, the people, trust that our elections are free and our elections are fair. Unfortunately, I am old enough to remember the bad old days when states tried to impose restrictions on voting. Many of those restrictions targeted people of color. Literacy tests and poll taxes were enacted as part of the laws in the South. Literacy tests were outlawed by the Voting Race Act of 1965 and the poll tax ruled unconstitutional in 1966 in the Supreme Court case of Harper vs. Virginia Board of Elections. L.D. 199 would turn the clock back by imposing new unnecessary restrictions on voting laws." I've always had an awful lot of respect for Mr. Talbot. He's been coming down since 2000 that I know of, when I had a different career in the other Body. The AARP testified. I've got numerous pages of that. I'm not going to read them all. I don't have to. The League of Women Voters

testified in opposition. Preble Street Homeless, Voices for Justice, Disabilities Right Center, and group after group after group testified that this was a bad idea. We voted the bill down, brought it back to committee. I would actually like to be debating the total merits of the bill because I think the bill would go down once again. I'd like to talk a little bit about the committee process eventually.

The other side likes to talk a lot about red tape, the need to cut red tape for business. We need to cut red tape for the taxpayer. L.D. 199, requiring voter ID, certainly looks like more red tape to me. Red tape for the voter. Requiring a photo ID in order to vote infringes on the rights of the voter. I am glad that our committee saw the light by soundly rejecting that initial proposal. Don't be fooled. What lies before the Senate today isn't even an amended version of voter ID. It's a continuation of a deceptive and expensive political game that our Secretary of State, Charlie Summers, and his cronies have been playing with the Legislature and Maine voters. In fact, in such a departure from the original intent of the bill that members of our committee.

THE PRESIDENT: The Senator will suspend. The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN:** Thank you Mr. President. Can I ask if the Senator is allowed to proceed in vein?

THE PRESIDENT: The Senator would be advised to please use respectful language. The Chair recognizes the Senator from Oxford, Senator Patrick.

Senator **PATRICK:** Thank you Mr. President. I apologize, Mr. President. I will do my best. They have been playing with the Legislature and Maine voters. In fact, it is such a departure from the original intent of the bill that members of our committee pressed to kill the bill in favor of a bi-partisan resolve to study voter participation and voter fraud. The other side wouldn't go for it and insisted that we keep L.D. 199. L.D. 199 is poisoned by political rhetoric and a lot of that rhetoric happened last year when numerous people in the papers, one being the Republican Party Chair, brought forward a lot of accusations of voter fraud. Bus loads of people were trucked from Farmington College. Bus loads of them, all over the place. They did a little bit of study on that and, guess what, they didn't find them. They found the buses but I guess it wasn't used for what he thought. This past November the people of Maine stood up for an unfettered access to the polls by protecting Election Day voter registration. I urge the Body to listen to the people and end L.D. 199 once and for all. Don't get me wrong. I would love to work with the other side and seek solutions together to increase voter participation, correct clerical errors in our voting system, and respond to confirmed incidences of fraud when they occur. I have not met one single elected representative that doesn't support that. Nobody wants voter fraud. Nobody wants to see clerical errors nor do the clerks. They are human and they do make mistakes. We all want to have the best elections in the world. I think we have still the best by far. That's not what the motion before us is about. It can never be about this. It's still L.D. 199. It's still voter ID in the minds of Maine people. Even the amended version before you is just another political game being played on the people of Maine. We had the bill in committee.

Senator **PLOWMAN**: Mr. President, point of order, the amendment is not before the Body.

THE PRESIDENT: The Senator may proceed.

Senator **PATRICK**: Thank you Mr. President. I apologize, Madame. In committee we had L.D. 199 again. I think we were making real good progress. I think we were making great progress. I think everyone in the committee agreed that we'd better do whatever we can to make our political system better. Our voting system better. When the rub really came down to it, we had to vote on a bill and it actually came out partisan. What it was, 7 Republicans voted for the Majority Report and 6 Democrats voted Ought Not to Pass, and one Independent voted Ought Not to Pass. The offer was made, because it was said in committee that this is the most important issue that can happen and to make sure that we jump on board with a study designated by the Legislature. Extremely important study. I said to my colleagues that if it was something this important, I remember way back when I was a State Representative and happened to be a committee Chair at the time, if something was extremely important and you happened to be in the Majority, you could ask for a committee bill. It's a strange thing, but when we want to make sure we're in harmony with one another, that we're all swimming down stream or up stream together, that we can do things, that we can have bills report out of committee as committee bills. This isn't one of them. The negative commendations of L.D. 199, to me, are always that bill that I fought numerous times against, and many others did, and actually some members of the Majority Party actually supported. I don't think Mainers like political games and I think this is a political game. They want real solutions to problems. We've seen no evidence of a real problem with intentional voter fraud in this state. This political farce of a study is certainly no real solution.

THE PRESIDENT: The Chair would remind the Senator that the amendment is not before us.

Senator **PATRICK**: That's right. I apologize. If we don't pass this Indefinite Postponement there may be another alternative, which I won't talk about. The thing that it boils down to is we've had times when Secretary of States have actually got a little more partisan than they probably should have. I would say that this is one of the times, from the start of 2011, that the Secretary of State seemed to be a little more partisan than normal. I don't think we need the partisanship. I think the Secretary of State has within his power, his authority, and actually his duty to do whatever study he deems necessary. I would hope that he would want to do the study on his own volition, without having me or any other elected official.

THE PRESIDENT: The Chair would remind the Senator, for the third time, that the amendment is not before us. The Senator may proceed.

Senator **PATRICK**: My apologizes again, Mr. President. I would say, Mr. President, that the issue of L.D. 199 is really what's at stake. Do we want to stick a stick in the voter's eye? The bill was voted down once before. Do we need the partisanship on this issue? What I'd like to see is everyone unanimously support this Indefinite Postponement motion in a sign of good faith because I think we can move on from this. I think the citizens have spoken

loudly that they don't want games. They showed us by a huge vote on the same day voter registration. I think we can move on and try to do something more prudent with our time than debate L.D. 199 once again. Thank you, Mr. President, and I apologize for my three indiscretions.

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

Senator **GERZOFSKY**: Thank you Mr. President. Ladies and gentlemen of the Senate, I stand today in total support, it's nobody's surprise, of the pending motion of indefinite postponement. I want to tell you why. Last time we talked about voting it was a little bit darker at night. It was a little bit later in the year. I spoke much louder that night than I am tonight. The passion isn't any less. I want to tell you a story. It has nothing to do with bathing suits. It has to do with an 88 year old Mom I have. Some of you here know my mother. She worked in here in the Minority a long time ago as a clerk and as the Secretary of the Minority Office. When the Majority turned, after about 100 years, to the Democrats, she was Sergeant at Arms here in this Chamber. At home most people at the polls know who my Mom is. She danced on Broadway to put food in my belly, and it certainly shows now. She worked in politics registering voters for many, many years. People here remember her that way. Because of this bill, and because of what we went through last year, I thought, "Mom, you'd better go down and get yourself a photo ID. You don't know when we might run out of words and they might actually vote this thing in." I always thought that it was the worse thing in the world for any Legislature to do; that would prevent one single Maine voter from voting. I took my Mom down to Motor Vehicles in Topsham to get a photo ID, because she had long ago lost her driver's license. She hasn't driven probably in 15 years. She had really nothing with her photo on it for ID. We went over to Topsham. Went inside with her. We waited for our turn. Went up to the window and tried to get her an ID. We were sent away. They told us what we needed to bring back in for her to get a photo ID. She needed a driver's license. She didn't have one. We couldn't find it. I scoured her old purses, her old wallets, like we do with our aging parents. Didn't have one. I tried to find a passport that I knew she had a long time ago. I couldn't find one. My Mom can sit and discuss politics with anybody in this room from 1940 to yesterday. Those of you that know her know that she's right on the ball. She knows her politics. She knows who she is voting for and who she's not voting for. I couldn't find the documents to get my Mom a photo ID. Last week the Secretary of State was in this building with some of his staff. I went up and I talked with him. I told them the problem I was having because only a week before I had to drive an 88 year old woman, frail and ill of health, sobbing that she might not be able to vote for her son again in the next election, if we had such a thing. When you get elderly some things really become more important than others. Voting became very important to her. One of the few things she could still do that didn't cost her money. She was very, very upset. When I saw the Secretary of State and I saw his staff I talked to them. I said, "You know my Mom." The Secretary of State served here when my Mom was here. I talked to his staff. They knew her. They said, "Stan, we're going to call the Department of Motor Vehicles and we're going to tell them that when Mary Pitcher comes in in the next couple of weeks to give her an ID because she had, at some point, been part of the system. At some point she had had a picture." I was ecstatic. I

was just thrilled. Went home, went over to my mother's place and said, "Mom, being that you raised yourself a Senator, I got a little bit of pull and a couple of friends and I went and asked the Secretary of State if he could help us and he was glad to. He remembered you." I don't know how many other constituents I have that don't have a Senator for a son, that don't know who the Secretary of State is, and doesn't really have those kinds of connections with us that are going to be left out in the cold if a piece of legislation like this ever, ever, ever passed. We should never prevent anybody with any rule, any more than poll taxes or any of the other issues we've had to deal with over the years. Maine has gone a long way in making it easier to vote than most states and we haven't had any problems with fraud. I think we went through that last year. I haven't heard of anything dealing with fraud on this one. A study, well this building has a lot of studies in it. It's got a cellar full, collecting dust. I don't think we need a study. I think what we need is to Indefinitely Postpone this piece of legislation because I defy anybody to come up and tell me this is what they ran on to get elected. We ran on getting jobs, not on preventing people from voting. If it happened to my 88 year old mother, everybody in here would feel ashamed if it did, it can happen to any of our constituents. Please, ladies and gentlemen, do what's right. Indefinitely Postpone this. Let's remember our parents and our seniors, amongst all the other minorities that are going to be out there that are going to be affected by this, all the other people that are going to be affected by this. Remember, all it takes is one. Only one that we deny the right to vote because of some rule like this, we should all be ashamed of ourselves. Thank you very much, Mr. President, for allowing me the time to speak.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Oxford, Senator Patrick to Indefinitely Postpone the Bill and accompanying papers. 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 (#373)

YEAS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, SULLIVAN, WOODBURY

NAYS: Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, KATZ, LANGLEY, MASON, MCCORMICK, PLOWMAN, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT - KEVIN L. RAYE

EXCUSED: Senators: MARTIN, RECTOR

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being excused, the motion by Senator **PATRICK** of Oxford to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE, FAILED.**

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

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, now we can address the amendment. The Committee Amendment which was voted out of the committee changes the title of L.D. 199 to "A Resolve Directing the Secretary of State to Study Voter Participation and Registration and the Conduct of Election in the State." The discussion in the committee, once this bill was reported back to the committee, centered around voter registration, persons who have been allowed to register to vote, and the voter participation, which is where we really should have been. Much was made of the fact that the Secretary of State can do this study at any time, but no one can be assured that the person conducting the report or the study this year will actually file the report next year unless there is a direction to do so. If you care enough about whether there is or isn't fraud, and whether there is or isn't a way to do this better, than you probably ought to be on board here because you all really do care about voter participation and you should probably care about what the Secretary of State finds. Thank you, Mr. President.

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

Senator **BARTLETT:** Thank you Mr. President. I oppose the pending motion and committee report for two essential reasons. First of all, it's not needed. The Secretary of State has the responsibility to oversee the conduct of elections and to provide us with any information we need to know. He also has a responsibility, if any other fraud is identified, to forward that on to the Attorney General's Office for the appropriate prosecution. He has every tool he needs already. Secondly, the investigation that has been done to date by this Secretary of State has been lacking, in my view. A letter was sent to over 200 students by our Secretary of State suggesting that they had voted fraudulently. A few phone calls revealed that in fact those folks were students at our universities, at our colleges, and were voting legally in accordance with Supreme Court rulings. They had a legal right to vote. They had a constitutional right to vote. They were sent letters suggesting that they were criminals. If that is the kind of investigation that is going to be undertaken, good riddance. The people of Maine deserve better than that. They deserve a Secretary of State who will focus on doing their job, making sure that everybody has a chance to vote, that are elections are run fairly, and if there is fraud, that it is prosecuted. That's his job. End of story. Sending a Secretary of State out on a witch hunt is absurd. It's unnecessary and it suggests that people who are voting are somehow criminals, that they are somehow suspects. Our job should be to help every single citizen in the state of Maine, 18 years and older, to get the polls on Election Day and have their voice heard. Thank you, Mr. President.

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

Senator **PLOWMAN**: Thank you Mr. President. I couldn't agree more. The Secretary of State should be reporting to the Legislature as to what is found. We heard allegations that the former Secretary of State shredded information. That hasn't been addressed to my satisfaction yet. We also heard that there are people who are not citizens of the state of Maine who are voting. They actually check on the voter card that they are not a citizen of the United States. Yet, they are issued a ballot because they turned in a card that they filled out and very honestly admitted that they are not citizens of the United States. They continue to be registered voters and we have looked at, and continue to look at, and some of these people will be interviewed to find out, and the voter record will show, how many times they voted. If that's okay with you, it shouldn't be. We can't discuss a lot of that because it could be a criminal investigation. We are expecting to hear the results back. What we heard in our committee from the Secretary of State's Office is that there are an incredible number of clerical errors that start at the very beginning of this process and continue on and work their way through the system, enabling people who are not allowed to vote by law to continue to vote. That's not a witch hunt. That is making sure we are not a banana republic. Every ballot in the box deserves to have the same integrity as the ballot filed before it and after it. What we're hoping is that when the Secretary of State's Office comes forward he will have studied how people register, how people vote, and where the errors are more likely to occur in order to get this settled. It's not about duplicate voting any more. We're getting a handle on that. We really need to get at how you fill out that card in the first place and how it goes forward. The Secretary of State is not just an individual, it's a constitutional office with duties to report back, no matter what you find and no matter how you feel about the information. If we have to pass a Resolve to make sure that the next Secretary of State, whether this person or not this person, in the form of the constitutional officer, arrives back before Veterans and Legal Affairs in order to say we examined and we found. We won't be having to second guess and hear rumors about may or may not have come forward or may or may not have embarrassed or shed light on errors. It's called transparency and asking for transparency shouldn't be wrong. Thank you, Mr. President.

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

Senator **PATRICK**: Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, the study which we are talking about came to us, basically, kind of semi-secretively. They allowed Presiding Officers and the Committee Chairs and Leads to hear the information first, which is I guess customary. The study itself, to me, was totally an incomplete study. It was actually a small sampling. I actually even asked the question in committee. I said, "Mr. Secretary of State, how can you do a study unless you check every single voter registration card in the state of Maine?" I think he actually said to me, "Well, I don't know if we can because of freedom of information stuff." I said, "How can you do a complete study?" I'm in hopes that, whether we vote to do a study or not, that he'll decide to do the study. With his knowledge and expertise, and especially with the people at the Secretary of State's Office, they will decide what is right. From what I've seen with the previous study and with the 200 college kids, it was a witch hunt. This study that I'm looking at right now, 84% clerical errors. It doesn't say within this report,

actually the aliens who filled out a voter registration card, believe it or not, they actually checked on the box that said I'm an alien. Well, if I was a clerk I would hope I would take that card and validate it and not put it into the system. If I was an alien, and I came to America an illegal alien, I would want everything that the United States of America has to offer, and that is to be able to vote. They are going to do an investigation to find out if there was any malice or fraud behind why they voted. From what I can see, they probably did it because they wanted to be more like Americans and more like Mainers. Hopefully we find out. If it's wrong they will go to jail. What I see in this amendment is L.D. 199 changed to a Resolve to have a study from a department head or a constitutional officer that has the ability to do this. I will be voting against this for numerous reasons because one of the things I remember is my constituents, numerous constituents, said, "John, do not support any bills that don't need to be supported, that shouldn't be supported, that there is no reason to support." This is one of them. Do I support the Secretary of State doing his own investigation? Absolutely. I would hope that would be one of the fundamental similarities to every single Secretary of State. In fact, I think there is one in this Body and I hope he stands up and talks about it, but I can't compel him. I think he may be able to lend some credence to this. The accusation of shredding, I think by a previous Secretary of State, an accusation is an accusation. If you read this report, the data we have gathered and received over the past couple of months suggests that a substantial number of non-citizens may have registered to vote. That's conclusive. May have. Approximately one-third of that number may have actually voted. I'm not sure, but they may have. We're going to turn the information over to the Attorney General and he'll sort it out. I think that with any study it all comes down to what you study, what you get for results, and where you go from here. I guess I do have confidence that the Secretary of State, if he decides to do his own study under his own jurisdiction, his own domain, and with the money that he's going to be using from his department. As far as I can see the money is going to be coming out of his department anyways, so we're just compelling him to do the study. Whether we get him to spend his own money or he spends his own money to do a conclusive study, I hope he does a very thorough study. Ladies and gentlemen, I won't be supporting it because I'm going to do the right thing for my citizens in the state of Maine. I think when a bill goes through the whole process, probably two years, we've probably wasted \$10,000 or more of the citizen's money debating on this issue. The Secretary of State can do his own study if he wants to. We all know he can. I'm not going to waste another dime of taxpayer's money. I wouldn't support the bill earlier in today's session, spending \$300,000, \$500,000, or \$700,000. I'm not going to waste the citizen's money on this one as well. Thank you, Mr. President.

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

Senator **SCHNEIDER**: Thank you Mr. President. Men and women of the Senate, first of all, the Secretary of State can already do this. Why would we want to support something that is unnecessary? Secondly, this bill is infamous. Regardless of what it has changed or morphed into, it was horrible before. I don't want to be associated with what this bill was, even if it has morphed into a study that is totally giving our blessing to something that we don't even need to give authority for. It's

ridiculous. It's like passing something just to pass it. I don't want my name attached to it. When people try to say there are lots of accusations because people, unfortunately, sling mud when they have an opportunity to do that. I want to say, as far as the former Secretary of State is concerned, there are not many people with that kind of integrity that he has. Anyone of us could be subject to mud slinging and I would assure you that that happens frequently. I remember when I was accused by an opponent of mine that I went along with everything that the Governor of the State of Maine wanted. I can assure you that that was so far from the truth. You can make accusations. People can make all kinds of accusations about us and about the Secretary of State, but the truth of the matter is, that person has unbelievable integrity. This notion of voter fraud, it just amazes me the kind of attention that this has gotten, given all the problems that we have in our state that are real. Let the Secretary of State do his job and stop burdening the Legislature with things that we don't need to be worrying about. We've got enough to deal with already. I'm totally in opposition to this. I think the people of Maine would be totally in opposition to this. I'm completely in favor of getting rid of any kind of fraud, but let the Secretary of State do what he's supposed to do. He doesn't need us to intervene in his work. Thank you.

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today in opposition to this motion. This debate is quite frustrating, especially when you look at the big picture and the political atmosphere around this issue and how charged it is. In essence, this study, even if it goes forward, regardless of the votes here today, is designed to fail because there is going to be no confidence in the findings. Something as serious as this issue should have a bi-partisan, independent entity or individual looking into it. We need to make sure that any results that are determined by a serious study such as this we all can rely on and have confidence in. I'm not questioning the integrity of the current Secretary of State or the former Secretary of State or one in the future. They are political positions that we elect and, ultimately, they are chosen, in practice, by the Majority party. For that alone, we should at redesigning this bill. I say we should vote this down and if you really want to do it you should create a process going forward that the entire state of Maine can have confidence in from the beginning to the end and the results would carry the day. To me, this lacks that. Thank you very much, Mr. President.

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

Senator **DILL:** Thank you Mr. President. Men and women of the Senate, I would just echo what Senator Goodall just said. Some of us have the upcoming elections on our minds a little bit. You can imagine the scenario where the current Secretary of State is running against the former Secretary of State for a higher office. I hope, personally, that is not the case, but it could very well be. It strikes me that if ever there was a study that would lack credibility and cause voters to be frustrated that we were injecting politics into the business of the State, this would be a perfect example. I won't be supporting the motion as well. Thank you.

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

Senator **FARNHAM:** Thank you Mr. President. I just want to remind the members of the Body that the current Maine Election Law, title 21A 195, requires the Secretary of State to report annually on the administration of the central voter registration system. As has been brought to the attention here to this Body and to the members of our committee, that is only one aspect of the election process. Therefore, although we're using the old number, that is one of the reasons why the content of this new bill has been changed. The title has been change to reflect the content and the specifics of the new bill. It includes the specifics to look at voter participation, to look at the conduct of elections, and also to look at the one aspect that was reported to the Veterans and Legal Affairs Committee annually, and that is the current system for registering voters. As was mentioned, the most important aspect of this is that whoever the Secretary of State is at this time, that person will be asked and will be in front of the Veterans and Legal Affairs Committee no later than February 1, 2013. There are specifics underneath this legislation. I apologize for the fact that it uses an old number, but I do want to alert folks to the fact that, with the new content and the new specifics, it does expand what the Secretary of State, in law currently, is directed to report to the committee on Veterans and Legal Affairs.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just have to say that here's another case of fraud, fraud, fraud. We're talking about fraud. Unemployment and welfare fraud. Workers' Comp fraud and voter fraud. Ever since we started talking about voter fraud and voter participation, it seems like we've been losing more participation. I know this past Summer, because of the things we did in this Body, I worked in a logging camp where all Americans, 15 of us, and we didn't get home until 6 o'clock or 7 o'clock Thursday night. Because of that, the other 14 people, because they weren't as up to speed on the laws as I was, didn't get to vote because we didn't get back in time for absentee ballots, by Thursday at 5 o'clock. We all had to be back up in the woods on Tuesday, when the election was there. It seems to me that all we're doing here is making it a lot harder for legal citizens to vote. I had two constituents that signed my nomination papers recently. One of them was my neighbor, someone who's lived in the town of Allagash his entire life. He's never moved from there. He has consistently signed my nomination papers in the past. When I went to have them verified this time, he's not on the list any more. Ironically, he went on-line and gave me \$5 on Clean Election. He shows up there. It seems like ever since we started messing around with it, we're making people that are legal to vote in the state of Maine have a harder time to vote. This is another case of going after something that I don't understand what the intent is. It certainly is not making the people who have the right to vote here in Maine have that right any longer.

Senate at Ease.

Senate called to order by the President.

Senator **ALFOND** of Cumberland requested and received leave of the Senate to withdraw his request for a Roll Call.

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

READ ONCE.

Committee Amendment "B" (H-733) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senator **SULLIVAN** of York was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **PLOWMAN** of Penobscot was granted unanimous consent to address the Senate off the Record.

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

On motion by Senator **COURTNEY** of York, **ADJOURNED** to Wednesday, March 14, 2012, at 10:00 in the morning.