

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

In Senate Chamber
Friday
March 22, 2002

Senate called to order by President Richard A. Bennett of Oxford County.

Prayer by Reverend Gary DeLong, Maine Sea Coast Mission in Bar Harbor.

REVEREND DELONG: Let us pray. All mighty and eternal God, You have work to be done that only human hearts and hands can satisfy. You, whose power is often revealed through human action, we call to Your remembrance this chamber of earthly leaders. No one knows better than You how much the peace, justice, and well being of our state depends on the business that is conducted in this place and on each one gathered in this chamber. We pray this day that they may not betray their stewardship, nor mistake the nature of their obligations. Oh God, we ask for these Senators an ennobling vision that will shine on in the midst of all the deliberation and debate of democracy. Give them the wisdom they need to know when to stand firm in light of the facts and when to let compassion rule the day. We know that all of us see only in part. We ask that You push back the horizon for those who labor here. Lengthen their sight and enlarge their sympathies that all their actions will be done as though no man, no woman, no child is insignificant. At the end of the day, may they know that they were mindful of not only needs and wants, but of their sacred capacity to foster hope. Amen.

Doctor of the day, Myron Krueger, M.D. of Bath.

Reading of the Journal of Thursday, March 21, 2002.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

JOINT ORDER - Directing the Joint Standing Committee on Legal and Veterans Affairs to Report Out a Bill Regarding Malt Liquor Testing

H.P. 1621

In House, February 20, 2002, **READ** and **PASSED**.

In Senate, March 13, 2002, on motion by Senator **DOUGLASS** of Androscoggin, **READ** and **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Comes from the House, that Body **ADHERED**.

On motion by Senator **DOUGLASS** of Androscoggin, the Senate **ADHERED**.

Non-Concurrent Matter

Bill "An Act to Create the Washington County Development Authority"

S.P. 541 L.D. 1672
(C "A" S-468)

In Senate, March 18, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-468)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-468) AS AMENDED BY HOUSE AMENDMENT "B" (H-967)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **SHOREY** of Washington, the Senate **RECEDED** and **CONCURRED**.

COMMUNICATIONS

The Following Communication: S.P. 820

**STATE OF MAINE
120TH MAINE LEGISLATURE**

March 20, 2002

Hon. Betty Lou Mitchell
Senate Chair, Joint Standing Committee on
Education and Cultural Affairs
Hon. Shirley K. Richard
House Chair, Joint Standing Committee on
Education and Cultural Affairs
120th Legislature
Augusta, ME 04333

Dear Senator Mitchell and Representative Richard:

Please be advised that pursuant to P.L. 1975, Chapter 771, Section 428, Governor Angus S. King, Jr. has withdrawn the nomination of Capt. Susan J. Clark, Esq. of Cape Elizabeth for appointment as member of the Maine Maritime Academy, Board of Trustees.

This nomination is currently pending before the Joint Standing Committee on Education and Cultural Affairs and confirmation by the Senate.

Sincerely,

S/Richard A. Bennett
President of the Senate

S/Michael V. Saxl
Speaker of the House

S/Betty Lou Mitchell
Senate Chair

S/Shirley K. Richard
House Chair

READ and REFERRED to the Committee on EDUCATION AND CULTURAL AFFAIRS.

Sent down for concurrence.

The Following Communication: S.C. 660

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003
Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Kathryn G. Underwood of Portland, for appointment to the Maine Technical College System Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
	Representatives	10	Andrews of York, Cummings of Portland, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Skoglund of St. George, Stedman of Hartland, Watson of Farmingdale, Weston of Montville

NAYS 0

ABSENT 1 Sen. Nutting of Androscoggin

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Kathryn G. Underwood of Portland, for appointment to the Maine Technical College System Board of Trustees, be confirmed.

Signed,

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#254)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY,
CARPENTER, CATHCART, DAGGETT, DAVIS,
DOUGLASS, EDMONDS, FERGUSON, GAGNON,
GOLDTHWAIT, KILKELLY, KNEELAND,
LAFOUNTAIN, LEMONT, LONGLEY, MARTIN,
MCALEVEY, MICHAUD, MILLS, MITCHELL,
NUTTING, O'GARA, PENDLETON, RAND,
ROTUNDO, SAVAGE, SAWYER, SHOREY,
SMALL, TREAT, TURNER, WOODCOCK,
YOUNGBLOOD, THE PRESIDENT - RICHARD A.
BENNETT

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Kathryn G. Underwood** of Portland, for appointment to the Maine Technical College System Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

The Following Communication: S.C. 661

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

ROLL CALL (#255)

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Ward I. Graffam of Portland, for reappointment to the Maine Maritime Academy Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
	Representatives	7	Andrews of York, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Stedman of Hartland, Weston of Montville
NAYS		0	
ABSENT		4	Rep. Cummings of Portland, Sen. Nutting of Androscoggin, Rep. Skoglund of St. George, Rep. Watson of Farmingdale

Nine members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Ward I. Graffam of Portland, for reappointment to the Maine Maritime Academy Board of Trustees, be confirmed.

Signed,

S/Betty Lou Mitchell
Senate Chair

S/Shirley K. Richard
House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Ward I. Graffam** of Portland, for reappointment to the Maine Maritime Academy Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

Off Record Remarks

The Following Communication: S.C. 662

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Jana LaPointe of Falmouth, for reappointment to the Maine Technical College System Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
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Representatives 10 Andrews of York, Cummings of Portland, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Skoglund of St. George, Stedman of Hartland, Watson of Farmingdale, Weston of Montville

reappointment to the Maine Technical College System Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

The Following Communication: S.C. 663

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Honorable Daniel E. Wathen of Augusta, for appointment to the Maine Technical College System Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
	Representatives	10	Andrews of York, Cummings of Portland, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Skoglund of St. George, Stedman of Hartland, Watson of Farmingdale, Weston of Montville
NAYS		0	
ABSENT		1	Sen. Nutting of Androscoggin

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Honorable Daniel E. Wathen of Augusta, for appointment to the Maine Technical College System Board of Trustees, be confirmed.

NAYS 0
ABSENT 1 Sen. Nutting of Androscoggin

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Jana LaPointe of Falmouth, for reappointment to the Maine Technical College System Board of Trustees, be confirmed.

Signed,

S/Betty Lou Mitchell Senate Chair S/Shirley K. Richard House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#256)

YEAS: Senators: None
NAYS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Jana LaPointe** of Falmouth, for

Signed,

S/Betty Lou Mitchell S/Shirley K. Richard

Senate Chair

House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#257)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of the Honorable **Daniel E. Wathen** of Augusta, for appointment to the Maine Technical College System Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

The Following Communication: S.C. 664

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Robert S. Walker of Virginia Beach, VA, for appointment to the Maine Maritime Academy Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
	Representatives	9	Andrews of York, Cummings of Portland, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Stedman of Hartland, Watson of Farmingdale, Weston of Montville
NAYS		0	
ABSENT		2	Sen. Nutting of Androscoggin, Rep. Skoglund of St. George

Eleven members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Robert S. Walker of Virginia Beach, VA, for appointment to the Maine Maritime Academy Board of Trustees, be confirmed.

Signed,

S/Betty Lou Mitchell
Senate Chair

S/Shirley K. Richard
House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#258)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

Farmingdale, Weston of Montville

NAYS 0

ABSENT 2 Rep. Cummings of Portland, Sen. Nutting of Androscoggin

Eleven members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Judith W. Andrucki of Lewiston, for reappointment to the University of Maine Board of Trustees, be confirmed.

Signed,

S/Betty Lou Mitchell
Senate Chair

S/Shirley K. Richard
House Chair

READ and ORDERED PLACED ON FILE.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **EDUCATION AND CULTURAL AFFAIRS** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 120th Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#259)

YEAS: Senators: None

NAYS: Senators: BRENNAN, BROMLEY, CARPENTER, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, FERGUSON, GAGNON, GOLDTHWAIT, KILKELLY, KNEELAND, LAFOUNTAIN, LEMONT, LONGLEY, MARTIN, MCALEVEY, MICHAUD, MILLS, MITCHELL, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, SAVAGE, SAWYER, SHOREY, SMALL, TREAT, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Judith W. Andrucki** of Lewiston, for reappointment to the University of Maine Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Robert S. Walker** of Virginia Beach, VA, for appointment to the Maine Maritime Academy Board of Trustees was **CONFIRMED**.

The Secretary has so informed the Speaker of the House of Representatives.

The Following Communication: S.C. 665

**120TH LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

March 20, 2002

The Honorable Richard A. Bennett
President of the Senate of Maine
120th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 120th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Judith W. Andrucki of Lewiston, for reappointment to the University of Maine Board of Trustees.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS	Senators	2	Mitchell of Penobscot, Rotundo of Androscoggin
	Representatives	9	Andrews of York, Desmond of Mapleton, Estes of Kittery, Ledwin of Holden, Richard of Madison, Skoglund of St. George, Stedman of Hartland, Watson of

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Regulate Professional Boxing"
H.P. 1487 L.D. 1990

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

Signed:

Senators:

SHOREY of Washington
YOUNGBLOOD of Penobscot
BROMLEY of Cumberland

Representatives:

THOMAS of Orono
MORRISON of Baileyville
DUPREY of Hampden
RICHARDSON of Brunswick
BRYANT of Dixfield
CLOUGH of Scarborough
DORR of Camden
MURPHY of Kennebunk
MICHAUD of Fort Kent

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-958)**.

Signed:

Representative:

HATCH of Skowhegan

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

Reports **READ**.

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

Divided Report

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Resolve, Regarding Legislative Review of Chapter 220: Methodology for Identification of Regional Service Centers, a Major Substantive Rule of the Executive Department, State Planning Office (EMERGENCY)
H.P. 1641 L.D. 2144

Reported that the same **Ought to Pass**.

Signed:

Senators:

SHOREY of Washington
BROMLEY of Cumberland
YOUNGBLOOD of Penobscot

Representatives:

THOMAS of Orono
MORRISON of Baileyville
HATCH of Skowhegan
DUPREY of Hampden
RICHARDSON of Brunswick
BRYANT of Dixfield
CLOUGH of Scarborough
MICHAUD of Fort Kent
DORR of Camden

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

Signed:

Representative:

MURPHY of Kennebunk

Comes from the House with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED**.

Reports **READ**.

On motion by Senator **SHOREY** of Washington, the Majority **OUGHT TO PASS** Report **ACCEPTED**, in concurrence.

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

Divided Report

Pursuant to Joint Order

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$15,000,000 for the Construction of a Civic Center and Auditorium in Eastern Central Maine"

H.P. 1690 L.D. 2189

Reported that the same **Ought to Pass**, pursuant to Joint Order 2001 (H.P. 1610).

Signed:

Senators:

SHOREY of Washington
YOUNGBLOOD of Penobscot

Representatives:

THOMAS of Orono
MORRISON of Baileyville
HATCH of Skowhegan
DUPREY of Hampden
RICHARDSON of Brunswick
BRYANT of Dixfield
DORR of Camden
MICHAUD of Fort Kent

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass**, pursuant to Joint Order 2001 (H.P. 1610).

Signed:

Senator:

BROMLEY of Cumberland

Representatives:

CLOUGH of Scarborough
MURPHY of Kennebunk

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

Reports **READ**.

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

Divided Report

Pursuant to Joint Order

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$25,400,000 for Economic Development"

H.P. 1691 L.D. 2190

Reported that the same **Ought to Pass**, pursuant to Joint Order 2001 (H.P. 1610).

Signed:

Senators:

SHOREY of Washington
YOUNGBLOOD of Penobscot

Representatives:

THOMAS of Orono
MORRISON of Baileyville
HATCH of Skowhegan
DUPREY of Hampden
RICHARDSON of Brunswick
BRYANT of Dixfield
CLOUGH of Scarborough
DORR of Camden

MURPHY of Kennebunk
MICHAUD of Fort Kent

The Minority of the same Committee on Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$29,400,000 for Economic Development"

H.P. 1692 L.D. 2191

Reported that the same **Ought to Pass**, pursuant to Joint Order 2001 (H.P. 1610).

Signed:

Senator:
BROMLEY of Cumberland

Comes from the House with the Majority **OUGHT TO PASS**, H.P. 1691, L.D. 2190 Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Reports **READ**.

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

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Regarding Legislative Review of Portions of Administration of Medicine in the School Setting, a Major Substantive Rule of the Department of Education (EMERGENCY)
H.P. 1608 L.D. 2106

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-923)**.

Signed:

Senators:
MITCHELL of Penobscot
NUTTING of Androscoggin
ROTUNDO of Androscoggin

Representatives:
RICHARD of Madison
DESMOND of Mapleton
SKOGLUND of St. George
ESTES of Kittery
CUMMINGS of Portland
STEDMAN of Hartland
ANDREWS of York
WESTON of Montville
LEDWIN of Holden

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-924)**.

Signed:

Representative:
WATSON of Farmingdale

Comes from the House with Reports **READ** and the Resolve and accompanying papers **COMMITTED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.

Reports **READ**.

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

Divided Report

The Majority of the Committee on **UTILITIES AND ENERGY** on Bill "An Act to Strengthen Energy Conservation"
H.P. 330 L.D. 420

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-961)**.

Signed:

Senators:
FERGUSON of Oxford
TREAT of Kennebec
CARPENTER of York

Representatives:
SAVAGE of Buxton
RINES of Wiscasset
CRABTREE of Hope
PERKINS of Penobscot
BERRY of Belmont
McGLOCKLIN of Embden
DUNCAN of Presque Isle
BLISS of South Portland
HALL of Bristol

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-962)**.

Signed:

Representative:
GOODWIN of Pembroke

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-961)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-961)**.

Reports **READ**.

On motion by Senator **FERGUSON** of Oxford, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-961)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-961) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-961)**, in concurrence.

Senate

Divided Report

The Majority of the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Ban the Use of Aircraft While Hunting"

S.P. 746 L.D. 2078

Reported that the same **Ought to Pass as Amended by Committee Amendment "B" (S-483)**.

Signed:

Senators:

CARPENTER of York
KILKELLY of Lincoln
WOODCOCK of Franklin

Representatives:

DUNLAP of Old Town
TRAHAN of Waldoboro
HONEY of Boothbay
USHER of Westbrook
McGLOCKLIN of Embden
BRYANT of Dixfield

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

Signed:

Representatives:

CLARK of Millinocket
PERKINS of Penobscot
TRACY of Rome

Reports **READ**.

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

READ ONCE.

Committee Amendment "B" (S-483) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-483)**.

Sent down for concurrence.

ENACTORS

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

Act

An Act to Amend the Pulling Events Laws

H.P. 1454 L.D. 1951
(C "A" H-898)

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

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (3/7/02) Assigned matter:

Bill "An Act to Create the Office of the Maine-Canada Envoy"
H.P. 1505 L.D. 2008

Tabled - March 7, 2002, by Senator **SHOREY** of Washington

Pending - FURTHER CONSIDERATION

(In House, February 26, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-791)AS AMENDED BY HOUSE AMENDMENT "A" (H-809)** thereto.)

(In Senate, February 28, 2002, on motion by Senator **SHOREY** of Washington, Bill and accompanying papers **COMMITTED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**, in **NON-CONCURRENCE**.)

(In House, March 6, 2002, that Body **ADHERED**.)

On motion by Senator **SHOREY** of Washington, the Senate **RECEDED** and **CONCURRED**.

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

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

House Paper

Resolve, to Study the Impact of a Maine-based Casino on the Economy, Transportation Infrastructure, State Revenues and the Job Market

H.P. 1700 L.D. 2200

Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** suggested and ordered printed.

Comes from the House, **REFERRED** to the Committees on **BUSINESS AND ECONOMIC DEVELOPMENT** and **LEGAL AND VETERANS AFFAIRS**.

On motion by Senator **SHOREY** of Washington, **REFERRED** to the Committees on **BUSINESS AND ECONOMIC DEVELOPMENT** and **LEGAL AND VETERANS AFFAIRS** and ordered printed, in concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **BANKING AND INSURANCE** on Bill "An Act to Lower Costs in the Small Group Market"

H.P. 1324 L.D. 1784

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-970)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970)**.

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

READ ONCE.

Committee Amendment "A" (H-970) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-970)**, in concurrence.

The Committee on **UTILITIES AND ENERGY** on Bill "An Act Regarding Utility Easements"

H.P. 1472 L.D. 1973

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-872)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-872)**.

Report **READ**.

Senator **FERGUSON** of Oxford moved the Senate **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report, in concurrence.

On motion by Senator **PENDLETON** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by Senator **FERGUSON** of Oxford to **ACCEPT** the **OUGHT TO PASS AS AMENDED** Report.

Senator **SMALL** of Sagadahoc was granted unanimous consent to address the Senate off the Record.

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

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

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

Senator **KILKELLY** of Lincoln was granted unanimous consent to address the Senate off the Record.

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

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

RECESSED until 11:30 in the morning.

After Recess

Senate called to order by the President.

THE PRESIDENT: The Chair would like to announce the following: in keeping with our goal to adjourn late next week, all Senate Amendments to the budget need to be in the Revisor's Office for drafting by 5pm tonight, Friday, March 22, 2002. It is my expectation that the budget will be in the Senate either later today or on Monday and that we will be in a position to enact it early next week. 5pm tonight is the deadline for getting any amendments you are proposing to the budget to the Revisor's Office.

Off Record Remarks

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Regarding Legislative Review of Portions of Administration of Medicine in the School Setting, a Major Substantive Rule of the Department of Education (EMERGENCY)

H.P. 1608 L.D. 2106

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-923)** (12 members)

Minority - **Ought To Pass as Amended by Committee Amendment "B" (H-924)** (1 member)

Tabled - March 22, 2002, by Senator **MITCHELL** of Penobscot

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 21, 2002, Reports **READ** and the Resolve and accompanying papers **COMMITTED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.)

(In Senate, March 22, 2002, Reports **READ**.)

Senator **MITCHELL** of Penobscot moved the Resolve and accompanying papers be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Senator **MARTIN**: Thank you, Mr. President, members of the Senate. This involves the rules that come from the department. Under the process of establishing the constitution, those rules automatically will go into effect unless the legislature takes any action. I'm assuming, therefore, that it is the wish of everyone here that whatever is in those rules will, in fact, take place. That is my wish, but I just want everyone to know that.

On motion by Senator **MITCHELL** of Penobscot, Resolve and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Specially (3/4/02) Assigned matter:

Bill "An Act to Allow the Department of Administrative and Financial Services, Bureau of General Services to Make Direct Selection of Architects and Engineers Whose Services Do Not Exceed \$25,000"

H.P. 1427 L.D. 1865
(C "A" H-826)

Tabled - February 28, 2002, by Senator **DAVIS** of Piscataquis

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-826)**, in concurrence

(In House, February 27, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-826)**.)

(In Senate, February 28, 2002, **READ A SECOND TIME**.)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-826), in concurrence.

The Chair laid before the Senate the following Tabled and Specially (3/4/02) Assigned matter:

Bill "An Act to Give the Department of Administrative and Financial Services, Bureau of General Services Discretion Regarding Building Codes"

S.P. 671 L.D. 1874
(C "A" S-432)

Tabled - February 28, 2002, by Senator **DAVIS** of Piscataquis

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-432)**

(In Senate, February 28, 2002, **READ A SECOND TIME**.)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-432).

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/20/02) Assigned matter:

HOUSE REPORT - from the Committee on **NATURAL RESOURCES** on Bill "An Act Regarding the Clearing of Vegetation in Areas Adjacent to Protected Natural Resources" (EMERGENCY)

H.P. 1679 L.D. 2179

Report - **Ought to Pass**, pursuant to Resolve 1999, chapter 116

Tabled - March 20, 2002, by Senator **MARTIN** of Aroostook

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

(In House, March 19, 2002, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.)

(In Senate, March 20, 2002, Report **READ**.)

On motion by Senator **MARTIN** of Aroostook, the Report **ACCEPTED**, in concurrence.

Under suspension of the Rules, **READ TWICE**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "A" (S-485) **READ**.

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

Senator **MARTIN**: Thank you, Mr. President, members of the Senate. The Committee on Agriculture and the Committee on Natural Resources had a bill that dealt with the same issue. This removes the language that would have been in conflict with the law since the Agriculture Committee chose not to deal with it and we want to make sure that the law remains the way that it was intended without changes.

On further motion by same Senator, Senate Amendment "A" (S-485) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-485), in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/20/02) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act Regarding the Payment of Severance Pay "

H.P. 1551 L.D. 2054

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-929)**

Report "B" - **Ought Not to Pass** (4 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "B" (H-930)**

Tabled - March 20, 2002, by Senator **EDMONDS** of Cumberland

Pending - motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929)**, in concurrence

(In House, March 19, 2002, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929)**.)

(In Senate, March 20, 2002, Reports **READ**.)

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

Senator **GOLDTHWAIT:** Thank you, Mr. President. On this item, I am a bit confused as to the significance of the Ought Not to Pass versus Report C and wonder if I could pose a question.

THE PRESIDENT: The Senator may pose her question.

Senator **GOLDTHWAIT:** Thank you. If someone could explain to me what the difference is I would appreciate it.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. You are asking a question about the difference between Report B and Report C. There was only one member on Report C and I believe their position was specifically directed to one company. Report B was Ought Not to Pass. The majority report was Ought to Pass as Amended. That is the significant difference. Report C had to do with one members' concern for a specific company.

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

Senator **TURNER:** Thank you, Mr. President. Good afternoon, ladies and gentlemen of the Senate. I'm going to ask that you vote against the pending motion. I will try to explain to you why I think this is in our interest, as a people and as a state, to reject this bill. As you probably know, severance pay has been part of the Maine economic picture, by statute, for more than 25 years. Frankly, while there was significant criticism about this being the only state in the union that has severance pay, I think the record shows that it has actually worked quite well. Why has this bill come before us, if that is the case? There is an issue regarding a company in York County, Vishay Sprague. There were bills submitted in an attempt to try to redress an ongoing situation that is, in fact, in litigation. That was the intent of this bill and another

bill that sits on the calendar. The reality is that this bill does not address Vishay Sprague specifically. Its intended purpose, as intended by its submitter, has become irrelevant to Vishay Sprague. The key thing that this bill does is it changes the provisions with respect to bankruptcy. In current severance pay law, if you go into bankruptcy, severance pay is not considered. The L.D. before you would change that and I think that would cause significant problems, and they are two-fold. First of all, when you look at bankruptcy law, and I believe it would prevail in this particular situation, in reality, if this bill were to become law, severance pay would end up as an unsecured creditor on the bankruptcy table, irrespective of what the bill intends. I think money would flow to those that bill intends to help. Secondly, and more importantly, I believe it would further discourage investment in our businesses which are troubled, or are in economic difficulty, and are seeking to be rescued by somebody who wants to infuse capital into a difficult situation. Some of you may have read in the paper or seen on television that Hathaway Shirt Company recently has failed. Failed yet again. I believe that situation never would have had a chance to rescue itself and to thrive had these bankruptcy provisions been in place. The key reason for that is that a parent organization would no longer have the protection of its corporate laws to shield it from an investment that would be very risky. So if you had a division or a wholly owned subsidiary in Maine, and you were outside of Maine, this bill would allow you to reach through the so called corporate veil and have severance pay become a liability for the parent organization. So if you were trying to figure out a way to further discourage major corporations and investors from investing in businesses that need rescuing in our economy, this bill will satisfy your needs very nicely. I think it will discourage investment and I would ask you to think very carefully about doing further damage to Maine's economic environment. I would urge you to not vote in favor of this bill. Thank you.

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

Senator **EDMONDS:** Thank you, Mr. President, men and women of the Senate. While I agree with the good Senator from Cumberland, Senator Turner, on many of his points, I disagree strongly on a couple of them. The addition of bankruptcy to this whole discussion is vitally important to every company in Maine that has a parent company outside of our borders, which speaks directly to the folks in Sanford. What this says is if you are a company that comes into Maine, and you utilize Maine resources and Maine workers, you must pay Maine severance pay. Just because you're outside of our borders does not mean you can somehow wash your hands of the whole deal if the local company goes bankrupt. I think this is just totally and completely a correct position for us to take. We are trying to look out for Maine people who are hard workers, who have been in some of these places for 35 years. I went to Hathaway Shirt yesterday and looked at those workers who have worked in that place for 35 years and they fully know that they should be getting their severance pay. If Hathaway goes bankrupt, which I hope they don't, but if for some reason that company isn't able to go forward, we need to be able to say to people 'you get protected'. If some other company from far away wants to use Maine resources and then leave because they can't function, I don't want us to wash our hands of Maine workers. I feel fairly strongly about this. I just feel it's absolutely wrong for people outside the state to think that they can separate

themselves in such a way that they don't have to pay Maine workers their due. That's what is being asked here. I think it's right for us, as representatives of Maine people, to support them. I know people will say to you that this is going to discourage business, and frankly, I think the good businesses will not be discouraged by this and the folks that would come and use our people and our resources willy-nilly and leave should be discouraged. Thank you.

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

Senator **SAWYER:** Thank you, Mr. President. Originally, in committee, I was on Report A because I thought this bill would actually protect the good people that had been laid off from Vishay Sprague. Subsequent to that vote, I understood that this bill did not positively impact their abilities. In fact, under the law of unintended consequences, my fear is that expansion of this will hurt their ability to be hired by a successful company. In committee, I think we generally agree. My phrase is: our task is to reward the good players and punish the bad players. The problem in business, as in many other fields of endeavor, is that it is very difficult, before the fact, to separate the good guys from the bad guys. Sometimes we have to take a risk and hopefully attract more good employers than bad. But I must join with the Senator from Cumberland, Senator Edmonds, in my opposition to this bill. I fear the unintended consequences of its passage will, in fact, add one more small, little cut to the possible death by a thousand cuts and will, in fact, ultimately hurt the very people we are trying to protect. I urge your opposition to the bill. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#260)

YEAS: Senators: BRENNAN, BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LAFOUNTAIN, LONGLEY, MARTIN, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, FERGUSON, GOLDTHWAIT, KILKELLY, KNEELAND, LEMONT, MCALEVEY, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-929)**, in concurrence, **FAILED**.

On motion by Senator **TURNER** of Cumberland, Report "B", **OUGHT NOT TO PASS ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

The Chair laid before the Senate the following Tabled and Later (3/21/02) Assigned matter:

Bill "An Act to Amend the Law Regarding Severance Pay"
H.P. 1498 L.D. 2001
(C "A" H-948)

Tabled - March 21, 2002, by Senator **TURNER** of Cumberland

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-948)**, in concurrence

(In House, March 20, 2002, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-948)**.)

(In Senate, March 21, 2002, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" H-948 **READ** and **ADOPTED**. **READ A SECOND TIME**.)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-948), in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Division.

The Chair laid before the Senate the following Tabled and Later (3/21/02) Assigned matter:

JOINT ORDER - Directing the Joint Standing Committee on Legal and Veterans Affairs to Report Out Legislation Regarding Reimbursement for Stolen Lottery Tickets
H.P. 1699

Tabled - March 21, 2002, by Senator **DOUGLASS** of Androscoggin

Pending - **PASSAGE**, in concurrence

(In House, March 20, 2002, **READ** and **PASSED**.)

(In Senate, March 21, 2002, **READ**.)

On motion by Senator **DOUGLASS** of Androscoggin, Joint Order **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

ORDERS

Joint Order

On motion by Senator **SAWYER** of Penobscot, the following Joint Order: S.P. 821

ORDERED, the House concurring, that the Task Force to Study a Universal Special Retirement Plan for All Levels of Law Enforcement Officers is established as follows.

1. Task force established. The Task Force to Study a Universal Special Retirement Plan for All Levels of Law Enforcement Officers, referred to in this order as the "task force," is established.
2. Membership. The task force consists of 11 members appointed as follows:
 - A. Three members of the Senate, appointed by the President of the Senate. When making the appointments, the President of the Senate shall give preference to members who serve on the Joint Standing Committee on Labor and the Joint Standing Committee on Appropriations and Financial Affairs;
 - B. Three members of the House of Representatives, appointed by the Speaker of the House. When making the appointments, the Speaker of the House shall appoint at least one member from a party that does not hold a majority of seats in the House and shall give preference to members who serve on the Joint Standing Committee on Criminal Justice;
 - C. One member representing the Maine State Retirement System, appointed by the Speaker of the House;
 - D. One member representing the Maine State Police, appointed by the President of the Senate;
 - E. One member representing local law enforcement agencies, appointed by the Speaker of the House;
 - F. One member representing county government, appointed by the President of the Senate; and
 - G. One member from the private sector representing a company that has knowledge of retirement plans, appointed by the President of the Senate.
3. Task force chair. The first named Senator is the Senate chair of the task force and the first named member of the House is the House chair of the task force.
4. Appointments; convening of task force. All appointments must be made no later than 30 days after adjournment. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the task force shall call and convene the first meeting of the task force, which must be no later than August 15, 2002.

5. Duties. The task force shall study the feasibility, advantages, disadvantages, cost implications and other relevant information concerning the establishment of a universal special retirement plan for law enforcement officers.

6. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the task force.

7. Compensation. Members of the task force are entitled to receive the legislative per diem and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the task force. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses for their attendance at authorized meetings of the task force.

8. Report. The task force shall submit a report that includes its findings and recommendations, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over labor matters and the Legislative Council by January 31, 2003. The task force is authorized to introduce legislation related to its report to the First Regular Session of the 121st Legislature at the time of submission of its report.

9. Extension. If the task force requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension. Upon submission of its required report, the task force terminates.

10. Budget. The chairs of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for approval. The task force may not incur expenses that would result in the task force's exceeding its approved budget. Upon request from the task force, the Executive Director of the Legislative Council or the executive director's designee shall promptly provide the task force chairs and staff with a status report on the task force budget, expenditures incurred and paid and available funds.

READ and PASSED.

Sent down for concurrence.

Senate at Ease.
Senate called to order by the President.

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

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

COMMUNICATIONS

The Following Communication: S.C. 667

**120TH LEGISLATURE
SENATE STANDING COMMITTEE ON SENATORIAL VOTE**

March 22, 2002

Senator Richard A. Bennett
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Bennett,

In accordance with Senate Order 31 that passed on March 12, 2002, the Standing Committee on Senatorial Vote has met to determine the outcome of the Special Election held March 5, 2002 in State Senate District 27.

The Committee was presented with vote totals from the March 11, 2002, recount of said election as follows:

Michael Brennan	3265
Sally G. Vamvakias	3254
Disputed Ballots	37

After deliberations the Committee voted unanimously to follow the laws in MRSA Title 21-A to determine the outcome of the election and proceeded to vote on the 37 disputed ballots and the following results were added to the recount totals:

Michael Brennan	10 votes
Sally G. Vamvakias	11 votes
Ballots Counted for Neither	16

The Committee agreed that the final vote total is:

Michael Brennan	3275
Sally G. Vamvakias	3265

Respectfully Submitted,

S/Senator Anne M. Rand, Chair
Standing Committee on Senatorial Vote

S/Senator John L. Martin

S/Senator Lloyd P. LaFountain III

S/Senator Jill M. Goldthwait

S/Senator Mary E. Small

S/Senator Kevin L. Shorey

S/Senator Karl W. Turner

READ and ORDERED PLACED ON FILE.

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

ORDERS

Senate Order

On motion by Senator **RAND** of Cumberland, for the majority of the Committee on Senatorial Vote, the following Senate Order:
S.O. 32

WHEREAS, the Standing Committee on Senatorial Vote has met and a majority of the Committee has determined that Michael F. Brennan, of Portland has been elected by a plurality of votes resulting from a Special Election on March 5, 2002, now, therefore, be it

ORDERED, that Michael F. Brennan of Portland be permanently seated as the duly elected Senator of Senate District 27.

READ.

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

Senator **RAND:** Thank you, Mr. President and men and women of the Senate. I guess it's no secret, we're all very well aware that the Committee on Senatorial Vote has been meeting and that we were dealing with a very contentious, some have used the word partisan, certainly an emotional issue for a lot of people who were involved with this. Before we vote on this order, I would just like to make a few comments. First of all, I'm grateful to the members that had been assigned to this committee because I think, even though we didn't agree, we worked very well together and I certainly was pleased with the way each and every Senator conducted themselves. Secondly, I would like to say that probably the biggest bone of contention, if you will, that committee members struggled with was the fact that there were a number of absentee ballots that were received after the polls closed. That was a big bone of contention, as I said, because there were some members who felt that those votes should be counted because voters made every attempt to comply with their right to vote. There were others who disagreed and said an election has to come to an end and the end has always been, or has been for many years anyway, on 8pm on election day. So we spent many, many hours stating our different views. By the way, you'll all be happy to know it was taped so if anyone wants to relive this, you can get copies of the tapes and listen to the full proceedings. Without going into all the different pros and cons of why or why not, the majority of the committee, after actually examining the envelopes of these uncounted ballots and being unable to determine some of the postmarks and wondering what we would do with these particular ballots if we did decide to check those votes, decided by a majority, a majority only, of the committee that these ballots would be treated the same way they have been treated in all past elections in the State of Maine. They arrived after the polls closed, therefore they would not be counted. We then went on to decide what rules and regulations we would use to govern ourselves as we proceeded to look at the disputed ballots. I was very pleased to note that the committee voted unanimously to follow MRSA Title 21A, present Maine law. We would use present Maine law to determine the outcome of this

election. After we examined the 37 disputed ballots, the results went this way; candidate Michael Brennan received 10 votes, candidate Sally G. Vamvakias received 11 votes, and ballots that counted for neither numbered 16 votes. So the committee did agree, unanimously, that the final vote total is Michael Brennan 3,275 votes and Sally G. Vamvakias 3,265 votes. No one disputes that. It is at this juncture, and having said these things and having them on the record, that I would ask that full Senate vote to permanently seat Michael F. Brennan of Portland as the duly elected Senator for Senate District 27. Thank you.

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

Senator **SMALL:** Thank you, Mr. President and men and women of the Senate. I wish that this was a unanimous report. I truly do. I've served with the good Senator-elect, or conditional Senator for the time being, Michael Brennan for a number of years on the Education Committee and I really like him. I like him a lot. It's been an effort for me to be a little hostile over these last couple of days because I really do like him, as I do the other candidate, Sally G. Vamvakias. They are both fine people and I think they would both make very good Senators for the people of Portland. Given the plenary authority that is granted by the constitution to this body to decide its own election, we felt it was appropriate to bring forth our concerns to the full Senate. The same concerns we shared in the committee. I, too, want to echo the good Senator from Cumberland, Senator Rand's, statements about the committee. At times it was contentious. Anything that deals with partisan issues often are. But at no time did I feel we weren't being treated fairly. I think having the Independent on the committee gave us a level of comfort, that it wasn't going to be an entirely party-line vote, and we felt that we had an opportunity to air all of our concerns and raise our objections. For that, I am very appreciative. As you know, this was a surprisingly close race. It looked to be a 20-vote difference and now it's down to 10 votes. What remains an issue, for those of us who were in the minority report, are, as the good Senator from Cumberland, Senator Rand, alluded to, the 36 absentee ballots which were postmarked in Portland on the same date or earlier as ballots that were counted. Some ballots made it in and some didn't. These 36 ballots were in the room during the official recount and have been in the custody of the City Clerk or the State Police the entire time. That is why we only contested these ballots and not others that may have been delivered or postmarked earlier but arrived afterwards. We don't know, and I hope nobody here today will attempt to even guess, what happened to make these ballots arrive after the election. We don't know what delayed them from being delivered to the clerk's office in City Hall. But we do know, or at least those of us on the minority report, that statistics tell us that it wasn't just chance. The 36 ballots that were postmarked in Portland were as follows: 12 ballots were postmarked March 2, 2002, one ballot was postmarked March 3, 2002, 23 ballots were postmarked March 4, 2002, and 8 ballots, which I would not have entertained any notion that they should be counted, were postmarked March 5, 2002. All of them arrived on March 6, 2002, the day after the election. The same time period that it took 8 ballots postmarked on March 5, 2002, is the same time period that it took 12 ballots that were postmarked on March 2, 2002. I just felt that was more than just, 'you know the US mail.' These were ballots that were postmarked in the City of Portland on Forest Avenue and did not make it to the City Hall, that is perhaps

a stones throw or at least a couple of blocks away. Would I recommend that all absentee ballots in the future be looked at according to their postmarks after an election? No. But we are given the authority today to count these ballots if we chose. Why would we, in this case? I think there were some extraordinary circumstances because of this being a special election. There was a 3-week period for voters to learn whom the candidate was for the Republicans and for them to decide to vote for that candidate, to request a ballot, and to get it back to City Hall. Granted, they could have gone to City Hall in person, if they were going to be gone or some other reason, if they were not able to go to vote. But for some people this was not an option. For some people, that is why they voted by mail. The fact that a husband and wife, who both voted the same day, had one ballot counted and one ballot not, just shows that there is something that is perhaps unusual in this situation and unusual enough for us to take another look at it. It basically comes down as an inconsistency that I can't explain. We looked, as we were looking over the postmarks than evening in the committee, for some explanation. Unfortunately, we received none other than 'this happens,' 'you can't trust the mail,' and 'you should have voted in person or someone should have delivered it.' I, in my mind, am not comfortable with that. I just feel that there were at least 36 voters who, as we said, did everything they were supposed to do and were then, somehow, denied their right to cast their vote in this election. Do I think this is going to be considered by the whole chamber? No I do not. I can add, and I understand that, and I accept those results. But I just felt that I wanted to let the men and women of this chamber understand what went on with our deliberative process and why we were not able, in the end, to accept the final outcome. I do want to say that after the vote today, and I'm sure that it will go for the good Senator, soon to be Senator, from Cumberland, Senator Brennan, that I will welcome him as one of this body and everything will be forgotten as far as this dispute is concerned. I look forward to that. But I really did feel that we needed to raise these concerns and objections that we had in a full airing of the Senate and not just in the committee. So that is our reason for not signing the majority report. I would like to add to the good, conditional Senator that after this is all over, I'd like to pass the olive branch by offering him a meal at Fat Boys, which opened yesterday. That's probably the highest honor that I can give anyone that I know. In the spirit of openness and goodwill, I hope you will take me up on that after this is all resolved. Thank you, Mr. President.

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

Senator **RAND:** Thank you, Mr. President and men and women of the Senate. I indeed thought that I had said all that I was going to say to this body on this matter. But the good Senator from Sagadahoc, Senator Small, did bring up a few things that probably we should flush out a little bit. One is the use of the existence of the plenary power that exists by constitution for not only the Senatorial Vote Committee but also this body, the full Senate. Similar power also exists for the other chamber. That is based on specific language in our state constitution that says the Senate may seat its own members. It does not go into great detail. It simply says that, but says emphatically that the Senate may seat its own people. By the same token, members of the other body may seat their own people. This is not new. This is in the Maine constitution. That existence of plenary power for the

chambers has existed for many, many years. We have had hundreds, if not thousands, of elections in this state, certainly since 1953. I will mention 1953 because I believe, and do stand to be corrected, that that is when we started to regulate or allow absentee ballots. There are some states even today that don't even allow absentee ballots and others who vote almost exclusively in that manner. So just humor me and allow me to use the 1953 date because my main point is that for many, many years we have had many, many elections in this state and we have had special elections. I would venture to say that at least one absentee ballot arrived at the polls after the polls had closed. This particular group of ballots has never been questioned by Democrats, by Republicans, by Libertarians, by Green Party members, or by voters who are unenrolled. Nobody has ever said 'we should count these ballots' because we went by the rules. The rules said, the law actually said, you have to get there before 8 o'clock, either through the mail or in person. You have to. Why do you suppose that law is on the books? It's because we have to start an election at a given time and we have to end it at a given time. Nobody has ever, no matter how close an election has been, said 'we have to count the ballots that the law says we shouldn't count'. Never. Now I know we have a person in the other chamber, I don't know if it was this election, but at some election, that won by one vote. I do know, for a fact, that there were some uncounted ballots, absentee ballots, that arrived after the polls closed and therefore were not counted. If we had decided, or the powers that be had decided, to count those ballots, would we have had a different outcome in that election? Possibly. But nobody brought it up. No side ever brought it up. Why? Because we have been operating for a good many years under the Maine Statute which says, in Title 21A, ballots have to arrive before the polls close. We are all familiar with nomination papers. We know that we have a certain date and they must be submitted by 5pm. How many of members, I ask you to ask yourselves, would take those precious nomination papers and put them in the mail, regardless of which part of the state you live in, 3 days before? Would you trust the mail to do that? You know darned well there is no grace period, 5pm means 5pm. They are either in or you're not on the ballot. It's that cut and dry. It's that simple. There is no other group with plenary powers to even appeal to. That's it. How many of you, and be honest with yourselves, you don't have to make your ideas public, would trust the mail at 3 or maybe even 4 days, depending on where you live in the state, or a week. Would you trust those precious papers to the mail? I would say, and I have done it myself, that I would drive the hour, and I have done it myself, to make sure that my papers were in. No question. They were stamped before 5pm on that given day. This particular issue has brought up a lot of different things for all the members of the committee. I think it's fair to say that we all learned something. I also think it's fair that we all think maybe there are some things that should be looked at. I personally do not think we should change the 8pm rule. Who's in is in and who's out is out because that is fraught with problems. But I do believe that if some legislator, or Governor, or department head feels that there is something wrong, the proper place to decide isn't with the 7 people with these plenary powers, which do exist, but with the full legislature. Why hasn't somebody in the past put in a bill that said 'we ought to deal with postmarked absentee ballots'? We've run into this situation before. Why didn't a piece of legislation appear? I've been here 16 years, nobody's put that bill before us. Do I think that would be a legitimate thing to do? I absolutely do think it's legitimate. Do I

think there are some things I learned about the election process that need to be looked at? I do. But that look should not be reserved to the 7 people, who, by the way, as an aside, under most circumstances, would be a majority of Republicans or Democrats. We were fortunate, in this case, to have an unenrolled member. But 9 times out of 10, you're going to find a majority party has control over those plenary powers. By the goodness and the ethical values of the people who have gone before us, none, whether they be Republican controlled or Democratic controlled, have ever said 'well, you know what, we're just going to change the rules here and we're going to go on and do something else.' They've all agreed that they would follow Maine Statute, which is precisely what this committee did in a unanimous vote. If there are things that need to be worked out, or looked at, or examined, let's do that in an open process. Put a bill in. Let both bodies look at it. Let the Governor look at it. Let the public come and give their input.

My second point is that, quite frankly, I'm a little disappointed. I could be wrong, but I felt that the good Senator from Sagadahoc, Senator Small, insinuated that there might have been some misconduct in that election. Nothing that we heard supported that. Nothing. In fact, if we were going to go on that theme, that there was some devilry afoot in Portland during this election, I would have to say how come 5 specimen ballots, which we did not count as votes, all went to the Democratic candidate? It's ridiculous, it's bazaar for me to make any statement like that. I think it's ridiculous and bazaar to assume that there was some type of misconduct. I'm sorry that I had to address that on the floor of the Senate. I thought we had each had our say on that in committee. With that, I would simply ask each of us to examine our consciences and vote our consciences. It is my hope that we will vote unanimously to permanently seat Michael Brennan. Thank you.

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

Senator **SMALL:** Thank you, Mr. President, men and women of the Senate. I just want to respond, very briefly, to the remarks by the Senator from Cumberland, Senator Rand, when she misconstrued my remarks to say that I had, in any way, said something had gone on that was illegal. What I had asked was that nobody makes those claims if the debate was going here today because we just don't know. There is no evidence to show that. I did not say that. I said that I thought something had happened that was not pure chance. That can run the entire gamut of things. It could have been that someone was ill that day and didn't pick up the mail from one post box. It could have been that a machine broke down. I don't know what it is and I would not infer what it could be because I don't have the evidence. All I was saying is that we just feel that it was not something that was natural and that's why we felt that this rose above the other instances in the past where votes were cast on the 4th or 5th and didn't arrive. Again, I just want to make sure this body and the public at large know that I, in no way, suggested that there was anything illegal or whatever going on. I have asked that no one else bring that up. What I suggested was that I do not believe that these ballots all received the same treatment. That's a very different thing. Thank you.

Off Record Remarks

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

Senator **GOLDTHWAIT:** Thank you, Mr. President, ladies and gentlemen of the Senate. I heard the word 'disappointment' a few minutes ago and I am not disappointed. In fact, after 8 years in this body, this has been an occasion for me that has lifted the Senate to a higher level. It was hard work, first of all, in a very busy time in our session to sort out the constitutional and legal issues. I think we only had one lawyer among us on the committee. Some people thought that was a good thing. At any rate, it was quite an assignment to understand the constitutional and statutory background for the issue that was put before us on which we were asked to make a recommendation to you, our colleagues. I think the Senator from Cumberland, Senator Rand, did an excellent job in her first comments, presenting the order and summarizing how this decision was made. I think the Senator from Sagadahoc, Senator Small, made a gracious and generous speech in which she accepted the results, expressed concerns, which, frankly, I shared as we looked at ballot envelopes. There were questions about the post office, but who among us has not had a question about the post office in the course of our daily lives. I think that the end point is that we had a mechanism to resolve this question of the election, that we employed it, that we worked through it quite quickly and entirely amicably. People have compared this to Florida, Zimbabwe, Bosnia and a few other places that have been brought up to me. I don't think it was like any of those. I think, once again, the Maine Senate has undertaken a very difficult assignment and resolved it in a manner that was both dignified, efficient, and legal. I am glad to say that we have reached a conclusion. I am thinking that in order for the lunch to be as balanced as the committee was, the Senator from Sagadahoc, Senator Small, and the Senator from Cumberland, Senator Brennan, really ought to include an independent at that lunch and I would be more than happy to attend. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Shorey.

Senator **SHOREY:** Thank you, Mr. President, men and women of the Senate. First of all, I'd like to voice my appreciation to the good Senator from Cumberland, Senator Rand, for running our meetings. Our meetings, I think, were very fair. She did a great job under some tough circumstances. She had a lot of help from her co-chair, Senator Martin of Aroostook, at times. But I think she did a great job. I will not be supporting this measure based on the reasons that I gave in committee. We had the opportunity to let the people from the district decide. I don't know how those absentee ballots were voted. I don't know whom they voted for. Nobody does. But we would have had a clear, concise winner at that point in time. That is why I won't be supporting this, but I will be supporting the good Senator, once he is a Senator, because I have a great deal of respect and appreciation of this institution and this body. When a person is a Senator, they deserve that respect.

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

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

Senator **TURNER:** Thank you, Mr. President, ladies and gentlemen of the Senate. I, too, would like to thank the Senator from Cumberland, Senator Rand, for her conduct in the meetings. I think I also would like to single out the Senator from Hancock, Senator Goldthwait. Frankly, she was in the most difficult position and all the eyes turned to her. She worked very, very hard, as did every member, to be fair. I think a special burden was with her. I think she listened carefully, was very thoughtful in her deliberations, and voted her conscience and voted fairly. My thank you for the work that she did. I also want to say that I've known Mike Brennan for many years. We first became associated in Cumberland County when we served together on the Affordable Housing Alliance back in the 1980's. When I first became a Senator and lap top notes were filling my e-mail box, I went to Mike and sought guidance because he had served on the Education Committee and worked on the special committee in off-session to try to shape and craft the proposal that I now believe is embodied in the budget that, hopefully, we will vote on in the next few days. He's a capable and good man. I will, also, welcome him heartily and look forward to working with him once he is seated. However, I am also not going to vote for the motion. The legal arguments have been advanced back and forth. I've said on occasion that I'm not an attorney but I could play one on television. I would say that, from an academic standpoint, I think all of us learned a great deal about the law. That in itself, in an academic sense, was very enlightening. I, as my other Republican colleagues on the committee, have so stated that the absentee ballots, in this case, should have been considered. There was a class of ballots that were mailed on the 4th that were counted. We had identified a class that were mailed on the 4th and earlier that were not. There is a provision called equal protection and that's the extent of what I'm going to lecture you on with regard to legal matters. Unless there are other things that have to come before us at this time, I would suggest that we move on and seat the Senator from Cumberland, Senator Brennan, permanently. Thank you.

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

Senator **MARTIN:** Thank you very much, Mr. President, members of the Senate. It was not an easy decision for many of us to try to decide as to whether or not the state law should be followed and be used as a guide. It was clear that plenary authority is given to the seating of members of this body. The constitution is clear. I asked the former Chief Justice whether or not a write-in candidate, in violation of state law and term limits, could be seated and the answer to that was yes. But it was clearly in violation of the voter's intent when they enacted term limits. That became, in my opinion, the decision we had to make. After two days, we basically voted unanimously that we would use state law as a guide. The process proceeded from that stage. There are a number of provisions in the election laws today that clearly spell out the time period for absentee ballots. A number of years ago it actually used to be 5 o'clock. Some of you may

remember that. Any absentee ballot received after 5 o'clock on election day was not counted. The legislature felt, back about 12 or 13 years ago, that this was not fair because why not keep it until 8 o'clock and the law was changed. If members believe that we ought to count, as IRS does with your tax return by using the seal of the federal post office as a basis, so be it. But that is not the law today. There is another provision in state law that basically said, and I will read it. It was enacted in public law 1921, 'ballots received at the close of polls to be retained by the clerk until the time set for destruction of regular ballots, all envelopes received by clerk of towns and cities after the hour affixed for the closing of the polls on the day of the election should be retained by them, unopened, until the time set by law for the destruction of ballots cast at said election, at which time the envelopes shall likewise be destroyed, unopened and unexamined.' That, to me, is very clear. So it basically became, from my point of view, a decision of whether or not we were going to follow the law that we tell the cities and clerks of this state to follow. I voted to do that. All 7 of us also signed the results of the vote totals, which is found on Supplement 8. So the only question left before us is the permanent seating of Michael Brennan of Portland. That is the only question left before us. All the others have been decided. I really cannot see why we would not unanimously do that. I fear that if we don't, we are potentially setting up the ability of either party, if we don't have members that happen to be unenrolled sitting here, making the decision on what is truly, purely, and simply a political matter. To me that sets a very dangerous precedence.

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

Senator **MILLS:** Mr. President and men and women of the Senate, I rise briefly. I was a witness to some of the proceedings of the committee and I was impressed with how it was managed. I was impressed by the chair's and management of the process. I was impressed by the orderliness and the sequence in which the committee confronted the several issues presented to it. But I need to say one thing that came home to me with some force as I was listening to your proceedings and reviewing some of the legal issues. In my own mind, I think these were highly challenging and I think they deserve a little comment before we close these comments. In doing some quick research on this provision of the constitution that says 'each house shall be the judge of the elections and qualifications of its own members.' There are comments on those phrases that go back to 1830. I, therefore, must assume that these words were written at the Constitutional Convention in 1819 in Portland and I think that they haven't been changed at all. They pre-date virtually all of our election laws, including the one that is under discussion this morning, the one that requires that ballots be delivered prior to the close of the polls. I think the people who drafted these words in 1819 really had two choices. They could say, 'look, we can take contested elections and throw them into the courts. That's the place where there is finality. That's a place where contested issues come to rest and are resolved. That's a place with a form of plenary power.' That's what scary about being a judge, you have that power and you know it. 'Or we can create another court, a court that is temporary, that has jurisdiction over this issue and this issue alone. That court could be the Senate.' The Senate of the state, which becomes a court for the purpose, the limited purpose of judging the qualifications and the elections of its members.

This, in my view, means that they wanted that decision to go to a place where justice, in the broadest sense, could be done without necessarily conforming to laws of lesser statute. In this case, we have a situation where my seatmate passed away on January 14th, and 9 days later we had an order from the Governor calling for a special election. There was a rapid gearing up among candidates for this election, some 5 or 6 candidates qualified to get onto the ballot. All of this was done in a great hurry. It was not your ordinary election. This is not a standard, 1st Tuesday in November, process for which everybody gets geared up. It wasn't even the primary election for which we all prepare and look forward to for months at a time. This was an election called in the space of just a few weeks. All of the campaigning was done rapidly. It stands to reason that the process of getting absentee ballots and filing them and getting them prepared and getting them returned, it's a two-step process, isn't it. You have to fill out the application and then you have to get your ballot. If you happen to be away during that frame of time, in Florida as some people are that season of the year, it becomes difficult to fulfill the letter of the law. I think it's an entirely respectable thing for this Senate, not the committee of this Senate, but for this Senate to say 'look, I think we should have at least looked at ballots that had decipherable postmarks that were 3 and 4 days in advance of the election.' I think that is a respectable position for this Senate to take as the judge of its own elections and its own membership. I respect the alternative view as well, but I think this is a very interesting discussion. It reaches right into the very sources of governmental power. It's been a fascinating experience to have observed. I want to congratulate those of you who were on the committee and struggled through it. I, too, have known Michael Brennan for a long time and I will hope to call him my friend in 10 minutes. Thank you.

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

Senator **DOUGLASS:** Thank you, Mr. President. I did not participate in this committee. One of the outstanding values of my service here or the outstanding moment and feelings I have about this body is the confidence I hold in every member here. I felt quite secure in knowing that the Committee on Senatorial Vote would do its work well, would look into all matters that they felt they needed to attend to, and would come back to us with a recommendation that was just. Here today we have a plenary power. I think it's very important that we remember that that power sets a course and when we vote today it really is about where our moral compass is. Some have said that they would include counting votes that came in after the deadline. I think if you hold that position, you have to determine that that rule allows other votes than just the ones that were at issue in this particular election. I suggest to you that that is a course that ought to be debated by the entire body and not decided here, where we have such a fragile balance. I hope that when we vote, it will be a unanimous vote, because the recommendation of our Committee on Senatorial Vote was very clear in assessing the votes that were counted. I think that is the direction in which we must exercise our plenary power. We have the power to exercise that for the good of this body. I would urge that we do so. Thank you.

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

Senator **MCALLEVEY:** Thank you, Mr. President, men and women of the Senate. I sat and listened to this interesting discussion. I'll make just two brief comments. Our plenary power belongs to the people of the State of Maine who lend it to us, temporarily. I would never question the motives of any Senator in this body as to how or why they vote.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#261)

YEAS: Senators: BROMLEY, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, GOLDTHWAIT, KILKELLY, LAFOUNTAIN, LONGLEY, MARTIN, MICHAUD, NUTTING, O'GARA, PENDLETON, RAND, ROTUNDO, TREAT

NAYS: Senators: CARPENTER, DAVIS, FERGUSON, KNEELAND, LEMONT, MCALLEVEY, MILLS, MITCHELL, SAVAGE, SAWYER, SHOREY, SMALL, TURNER, WOODCOCK, YOUNGBLOOD, THE PRESIDENT - RICHARD A. BENNETT

ABSENT: Senator: BRENNAN

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, on motion by Senator **RAND** of Cumberland, the Senate Order was **PASSED**.

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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

Senator **GOLDTHWAIT** of Hancock was granted unanimous consent to address the Senate off the Record.

Senator **LONGLEY** of Waldo was granted unanimous consent to address the Senate on the Record.

Senator **LONGLEY:** Given the debate today, I would ask that when we adjourn, we do so in honor of our fallen colleague, the good Senator from District 27, Cumberland County, Senator Joel Abromson. We go off in his honor. Thank you.

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

Off Record Remarks

On motion by Senator **LONGLEY** of Waldo, **ADJOURNED**, to Monday, March 25, 2002, at 10:00 in the morning, in memory of and lasting tribute to Senator I. Joel Abromson of Cumberland County.