

**STATE OF MAINE  
ONE HUNDRED AND TWENTY-SECOND LEGISLATURE  
FIRST SPECIAL SESSION  
JOURNAL OF THE SENATE**

In Senate Chamber  
Thursday  
April 14, 2005

Senate called to order by President Beth Edmonds of Cumberland County.

Prayer by Reverend Canon Henry Male of the St. Barnibus Episcopal Church of Rumford.

**REVEREND MALE:** May I first begin by saying the letter said it had to be non-sectarian, non-political, and I'm not even here. Just let you think about that for a while. I'm a non-person.

First of all, I want to thank you all for allowing me to be here with you today. This invitation is very kind and gracious, I feel. For the people of Maine, I hope I represent them to some degree today. I want to just quote from the Reverend Peter Marshall, who used to be chaplain to the Congress. He made a remark one time as a prayer. He said, 'Lord, please, with all the things they have to decide upon, the heaviness and the weightiness of their concerns, Lord, have mercy on their souls.' That's not my prayer. Let us pray now.

Thank You, almighty God, for the State of Maine. As Your people wake to the first light of day, You prepare nourishment for body and soul with clam chowder, herring, clams, lobsters, blueberries, and potatoes. From such blessing our forefathers distilled their rugged liberty. Grant us grace to win the same, along country roads and wooded lands, on rocky shores, and in a thousand lakes. May these, your servants, all receiver Your guidance in their decision-making. May they be blessed and be a blessing in their work, not for partisan gain but for the common good of the people of Maine. May they sense and know that it is a sacred trust with which they have been endowed. May they be responsive to those who are not only Mainers but all those who vacation here or who now live here from other parts of the world. This we pray to You and through You, the author and finisher of all that is good and all that is holy. Amen.

Doctor of the day, Dr. Richard Flowerdew of Falmouth.

Reading of the Journal of Wednesday, April 13, 2005.

Off Record Remarks

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

**ORDERS**

**Joint Order**

On motion by Senator **BRENNAN** of Cumberland, the following Joint Order:

S.P. 552

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, April 26, 2005, at 10:00 in the morning.

**READ and PASSED.**

Ordered sent down forthwith for concurrence.

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

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act To Amend the Potato Industry Licensing Laws"  
H.P. 1110 L.D. 1572

Comes from the House, **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed.

On motion by Senator **BRENNAN** of Cumberland, **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed, in concurrence.

Bill "An Act To Require Random Drug Testing for Emergency Vehicle Operators"  
H.P. 1108 L.D. 1570

Comes from the House, **REFERRED** to the Committee on **LABOR** and ordered printed.

On motion by Senator **STRIMLING** of Cumberland, **REFERRED** to the Committee on **LABOR** and ordered printed, in concurrence.

**COMMUNICATIONS**

The Following Communication: S.C. 170

**MAINE STATE LEGISLATURE  
COMMITTEE ON JUDICIARY  
AUGUSTA, MAINE 04333**

April 12, 2005

The Honorable Beth Edmonds  
 President of the Senate of Maine  
 122nd Maine Legislature  
 State House  
 Augusta, Maine 04333-0003

Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 122nd Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Honorable Ronald A. Daigle of Fort Kent, for reappointment as a District Court Judge.

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	3	Bromley of Cumberland, Hasting of Cumberland, Hobbins of York
	Representatives	10	Bryant of Windham, Bryant- Deschene of Turner, Canavan of Waterville, Carr of Lincoln, Dunn of Bangor, Faircloth of Bangor, Gerzofsky of Brunswick, Nass of Acton, Pelletier- Simpson of Auburn, Sherman of Hodgdon
NAYS		0	
ABSENT		0	

Thirteen 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 Ronald A. Daigle of Fort Kent, for reappointment as a District Court Judge be confirmed.

Signed,

S/Barry J. Hobbins  
 Senate Chair

S/Deborah Pelletier-Simpson  
 House Chair

**READ and ORDERED PLACED ON FILE.**

The President laid before the Senate the following: "Shall the recommendation of the Committee on **JUDICIARY** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 122<sup>nd</sup> Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#62)**

YEAS: Senators: None

NAYS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, CLUKEY, COURTNEY, COWGER, DAMON, DAVIS, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MITCHELL, NASS, PERRY, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

ABSENT: Senators: DIAMOND, MILLS, NUTTING, PLOWMAN, TURNER

No Senator having voted in the affirmative and 30 Senators having voted in the negative, with 5 Senators being absent, 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 **Ronald A. Daigle** of Fort Kent, for reappointment as a District Court Judge was **CONFIRMED**.

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

The Following Communication: S.C. 171

**MAINE STATE LEGISLATURE  
 COMMITTEE ON JUDICIARY  
 AUGUSTA, MAINE 04333**

April 12, 2005

The Honorable Beth Edmonds  
 President of the Senate of Maine  
 122nd Maine Legislature  
 State House  
 Augusta, Maine 04333-0003

Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 122nd Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Honorable Thomas E. Delahanty II of Falmouth, for reappointment as a Superior Court Justice.

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	3	Bromley of Cumberland, Hasting of Cumberland, Hobbins of York	L.D. 1042	Resolve, To Ensure Disclosure in Real Estate Transactions
	Representatives	10	Bryant of Windham, Bryant- Deschene of Turner, Canavan of Waterville, Carr of Lincoln, Dunn of Bangor, Faircloth of Bangor, Gerzofsky of Brunswick, Nass of Acton, Pelletier- Simpson of Auburn, Sherman of Hodgdon	L.D. 1046	An Act To Place Seasonal Businesses in a Lower Workers' Compensation Bracket than Year-round Businesses
				L.D. 1222	An Act Regarding Cancellation of Disability Insurance

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

NAYS 0  
ABSENT 0

Thirteen 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 Thomas E. Delahanty II of Falmouth, for reappointment as a Superior Court Justice be confirmed.

Signed,

S/Barry J. Hobbins  
Senate Chair

S/Deborah Pelletier-Simpson  
House Chair

**READ and ORDERED PLACED ON FILE.**

On motion by Senator **BRENNAN** of Cumberland, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION.**

The Following Communication: S.C. 168

**MAINE STATE LEGISLATURE  
COMMITTEE ON INSURANCE AND FINANCIAL SERVICES  
AUGUSTA, MAINE 04333**

April 7, 2005

Honorable Beth Edmonds, President of the Senate  
Honorable John Richardson, Speaker of the House  
122nd Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Edmonds and Speaker Richardson:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Insurance and Financial Services has voted unanimously to report the following bills out "Ought Not to Pass":

Sincerely,

S/Sen. Nancy B. Sullivan  
Senate Chair

S/Rep. Anne C. Perry  
House Chair

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

The Following Communication: S.C. 169

**MAINE STATE LEGISLATURE  
COMMITTEE ON UTILITIES AND ENERGY  
AUGUSTA, MAINE 04333**

April 7, 2005

Honorable Beth Edmonds, President of the Senate  
Honorable John Richardson, Speaker of the House  
122nd Maine Legislature  
State House  
Augusta, Maine 04333

Dear President Edmonds and Speaker Richardson:

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

L.D. 1051 Resolve, Establishing a Study Commission To  
Examine Water District Fees Assessed for Fire  
Suppression

L.D. 1052 An Act To Require Municipalities To Institute  
Sewer Service Charges

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Philip L. Bartlett II  
Senate Chair

S/Rep. Lawrence Bliss  
House Chair

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

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**SENATE PAPERS**

Bill "An Act To Assist Towns with the Implementation of the Laws Governing Growth Management"

S.P. 551 L.D. 1574

Sponsored by President EDMONDS of Cumberland.  
Cosponsored by Representative KOFFMAN of Bar Harbor and Senators: BROMLEY of Cumberland, DIAMOND of Cumberland, ROTUNDO of Androscoggin, STRIMLING of Cumberland, Representatives: DUCHESNE of Hudson, PIOTTI of Unity, WOODBURY of Yarmouth.

On motion by Senator **COWGER** of Kennebec, **REFERRED** to the Committee on **NATURAL RESOURCES** and ordered printed.

Sent down for concurrence.

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

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

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

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Off Record Remarks

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**RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

**THE PRESIDENT:** The Chair is pleased to recognize today the Legislative Scholarship Award recipients. I will be requesting that each recipient and their Senator come to the front of the chamber to receive their scholarship and for a photo opportunity. This is a little bit out of order, but we are so pleased with these young people and this scholarship program that we are taking this time to do this.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Kennebec, Senator Cowger, and Caitlin Dionne to the front of the chamber. Caitlin's father, Peter, is here today on behalf of his daughter. Caitlin attended Hall-Dale High School in Hallowell and is attending the University of Maine at Orono, earning a degree in Biology.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Knox, Senator Savage, and Dustin Hilt to the front of the chamber. Dustin's mother, Joanie Hilt, and grandmother, Nancy Griffin, are here today accepting the award on Dustin's behalf. Dustin attended Georges Valley High School in Thomaston and is attending Colby College, earning a degree in Political Science.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Lincoln, Senator Dow, and Kathryn Hassett to the front of the chamber. Kathryn attended Medomak Valley High School in Waldoboro and is attending the College of the Atlantic, earning a degree in Human Ecology.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Sagadahoc, Senator Mayo, and Jeffrey Boivin to the front of the chamber. Jeffrey attended Richmond High School and is attending Thomas College in Waterville, earning a degree in Criminal Justice Administration.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Somerset, Senator Mills, and Natasha Nelson to the front of the chamber. Natasha's mother, Sharon, is here today accepting the award on behalf her daughter. Natasha attended Skowhegan High School and is attending Husson College, earning a degree in Physical Therapy.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Washington, Senator Raye, and Janice Rice to the front of the chamber. Janice is also a non-traditional student. She is a single mother of three who is attending the University of Maine at Machias, earning a degree in English.

The Chair would request that the Assistant Sergeant-At-Arms escort the Senator from Piscataquis, Senator Davis, and Scott Lavigne to the front of the chamber. Scott attended Greenville High School and is attending Bowdoin College, earning a degree in Economics.

The Chair is pleased to recognize the family members who have escorted the award recipients to the State House today. You have seen many of them already, but I'd like them to stand. Mr. and Mrs. Dunlap; Joni and Doug Hilt; Nancy Griffin; Angela and Larry Boivin; Sally Jo Goodwin; Ann and John Hassett; Sally Foster; Julie Boivin; and Judy Lavigne. Would you please and receive the greetings of the Maine Senate.

I think this legislature can take great pride in the young people and our ability to give them some assistance in their educational pursuits.

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Off Record Remarks

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**ORDERS OF THE DAY**

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

NOMINATION - of the Honorable Thomas E. Delahanty II of Falmouth, for reappointment as a Superior Court Justice

Tabled - April 14, 2005, by Senator **BRENNAN** of Cumberland

Pending - **CONSIDERATION**

(In Senate, April 14, 2005, Communication (S.C. 171) from the Committee on **JUDICIARY, READ** and **ORDERED PLACED ON FILE.**)

The President laid before the Senate the following: "Shall the recommendation of the Committee on **JUDICIARY** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 122<sup>nd</sup> Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#63)**

YEAS: Senators: None

NAYS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, CLUKEY, COURTNEY, COWGER, DAMON, DAVIS, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

ABSENT: Senators: DIAMOND, TURNER

No Senator having voted in the affirmative and 33 Senators having voted in the negative, with 2 Senators being absent, 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 **Thomas E. Delahanty II** of Falmouth, for reappointment as a Superior Court Justice was **CONFIRMED**.

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

**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **TAXATION** on Bill "An Act To Clarify the Law Regarding Transfer Tax Liability for Deeds between Domestic Partners"

H.P. 22 L.D. 19

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-116)**.

Signed:

Senators:

PERRY of Penobscot  
STRIMLING of Cumberland

Representatives:

WOODBURY of Yarmouth  
HANLEY of Paris  
McCORMICK of West Gardiner  
PINEAU of Jay  
HUTTON of Bowdoinham  
SEAVEY of Kennebunkport  
WATSON of Bath

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

Signed:

Senator:

COURTNEY of York

Representatives:

CLARK of Millinocket  
CLOUGH of Scarborough  
BIERMAN of Sorrento

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-116)**.

Reports **READ**.

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

On motion by Senator **WESTON** of Waldo, 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 Perry.

Senator **PERRY:** Thank you, Madame President, ladies and gentlemen of the Senate. It's a very simple bill. A couple of years ago we set up a domestic partner registry to guarantee legal rights to domestic partners. Married couples can transfer property between themselves with no real estate transfer tax. Parents can transfer to children. We also have a bill in the

Taxation Committee where we are hoping to extend that from grandparents to grandchildren, where you can transfer property without the real estate transfer tax. We set up the registry to extend the same legal protection. This is just one that we need to go ahead and pass to level the playing field. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Penobscot, Senator Perry to Accept the Majority Ought to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#64)**

**YEAS:** Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, RAYE, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

**NAYS:** Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, MILLS, NASS, PLOWMAN, ROSEN, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK

**ABSENT:** Senators: DIAMOND, TURNER

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **PERRY** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

**READ ONCE.**

Committee Amendment "A" (H-116) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Senate**

**Ought to Pass As Amended**

Senator BRYANT for the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act To Allow Electronic Calling Devices for Hunting"

S.P. 88 L.D. 268

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-80).**

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

**READ ONCE.**

Committee Amendment "A" (S-80) **READ** and **ADOPTED**.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Institute Loser-pay Litigation in the State of Maine" S.P. 14 L.D. 34

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

Signed:

Senators:  
HOBBS of York  
BROMLEY of Cumberland  
HASTINGS of Oxford

Representatives:  
PELLETIER-SIMPSON of Auburn  
FAIRCLOTH of Bangor  
GERZOFKY of Brunswick  
CANAVAN of Waterville  
BRYANT of Windham  
DUNN of Bangor  
NASS of Acton

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

Signed:

Representatives:  
SHERMAN of Hodgdon  
CARR of Lincoln  
BRYANT-DESCHENES of Turner

Reports **READ.**

Senator **HOBBS** of York moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On motion by Senator **DAVIS** of Piscataquis, 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 Aroostook, Senator Clukey.

Senator **CLUKEY:** Thank you, Madame President, ladies and gentlemen of the Senate. Since this is the only bill this session that I have that will make it to the floor of either the House or the Senate I feel I have to speak on it. I hope you will oppose the Ought Not to Pass report and support the minority motion of Ought to Pass. My inspiration for submitting this bill was spawned by two basic ideas that prevail in our culture today. One is that people are not responsible for their actions anymore. Two, the person who subjects another to a lawsuit can simply walk

away when they loses. Today an attitude also prevails that everyone has the right to his day in court, regardless of the merit of his case. Lawsuits are sometimes the only way a citizen can right a wrong, but throughout most of our history, you couldn't drag somebody into court without first creating a plausible case against him. There used to be a sense of balance. Keeping people from being hurt by ill founded allegations was just as important as righting a wrong. Anyways, the theory today is maybe you'll win, but if you don't you just walk away and leave the defendant with all the attorney fees. There are countless examples of the negative effect of needless litigation in our country and state today. The most mentioned is the increase cost in health insurance due to needless litigations in the healthcare field. As far back as the early 1990's, John Shepard, the past President of the American Bar Association said it's impossible to calculate the cost to society associated with needless litigation and that the need for altering our present system is demonstrated daily.

I'd like to read two very important provisions in this bill that seemed to be overlooked by a lot of the folks opposing this bill. Section A, attorney's fees under this subsection must be paid by the non-prevailing party but may not exceed the amount of the attorney's fees of the non-prevailing party with regard to that position or claim. Section E, which is another very important provision, says the court may, in its discretion, limit the fees recovered under this subsection to the extent that court finds special circumstances that make payment of those fees unjust. Those two provisions right there are safety valves, I feel, in this legislation.

I hope you will oppose the Ought Not to Pass and vote for the Ought to Pass minority report. Thank you very much.

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

Senator **HOBBS:** Thank you very much, Madame President and members of the Senate. I have a great deal of respect for my colleague from Aroostook, Senator Clukey. I know that he presented this bill with great sincerity and on the surface you might ask yourself if that might be a reasonable thing to ask. If you bring a case and you lose, then should pay for the consequences. On it's surface it looks like it might be meritorious. Essentially what we are doing is we're reverting back to our British ancestors, and those who came over to this country, that had a system of a loser pay lawsuit process. That still exists in Great Britain, but it doesn't exist in the United States. This bill, if enacted, would dramatically shift our legal system from one where the general rule is that each party will pay for their own attorney's fees, often referred to as the American Rule. As I mentioned, the other way, as suggested by the good Senator from Aroostook, Senator Clukey, is referred to as the British Rule.

The intent of L.D. 34 will reduce the number of lawsuits in Maine. I think that result could probably be realized if enacted. I ask you to weigh several considerations before deciding to make such a dramatic policy change in our legal system. First, our current system has several mechanisms in place to deter what is known as frivolous suits. The main mechanism is in the rules of our court known as Rule 11 of our Civil Rules of Procedure. Rule 11 is a very solemn rule, one that, unless followed, can get an attorney disbarred permanently, for life. Some of us refer to it as 'taking our ticket away.' It's a very, very solemn thing for a lawyer to sign a pleading if there are no meritorious arguments stated in

that pleading. Are there suits that are filed in violation of Rule 11? Probably there are, just like in every other profession. A lawyer's signature, though, on these pleadings or a motion filed in court represents an action that is warranted by law. It states that a claim is valid and the factual contentions in the evidentiary support is there in order to substantiate that claim.

There is another mechanism in our statutes in our American system to deter frivolous suits. That is in the fact that the plaintiff in a case incurs not only the impact of the harm that is generated in the lawsuit but also attorney's fees if, in fact, someone makes an offer of judgment. An offer of judgment means during the course of a proceeding, if a defendant in a case makes an offer to settle the case for, let's say, \$20,000 and the plaintiff says no, and the case comes back and the plaintiff receives less than \$20,000, then the expenses incurred, under Maine law and the rules of court, are borne by the party that didn't reach the threshold. This means the plaintiff in the case I just mentioned, who didn't get the \$20,000 by a jury or by a judge in a court case.

There are two present mechanisms that defer frivolous suits. I think our concern with this particular bill, and I know my concern, goes beyond frivolous lawsuits, because that has always been an argument that has been made. Basically, my concern is one of impacting and deterring meritorious suits, suits that have a good case, a good cause of action. Instituting this loser pay system, or the British Rule system, will erode our citizen's access to justice for fear of a financial repercussion if you bring a case and lose a case. If some client came to see me, if we had a loser pay system, and presented a case to me that was meritorious in nature, I would be committing malpractice and be sanctioned to the overseers of the bar sanctions if I didn't tell the client this, 'You understand that you have a very good case, I think very strongly you might prevail in this case. You're up against a major cooperation and they are going to expend, because it might set a precedent, hundreds of thousands of dollars in legal fees.' If you lose, you most likely will have to pay those legal fees.' That's the problem with this bill. It's a David and Goliath situation. If you have money and you are wealthy, or you are a big corporation, you will benefit by this bill. There are a lot of our constituents, in all of the different places we represent and the municipalities we represent, that have good lawsuits but will be deterred because of the threat of having a major corporation, with their battery of attorneys from those big law firms in Boston, New York, and Washington D.C., come to Maine with their big legal bags, all five or six of them sitting at the table, possibly against one or two of my brothers and sisters in the bar in Maine. If they prevail, the major corporation in a case, even though it was a good case, but if for whatever reason, the jury found that it did not have all the weight it should have had, the loser in that case, one of our constituents who aren't among the wealthy or doesn't have the corporate pocketbooks behind them, will have to pay. The court system should not only be available to those who have money or those who have the power of the court system through their legal means. Access of justice and equality under law is an important pretense of how our country was founded. I believe this bill will unbalance that access to justice. Thank you very much and I hope you will vote for the Ought Not to Pass report.

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. I'm not an attorney but I sure enjoy

hanging out with the ones on the Judiciary Committee. Just a couple of points of clarification regarding this bill, paragraph 6A reads, 'Attorney's fees under this section paid by the non-prevailing party may not exceed the attorney's fees of the non-prevailing party.' There will be no big law firm coming to Maine and getting a whole lot of money unless the person who brought the suit invested that much money as well. Paragraph E also allows the court, in its discretion, to limit the fees recovered under this subsection to the extent that the court finds special circumstances that may make payment of those fees unjust. There is a lot of discretion left to the judge as to whether the fees will actually be assessed, and when they are assessed, they may be no more than what the plaintiff invested. There is also a provision that takes into account contingent fee agreements, which are often signed in these plaintiff-type litigation cases. That also limits the amount of fees. Please understand that the bill has not gone hog wild. It has said that if you are going to file a suit, you may end up having to pay the same amount to another attorney as you did to your attorney to pursue it. If a judge can look at it and say that you can't possibly do this, he may order that there will be no fees. This is not a loser pay all situation. There is much discretion left to the court and the proposed legislation is very reasonable about recognizing that there could be forces as were earlier described. I ask you to oppose the pending motion.

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

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. It's hard to keep your seat when these things come up. I can live with this bill either way. It's the English Rule, the English lawyers are quite well to do. I've met many of them in my travels. The interesting thing is that in England they actually apply the rule to the state. If the state prosecutes somebody and they lose, then the state has to pay the fees. It works well. We have had this rule, or a modification of it, in Workers' Compensation for about a dozen years or so. It was called the Prevail Rule. The difference was that in Workers' Compensation you were not permitted to charge your client unless you prevailed. It really puts some teeth in the game. It meant that you had to screen your cases very carefully. You didn't take Workers' Compensation cases unless you had good reason to believe that the client had a good case and you were going to prevail. Only when you prevailed did you get paid and you could not collect anything out of the client. You could only collect from the employer who loses. That led to very successful screening of bad Workers' Compensation cases. The legislature, in its wisdom, with the Blue Ribbon Commission in 1992, did away with that system and I think that was a mistake. We now have privatized legal aide for Workers' Compensation clients, at a great expense to employers, and we don't have an effective screening mechanism for bad cases.

Getting back to the bill at hand, however, it is well crafted. It's well written. I commend the sponsor and it will create a major shift in the economic consequences of litigation. I will share with you one of the major consequences and then I'll sit down. When there are claims made on behalf of injured people, in an automobile setting or medical malpractice setting or if someone is injured by a product that explodes and harms them, then the custom is now that the injured person has to pay his own council fees out of any successful recovery, often in a contingency fee

setting. It greatly diminishes the amount of money that is going to the injured party. In the medical malpractice area, where the technical side of litigation is so very difficult and where often a lot of expenses and council fees are generated, on both sides, in order to litigate a medical malpractice claim, it is often said that the net recovery to injured people in the medical malpractice setting is a very small portion of the amount of money that is flowing through that insurance system. That is a legitimate criticism of that system. The cases are so difficult, and often times the resistance from the medical community to acknowledge any nature of responsibility is rather extraordinary. In any case, if the injured party in an automobile accident case or a medical malpractice case prevails, the nice thing about this bill is that they will be able to get the cost of the litigation and the council fees out of the defendant, who resisted the claim, perhaps inappropriately. It would add to the recovery of injured people. The money doesn't come out of no place, of course. It comes out of insurance premiums for medical malpractice. It comes out of insurance premiums for automobiles and the liability component of your homeowner's policy and the premium you pay for general liability insurance on a business. It will increase premiums. You say, 'Well maybe it will work the other way too so that the injured party will have to pay the insurance company when the injured party loses.' Well good luck. Most injured parties that I've represented who lost were lucky to be able to hobble out of the courtroom, let alone go to work and pay a bill to the insurance company. Bankruptcy, in large measure, will protect most or many, let's say, of the injured people who don't prevail. There will be no protection for the insurance carriers because they will have to pay when they lose. Middle class people, people who make \$20,000 or \$25,000 a year and get hurt in an automobile accident or are injured by medical malpractice and have a home worth \$80,000, those folks, when they go to court on an injury case and lose, can afford to pay the other side's council fees and it may be devastating to them. It may have an adverse impact on middle class access to the court system and poor people will still have access, as they always have had. When they win they will have their council fees paid through insurance carriers.

I can live with this system, and quite honestly, I'm not even sure how I'm going to vote. Thank you.

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

Senator **HASTINGS:** Thank you, Madame President, ladies and gentlemen of the Senate. One thing that I've learned here already is that if there is bi-partisanship here, as there is in the rest of the state and in the country, it's almost a uniform agreement that much of society's problems stem from lawyers. If I thought I was here defending a bill for lawyers, I would surrender and sit down. This is not really a lawyer's bill, as the good Senator from Somerset, Senator Mills, indicated. Lawyers are still going to be paid. That's not the issue. This is really a consumer bill. I think what it comes down to is do we want the doors of justice or the halls of justice, to be perhaps a little bit too wide open or closed too much? We've heard the points made that there maybe some frivolous lawsuits. There probably are, although I think by in large those are often brought by pro se litigants, people representing themselves. This bill provides no relief there because they have incurred no fees. What it really does, the real impact of this, is to put a chilling effect on the case that may not be clear-cut. As most lawyers will tell you, and as I



think you would understand, most cases brought to court are not clear-cut. There are issues. There are points on both sides of the case. It's only the parties involved that believe that the other side's position is always frivolous. That's almost a given. Other than that, most lawyers and most people, when they look closely at any case file, will see that there are two sides to this story. Somebody is going to win and somebody is going to lose. That doesn't mean the other side was frivolous. As has been pointed out, the Goliaths of this world will not be deterred by this. It's the David's that will be deterred. They are going to have to put their personal assets on the line to bring a case that maybe a good case, but that you have a chance of losing on. What are you going to do? Are you going to just leave Goliath out there because you might lose this case and you might lose your house on this. You may think you'd better leave sleeping dogs lie. I really think it's a consumer case and in a way it's an anti-consumer case, in that regard.

One other thing that should be pointed out, as was pointed out in our committee by the Office of Consumer Credit Regulation, this really throws a wrench into many of our consumer credit laws. The Maine Consumer Credit Code, the Maine Fair Debt Collections Practice Act, and the Maine Credit Reporting Act all allow for the little guy, the complainant, to collect attorney's fees against the big guy that they are bringing the suit against but doesn't allow it vice versa. Now, we're saying that, in the Maine Consumer Credit Code, that the corporate defendant will have redress for attorney's fees against the plaintiff. We have shifted that balance entirely. As I made the point this morning, I'm a real estate lawyer. It doesn't make any difference to me. I think it does to the consuming public. We would be shifting things in the wrong direction and I urge that you support the Ought Not to Pass. Thank you.

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

Senator **BARTLETT:** Thank you, Madame President. I rise to join the chorus of lawyers who are speaking on this bill today. I agree that, at its core, this bill is not about lawyers. It's not about helping or hurting lawyers. It's about access to justice. It's about access not just for individuals. We often have in our minds a picture of somebody who maybe spilled coffee on themselves and are running into court. Someone who slips and falls, through nobody's fault, and runs in and files suit. Let's not forget that also affected by this would be any plaintiff. That includes small and medium sized businesses that would be hurt. Have you ever seen a small company, just trying to get by, trying to go up against a big company that they have a contract dispute with? You are going to start putting many of Maine's small businesses in a position of being unable to enforce their contracts with large, out-of-state corporations because it adds an enormous burden to what they are trying to do.

I'd also like to respond quickly to the Senator from Penobscot, Senator Plowman's point. She's actually right, there is a cap in this bill. It caps the fee at what the plaintiff's costs are. The point to recognize is that the plaintiff, once that case is filed, often loses entire control of the costs, even of their own attorney. This is because the defendant can easily try to drive up costs. This will create a huge incentive for them to do it. All you have to do is file motion, after motion, after motion. All of those motions could fail, but that requires hours and hours of attorney's time. The fees just start going up exponentially. There are a number of

times that I have seen this. There are some lawyers you hate to go up against because you know they are going to bury you in motions. This will just exacerbate that problem and make it much harder for people to both get through the court process quickly, because of the incentive to flood it with motions, and will also drive up the plaintiff's costs to a point where the plaintiff has to throw up their hands and say, 'I can't put this much of my own money at risk.' This is a bill that affects individuals. It affects businesses, even moderate businesses who have a fairly sizable revenue stream are going to be deterred from going against big companies, even when they are in the right. Even if you have a 90% chance of winning, as a lawyer you have got to advise your client that there is always a chance you can lose because you never know what that jury is going to do. To put the kind of money on the line that we're talking about, it would just slam the doors of the court shut for many people. Thank you.

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

Senator **PLOWMAN:** Thank you, Madame President, women and men of the Senate. It's a sure sign that I'm spending too much time with the Senator from Somerset, Senator Mills, when I'm suddenly not sure how to vote on this.

I do have a question, if someone would answer it for me.

**THE PRESIDENT:** The Senator may pose her question.

Senator **PLOWMAN:** Should someone sue me and I lose, I would be responsible the way this first paragraph is written to pay everybody's attorney's fees. This isn't just a plaintiff loses. This is a loser. My good seatmate just mentioned, say a credit card company sues me. I'm going to fold right off the bat because I don't want him to win and me have to pay what they are asking for plus attorney's fees. Is that the way this bill is?

**THE PRESIDENT:** The Senator from Penobscot, Senator Plowman poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from York, Senator Hobbins.

Senator **HOBBS:** Thank you, Madame President and members of the Senate. I know this is payback time for the last debate we had and I thank you very much for bringing up this point. Let me say this to you, if you were a consumer and you had a case and you wanted to bring the case against a major company, and you lost, you would have to pay attorney's fees. The good Senator from Oxford, Senator Hastings, raised a very valid point. That is, how does this bill effect the situation with consumer credit codes and other aspects of our consumer laws? How does this bill relate to landlord/tenant situations? Does it apply to landlord/tenant situations? The bill is not clear as to whether it applies to landlord/tenant situations. Will this bill, in its present form, encourage law suits versus discouraging law suits in that it will take away, in the early process, the possibility of negotiating a suit and trying to settle a suit through alternative dispute resolution practices versus bringing the suit and trying the suit? It takes away the incentive to try to settle the case at the earlier time. As you probably know, most of the cases that the good Senator from Somerset, Senator Mills, has brought forward regarding automobile accidents and cases involving medical malpractice, 9 out of 10 of those cases are settled prior to suit.

What happens, though, with this particular bill, it takes away the incentive, sometimes, to enter into alternative dispute resolution. Ironically, in the end, this could clog the courts even further. What will happen is, if I lose a case and I'm ordered to pay attorney's fees and I don't have the money to pay the attorney's fees, I will be sued on the collection of the attorney's fees. This will even increase the court process even further. If for some reason the jury votes, in a civil case by one or two or three jurors, more one way than the other, I might have to borne the attorney's fees. If I don't have the money to pay attorney's fees, they can attach my wages, they can attach my house, or they can attach savings accounts that I have for my children. Those are the decisions that a person has to think about before they initiate a case because those are the consequences if you are David against Goliath. I think you know this because you read it and I have read it many times. We had a long and extensive hearing on this case in which, ironically, the Maine Insurance Agents Association even opposed this bill. Unfortunately, the intended purpose will not be met because what we will have is less access to justice for those who need the access and there will be more access to justice for those who have the means.

**THE PRESIDENT:** The Senator from Penobscot, Senator Plowman, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **PLOWMAN:** Thank you, Madame President and men and women of the Senate. Thank you for the answer. I'm glad I don't pay you by the quarter hour. I appreciate all the information. I do think that I will be voting with the majority Ought Not to Pass. I will tell you why, because Paragraph 6 says, 'Reasonable attorney's fees incurred by the prevailing party in prosecuting or defending the action.' If that means that I'm on the hook because I've lost defending my action and I have to pay the plaintiff's fees for suing me, than that's not the kind of tort reform that I'm looking for. I'm a little more of a purest than that. Thank you.

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

Senator **CLUKEY:** Thank you, Madame President, ladies and gentlemen of the Senate. When I sponsored this bill I wasn't expecting attorneys to line up to co-sponsor it. When you stop and think about it, attorneys really can't agree on anything. They are on the opposite side of every issue, if you think about it. It's kind of refreshing for me to see so many of them feeling the same way about this bill.

I wanted to speak a little bit about it. I'm not an attorney but I've read about Rule 11, which was brought up earlier. From what I've read, it only helps a fraction of those victimized by lawsuits. I also would like to thank the Senator from Penobscot, Senator Plowman, who originally brought up the fact that if you are a big company you can't raise your fees way up as an intimidation factor because it's covered in the bill in a couple of places in the bill that this would not be allowed. Again, I hope you will oppose the Ought Not to Pass motion and vote for the Ought to Pass motion. Thank you.

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

Senator **DAVIS:** Thank you very much, Madame President. I want all the attorneys in this chamber to know that ever since my State Trooper days I've always had a warm spot in my heart for you. I've taken up your causes as often as I could. I really feel for you listening to you this day.

I do want to tell you a little bit about a personal experience that I had two or three years ago with some constituents. These folks come here to Maine and they decided to build a house. You can take a picture of a house and you can look at the driveway. They filed a lawsuit against the contractor who put the driveway in. You can look at the foundation. They filed a lawsuit against the people who put the foundation in. You can look at the siding on the house. They filed a lawsuit. You can go through the house step by step; the electrician, the person who put the roof on, the plumber, the carpet layer, the cabinetmaker, and you name it. How I found out is that their m.o. was to force people into settling. Unlike what my good friend from York, Senator Hobbins, said, instead of delaying settling, they were forcing people into settling because the attorney's fees were too much for these small contractors. They couldn't afford \$5,000 or \$8,000 to defend themselves. They would simply pay out \$5,000 and get out of it. That is the truth. That is what happened. How I found out about is because there was somebody with some spine who stood up to them and said, 'Let's go to court.' They went to court and they lost almost immediately. This person did some research on the thing. It made it into the Boston Globe. There were almost 40 lawsuits that this couple filed in a two or three year period. This is absolute abuse. I have no problem with this bill. I think this bill is fine. In fact, in Section E it says that the court has the discretion to limit fees, unreasonable fees and unreasonable charges, that someone might attempt to recover. I know that my good friends the attorneys never charge unreasonable fees. I would urge you to support this bill. Thank you very much, Madame President.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#65)**

**YEAS:** Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COURTNEY, COWGER, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, PLOWMAN, RAYE, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

**NAYS:** Senators: ANDREWS, CLUKEY, DAMON, DAVIS, NASS, ROSEN, SAVAGE, SNOWE-MELLO

**ABSENT:** Senators: DIAMOND, TURNER

25 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **HOBBS** of York to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act Concerning Disability Retirement Benefits under the Maine State Retirement System"

S.P. 35 L.D. 93

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

Signed:

Senators:

STRIMLING of Cumberland  
BARTLETT of Cumberland  
SNOWE-MELLO of Androscoggin

Representatives:

SMITH of Van Buren  
DRISCOLL of Westbrook  
JACKSON of Fort Kent  
HALL of Holden  
DUPREY of Hampden  
CRESSEY of Cornish  
TUTTLE of Sanford  
HAMPER of Oxford  
CLARK of Millinocket

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-82)**.

Signed:

Representative:

HUTTON of Bowdoinham

Reports **READ**.

On motion by Senator **STRIMLING** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**

Sent down for concurrence.

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**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act To Amend the Maine Workers' Compensation Act of 1992 To Facilitate Timely Independent Medical Examinations and Benefit Payments"

S.P. 289 L.D. 881

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

Signed:

Senators:

STRIMLING of Cumberland  
BARTLETT of Cumberland

Representatives:

SMITH of Van Buren  
DRISCOLL of Westbrook  
JACKSON of Fort Kent  
HUTTON of Bowdoinham  
TUTTLE of Sanford  
CLARK of Millinocket

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-81)**.

Signed:

Senator:

SNOWE-MELLO of Androscoggin

Representatives:

HALL of Holden  
DUPREY of Hampden  
CRESSEY of Cornish  
HAMPER of Oxford

Reports **READ**.

Senator **STRIMLING** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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**SECOND READERS**

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

**Senate**

Bill "An Act To Include Androscoggin County in the Law Governing the Use of County Surplus Funds"

S.P. 101 L.D. 339

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

Sent down for concurrence.

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Off Record Remarks

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**Senate As Amended**

Bill "An Act To Make the 3rd Violation of OUI a Class C Crime"  
S.P. 149 L.D. 462  
(C "A" S-77)

Bill "An Act To Make Changes to the Banking Laws"  
S.P. 196 L.D. 587  
(C "A" S-78)

Bill "An Act To Enhance the Supervisory Powers of the  
Department of Professional and Financial Regulation, Bureau of  
Financial Institutions"  
S.P. 324 L.D. 949  
(C "A" S-79)

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

Sent down for concurrence.

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

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**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 (3/22/05) Assigned matter:

JOINT ORDER - Directing the Joint Standing Committee on Business, Research and Economic Development and the Joint Standing Committee on State and Local Government To Report out a Bill To Create Regional Economic Departments  
H.P. 950

Tabled - March 22, 2005, by Senator **GAGNON** of Kennebec

Pending - **PASSAGE**, in concurrence

(In House, March 17, 2005, **READ** and **PASSED**.)

(In Senate, March 22, 2005, **READ**.)

On motion by Senator **GAGNON** of Kennebec, the Joint Order **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later (4/6/05) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Improve Public Understanding in Rulemaking"  
H.P. 417 L.D. 562

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-101)** (10 members)

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

Tabled - April 6, 2005, by Senator **SCHNEIDER** of Penobscot

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**

(In House, April 5, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-101)**.)

(In Senate, April 6, 2005, Reports **READ**.)

On motion by Senator **WOODCOCK** of Franklin, 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 York, Senator Andrews.

Senator **ANDREWS:** Thank you, Madame President and fellow members of the Senate. I would ask you not to support the minority report and go on to the Ought to Pass as Amended by Committee Amendment 'A' (H-101). When this bill came to us, I would venture to guess that everyone on the committee had a problem with it. The stage agencies and the sponsor and the committee worked together very well to come up with an amendment that seemed to satisfy everyone.

At the request of same Senator, Reports **READ**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#66)**

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY,  
DAVIS, DOW, HASTINGS, MILLS, NASS,  
NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE,  
SNOWE-MELLO, WESTON, WOODCOCK

ABSENT: Senators: DIAMOND, TURNER

17 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **SCHNEIDER** of Penobscot to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE, PREVAILED.**

Sent down for concurrence.

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Off Record Remarks

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The Chair laid before the Senate the following Tabled and Later (4/13/05) Assigned matter:

HOUSE REPORT - from the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Recruit and Retain College Graduates through Loan Repayment"

H.P. 302 L.D. 399

Report - **REFER** to the Committee on **EDUCATION AND CULTURAL AFFAIRS**

Tabled - April 13, 2005, by Senator **GAGNON** of Kennebec

Pending - **ACCEPTANCE OF REPORT**, in **NON-CONCURRENCE**

(In House, April 12, 2005, Report **READ** and **REJECTED** and Bill and accompanying papers **COMMITTED** to the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT.**)

(In Senate, April 13, 2005, Report **READ.**)

On motion by Senator **BROMLEY** of Cumberland, Report **REJECTED**, in concurrence.

On further motion by same Senator, Bill and accompanying papers **COMMITTED** to the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT**, in concurrence.

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

**COMMUNICATIONS**

The Following Communication: S.C. 172

**OFFICE OF THE PRESIDENT  
3 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0003**

April 11, 2005

Honorable Joy O'Brien  
3 Statehouse Station  
Augusta, ME 04333-0003

Dear Secretary O'Brien:

Pursuant to my authority under Executive Order 30 FY 04-05 as amended, I am pleased to appoint Senator Cowger of Kennebec to the Maine Creative Economy Council representing a member of the Senate.

If you have any questions regarding this appointment please don't hesitate to contact my office.

Sincerely,

S/Beth Edmonds  
President of the Senate

**READ** and **ORDERED PLACED ON FILE.**

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

**PAPERS FROM THE HOUSE**

**House Paper**

Bill "An Act To Require Parental Notification of Teenage Abortions"

H.P. 1112 L.D. 1575

Comes from the House, **REFERRED** to the Committee on **JUDICIARY** and ordered printed.

On motion by Senator **HOBBINS** of York, **REFERRED** to the Committee on **JUDICIARY** and ordered printed, in concurrence.

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

**REPORTS OF COMMITTEES**

**House**

**Change of Committee**

The Committee on **LABOR** on Resolve, Directing the Maine State Retirement System To Develop a Proposal To Provide Relief for Retired State Employees

H.P. 787 L.D. 1144

Reported that the same be **REFERRED** to the Committee on **INSURANCE AND FINANCIAL SERVICES**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve and accompanying papers **REFERRED** to the Committee on **INSURANCE AND FINANCIAL SERVICES**.

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

**REFERRED** to the Committee on **INSURANCE AND FINANCIAL SERVICES**, in concurrence.

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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 **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Criminalize Harming a Dog Used for Law Enforcement Purposes"

H.P. 49 L.D. 53

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-119)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-119)**.

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

**READ ONCE.**

Committee Amendment "A" (H-119) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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The Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Expand Supervised Community Confinement Options for a Person with a Terminal Illness"

H.P. 261 L.D. 348

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-120)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-120)**.

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

**READ ONCE.**

Committee Amendment "A" (H-120) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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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 **LABOR** on Bill "An Act Concerning Payment of Health Insurance Premiums for Surviving Spouses of Maine State Retirement System Members"

H.P. 362 L.D. 487

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-122)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-122)**.

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

**READ ONCE.**

Committee Amendment "A" (H-122) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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The Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Reestablish the Penobscot County Budget Committee"

H.P. 274 L.D. 361

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-126)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-126)**.

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

**READ ONCE.**

Committee Amendment "A" (H-126) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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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 **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Make Illegal Possession of Certain Narcotic Drugs a Class C Crime"

H.P. 577 L.D. 812

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-121)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-121)**.

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

**READ ONCE.**

Committee Amendment "A" (H-121) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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

**COMMUNICATIONS**

The Following Communication: S.P. 553

**122<sup>nd</sup> MAINE STATE LEGISLATURE  
AUGUSTA, MAINE 04333**

April 14, 2005

Sen. Elizabeth H. Mitchell  
Senate Chair, Joint Standing Committee on Education and Cultural Affairs  
Rep. Jacqueline R. Norton  
House Chair, Joint Standing Committee on Education and Cultural Affairs  
122<sup>nd</sup> Legislature  
Augusta, ME 04333

Dear Senator Mitchell and Representative Norton:

Please be advised that Governor John E. Baldacci has nominated Paul J. Dowe, Jr. of Bangor for reappointment and Marjorie Murray Medd of Norway, Charles O'Leary of Orono, and Chad Marquis of Fort Kent for appointment as members of the Board of Trustees, University of Maine System.

Pursuant to Title P&SL 1865,c. 532, these nominations will require review by the Joint Standing Committee on Education and Cultural Affairs.

Sincerely,

S/Beth Edmonds  
President of the Senate

S/John Richardson  
Speaker of the House

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

Sent down for concurrence.

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

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

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

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

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

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On motion by Senator **BRENNAN** of Cumberland, **ADJOURNED**, pursuant to the Joint Order, to Tuesday, April 26, 2005, at 10:00 in the morning.