

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

In Senate Chamber
Monday
April 5, 2010

Senate called to order by President Elizabeth H. Mitchell of
Kennebec County.

Prayer by Senator Peter B. Bowman of York County.

Senator **BOWMAN**: Good Morning. I want to start my little reading this morning with The Anyway Rules and they come from the Alabama Institute for the Deaf and the Blind but surely the author of these words attended perhaps the Alabama Legislature, perhaps the Maine Legislature, you never know, because they really apply, as you will see, to the work that we do. The Anyway Rules, Rule #1, people are illogical, unreasonable, and self centered. Love and trust them anyway. Rule #2, if you do good people will accuse you of having selfish ulterior motives. Do good anyway. Rule #3, If you are successful, you win false friends and true enemies. Succeed anyway. Rule #4, the good you do today, will be forgotten tomorrow. Do good anyway. Rule #5, honesty and frankness, make you vulnerable. Be honest and frank anyway. Rule #6, the biggest men with the biggest ideas, perhaps you would think legislators, can be shot down by the smallest of men with the smallest minds. Think big anyway. Rule #7, people favor underdogs, but they follow the top dogs. Fight for the few underdogs anyway. Rule #8, what you spend years building, may be destroyed over night. Build anyway. Rule #9, People really need help but may attack you if you do help them. Help people anyway. And the last rule, #10, the world would be better if you give the world the best that you have, so give the world your best anyway. Now I ask you to take a minute, to close your eyes, and pray in full silence and turn your attention inward and to take a couple of deep breaths. As we end, and near the end of this Legislature, it is important for us to pause and consider all that we have accomplished in these past few months. It's pretty amazing to think about it. We showed up, we listened to each other, mostly. We fought, we talked, we often didn't agree, but we persevered always believing in the legislative process. All of us chose at some point in our lives to run for public office, to serve the people of Maine. No doubt we made this choice for a variety of reasons, but at our core, we all wanted to make a difference. To do the best of our ability, we wanted to protect, preserve, cherish, and fight for the good of the people, for the good of our beautiful state. So as we complete this session, before we move on to the next new beginning, whether it is the campaign, another endeavor, or just well deserved rest, let us be grateful for the privilege of coming together, to help make our corner of the country better. Let us rejoice in a job well done. For despite our differences, we are all alike in so many ways, beyond our individual identities, and desires, there is a common core of self, and an essential humanity whose nature is peace. Whose expression is thought, and whose action is unconditional love. When we identify with that inner core, respecting and honoring it

in others as well as our selves, we experience growth and grace in every area of our lives. Amen.

Pledge of Allegiance led by Senator Lisa T. Marraché of
Kennebec County.

Reading of the Journal of Friday, April 2, 2010.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act Regarding the Commissioner of Education's Rule-making Authority" (EMERGENCY)

H.P. 1272 L.D. 1784
(H "A" H-808 to C "A" H-777)

In Senate, March 31, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-777) AS AMENDED BY HOUSE AMENDMENT "A" (H-808)** thereto, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-777) AS AMENDED BY HOUSE AMENDMENTS "A" (H-808) AND "B" (H-818)** thereto, in **NON-CONCURRENCE**.

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

ORDERS

Joint Resolution

On motion by Senator **BARTLETT** of Cumberland, under unanimous consent on behalf of President **MITCHELL** of Kennebec (Cosponsored by Representative **PERRY** of Calais and Senators: **BARTLETT** of Cumberland, **BRANNIGAN** of Cumberland, **BRYANT** of Oxford, **JACKSON** of Aroostook, **NUTTING** of Androscoggin, **RAYE** of Washington, **ROSEN** of Hancock, **SCHNEIDER** of Penobscot, **SMITH** of Piscataquis, Representatives: **DRISCOLL** of Westbrook, **GIFFORD** of Lincoln, **KNIGHT** of Livermore Falls, **McCABE** of Skowhegan, **PEOPLES** of Westbrook, **THERIAULT** of Madawaska) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 214.), the following Joint Resolution:

S.P. 746

**JOINT RESOLUTION MEMORIALIZING THE UNITED STATES
DEPARTMENT OF COMMERCE AND THE UNITED STATES
INTERNATIONAL TRADE COMMISSION TO ENSURE THAT
OUR TRADE LAWS ARE ENFORCED**

WE, your Memorialists, the Members of the One Hundred and Twenty-fourth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the United States Department of Commerce and the United States International Trade Commission as follows:

WHEREAS, the economic downturn is having a critical impact on ordinary Americans who are struggling to maintain or find jobs in an increasingly difficult environment; and

WHEREAS, a vibrant manufacturing sector is critical to an immediate economic recovery and to the long-term health of the State of Maine and the United States, and free trade cannot occur unless our trade laws are strictly enforced; and

WHEREAS, over 2,000,000 manufacturing jobs have been lost nationwide since the start of the recession in December of 2007, and well over 5,000,000 jobs and over 50,000 factories have been lost in the last 10 years; and

WHEREAS, in a December 2, 2009 USA Today/Gallup poll, Americans were asked what should be done to create more jobs in this country and the most frequent response was to "keep manufacturing jobs in the United States"; and

WHEREAS, a strong industrial base is important to our Nation's economic and national security, demonstrated by the following:

1. American manufacturing directly employs nearly 12,000,000 Americans and directly supports 8,000,000 additional jobs in other sectors;
2. American manufacturing pays, on average, 20% higher wages than other sectors of the economy;
3. American manufacturers are responsible for 2/3 of research and development investment in the United States; and
4. Nearly 80% of all patents filed come from the manufacturing sector; and

WHEREAS, our coated paper industry is the most efficient in the world and its workers can compete with any foreign competition that does not enjoy the benefit of illegal government assistance; and

WHEREAS, on September 23, 2009, Appleton Coated LLC, NewPage Corporation, Sappi Fine Paper North America and the United Steelworkers of America initiated a trade investigation with respect to certain unfair trade practices, including dumping and subsidization, conducted by Chinese and Indonesian producers of coated paper; and

WHEREAS, dumping occurs when a foreign producer sells into the United States domestic market for less than the price that producer charges in its home market or when its United States prices are below the cost to produce the product, and foreign

government subsidization is a form of financial assistance that benefits foreign production, manufacture or exportation of goods; and

WHEREAS, the United States has trade laws that allow domestic industry and its workers to petition for relief from unfair trade practices that create what are considered an unlevel playing field and lead to plant closures and job loss in communities throughout America; and

WHEREAS, the United States International Trade Commission and the United States Department of Commerce are reviewing the trade investigation and will make determinations as to whether dumping and subsidization have occurred and whether domestic producers and the domestic workforce have been materially injured as a result; and

WHEREAS, paper imports from China and Indonesia grew by roughly 40% in the first 6 months of 2009, as compared to the same period in 2008, and domestic shipments dropped by roughly 38%; and

WHEREAS, Chinese and Indonesian producers have captured almost 30% of our market in coated paper products, double the amount from the previous year; and

WHEREAS, since 2002, roughly 60,000 jobs have been lost in the paper sector in America; and

WHEREAS, the trade investigation affects 6,000 workers whose jobs are at risk from unfair trade competition and in a preliminary determination, the United States Department of Commerce has sided favorably with the American paper companies; and

WHEREAS, both the Chinese and Indonesian governments have long-standing policies to encourage the development of their paper industries and have provided a host of illegal subsidies to paper producers to give them an advantage over American-produced goods; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to reaffirm the commitment of the State of Maine to the importance of manufacturing to our local economy and throughout the United States, and we express support for strong enforcement of our trade laws and for the domestic coated paper industry and its workers who have been injured by unfair trade practices by foreign producers; and be it further

RESOLVED: That We, your Memorialists, respectfully urge and request that the United States Department of Commerce and the United States International Trade Commission hold Chinese and Indonesian producers accountable for unfair trade practices that distort markets and devastate production and employment in the United States; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable Gary Locke, the Secretary of Commerce, to the 6 Commissioners of the United States International Trade Commission and to each Member of the Maine Congressional Delegation.

READ and **ADOPTED**.

Sent down for concurrence.

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Allow a Casino in Oxford County" I.B. 5 L.D. 1808

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

Signed:

Senators:

SULLIVAN of York
GOODALL of Sagadahoc

Representatives:

CORNELL du HOUX of Brunswick
PINKHAM of Lexington Township
VALENTINO of Saco
TRINWARD of Waterville
CAREY of Lewiston
RUSSELL of Portland
TUTTLE of Sanford

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-804)**.

Signed:

Senator:

PLOWMAN of Penobscot

Representatives:

BEAULIEU of Auburn
FITTS of Pittsfield
NASS of Acton

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

Reports **READ**.

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

Senate at Ease.

Senate called to order by the President.

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

Senator **RAYE** of Washington was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

Off Record Remarks

ORDERS OF THE DAY

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

HOUSE REPORT - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act To Allow a Casino in Oxford County"

I.B. 5 L.D. 1808

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

Minority - **Ought To Pass as Amended by Committee Amendment "A" (H-804)** (4 members)

Tabled - April 5, 2010, by Senator **BARTLETT** of Cumberland

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 2, 2010, Reports **READ** and the Bill and accompanying papers **INDEFINITELY POSTPONED**.)

(In Senate, April 5, 2010, Reports **READ**.)

Senator **SULLIVAN** of York moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence.

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

Senator **PLOWMAN**: Thank you, Madame President. Men and women of the Senate, I would urge you to reject this motion. The motion will, as you know, kill the bill and will send it out for presentation to the voters of the state of Maine. It is an initiated bill that is before you, and the Bill is An Act to Allow a Casino in Oxford County. The committee urged the parties that are interested in the gambling issues of the state of Maine to go out and negotiate together because there was some interest in a competing measure. The interest was generated by the Passamaquoddy Tribe, who was seeking to be brought in at this point to recognize their efforts and their needs for economic development down in Washington County. At that point there was another party that came in, which was Penn National, who operates Hollywood Slots in Bangor. Penn National had discussed and actually asked Appropriations to consider giving them 35 table games in the Bangor area. So we sent these three parties out to negotiate and see if they could come to an agreement on a competing measure. Now keep in mind that we asked the initiators of this bill to go out and negotiate with two other parties, to form an alliance to actually help defeat their initiative, and have the competing initiative. They did this in good faith and came back to the committee. The work product before you is the Minority Report of the committee. I would love to have this motion defeated so we can talk about the Minority Report of the committee. It does give opportunity to all three. I would ask you to please oppose this motion so that we can talk about what that opportunity is and see if that is something we would actually like to send out before the people. Thank you, Madame Chair.

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

Senator **RAYE**: Thank you, Madame President. Men and women of the Senate, I rise in opposition to the motion that is before us. If we pass this motion, we will be precluding an opportunity to put an end to the regionalism that has divided the state north and south and east and west on this issue. It is a very difficult situation for the people I represent in Washington County and the Passamaquoddy Tribe, who have worked for two decades now, two long hard decades, to bring this opportunity to our part of the state. The motion before us today would preclude that possibility and preclude the opportunity to bring together east and west behind one proposal, so I join with the Senator from Penobscot, Senator Plowman in expressing my opposition to this motion.

On motion by Senator **RAYE** of Washington, 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 Oxford, Senator Hastings.

Senator **HASTINGS**: Thank you, Madame President. Ladies and gentlemen of the Senate, I too rise to ask your opposition to the motion before you, so that we can move to the Minority report. My constituents of Oxford County know that they are going to be on the ballot with this, they have the signatures. I wanted to echo the sentiments stated by the Senator from Washington, and the Senator from Penobscot. Oxford County and Washington County have much in common. Those things they have in common are not the things that make us happy; economic blight, high

unemployment, lack of job opportunity. It seems to me that as we approach this we should consider moving ahead in a way that will aid both of those and let the public make this decision. Remember that this is not a decision that we make ultimately. It will be made by the public at referendum in any case. If we support the pending motion the public is going to make its decision about Oxford County and its needs and the public desire to expand their gaming in Maine. If the public supports that, it is only going to help Oxford County. Oxford County, which is lost in the Oxford Hills area, was once, when I started in this Body, a thriving base of manufactured housing and construction. Five plants were in existence, all going well. As I stand here today we are down to two plants, both of those struggling, and we have lost countless jobs in the Oxford Hills area and in Oxford County as a result. This is an opportunity that will be for the public to decide. Gaming is not my first choice for economic development but, ladies and gentlemen of the Senate, I stand here to say that right now it may be the only choice we have in Oxford County, and perhaps also in Washington County, which has even harsher economic circumstances than we do. So if we are going to let this go out to the voters, let's give the voters a chance to decide if they want to answer this question once and for all and do so in a way that would benefit two distant but similarly situated areas of our state, Oxford County and Washington County. So Madame President, I urge that we vote against the pending motion. Thank you.

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

Senator **SULLIVAN**: Thank you, Madame President. Men and women of the Senate, I don't really disagree with much of what has been said in this chamber this morning on this item. The State of Maine's laws at the present time require that if an area wants to have gambling, casino or racino, they must gather signatures and put it to a vote. Oxford County did that. They put a lot of money into it. They followed the law. Originally, if we put out a competing measure, and that is what we are talking about, a competing measure, that is our seal of approval of the way it is set up because that is a legislatively initiated bill. Unlike the citizen's initiative, they set the law up, they put it out and they asked and got 100,000 people to sign. Now we are creating a competitive measure, if we were to go further with this bill, and we are saying, 'You know what, there are certain areas that don't have to follow the law as we see it.' We also say we close the door to anyone in the future, other tribes in the future. That letter is written, that at this time the Penobscot choose not to be involved. We need to be very careful that if someone petitions for one casino, we don't go out and give three. The people did not ask for that. It is true however, and the Senator from Penobscot is 100% right, I believe that had we had more time, had this come in sooner, we might have been able to craft a bill that would set up a taxing situation, everything that would work, and you could send it out as a legislative initiative. That was clearly defined and was beneficial to the people of Maine, through taxes. This one is not. So by choosing to go the Indefinitely Postponed route, the casino question still goes out, and the people still get to vote. Those 100,000 people that signed the petition that it was going to be Oxford. I think we need to honor that given we did not have the time. Certainly the Senator from Penobscot and others worked like little beavers in trying to make sure that we could get something out. We ran out of time and we were unable to come

up with something, so I would ask for Indefinite Postponement. I think it is fair. I think it honors the route that we had set up, as a Legislature, in signing a petition and allowing the citizens to come forward to basically approve three casinos, which is not, in my judgment, what people were looking at originally. More time might have been a different story. We just didn't have it given the shortness and the direction from leadership to hurry up as quickly as possible. So I would ask you to please vote for the Indefinite Postponement. Thank you.

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

Senator **GOOLEY:** Thank you, Madame President. Men and women of the Senate, I stand before you in opposition to the present motion. Over the last 15 years, when I started in the House in 1995, I was against casinos and I was for a whole number of years, but I think that the situation has changed. It has been mentioned about the unemployment around the state. Over in Rumford it is currently about 15%, and there are several areas in the state where it is almost pushing 15%. I stand before you to say that we need to vote against this motion because we need to go on to the amendment which shows that \$45 million in revenues for different programs, including K-12, that are very important to the state, and that is very important to all of us. Thank you very much.

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

Senator **GOODALL:** Thank you, Madame President. Men and women of the Senate, I rise today and join the good Senator from York in support of the motion to Indefinitely Postpone. I rise just to say a brief word or two about what is before us. We are not talking or debating whether or not we should have gaming, which we already have in this day, or more casinos. We are talking about whether or not we should allow this measure to go forward or be defeated. If we ultimately defeated this motion, then we would talk about the merits of a competitive measure. It is important to note that there will be a measure on the ballot deciding whether or not we will have a casino in the state. It is also important to note that, hopefully, anything that we put out on the ballot and any measure, any competitive measure, implicit in that it is a well thought out proposal. The time issue is very important to consider and, in my opinion and many people on the committee, we struggled with putting together a proper proposal. The only issue before us right now is if we want to have the Oxford Casino proposal on the ballot and nothing else. Thank you, Madame President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Sullivan to Indefinitely Postpone the Bill and accompanying papers. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#398)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, COURTNEY, CRAVEN, DAMON, DAVIS, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, MILLS, NUTTING, PERRY, RECTOR, SCHNEIDER, SIMPSON, SMITH, SULLIVAN, TRAHAN, WESTON, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: GOOLEY, HASTINGS, MCCORMICK, NASS, PLOWMAN, RAYE, ROSEN, SHERMAN

ABSENT: Senator: BRYANT

26 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **SULLIVAN** of York to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **PREVAILED.**

The Chair laid before the Senate the following Tabled and Later (3/29/10) Assigned matter:

Emergency

An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2010-11 and To Make Certain Changes in the Laws Governing Tax Increment Financing Payments in the Unorganized Territories
H.P. 1294 L.D. 1807
(C "A" H-758; H "A" H-771)

Tabled - March 29, 2010, by Senator **PERRY** of Penobscot

Pending - **ENACTMENT**, in concurrence

(In Senate, March 25, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-758) AND HOUSE AMENDMENT "A" (H-771)**, in concurrence.)

(In House, March 29, 2010, **PASSED TO BE ENACTED.**)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

The Chair laid before the Senate the following Tabled and Later (4/2/10) Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Allow the Town of Wells and the Town of Ogunquit To Amend the Terms of Their Cost-sharing Agreement for Their Community School District and To Provide Each Town the Ability To Withdraw from the Wells-Ogunquit Community School District"

S.P. 670 L.D. 1747

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-422)** (5 members)

Tabled - April 2, 2010, by Senator **ALFOND** of Cumberland

Pending - **FURTHER CONSIDERATION**

(In Senate, March 24, 2010, on motion by Senator **ALFOND** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In House, March 31, 2010, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-422) AS AMENDED BY HOUSE AMENDMENT "A" (H-815)** thereto, in **NON-CONCURRENCE**.)

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

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

Senator **BOWMAN:** Thank you, Madame President. I think we have debated this bill at length previously, so I would ask my colleagues, just as I am going to do, to limit our discussions because we need to keep moving bills. In my fifty years of working in the private sector, public sector and non-profit sector, I have learned to recognize problems, propose rational solutions to them, and then act upon them. In my opinion the unfairness of the cost-sharing agreement in the Wells-Ogunquit school district is such a problem. The motion on the floor contains a common sense, simple, creative, straight-forward, and proven effective method of dispute resolution, which is mediation. If that fails binding arbitration is done by an objective, dispassionate, third party, and the results are not guaranteed either way. I strongly believe that non-support of the pending motion is walking away from your legislative responsibility to identify problems, propose solutions and then act upon them. Thank you.

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

Senator **NASS:** Thank you, Madame President. Ladies and gentlemen of the Senate, I agree with the good Senator from York about the fact that we have certainly debated this year after year for what seems like forever. What the new news today is the amendment that came from the other Body. It does, in fact, call for mediation, which we have done before. The last time this issue was here last session I think it was in mediation, perhaps two sessions back. I have kind of forgotten, we do this so often. It failed. It failed to produce results, so here we are back again.

This amendment, as it came from the other Body, basically calls for mediation again, at the request of either party, and if that doesn't work, we are binding arbitration again, at the request of either party, paid for by the requesting party. So, again the legislature apparently is going to try to force a result, a result that was not anticipated in the beginning.

As I have said before, for 360 years these folks down there have been educating their kids on their own pretty well without much help from us. Thirty years ago, a small section of what was Wells became Ogunquit. The key, I think, to this is what happened then. Obviously, based on the population then and now and the size of what is now Wells and what is Ogunquit, the key here is the promise made in that agreement. The promise was that the folks in Ogunquit will continue to pay for education as they had before, based on the value of their property, as is the case in Wells and every other community in the state. So it was the value of the property that determined what their share of the education expense was going to be. Since they separated 30 years ago the folks in Ogunquit, or some of them at least, come back here every couple of years asking to change that result. The agreement of the time did not say anything about future changes. That is not what the agreement was, because if it were they would not be a separate town. I will guarantee it, it would not have passed. The current population of Wells is 10,000. The current year-round population of Ogunquit is around 1,500. The politics of that indicate that they would not be a separate town if that was in the cards then. So the agreement was you folks in Ogunquit continue to pay what was then perceived to be your fair share of the cost of education. Why is that so hard to understand? There was no provision, then or now, to change the situation. It is only the fact that we are here and continue to hear these proposals, and the fact that Wells and Ogunquit are established by private and special laws, that we continue to keep doing this. So all I am asking, Madame President, is that you will oppose the current motion and we go on to do what this Body has already done a couple weeks ago and insist that this be Ought Not to Pass, because they need to face up to the fact they have an obligation to fund education. If they want to fund it some other way, then let them bring in a proposal to change how we fund education. They have never done that. As long as we want to use the property tax as the mechanism for funding education, they need to pay their fair share and then quit coming up here and asking us the same question over and over again. So I would urge that you would vote against the pending motion. Thank you.

On motion by Senator **NASS** of York, 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 Schneider.

Senator **SCHNEIDER:** Thank you, Madame President. Men and women of the Senate, with all due respect to my Senate colleague from York, Senator Bowman, I do think, though I agree, that it is about common sense. To me it is about when a promise is made a deal is struck. That is a solid promise and that is a solid deal. There was a deal that was struck when the village of Ogunquit asked to be separated from the town of Wells and that was that they would stick with funding education. Clearly, this is an effort to undo that promise and, to me, that is common sense.

When I make a promise I expect to be held to that promise and I expect those communities to be held to their commitments to one another. If, for example, they choose to undo the original deal, to me, then that is the way to undo this unhappiness and to go back and put the village of Ogunquit under the town of Wells. So I would hope that these communities will get a clear message that this is perhaps not the correct legislation and if they want to undo what was done, upon their request, that they go back to their original deal which was the village of Ogunquit under the town of Wells. This is the only bill I would vote in favor of. To undo what is currently the present deal. So I would hope again that we would vote against the pending motion of Recede and Concur and I would hope that we would end this debate by voting to pass on this piece of legislation. Thank you very much.

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

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate the very worst thing we could do is to delegate our legislative authority, or even that of the two towns or a single individual, to solve a problem that for some reason the two towns themselves can't solve, and indeed this chamber cannot. I suspect the reason this problem cannot be solved is because the current situation on the ground is pretty much probably what it ought to be. If you own a million dollar home in Ogunquit, the burden that you are asked to bear for the education of Maine's children is \$3,250, which is about a third or a quarter, depending on your school district, of what it costs to educate one first grader. So you can own a million dollar piece of property on the waterfront of Ogunquit and the only thing we are asking of you is to educate one-third of a kid. When you go to mediation, when you try to mediate down from there, where do you go? Then you can't solve it in mediation, so you hand it over to an arbitrator and you say, 'You, Mister Smart Person, you pick out another number'. I will tell you what I would do if I were the mediator, I would double it. Two-thirds of a kid if you own a million dollar home in Ogunquit. Maybe even a whole kid. I don't get it. I don't know why this bill is in front of us again. I have been here sixteen years. I have seen this bill too many times. I would like to put a stake through its heart. Well we can do that today, for at least the time being, if we vote no on the pending motion. Thank you.

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

Senator **BOWMAN:** Thank you, Madame President. I will be very brief. A thirty year old agreement to me is ripe for revisiting. All of the documents that we have we are continually changing. Maine's Statutes and our Constitution at the state and federal level periodically gets revisited and there are some people out there now who want to radically change the U.S. Constitution. So a thirty year old agreement just doesn't mean it's locked in concrete. Finally, the inference here is that the poor folks in Wells are up against the rich folks in Ogunquit. If you look at the median income for the people in those two communities, you will find that there is not much difference at all. There is a lot of coastline in Wells. We need to act on this one way or another. If we defeat the pending motion I think you are going to see this again, should you come back in the Body. Thank you.

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

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, I also promise to be very brief. As a former member of the Education Committee, I can't help but pick up on the good Senator from York's comments a few minutes ago about how until we fund schools differently we shouldn't change this. I think I agree with that. As I look at this bill, and the situation where both Wells and Ogunquit do their whole school budget on \$3 million of property tax when all of inland Maine has to raise \$13 million, \$14 million, \$15 million, or \$16 million, it kind of makes me think that if we had something right that uniform property tax again both Wells and Ogunquit would help pay for education the way they used to. Thank you.

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

Senator **SCHNEIDER:** Thank you, Madame President. Men and women of the Senate, I did not intend on standing again, but I did want to say in response to my colleague from York, Senator Bowman, that unfortunately this is not just a situation of coming back after many, many years. As soon as the village of Ogunquit became the town of Ogunquit, once that ink was dry and they got what they wanted under their agreement, which was to become their own town, they started coming almost as soon as the ink was dry and complained of this deal. That is the problem I have here, this wasn't something where times have changed. On the one hand they say times have changed and, on the other, the town of Ogunquit says they have been unhappy with the deal from the get go. My point is which one is it? I mean a deal is a deal. That was their responsibility. They said they would help fund education and they would stick with that. Clearly this is about money, so I cannot, as a legislator, in good conscience vote to break a deal where two communities made a promise to one another. That is what this is about. They are unhappy with the money and they do not want to contribute as much to education. That is why they are back over and over, because they figure eventually they might get what they want. I hope that this legislature and any future legislature would say no to that. Thank you.

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

Senator **WESTON:** Thank you, Madame President. Men and women of the Senate, just one point. The issue has been raised this morning by the good Senator from York, Senator Bowman, about the median income in Ogunquit, and we were told during the hearing that it is approximately \$43,000. That is not the median income. That does not include the house that is worth \$1 million, because the median income in Ogunquit is only based on the year-round residents, which is a very small percentage of that town. So if you could get the income of all the residents, all of the tax payers, then we would be closer to the mark of \$1 million. Thank you.

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

Senator **COURTNEY**: Thank you, Madame President. Men and women of the Senate, as I have followed the debate and listened very carefully to both sides, I struggle to understand the motivation for this bill. While I could never question any of the motivations of anyone pursuing an effort to support their constituents, it would seem that with some of the previous discussions we have had in the building over a couple of years, I am surprised as can be to see the length that this has. I am trying to understand the motivation and understand how we have gotten to this point. We have an opportunity with this bill to import the tax burden to the State of Maine for educational funding. As I see it here 80% of the properties in Ogunquit are commercial and seasonal and 65% in Wells are year-round residents. So it seems to me that what we are doing, we are somehow giving a bunch of wealthy property owners a break. I cannot understand for the life of me the common sense or the motive for that. I wish someone could explain that to me, because I have listened carefully and I have talked in the halls and I have talked to a number of people, but I can't see how we are getting to that point. We have also been talking about trying to have fewer school districts, yet this would take a piece and move it completely out of the district, and allow them to do something different, which is unknown at this time. I would strongly suggest that we don't create this property tax break to wealthy property owners along the coast of Ogunquit, where a wealthy property owner along the coast of Ogunquit can pay less to educate their students than someone with a ranch in Sanford, Maine. Why would we do that? Why would we do that?

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

Senator **BARTLETT**: Thank you, Madame President. I just wanted to speak to clarify what this bill does and doesn't do. This bill doesn't change the arrangements between Wells and Ogunquit. It doesn't provide a tax break or a tax increase to anyone. It simply says and recognizes that there has been an ongoing dispute between two communities and this bill attempts to find a resolution. They go to mediation. If mediation fails, they go to a binding arbitrator. We don't know what the results would be out of that. Both sides can present their case to someone who can come up to speed on all of the details including the legislative history, including the debates that happen in this chamber. That is all it does. This isn't changing the arrangement between Wells and Ogunquit one iota, it is simply trying to provide some effort to resolve a conflict. Thank you.

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

Senator **NASS**: Thank you, Madame President. Ladies and gentlemen of the Senate, I rise again to correct some of the specific numbers mentioned. The Senator from Androscoggin, Senator Nutting, mentioned some mil rates and suggested that both towns were paying a certain mil rate. These are the numbers: the folks in Ogunquit are paying \$3.25 million to education. The folks in Wells are paying \$5.22 million. These are low numbers for everyone else in the state. He pointed out some higher numbers. Then the average rate for education turns out to be about \$7.22 million. It is hard to believe we are having this discussion when rates for education are so low. The folks in this community still have a mutual school district called Wells-

Ogunquit CSD. They just passed their budget down there, without any cry from the folks in Ogunquit, so at the place you would think it would occur, on the cost of education that the people concerned would choose to show up for the cost of education. Apparently they didn't have a problem this year, when we are all struggling to come up with money for education. It appears that there is a small group of people in Ogunquit who keep bringing this issue up before us and hope that the outcome is different. I urge you to make sure that the outcome is the same. That we ask them to stick with their original agreement and pay their fair share of the cost of education. That seems not much to ask, Madame President. Thank you.

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

Senator **SIMPSON**: Thank you, Madame President. Men and women of the Senate, we had an interesting Easter weekend. I am sure all of you were as inundated as I was with the phone calls and emails from both of these communities. I decided to rise to discuss the pending motion, that passed in the other Body, which is to bring this to mediation. I will not be voting with the current motion, because I do not think there is anything in dispute that needs mediation. We have a social contract that the State of Maine decided a long time ago that we fund education through property tax and that we are all responsible for the children of the state of Maine. To carve out and allow people to mediate that somehow. They say, 'Well you know we are not really from here, we are just here for a little while. Why should we pay for those people's next door students? While we enjoy the benefits of living in the most beautiful part of the state of Maine, and we get to drive on your roads to get there, and we can employ these kids part-time from the local schools next door to work in our businesses, but we don't want to pay our share to educate them.' That is a very bad public policy direction, so the reason I cannot support the pending motion is that I disagree that something needs mediation. That is our long standing public policy and I think that is the right way to do things. Thank you, Madame President.

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

Senator **DAMON**: Thank you, Madame President. Ladies and gentlemen of the Chamber, as I have listened to this debate I have thought a lot about some communities in my district a little further Downeast from Wells and Ogunquit. Not this similar, because one particular community, actually the community of my birth, has a very, very high property value. It doesn't have any industry or business. It has some people who come part of the year and like to live there. They have, because of their like to live there, been able to purchase property and have paid outrageous prices for property, which has boosted everyone's property value. So that community have joined in with other communities to educate their children, much as is the example here in the current debate, and agreed to have a formula whereby their valuation was a big part of the solution of funding the education, much like the debate today. It turns out that that agreement got way out of whack and was not as it was originally intended. It was always understood and known that the people in that community would be paying more because they presumably had more, because of their valuation. Some people in that community indeed did have

more, and we have used those examples here in this debate, but some people in that community didn't have more. They were stuck living there year round and their property taxes were going up and up and up and their incomes were not, and they continued to struggle. They looked for some relief. When I first purchased my house, I signed an agreement, a document, a contract, with a lending institution that said that I would be paying 6.5% - 7% interest for the duration of that loan. When the economy changed, when interest rates changed, I asked if I could renegotiate the terms of that loan and my lending institution said I could. So together we arrived at an interest rate that was fair to them and fair to me and we agreed on that. We changed that contract during the course of time. That wasn't a bad thing, but both parties agreed to do it. I have heard today that there were attempts, apparently a number of attempts, made by these two communities to change their agreement. It seems as though, but I don't have enough history to know for a fact, that the initiator of these attempts was perhaps the newly created town of Ogunquit. I don't know that for a fact, I will have to rely on your stories, that rather recently they almost came to some kind of agreement. We did enact something here in the Legislature called L.D. 1 or Funding Formula for Education, EPS, and that stopped that, and now we have moved to this. It seems as though, to me, that one of the towns is not going to be happy or satisfied. I haven't seen this in anything you have said today, that I have heard or read, that one town doesn't want to pay for the education of its students or contribute to the payment of the education of the students of that particular grouping. They just want to look at it as a bit of a more fair way to do it, and we can't seem to come up with it legislatively. I don't know if we should. I actually think that, in spite of what has been said today, it probably is time for one person, a mediator and eventually an arbitrator, to come up with that decision that they live by. Judges do it all the time. Maybe that is where we ought to have this go, I will be supporting the pending motion and I thank you, Madame President, for the time.

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

Senator **WESTON:** Thank you, Madame President. Men and women of the Senate, I do like to negotiate my interest rates down. That is an agreement between me and the bank. We agree upon an interest rate. They don't have to deal with me if they don't want to. This bill says that the towns shall enter binding arbitration. Would you want to go into binding arbitration on your interest rate on your mortgage and find it went up? That is what we are saying here. They came to the legislature for a Private and Special law. Under an amicable agreement is how the solution can happen. They can bring another amicable agreement and the law can be changed. What we are doing is giving one side a leg up and that is not how you solve a disagreement.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Alfond to Recede and Concur. 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 (#399)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, CRAVEN, DAMON, DIAMOND, GERZOFSKY, GOODALL, MARRACHE, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: BRANNIGAN, COURTNEY, DAVIS, GOOLEY, HASTINGS, HOBBS, JACKSON, MCCORMICK, MILLS, NASS, NUTTING, PERRY, PLOWMAN, RAYE, RECTOR, ROSEN, SCHNEIDER, SHERMAN, SIMPSON, SMITH, TRAHAN, WESTON

ABSENT: Senator: BRYANT

12 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **ALFOND** of Cumberland to **RECEDE** and **CONCUR, FAILED.**

The Senate **INSISTED.**

Senate at Ease.

Senate called to order by the President.

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

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

Senator **RAYE** of Washington was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution:

H.P. 1320

JOINT RESOLUTION MEMORIALIZING THE UNITED STATES CONGRESS TO INCREASE FLEXIBILITY REGARDING PAYMENTS TO MAINE VETERANS' HOMES

WE, your Memorialists, the Members of the One Hundred and Twenty-fourth Legislature of the State of Maine now assembled in the Second Regular Session, most respectfully present and petition the United States Congress as follows:

WHEREAS, the federal Veterans Benefits, Health Care, and Information Technology Act of 2006, Public Law 109-461, requires the United States Department of Veterans Affairs to reimburse Maine Veterans' Homes at a higher rate for the cost of care provided to veterans with a 70% or higher service-connected condition or who require nursing home care for a service-connected reason; and

WHEREAS, the 70 Percent Program was set up to give equal access to veterans with service-connected disabilities who use Maine Veterans' Homes in Augusta, Scarborough, Caribou, Bangor, South Paris and Machias, Maine; and

WHEREAS, although the intent of the United States Department of Veterans Affairs regulations is to provide a higher per diem rate for veterans with service-connected disabilities, the regulations actually result in significantly lower total amounts being paid to many Maine Veterans' Homes providing nursing home care to veterans with service-connected disabilities; and

WHEREAS, as implemented, the 70 Percent Program does not provide to many Maine Veterans' Homes the actual cost of care for disabled veterans in these homes, despite congressional intent; and

WHEREAS, the continued financial viability of many state veterans' homes systems across the nation is threatened, including the Maine Veterans' Homes; and

WHEREAS, the threat to the continued financial viability of state veterans' homes is particularly acute in the 30 states that have Medicare-certified or Medicaid-certified state veterans' homes, including Maine, and that receive payments for the care of veterans with service-connected disabilities under such programs; and

WHEREAS, several states have refrained from admitting some veterans with service-connected disabilities to state veterans' homes; and

WHEREAS, although the new United States Department of Veterans Affairs per diem program is viable for some states providing nursing home care and domiciliary care to veterans with

service-connected disabilities, it is highly problematic for states providing skilled nursing home care to veterans with service-connected disabilities in Medicaid-certified and Medicare-certified state veterans' homes; and

WHEREAS, legislation to rectify this problem is before Congress in H.R. 4241, which would allow for increased flexibility in payments for state veterans' homes; now, therefore, be it

RESOLVED: That We, your Memorialists, on behalf of the people we represent, take this opportunity to urge the United States Congress to support and pass H.R. 4241; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, to the Speaker of the United States House of Representatives and to each Member of the Maine Congressional Delegation.

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

READ and **ADOPTED**, in concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/11/10) Assigned matter:

SENATE REPORT - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Implement the Recommendations of the Working Group Concerning Domestic Violence and Firearms"

S.P. 725 L.D. 1817

Report - **Refer to the Committee on Criminal Justice and Public Safety, pursuant to Resolve 2009, Chapter 86**

Tabled - March 11, 2010, by Senator **BARTLETT** of Cumberland

Pending - **ACCEPTANCE OF REPORT**

(In Senate, March 11, 2010, Report **READ**.)

On motion by Senator **BARTLETT** of Cumberland, Bill and accompanying papers **INDEFINITELY POSTPONED**.

Sent down for concurrence.

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

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

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

Senator **RAYE** of Washington was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BARTLETT** of Cumberland,
RECESSED until 2:30 in the afternoon.

After Recess

Senate called to order by the President.

Off Record Remarks

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

ENACTORS

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

Emergency Measure

An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force

S.P. 710 L.D. 1810
(C "A" S-500)

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

Senator **HOBBINS:** Thank you, Madame President. Men and women of the Senate, before this bill is acted upon, by this Body and the Legislature, I thought it would be a good idea to, on the record, memorialize some remarks that I think demonstrates some of the diligent work that the Ocean Energy Task Force provided since the inception of the Ocean Energy Task Force in November of 2008. Governor Baldacci, at that time, established this task force to recommend a strategy for moving forward as expeditiously as possible with the development of the vast indigenous renewable ocean energy resources of the Gulf of Maine. Since that time, this legislature, last year enacted the first part of the recommendations and implementation of the Governor's Ocean Energy Task Force, and that was done with the unanimous vote of the Utilities and Energy Committee and with the unanimous vote of this legislature. Since that time, the task force has completed its work and has provided a supplemental bill. The first bill that you saw when you were reviewing legislation about six weeks ago, you will notice was very lengthy and wordy. It addressed some issues that were complex in nature and, quite frankly, wasn't ready for full consideration by this Body. That was very obvious at the

legislative hearing on the bill, where I presented the legislation on behalf of the Ocean Energy Task Force. Fortunately, the bill has been amended to address the concerns that were raised at that public hearing by Maine Municipal Association, the Maine Lobsterman Association, the Maine Energy Marketers Association, and the Industrial Consumers Group. Fortunately the Committee, thru its hard work, was able to craft a bill that addressed all of the concerns with the different stakeholder groups that I just outlined. As a reminder, the Ocean Energy Task Force included a diverse group of individuals representing the fishing industry, the environmental community, the business community, academia, and state government. The task force also had four official legislators and one adjunct member of our Committee. The official legislators that were appointed, the good Senator from Washington, Senator Raye, Representatives Fitts and Adams. Fortunately we had an unofficial member who attended most of the sessions, the good Senator from Sagadahoc, Senator Goodall. I was the other member of that task force.

This bill establishes a 5,000 megawatt goal for development of off shore wind in Maine waters, and also the federal waters, by the year 2030. The bill recognizes, which I mentioned before, Maine's vast renewable ocean energy resources and over time it's been shown through extensive research that this energy can provide for heat and transportation in abundance, which would reduce the states dependency on imported fossil fuels. The bill before you, which has been amended from the original one as I stated, prepares Maine for any off shore wind tidal wave development in Maine waters. The bill recognizes existing uses of state waters. The bill also amends the merge lands leasing provisions in appropriate manner. The bill also clarifies the state's environmental permitting process for demonstration projects in recently established test sites. The bill also sets forth notice provisions to make sure that the process is transparent. The bill clarifies state municipal coordination with the assistance of the Maine Municipal Association. This legislation also calls upon the Public Utilities Commission to issue a request for proposals for long term contracts for 25 megawatt offshore wind using floating turbine technology in deep water. When I say deep water we are talking over 300 feet and at least ten miles from land or an uninhabited island. Also, this bill calls for up to 5 megawatts of tidal energy demonstration projects which have been successful in the initial test runs in the town of Eastport.

The bill also is a combination of much work on the part of a combination of the members of the Governor's Ocean Energy Task Force and members of the Utilities and Energy Committee. I would like to commend all of the members. The good Senator from Aroostook, Senator Sherman, attended most of those work sessions even though he has a heavy load of another Committee, and I thank him for his efforts. I hope today that we can set Maine on the right course to provide a good blue print for Maine's wind energy future. Thank you.

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

Senator **RAYE:** Thank you, Madame President. Men and women of the Senate, I rise to join the good Senator from York in expressing support for the measure before us. This bill is the result of a great deal of hard work done by an extraordinary group brought together by the Governor for the Ocean Energy Task Force in the fall of 2008. This group includes leaders of industry,

energy, research development, fisheries, government and other sectors, including our distinguished former Governor Angus King. With two Democrats and two Republicans from the legislature representing the House and Senate, together we were asked to recommend strategies that will enable Maine to play a vital roll in achieving a critical national goal, first envisioned by President George W. Bush in 2006, reaffirmed by President Barack Obama in 2009, and endorsed by Republicans and Democrats in Congress, to meet 20% of the nations energy needs through wind power by the year 2030. With this bipartisan push by two successive Presidents of vastly different ideological persuasions and the support of Congress, it is clear that the United States of America is committed to achieving its goal. Now, states across the country, from the Great Plains and along both coasts, are competing to see what part of our nation will lead the way in attracting the investment in new technologies in the next generation of energy related jobs, spurred on by the renewable energy revolution. This bill is improved and honed through the good work of the Utilities and Energy Committee. I want to express my gratitude to the good Senator of York, Senator Hobbins, the Senator from Aroostook, Senator Sherman, and the good Senator from York, Senator Bowman, for their work in producing a bill that won the unanimous support of a diverse Committee. It represents Maine's best hope of being in the position to compete for as much as \$20 billion in investment and the potential of as many as 15,000 jobs for the Maine people in future years. This is an extraordinary piece of legislation. I am very pleased to have had the opportunity to work on it and I would call upon all of us to join together in unanimous support of L.D. 1810. Thank you, Madame President.

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with 1 Senator having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

ENACTORS

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

Emergency Measure

An Act To Amend the Maine Medical Marijuana Act
S.P. 719 L.D. 1811
(C "A" S-508)

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

Resolves

Resolve, Regarding Legislative Review of Portions of Section 10: Stream Crossings within Chapter 305 Permit by Rule Standards, a Major Substantive Rule of the Department of Environmental Protection

H.P. 1224 L.D. 1725
(S "A" S-493 to C "B" H-678;
S "A" S-506)

Resolve, Authorizing the Commissioner of Administrative and Financial Services To Sell or Lease the Interests of the State in Certain Real Property Located at 187-189 State Street, Augusta, Known as the Smith-Merrill House, and at 159 Hogan Road, Bangor, known as the Elizabeth Levinson Center

H.P. 1311 L.D. 1825
(C "A" H-816)

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

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

COMMUNICATIONS

The Following Communication: H.C. 299

**STATE OF MAINE
CLERK'S OFFICE
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333**

April 5, 2010

Honorable Joy J. O'Brien
Secretary of the Senate
124th Maine Legislature
Augusta, Maine 04333

Dear Secretary O'Brien:

The House voted today to insist on its previous action whereby An Act Concerning Statewide Communications Interoperability (H.P. 1201) (L.D. 1700) (C. "A" H-755) Failed of Passage to be Enacted.

Sincerely,

S/Millicent M. MacFarland
Clerk of the House

READ and ORDERED PLACED ON FILE.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **JUDICIARY** on Bill "An Act To Replace the Maine Limited Liability Company Act"

H.P. 1118 L.D. 1580

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-819)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-819)**.

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

READ ONCE.

Committee Amendment "A" (H-819) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

The Committee on **NATURAL RESOURCES** on Bill "An Act To Amend the Waste Motor Oil Disposal Site Remediation Program"

H.P. 1314 L.D. 1827

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-822)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-822)**.

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

READ ONCE.

Committee Amendment "A" (H-822) **READ**.

On motion by Senator **RAYE** of Washington, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-822), in concurrence.

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

Senate at Ease.

Senate called to order by the President.

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

Senator **BOWMAN**: Thank you, Madame President. As we were discussing L.D. 1810, the Governor's Ocean Energy Taskforce bill and its passage, I think we failed to mention one of the key people that made this bill as successful as it was and to get it to fruition as rapidly as we were able to do. That is Beth Magusky of DEP. I saw her at several of the public meeting around the state. She was always in the committee room, taking notes and lining things out. I even caught her in the hallways in between and after the meetings preparing for the next meeting, whether it was that afternoon or later. I don't think this bill would be before us in its present state without her wonderful work. I really thank you, Beth. We couldn't have done it without you. Thank you.

THE PRESIDENT: The Chair would ask Beth Magusky to stand and accept the greetings of the Maine Senate.

ORDERS OF THE DAY

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

HOUSE REPORT - from the Committee on **NATURAL RESOURCES** on Bill "An Act To Amend the Waste Motor Oil Disposal Site Remediation Program"

H.P. 1314 L.D. 1827

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-822)**

Tabled - April 5, 2010, by Senator **RAYE** of Washington

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-822)**, in concurrence

(In House, April 5, 2010, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-822)**.)

(In Senate, April 5, 2010, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-822) **READ**.)

Committee Amendment "A" (H-822) **ADOPTED**, in concurrence

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until 4:30 in the afternoon.

After Recess

Senate called to order by the President.

Senator **SULLIVAN** of York requested and received leave of the Senate that members and staff be allowed to remove their jackets for the remainder of this Session.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/1/10) Assigned matter:

HOUSE REPORT - from the Committee on **TAXATION**, pursuant to Joint Rule 204, on Bill "An Act To Amend the Tax Laws"
H.P. 1084 L.D. 1540

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-754)**

Tabled - April 1, 2010, by Senator **PERRY** of Penobscot

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

(In House, April 1, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-754).**)

(In Senate, April 1, 2010, Report **READ.**)

Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-754) **READ.**

On motion by Senator **PERRY** of Penobscot, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-754), in concurrence.

On motion by Senator **DAMON** of Hancock, the Senate removed from the **SPECIAL HIGHWAY TABLE** the following:

An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs

H.P. 1167 L.D. 1639
(S "A" S-441 to C "A" H-699)

Tabled - March 29, 2010, by Senator **DAMON** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 25, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-699) AS AMENDED BY SENATE AMENDMENT "A" (S-441)** thereto.)

(In House, March 29, 2010, **PASSED TO BE ENACTED.**)

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

On motion by Senator **DAMON** of Hancock, the Senate removed from the **SPECIAL HIGHWAY TABLE** the following:

An Act To Reduce Noise Caused by Motorcycles and Improve Public Health

S.P. 647 L.D. 1675
(C "A" S-415)

Tabled - March 23, 2010, by Senator **DAMON** of Hancock

Pending - **ENACTMENT**, in concurrence

(In Senate, March 17, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-415).**)

(In House, March 22, 2010, **PASSED TO BE ENACTED.**)

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

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

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

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

On motion by Senator **BARTLETT** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/1/10) Assigned matter:

Bill "An Act To Encourage the Use of Models in the Collection and Use of Student Achievement Data" (EMERGENCY)
S.P. 704 L.D. 1799
(C "A" S-483)

Tabled - April 1, 2010, by Senator **ALFOND** of Cumberland

Pending - **FURTHER CONSIDERATION**

(In Senate, March 29, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483).**)

(In House, March 31, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483) AND HOUSE AMENDMENT "A" (H-813), in NON-CONCURRENCE.**)

On motion by Senator **ALFOND** of Cumberland, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483).**

House Amendment "A" (H-813) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **ALFOND** of Cumberland, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "A" (S-483).**

On further motion by same Senator, Senate Amendment "A" (S-515) to Committee Amendment "A" (S-483) **READ.**

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

Senator **ALFOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, here we are this evening finally talking about L.D. 1799. I say finally because I think I had a warm up act about two weeks ago and now we are here tonight. This bill, An Act to Encourage the Use of Models and the Collection of Use in Student Achievement Data, has received the attention it deserves. This is a big change here in the state of Maine, and not one that I think the Committee took lightly, nor do I think this Body should. Let me tell you what this bill and amendment does, because there has been a lot of misinformation about what this bill does. First, it allows the State of Maine to remove the statute that does not allow the collection of student assessment data as part of teacher evaluations. That is the first step in this bill and this would remove the statute that does not allow that to happen. That is important and a key ingredient in this bill, being the third of three Race to the Top fund bills which would make Maine eligible for up to \$100 million in a competitive grant process. We saw just this last week two states were awarded over \$500 million in Tennessee and over \$100 million in Delaware. Clearly the Secretary of Education, Arne Duncan, is taking this seriously. Well over a dozen states competed for this first round and only two received funding. That is the first step. It allows the State to remove a barrier we have on the books. The second is that the Commissioner of Education will gather a stakeholders group. The stakeholders group is who we would think would be in a stakeholders group when we are talking about this subject; the MEA, the Maine Principals Association, the Maine School Boards Association, the Maine School Superintendent's Association, and

the Maine Administrators of Services for Children with Disabilities. So these five groups will get together and Commissioner Gendron will look at all of the models out there in the United States, and potentially internationally, and bring them and put them in front of the stakeholders group. This stakeholders group will look and analyze the models and they will have to approve any one or multiple models that get sent to our districts. All this work has to be done before July first of 2011. Right now in this amendment, it says each school administrative unit within the state may select and incorporate one or more of the models developed pursuant to sub-section one for the evaluation of professional performance of a teacher or principal employed by that school administrative unit. Lets take that sentence, it says that it may, it's not shall. You may decide to employ any one or multiple models that the stakeholders group has approved. Second, if locally your school district has had this conversation that they want student assessment to be part of a teacher or principal evaluation, they have had the discussion locally, they have decided that this is important for their community and they have decided that this is something they want to do. If this is the case, then they may use one of the models developed at the state level by the stakeholders group. To me, as a local community, your superintendent, your school board, community members, and teachers all have decided that this is a track they want to go on and thus they will use one of the models that was adopted by the stakeholders group. I think this is a very good first step, I think this is going to be a thoughtful step for the state of Maine. I think we have a stakeholders group that has time, but not infinite time, to come up with models or a model to send out. If that local community wants to it may adopt something that includes student assessments as part of teacher and principal evaluations. I would urge the Senate to think about your vote. If you decide to vote against this, you basically do not want to give the State of Maine the best chance possible for up to \$100 million. For those of you that complain that when is a state ever get to 55% you essentially, by voting against this, are making your vote to count as to say we are not at 55% and this \$100 million, potentially over the next three years, is not important to you. That is the choice that you all have to make and I hope that you follow my light. Thank you very much, Madame President.

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

Senator **WESTON:** Thank you, Madame President. Men and women of the Senate, we love to talk about our creative economy. We want innovation, but we are discussing an amendment that is nothing but restrictive. Can you imagine us saying that we want everyone to drive cars, we want you to learn how, and we want you to go out there but nobody can design any other car except Toyota and everybody has to drive a Toyota. We are taking away decisions from our local schools, innovative and creative decisions, and we are saying a group of nearly bureaucrats sitting in the fifth floor of the office building next door is going to decide the policy for your schools. If any thing changes and makes this policy difficult it's that you have to wait for the legislature to come back and act again. I say if you want to give up any hope of a chance at Race to the Top, then go ahead and accept this amendment. If you really want to do it, then lets vote against this amendment and go to the bill that got nearly a unanimous report including my good Chair. Thank you.

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

Senator **DAVIS:** Thank you, Madame President. Men and women of the Senate, I think this amendment gives the teachers a chance to have some say however slight in the valuation process. Teachers are apprehensive. They are fearful of what is going on and what's coming down the turnpike after them. I remind you that learning results, No Child Left Behind, have been very very difficult for the classroom teachers. This at least gives them some say on how they will be evaluated. They can choose from several different models. It is not perfect to be sure, but never the less, I think it is much improved over the other bill. I do agree with the speech by the Senator from Cumberland, Senator Alfond. I agree with everything he said. I am often reminded of the famous musical Oklahoma. The farmers and the cowboys were having some conflict and some man got up and sang a famous song. He wanted to say a word to the farmers. So I am school teacher, I was a teacher for 36 years, and I would like to say a word for the teachers. Give them a break. Let them have something to say on their evaluation process. There are many, many good teachers. There maybe some that are not, but most of them are good and they are hard working. Let's pass this amendment and then we can have the Race to the Top. At least give the teachers some security, some measure of peace, that they are going to be evaluated fairly. Thank you.

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

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

THE PRESIDENT: The Senator may pose his question.

Senator **RAYE:** Thank you, Madame President. I am the son of a teacher. I grew up in a teaching household, so I am familiar with the fact that there are some times when a teacher may have a high performing group of kids, a class that does very well. The following year that same teacher may have a more difficult, more challenging group of kids. I am curious if someone can explain how this would work in terms of teacher evaluation and if I need to be concerned about teachers being judged because of perhaps a difficult set of students in terms of the evaluation.

THE PRESIDENT: The Senator from Washington, Senator Raye poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Alfond.

Senator **ALFOND:** Thank you, Madame President. The goal of this amendment, and the previous bill that we had in Committee, was for the Commissioner of Education to go out and look at every model that is out there. To answer your question more directly though, just like the good Senator from Cumberland said, there are going to be teachers on this stakeholders group, or people that are representing teachers on this group. Everyone understands your example very well. We talked in our caucus about a doctor's office where you can decide who comes and who doesn't. When you are a third grade teacher you're just accepting those second graders coming in because you have to. You might have a stellar class one year and the next year you might have a

challenging class. Teachers are going to be part of this process. Nothing that gets approved by the stakeholders group will go out without these five groups saying yes we approve this being used in our local schools. I think they will be cognizant of the realities in the trenches on the ground and they have to build that in. This idea that there is going to be one test, this super high stakes test or assessment or evaluation, is not Maine's culture. We have never done it and I do not see this coming out of this. It just wouldn't fly. It wouldn't work.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I just wanted to rise for a moment and stress my frustration I feel with these federal mandates that we continue to see and these federal promises of federal money coming back to our states. I just want to remind you that they take our money. They take it down to Washington and then they give it back to us in these dangling carrots and tell us that if we change our education system, we can get our own money back. I just want to rise in frustration and put on the record that I am really kind of sick and tired as a policy maker representing children who need a good education and seeing these policies come back. I just wanted to illustrate my frustration. I will say that I believe that we are going to need more work on this issue. I am going to support the amendment with the idea that we are going to be coming back in a short period of time. We will see some models, but I believe we will be tweaking those models and fixing things in the future. I just wanted to illustrate my frustration with the fed's. Thank you very much.

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

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate, if we pass this amendment, I assume from the gloss that has been provided to it by the Senator from Cumberland, that everyone of these five so called stakeholders would have a personal veto over any form of assessment that any local school district might choose to adopt. This is taking away complete discretion of the Maine school boards and is imposing on our entire school system for all 200,000 or 195,000 kids. The prospect that none of the people who teach them will ever be evaluated in any meaningful way because we are putting the union in charge of vetoing the system, by which they are assessed, I find it unconscionable, especially after what we have been through with learning results. The efforts to do local assessments were completely ballasts up. Now we had a simple bill who's sole purpose is to remove an insidious restriction on what the school systems in our state can do by way of doing an honest evaluation of teacher performance. We are not going to pass that bill. Instead we are going to pass an amendment on it that, frankly, I think is designed to kill the bill. It makes it worse because it says that school boards, in order to use any form of student assessment and not just a state assessment, but any form of student assessment, in the process of evaluating teachers, has to adopt a model that has been ratified by all five of these stakeholders and all five of them will have a veto on what it will contain. This is a pretty sad moment. I am way beyond worrying about the Race to the Top money. I think that money is long gone. Right now I am concerned about the future of

education and for the students in our school system. I am concerned about the future of our state and about our ability to compete in the modern world. I guess we are going to be evaluating teachers on the basis if they dress neatly, comb their hair, and brush their teeth when they come to work in the morning because I don't know what there is left if you take away the performance of their students. If you can't evaluate teachers on the basis of the value they add in the classroom, where are you? We are no longer today talking about assessments of the sort that most of us in this room took twenty years ago with a number two pencil.

Today, the Northwest Evaluation Associates, the NWEA system, which is managed by teachers has computerized assessments that can measure what a child does in September and measure the growth of that child's development in November, January, and in June at the end of the year, reveal in math, science, English, the value that has been added to that child's life within the course of his or her exposure to that classroom. These tools are in use in about one hundred school districts. Why? Because teachers like them. Teachers want to know whether they are succeeding in reaching their students. They want to know where the holes are, where the student gains are, and where the holes are in the curriculum in the classroom, and so do the principals. With modern assessment systems, the other large teachers union, the American Federation of Teachers, has a policy statement that it will be fine with them to have student assessment used, a one measure among others, to evaluate the performance and ability of teachers. Why? They see that good teachers will stand out in such a system and, in another world perhaps, be rewarded for doing a good job. Teachers who are not doing so well have the means at their disposal to measure their own improvement as they grow in their own profession. There are assessment systems out there now that do an extraordinary job of measuring both student performance, teachers performance, and school performance. We are today putting on a amendment to this bill that will essentially deprive our school systems of making any use of these modern tools, the assets, the wonderful devices that we have now to help kids learn. It is a sad day. We are setting back education in Maine by decades by passing this amendment.

On motion by Senator **MILLS** of Somerset, 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 Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President. Men and women of the Senate, I am going to read a short note from a teacher in Maine. Then I would like to address a question that was asked earlier. 'I am in favor of having student testing linked to teacher evaluation. I feel that this action holds teachers accountable in their profession, and allows for constant reflection and improvement. It is about time that Maine sees our educational profession as the gateway for student achievement. Thank you.'

The question was asked, what do you do as a teacher when you get a really great class and they just seem to bound in one year, then the next year you get a class that is just struggling? This isn't going to punish a teacher because they have a class that is struggling. It is going to help that teacher bring that class

as far as they possibly can. It is the growth of each student in that year. If that student can grow just in small baby steps, and that is what you have done. That is what these assessments you just heard about do. Things have changed. Other states are looking at how we look at education is so different then other countries. I actually had a chance to meet the Minister of Education in Singapore. She said, 'You don't really get to choose to be a teacher in Singapore. You have to go and do very well and get a degree. Then you apply to the government. They choose about ten of every one hundred applicants to be a teacher. Then you have to go get your two years Masters degree. Then you are told where you are going to teach. You are not even paid very much money. It is prestigious to be a teacher.' Singapore is leading the world in education. The United States is sinking. We have always been at the top. We are now in the middle and are going further down. We have to look at how to educate our children differently. We have a lot of children with issues, as the good Senator from Washington County talked about. We want to encourage those teachers to take those children where they are and bring them as far as they can go. That is what this will do, in addition to just maybe bringing some money to this state that is going to be sorely needed. Thank you.

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

Senator **DAMON:** Thank you, Madame President. Ladies and Gentlemen of the Senate, as I have been listening to the discussion, and as we have been discussing it in our respective caucuses, I can't help but think back on my earlier career as an educator. Like so many of you, my colleagues in this chamber, we have been in that classroom. We do know what it takes to be successful. We have seen, I am sure all of us, varying degrees of success in terms of teachers and their students and the progress of both. Unfortunately, I have also seen, from a management perspective, that there has been a link, or a supposive link, between classroom growth and teacher effectiveness when it is to be used as a means for continuing employment as a particular teacher or terminating that arrangement. Sometimes those decisions have, from my perspective, have been right and sometimes they have been wrong. When I separate out what has been right and what has been wrong, it always comes down to the effort that has been made by the boss, by the evaluator, by the administrator, by the principal, as whether or not those evaluations have been true, accurate and objective, or whether they have been nothing more then an exercise to build a case that has been decided previously, whether or not those evaluations have been followed by a plan to improve that particular educator if improvement is in order, or whether they have simply neglected that component of that evaluation entirely. I have heard it said that there are now fantastic tools available to those administrators, those evaluators, and us, as the public, to make those evaluations of our teachers. I don't know what those tools are. I think I have been away from the profession long enough, so that they weren't there when I was there. If they can determine where each and every one of those children in that class was at the beginning of that school year and if they can determine the progress that each and every one of those children have made during the course of that school year and if it can be determined that the result of that progress or lack there of was a direct result of that teacher, that's a pretty good tool. Where does that tool factor in the individual lives of each one of those

students? Let me draw a point. I know of a particular classroom that there are nineteen children. In that particular classroom, let's call it a hypothetical but it isn't, there are fourteen of them who are living in single parent households, fourteen out of nineteen. Let's draw another couple of issues into what that child, or any of those children, bring into that classroom everyday that they come in to learn. Let's bring in the child who is sick to death of coming to school because he has to leave his siblings at home and he doesn't know what their condition is going to be when he returns. Let's bring in the child who was taken to a party over the weekend where guns were produced and his parent that was with him said, 'Take your younger brother and sister into the room and guard them.' He brings that baggage to school. What is he going to learn? What is she going to learn on that next day? What about the child that comes to school hungry? What about that child? I can go on and on and on and I will if you wish. Where do you factor that in to where that child started at the beginning of the school year and where they ended up at the end? If it truly is only a baby step, then I say that teacher has worked wonders, but if in fact that the model says that they need to be from here to here or else that teacher has been ineffective, I say you have missed the point. If we can develop a model, if we can agree upon it, if we need to have a model, for that evaluation, because apparently we don't have the interaction of an administrator with a teacher, the one on one that I think is most effective and most necessary. If we don't have administrators that can do that, make those changes, pat those backs, or usher them out the door, then let's try to come up with a model that I believe this amendment tries to approach, so that we can move forward on this race to the top. Before I sit down, I might just also say, there might have been another way to Race to the Top. Thank you, Madame President.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I rise and will pretty much make all the same points as the previous speaker, but I will skip over those he has already made and just add a few more to his wonderful argument. We have regions of our state that swing from one low rate of poverty to a great rate of poverty. Those kids in that district learn differently because they are poor and they are thinking about surviving more than they are about learning in school. You have different segments of the state that get much more education funding than other portions of the state. They have a wider curriculum to learn from and much broader areas to have expertise in and people learn differently. Without factoring in all of the differences across the state, there really is no way to assess learning and that is why I hate tests so much. It tries to put all the kids into the same framework and you just can't do that. I think we have come so far away from what we really need to teach kids and that is to identify their unique quality and then build on it. That unique quality may not be in taking tests, it might be fixing a car or building a cabinet. We have lost sight of what makes kids unique and build off those things. That is why I am going to support the amendment.

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

Senator **SULLIVAN:** Thank you, Madame President. Men and women of the Senate, I am not going to support the amendment.

I am not going to support the amendment for a lot of reasons, many of which my almost seatmate has spoken of. Do you think that his discussion of students fourteen out of nineteen of that in theory classroom coming from divorced homes is false, or the child who is sick, the child who has been at the party, or perhaps the child who has been used as a sexual pawn is false? Yes, it does happen. Don't kid yourself. It happens in every part of this state. I have a student who has two parents in jail. I am worried here also for a variety of reasons. I am looking at the amendment and it says that if a school administrative unit wants to they can include student assessments as part of the teacher evaluations. A great way when they are looking at who to fire. If you fire that teacher who has been around for a long time, you save more money. Yes, that does happen by the school boards in some cases. We design something in the Department of Education and this study group that looks at a possibility of five models, five models. I want you to know that in the way we assess children now we can use any model that fits the child. There could be a hundred different models but we decide which model to use. There will be five for the state of Maine and it doesn't make any difference where you live, what section of Maine, there are five. There are five models. We assess children to their standing. This is about evaluation. This is about children learning. I maintain that if you have to choose a place, a particular model, there is a certain mandate to that. If you use the New England basic core, that is a mandate. It is expensive to give tests that are nationalized. Of course there will be money. I also want you to know right now that our school system is set up, if you happen to be at the low end of the spectrum, special ed, there are a lot of special rules that kick in. If school systems have still been able to keep their gifted and talented programs, and they haven't even though they are mandated, they have not been kept. Once again this is the child in the middle. We have squeezed the child in the middle until the cows have come home, sorry about that Senator Nutting. We have always taken and affected the average student the most. Now we are adding home lives. This is the amendment, I would agree, is just as bad as the bill. It has been made at the last moment. What I have been told over and over and over and over again in my teacher professional days, we teach for the goodness of children, to make sure that the whole child is recognized, and allowed to grow. Instead, we are trying for perhaps some money. So I agree, it is sad. I will soon be leaving the classroom. I will miss the classroom. I will miss the students. I will not miss the shenanigans going on at both the Washington level and the state level who have decided what is good for children and what is not, when many of us have had twenty, thirty or more years in. Think of what happens right now, when they produce those scores for local schools. Think of how it turns one school against another. That is really nice to know that you are going to a low performing school. So there are plenty of things that we do that hurt kids now. I am not very popular in my caucus but it is nothing new. I am concerned, I am very concerned about this bill and I am very concerned about the children with whom I work when I am not here. I see their needs. It is not about chewing gum anymore. That used to be the number one problem in the classroom when I started teaching, chewing gum. To have the good old days back again. The problems are nothing that you even imagine because you are fortunate enough that have instilled values, church life, and have been instilled a sense of public commitment, of why you are sitting here. No, it is not for the hours, and I know it is not for the money. This has been put together for the sake of money. I am

concerned and I will be voting in opposition. I can read and I can count. I will still vote in opposition because I believe it is the best thing.

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

Senator **CRAVEN:** Thank you, Madame President. Men and women of the Senate, In Longley School in Lewiston, over 60% of the students are transient students and immigrant students who do not have English as the first language. Over 90% of them get free or reduced lunch. I believe there is no way to tie student achievement with teacher assessment. Serving on Appropriations, I am painfully aware of the cliff that we are facing next year. This amendment will put us in a position to at least qualify for some of those dollars. Certainly nothing is black or white. Nothing is one way or the other. I think that we have to keep trying and moving forward every step of the way. This is a resolve to get a group together to study various kinds of avenues to do the assessments, to put us in that position, and I will be supporting that amendment. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Rector.

Senator **RECTOR:** Thank you, Madame President. Men and women of the Senate, I am frankly confused. I understand, as we talk here about local characteristics, that our schools are unique in many different communities. Those characteristics are unusual and may be based on what that community might be like. Yet I believe what we are voting on here would require that student assessment structures that our teachers, administrators and school boards could have agreed upon within that community, can only be used if they meet the standard that some five member group here in Augusta has determined. They couldn't use their own student assessment process that they had come up with in the community that might reflect those unique characteristics of the students there. I guess I would like to pose a question to the Chair. If a student assessment has the purpose to help identify and measure student progress over time with the passage of this amendment would a local school board, in collaboration and support of their local school administration and teachers, be able to select any assessment structure that they chose or would they be forced to use a structure that was put in place here in Augusta? Thank you, Madame President.

THE PRESIDENT: The Senator from Knox, Senator Rector poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Alfond.

Senator **ALFOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, the answer to that question is no. I would also ask a question through the Chair. I would like to know how many of us can talk about our districts and talk about the local assessments they currently have on their books, and talk about how quickly those are ready to be shared with the state? I would like to hear that answer.

THE PRESIDENT: The Senator from Cumberland, Senator Alfond poses a question through the Chair to anyone who may

wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you, Madame President. Men and women of the Senate, I have several school districts that are very proud to be using assessment systems of a varied sort. I had mentioned one of them in my earlier remarks. These are assessment systems that they do not have to invent at the local level. Variations can be accommodated. To illustrate what is available in today's world, these NWEA assessments are available in math, science, English usage, and English comprehension. The tests are, for example, in math; the student is put in front of a computer screen, the assessment begins, and if the student is able to answer most of the questions quite well, it scales up immediately, questions that are made difficult for the student, so that even if you are a little Einstein, you will eventually come to the point of having to struggle and getting some answers wrong. On the other hand, if you are not able to answer the initial questions, the computer scales down immediately to reach the level of that child's achievement. So the kid that has the most trouble in class comes out of the assessment says, 'I didn't do too badly, I got three-quarters of them right.' The brightest kid in the class comes out sweating and says, 'I did terrible, I got a quarter of them wrong.' The test has something like 5,000 questions in the database. These are questions that are originated from teachers all over North America. They are constantly updated and they can be tailor made to match the learning results to the State of Maine and have been. I have school districts in my district that are proud to be using these assessments. The teachers find them extremely valuable to appraise how their students are doing as the year progresses. The interesting thing about these assessments is that the cost of them is about \$5 per child per year and you can give the assessment as often as you want to all the children in the class. It doesn't matter how often you give it. For next to no money, you can track student progress. I am not here to say tonight this is the answer, that this is the magic bullet, but to say that we should have a statute on the books that says you cannot use those kinds of assessments to evaluate teacher performance is to commit a crime, frankly, in terms of respecting what our children deserve. In the field, these assessments are now being used by the teachers themselves, as well as administrators, to aid in their own work. To say that no one in this state will be able to use those kinds of assessments, among others, to evaluate teacher performance, and that is what this amendment is designed to do, to deliver a veto to any member of this stakeholders group over any kind of assessment, to take away the power of the commissioner to design these assessments. The report that came out of committee 11 - 2, I think it was, said lets have the stakeholders group. Lets have that group operate as an advisor to the Commissioner in developing models and that at the local level they can choose from among these models. It was a reflective, appropriate piece of work, that garnered the majority support of the committee. Tonight, in the Senate in this chamber, we have this floor amendment which completely guts, as far as I am concerned, the intention of the Majority Report of the committee and presents us with a law that will be worse then the one that is presently on the books.

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

Senator **RAYE**: Thank you, Madame President. Men and women of the Senate, I find myself very conflicted by this amendment because I want to make sure that we are protecting teachers from unfair or capricious evaluations. I also know there are teachers out there who do not perform well and Maine's children suffer as a result. It is trying to strike a balance here to figure out what impact this amendment will have and what is the best thing for education moving forward. We all know that there are teachers who do need to have evaluations. With respect specifically to the amendment before us, I guess I am puzzled about what the rules are. How it would work? Perhaps its nebulous and perhaps it isn't really nailed down in here. If so, then that is an issue as well. We have heard a couple of times that each member of the stakeholder group would have the veto. I would like to know before we vote, if that is the case. Is this designed so that one member of a five member stakeholder group would have veto or is it something that the majority of the stakeholder group will decide? Is there someone who can answer that question?

THE PRESIDENT: The Senator from Washington, Senator Raye poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Alfond.

Senator **ALFOND**: Thank you, Madame President. Ladies and gentlemen of the Senate, there is no prescription on how this group will deliver an agreement on the models. There is nothing in here for a good reason, because then we would be sitting here debating, 'Well if someone has a veto power, then what's that? If it is the majority, then that is not enough. We should be talking about a super majority. Then we will be talking about, well does someone get a half a vote, or a third of a vote?' We didn't want to go down that line. The good Senator from Somerset, Senator Mills, has talked about a model twice tonight. No one is suggesting that model cannot be one of the models that goes into the stakeholders group then gets delivered as an approved model throughout the state if that local district wanted to adopt that. I think this is great and that is the type of grass root information sharing that I am sure will happen during this stakeholders process of deliberating and thinking about models to approve. The other piece that I think is interesting is when we are talking about this bill we are forgetting about every other thing that we are doing in education. There is a small little piece called response to intervention which does almost everything we have talked about when we have a child or a class that is struggling. A response to intervention gives that teacher and that school district a system where you can now identify children earlier, when they start lapsing, when they start not achieving what they should or could. It is not like this a silver bullet. No one is pretending this is a silver bullet. There are other educational pieces that we have passed in this Body. Multiple pathways. We now know that not every student is going to go into that brick or wooden structure, sit in that classroom seat, and all of a sudden have yearly progress. We know that children learn differently. We get it. Our teachers get it. Our administrators get it. Our superintendents get it. That is why we have many things we are reacting and evolving to in education here in the state of Maine. This is another evolution. Thank you, Madame President.

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

Senator **GOOLEY**: Thank you, Madame President. Men and women of the Senate, my wife was a school teacher for a number of years, so I reflect on that. A couple of things on this issue. The Longley School was mentioned earlier. I get the Lewiston Sun Journal and there was a letter to the editor in a couple of weeks ago by a retired school teacher from the Longley School who talked about the problems at the Longley School because of the issues that were mentioned by the good Senator from Androscoggin. I can empathize with the problems of the teachers, not only in that school, but also in other schools that have students that aren't proficient in English, as an example. The other thing I would like to mention is that I got a letter from a teacher at Carrabec High School. They are not in my area but adjacent to it. There are three school systems that were low performing. This teacher says that she has been teaching at Carrabec High School for ten years. She said that the 2007 Carrabec High School was designated by the US World News and Report as a bronze medal winner in their assessment of high schools. Two and one half years later, the State of Maine designated Carrabec High School as a low performing school based solely on SAT scores. This teacher goes on to talk about the issues involved; the low income, the single parent family, and so on. Sure I would like to see us gain \$100 million. Who wouldn't? Because of the ramifications of expecting this \$100 million, I cannot support this amendment. Thank you.

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

Senator **SCHNEIDER**: Thank you, Madame President. Men and women of the Senate, first of all, I don't think the original bill was the be all end all to solving our problems in educating our students. Neither will this amendment; however. I think when we talk about the frustrations coming from Washington, we have a situation where we are in a global competitive arena. The United States, including this state, is falling further and further behind, especially in certain areas of K-12 education. We are looking for ways where we can improve. I don't think we should be pitting our teachers against us or against the notion that we look thoroughly at evaluations of our students, our educators and our administrators. It is something we need to look at comprehensively. This is just one component of that. It is not onerous. I hope that we support this amendment and, if not the amendment, the bill because I think we should be looking at various models in which we can improve education and I think this is one path to that. I also was to say that I think we should thank our teachers and educators because it is difficult now. Everybody is being scrutinized. It is difficult because we have made some significant cuts in the current budget. I think that we also need to make sure that our teachers know we are very grateful to them and that this is not some way of hitting them or not thanking them, but to acknowledge that we need to look at the correlation between our educators and our students. I also want to talk about this notion that students that live in difficult situations are not able to be educated thoroughly and appropriately, because there have been whole schools that have very significant challenges in very poor areas, a lot of the same challenges we have here in Maine. They, through using certain tools of education, have been able to turn those schools around and the improvement for the education of young people has been significantly improved. My goal by supporting this is, of course, to

see additional funds flow to the state to benefit our students and to also acknowledge that there is a connection here and that we can look at this and evaluate it and hopefully together, including educators at the table, we will be able to do that. I think that is what this amendment is. We make amendments all the time on the floor. To say that this is just to appease one particular group, I don't think that that is the case. I think we have a lot of different people here who have expressed concerns about this particular bill. The amendment is trying to make people feel more comfortable with this particular piece of legislation and I think it achieves that. Though I don't think that either of these is going to solve all of our problems, I certainly support the bill and I support the amendment that will hopefully bring enough people together to support this piece of legislation moving along. Thank you very much.

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

Senator **SHERMAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I was getting hungry and still I am getting hungry. We have had these debates. I am not sure what I can add to it. I have a somewhat unusual background. Not really unusual, but I practiced law for a while. You can spend a day in a half at the Registry of Deeds doing one little thing. You could spend two weeks getting ready for a small trial. I often thought some of the attorneys I ran across should be tested on a regular basis but they aren't, obviously. We have doctors and nurses, the same sort of thing that is just parenthetically to what I want to say. I started teaching in the late 1970's. We didn't pick our students. There they are. You're teaching chemistry, which is kind of fun because you had the bright students that had a goal to go to college, goal orientated. Those are still there. It was great teaching those youngsters. I have a Masters degree in chemistry. I got it from the University of New Hampshire, back in the 1970's. There has been a drumbeat for probably twenty years to fix education. Let's do something with it.

Forbes magazine, I didn't bring it in, but they are always after MEA, which is kind of amusing in some ways. I thought they were about investing. In the Forbes magazine this time they have a program in one of the states where they would like highly qualified people doing other things to get trained to go into schools. The story who it was about was in her late thirties, early forties. She was a stockbroker making quite a good income and there was maybe twenty-five or thirty of these folks that we in her class. She became an English teacher. In that story, I felt sympathy for her because she was correcting 150 writing prompts. She had different layers of students. I am laughing at that, when you are reading it, because that is what a lot of us went through. We don't get to pick those kids. We really have no independence as teachers. You had to be at school at 7:30 am. The elementary teachers, bless their hearts, were always there first. Maybe they were more caring than us older guys in high school. We had to stay till 3:30 pm even though you may want to do something else. You had to correct tests. Most of us come back at night for a couple of hours or did several hours at home on weekends to do one big burden. I am going to end with a litany of things that have happened to schools over the past few years. Before I say that, Senator Turner used to sit in one of these chairs. He came from a small high school, I believe in Lubec, and went to the University of Maine. He got into financing and he did fairly well from Lubec High School. My point being

that when I started teaching, I made a list of these things that you expect teachers to do and you're trapped, and I don't mean that in a bad way, for twenty minutes at lunch. Here we take lunch when we feel like it. I see lawyers eating all the time. Maybe with doctors, and my wife is a nurse, the patients come first. Maybe that's why I should talk about students. Here are some of the things we went through and this is a short list. We had the great geniuses to talk about open concept schools. What that was is that you had a big room like this or larger. The idea was that one teacher was going to give a large lesson maybe on a science project or something, and then you are going to break up those children in smaller groups and the teachers are going to work with some aspect of what that larger lecture was. Teachers were never trained in that, so you may have some of these schools around where pretty soon the books are piled higher and higher. You were back, in a sense, to teaching the old way, if you will, which was in some cases highly affective. We had new math. Maybe some of the kids earlier went to new math. That was supposed to teach kids in a particular way. It would take them an hour to do one problem. They had all the little zeros lined up the way they should be tenths, hundredths and that sort of thing. We went into mini courses, which swept that state at one time, instead of four quarters. We would have a quarter of a course. Mini courses were a great fad, maybe they are someplace today. Those of us that wanted a basic curriculum at one point needed sixteen credits to graduate from high school. Now there are twenty-two, twenty-five. You do all sorts of things to get credits. You may have to do an art piece. We went into that type of situation. I am only a quarter of the way down here. We added a school year, thinking we did something great.

I have heard other reference of other countries. I was on the NEA, Director of the State of Maine. We used to go to D.C. and all that junk, and listen to the experts talk to us. I was also on the local board. We had folks that went to France and Switzerland, who had a 220 day school year, but they used to take them on outings skiing, as I understood it. I hope I am not making this up. Those days that you took the kids out, those counted as school days. Germany right now is going through a big change in their school structure because they used to have a track where kids went into the crafts if you will, and that wasn't quite right, so now they are messing around with that. We had mini courses, open concept, and assertive of discipline. That came from California. A bunch of superintendents went out to a meeting out there and they said we are having trouble in the classroom, so let's practice assertive discipline. Not that there are any teachers who remember that. You gave Jonny or Janie a mark on the wall. If they were good, and you got so many marks on the wall, you had popcorn, soda, or an ice cream deal. I will end here. Unless it is done in an intelligent sort of way, you are going to mess around with teacher's minds and lives again, who have no control over it.

My mentor when I first came here, and I will end with this, was a gentleman by the name of Irvin Blanchard. He was Superintendent of Caribou. Irvin gave me two pieces of advice; one was the ten second rule. Down here you never held on to a piece of paper more than ten seconds or it would be yours for life. We got talking about teachers. He said if you have a teacher who knows his or her subject matter and loves the subject matter, I don't care whether you are open concept or black and white, days where you go 2-3 hours one day, students will learn. I have seen case after case where the low achieving students, if you will, have been brought forward. My take on schools is that I go to the reunions of kids that have graduated. Some have been out ten or

twenty-five years. We had a thirty year reunion not to long ago. We had every student who graduated except two. One said she had such a terrible time at the school she would never come back. The other happened to be in jail in California, but that is another issue. Every one of those students had done something in life. Some were actually lawyers, which is something I guess. Some had Masters degrees in all sorts of things. Some went into banking. Some worked for the State. In fact, there are a couple individuals who work in this building that went to my high school a few years ago. Once in a while she comes back here talking about how she is a union member. We talk to her on a regular basis. She also used to be a fairly good ball player. What I am saying is, we can do these assessment type things, and talk about teachers being fired if you will, but unless you look at the fact that you give some autonomy to the teacher in the classroom you can test kids all you want. If that teacher knows his or her subject matter and they enjoy teaching, and you have teachers that don't, frankly, they are good at other things but they don't enjoy teaching. We can do this. I have no idea how I am going to vote on this thing, but I get amused by some of these stories I hear and how we are going to do things. I don't mean amuse in a bad way, because I talk about a lot of stuff that I don't know about either, so, I will except people pontificating about schools.

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

Senator **RAYE:** Thank you, Madame President. I rise with another question. I think a number of my questions are in direct correlation to my concern about this issue and trying to get this vote right. Can the use of student performance be tied directly to the dismissal of a teacher or is it just one factor in the teachers overall evaluation?

THE PRESIDENT: The Senator from Washington, Senator Raye poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Davis.

Senator **DAVIS:** Thank you, Madame President. Men and women of the Senate, I would say that this is just one of these things that they are going to evaluate and that is the way it has always been in the system. I think that is the way I read this amendment. Thank you.

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

Senator **SIMPSON:** Thank you, Madame President. Men and women of the Senate, I first ran for office ten years ago when my son was only in the third or fourth grade. Now he is in collage. One of the things that I remember first thinking about when I came here was Learning Results because it had all just started. I was very closely connected with the classroom because I always volunteered in his public school because I wanted to make sure he was getting a good education. Then the reports cards came out for a new method of testing and teaching. The really fortunate children got to go home with report cards. Those for special needs kids would say, 'Fails to meet the standard.' That is all they would get for grades. Some of them would be able to meet that standard. How disheartening, year after year. How long will that student stayed school? So, like the good Senator from

Lincoln, I am pretty upset with the federal government for waiving \$100 million in our face, to say we have to start judging student performance and linking the teachers to the student performance, when they never funded special education yet they place these demands on our teachers. That being said, in these tight times, and we see all of our schools struggling, we can't look the other way and say we'll forgo trying to get this money. Not that I think it is terribly likely and certainly we are not going to get \$100 million. If we get something, that is better then nothing. This is from my child's second grade teacher. I went to help with those kids that are a little brighter. They wanted to have some extra reading and stuff and I was working there. She said, 'So I hope this year goes better then last,' this teacher that we all linked to the student performance. She said, 'At the end of the last year, I had two students left from the beginning of the year.' Two students. How will she be assessed? Most students are not even there anymore to see what their progress was. I hope you all will support the pending motion because we shouldn't turn our back on the little bit of extra cash to help our strapped schools and our strapped tax payers. This isn't a Race to the Top, it big brother sort of bullying us. For all the years I spent going back and forth to the public school and being involved with my son's education, I didn't see any teachers I thought were so incompetent, that needed to go. I saw a lot of hard working people who were there early, volunteering, doing things after school, and making an extra effort to help our students. Unfortunately, I didn't see as much dedication for a lot of parents, so before we start saying teachers are responsible for everything, we should all look in the mirror and see whether or not we come home after work and help our kids with their homework and make sure that if you are an employer that you give your parents a little time off if their children are sick so they can be there to care for them. I am troubled that I have to vote for linking teachers to student performance in this way, in an effort to get \$100 million, but that is what I will do. Thank you.

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

Senator **ALFOND:** Thank you, Madame President. Ladies and gentlemen of the Senate, I rise just for two quick points, one a correction. If your local school system had an assessment that they really loved, there is nothing in this amendment that says that that local assessment could not be used in addition to the ones that this stakeholders group comes up with. I wanted to correct the record. I think it was the Senator from Knox, Senator Rector, who asked the question and so that is that piece. The Senator from Somerset, Senator Mills, brought attention to the NWEA. Well apparently there are over 120 schools that use the NWEA to help determine the amount of growth that students are making and these scores could also be part of the evaluation process. What we are talking about is that we have a blank slate to do it right, to do it thoughtfully, and I hope that this is the final comment on this bill, probably not. Thank you, Madame President.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Alford to Adopt Senate Amendment "A" (S-515) to Committee Amendment

"A" (S-483). 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 (#400)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, CRAVEN, DAMON, DAVIS, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, MCCORMICK, PERRY, RAYE, SCHNEIDER, SHERMAN, SIMPSON, TRAHAN, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: COURTNEY, GOOLEY, HASTINGS, MILLS, NASS, NUTTING, PLOWMAN, RECTOR, ROSEN, SMITH, SULLIVAN, WESTON

ABSENT: Senator: BRYANT

22 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **ALFOND** of Cumberland to **ADOPT** Senate Amendment "A" (S-515) to Committee Amendment "A" (S-483). **PREVAILED.**

Committee Amendment "A" (S-483) as Amended by Senate Amendment "A" (S-515) thereto, **ADOPTED**, in **NON-CONCURRENCE.**

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483) AS AMENDED BY SENATE AMENDMENT "A" (S-515) thereto, AND HOUSE AMENDMENT "A" (H-813), in NON-CONCURRENCE.

Ordered sent down forthwith for concurrence.

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

Bill "An Act To Amend the Tax Laws"
H.P. 1084 L.D. 1540

Tabled - April 5, 2010, by Senator **PERRY** of Penobscot

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-754)**, in concurrence

(In House, April 1, 2010, Report **READ** and **ACCEPTED** and Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-754)**.)

(In Senate, April 1, 2010, Report **READ**.)

(In Senate, April 5, 2010, Report **ACCEPTED**, in concurrence. **READ ONCE.** Committee Amendment "A" (H-754) **READ**.)

On motion by Senator **PERRY** of Penobscot, Senate Amendment "A" (S-514) to Committee Amendment "A" (H-754) **READ**.

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

Senator **PERRY:** Thank you, Madame President. Ladies and Gentlemen of the Senate, I would like to tell you a little bit about the bill before us and about the amendment that I am offering and how it came about that we need this. It is one of those situations that we run into down in taxation, more and more we see situations arising where we find businesses with an audit situation, a tax liability that hadn't shown up in past audits or years past, and sometimes it is just the nature of the economy changing, sometimes I don't know how these things come about, so I want to tell you about this specific amendment and the case at hand. It is hard for me in some ways to present this amendment, it's a very important bill that we need to pass. This amendment has a fiscal note and this bill is going to end up on the appropriations table, and I don't know if there is a way to deal with this. The situation is, we do things differently here in the state of Maine in regards of renting cargo vans, then I think any other state in the nation, at least every other state around us, and we handle cargo vans, I think its registration is over six thousand pounds, we deal with them differently then we deal with car rentals. If you are in the car rental business, and you buy a car to rent to your customers, that car is tax exempt when you purchase it, because you are collecting sales take on the rental at the rate of ten percent. When you ultimately sell that car, you collect sales tax on whatever value is left in the car when you sell it. So the State forgoes the tax revenue on the purchase of the car up front when it is worth retail, and collects sales tax when it is sold down the road and in between, they collect sales tax on the rental. Cargo vans are different here in the state of Maine, cargo vans you pay the sale or use tax at the time you purchase it, and then cargo van rentals are tax exempt. That is a situation we took care of in tax reform, in the tax reform package; we recognized we were out of step with the rest of the nation on how we were handling cargo vans, and that there was ultimately a potential problem there. One of the reasons we had to deal with it in tax reform is we were giving up revenue up front, when the vans were purchased, revenue was coming in. Untimely, we probably collect more revenue by making the purchase up front, tax exempt and collecting at a higher rate while it is being rented, but it caused a dip in revenue that would have been dealt with, with a fiscal note, that is why we put it in tax reform, it was paid for there, it brought us in line with the rest of the country. That is only a side issue, let me explain. We have Enterprise Rental Car that has been audited a number of times over the years and have come up clean in regards to these cargo vans, it was an issue that never came up in audits; I am sure in any audit they find issues that are dealt with, and paid if there is an assessment and that's it, but the cargo issue never came up. This recent audit, and this information is coming through Enterprise Rental because Maine Revenue won't share tax payer information, so I am sharing with you information that they shared with me, at the end of the audit there was a final question, do you do anything with cargo vans? The answer was yes, and they said that they need to put this audit on hold and we need to get more information from

you. Enterprise Rental Car who also owns Alamo, and National Rental Car, I think it is also here in the state, a privately held company, and as far as I can tell good corporate citizens here in the state of Maine. Realized that they had been doing things in Maine the same way they had been doing them in all the rest of the states they do business in. They were not paying sales tax on these cargo vans when they purchased them, and they were collecting sales tax from their customers when they were renting them, and remitting the money to the state of Maine, something to the tune of like \$168,000 of sales tax money was collected from customers and remitted to the State of Maine, albeit improperly, shouldn't have been done that way. That is the way they do it in every other state, and that is the way they do it in the state of Maine, and who could imagine that cargo vans and rental cars would be done differently, but it has been up until now, and right now we don't know how we are going to be doing it moving forward. If you look at the entire Enterprise Rental Car fleet, and the amount of business they do with these vans, roughly thirty vans will take care of their business in the state of Maine on an ongoing basis, but the nature of the business is these vans come in the state, they come out, they are rotated regionally, you get one way rentals, in the fall in Maine to Florida, in the spring from Florida back up to Maine, so over the course of any given year or two, where thirty vans were handled, the amount of business they do, there is a couple of hundred vans that cycle in and out through the state of Maine. So now Enterprise is looking at potentially roughly \$700 per vehicle based on the value of these vehicles, \$700 per vehicle use tax audit on every vehicle that they have done business here with in the state of Maine. Even if it is only for a few days as the inventory rotates. If a one way comes here in the state of Maine and it is rented out of the state of Maine, they are going to get hit, or they have been hit with an excise tax, with a use tax. So that is the situation that was presented to me, Enterprise approached me, very concerned about this latest twist on this standard audit procedure because they knew they had not been doing it the way the law prescribed, and they knew they potentially had a very big problem just from the nature of the way rentals occur, and more vehicles come through the state then it takes to just manage their business they have here and that potentially, with a very small connection to the state of Maine, they could end up a \$700 tab on a \$40 rental out of the state. We looked at the fact that they have collected about \$168,000 from customers, collecting sales tax and remitting it to the State. We have the money. We've spent it by now, but we have it. The customer who rented the van is entitled to ask for that money back. I think they have a three year window to do it. We all know, realistically, that's just not going to happen. Certainly not \$168,000 worth. Very little, if any, will ever be returned. The question is, should we consider an offset? Let me just back up on moment. The last couple of weeks I've been working on this quite a bit. The audit hasn't even been completed, or hadn't been completed. I was getting feedback that we should just stay calm and see what happens, that this audit may not be as bad as they think and we may be able to settle this quite easily because Enterprise Rental had come forward and said they were willing, because they screwed up and collected the money, to pay. They offered to settle this with paying what the use tax is on roughly the 30 vehicles it takes to meet their needs here in the state of Maine but not the 200 vehicles that would cycle through. The feedback I got from Maine Revenue was to just sit tight, that this may not be as bad as they think and that we're not going to hit them for misuseage and vehicles that pass

through the state. It was reported to me, through Enterprise, that they did get their final assessment and I am at liberty to share that over \$200,000, roughly \$210,000, was their assessment with another \$95,000 of penalty and interest, for a grant total of over \$300,000 because of just the way things go with their business and no right to offset any of that with the sales tax they've collected and given to the State of Maine. Honestly, probably rightfully so. It's fraught with difficulty, trying to allow them to offset it. That's what this amendment does. There is a fiscal note and if we adopt it this will end up on the Appropriations Table. What makes it even worse is we're all hanging here in limbo because of the pending repeal of tax reform. If we had not done tax reform at all, at least they would know if they are in further jeopardy operating here in the state of Maine. If tax reform had gone into effect January 1st they would know, at least after January 1st, that they risked no further audit and there was no problem moving forward with the way they are doing business because now we are in conformity with the rest of the nation. The fact that tax reform is in limbo, Enterprise finds themselves in limbo and they don't want to risk any more of these \$700 per vehicle audit assessments, so they are going to get all their rental vans out of the state of Maine because they don't know what is going to happen. We can't provide them with any assurances that we understand that it's because of us, we do things differently, we understand they are in limbo, or that we're going to commit to them that there will be no more audit activity on their vans that are here currently until we get an answer on tax reform. We can't promise them at this point, as far as I know, that they are safe. They want to remove their vans from the state of Maine because they are not going to risk any additional costs. That's where we are now.

To make it worse, we hear all the time that we are a high tax state. That's not good for business and I hate it. I think when you dig into it that's not the case in many ways. I attended a conference with all the Tax Chairs and Appropriations Chairs from New England. Quite frankly, we're the envy of most of New England right now with the way we've handled our problems here in the state of Maine. Even New Hampshire is raising taxes. They've all got problems with unemployment compensation. They really are impressed with the way we've been handling things here in the state of Maine. I don't think it's necessarily our tax rate but it's the nit picking. It's these situations that arise that there are just no good answers for. It's not Maine Revenue's fault. They are enforcing the laws we give them. Then we bang our heads against the wall about the way they are enforcing them. They are doing their job. I get it. Enterprise wasn't doing things the way the law said here, but in very good faith they were operating here in the state of Maine. They have 176 employees. They are good corporate citizens. They register their cars here, locally, in the state of Maine, in Bangor, South Portland, Saco, and other places around the state. They don't have to do that. There are other systems where the money doesn't stay locally. The problem is we have really turned this good company, who has done well in the state of Maine, sick over what's going on here in the state of Maine and they are angry. I understand why they are angry. We may get the \$310,000 out of them before we are done, but they have no desire to register their cars in Bangor or South Portland any more, or locally, because they feel like they've been treated unfairly here in the state of Maine. I understand that. This amendment seeks to allow them to offset some of the money they collected and remitted to the State of Maine minus any money that might be returned to customers if

they request it against this \$310,000 assessment. I'm highly skeptical that we can find a way to make this particular amendment work. We're running out of time. If we accept this amendment, this bill will end up on the Appropriations Table. I'm going to continue to work to see if there are any additional amendments that could be used in Appropriations to try to do something to mitigate what's going on with this penalty, because I hate to see a good corporate citizen soured on the state of Maine and taking it out on our local communities where they register cars and just leaving with that impression of the state. I'm asking people to consider accepting this amendment and it will buy us a few more days to continue to work to see if there are any solutions that makes this problem at least not so bad. Thank you.

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

Senator **NASS:** Thank you, Madame President. Ladies and gentlemen of the Senate, I won't add much to what the Senate Chair of Taxation said except to say he's right. I've shared with him for six years the frustration of watching Maine Revenue Services seemingly pick on somebody every year, or two or three entities. It's always different, it's always expensive, and we have no way of fixing it. It is about separation of powers. We get to make the laws and they get to enforce them. It's tough putting the two things together sometimes. I am very uncomfortable with this amendment. It's got a huge fiscal note on it. We have no money. Where is this going to go? It's going to go on the Table. The Chairman has asked for a couple of more days to fix this. I don't see a fix and I'm very worried about the bill. The bill is important. It has some very necessary things in it. We are now putting all of those things in play in the next few days. I'm going to be vigilantly watching for the results. I don't think there is one that is going to be satisfactory. In the end I think we are going to have to abandon Enterprise and wait for another time. That's unfortunate, but I think that's our only choice at this point. Thank you.

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

Senator **COURTNEY:** Thank you, Madame President. Men and women of the Senate, I just wanted to respond to a couple of comments that we heard with the explanation of the amendment. I think if you look at the amendment, it has an approximately \$700,000 fiscal note, which concerns me greatly because I thought that I heard the good Senator from Penobscot say that if the largest sales tax expansion that has ever been proposed in the state had passed then we wouldn't be having this problem trying to help out Enterprise. I just wanted to kind of lay that out there to enhance the debate because I'm not sure that it was the intent of even the people who drafted the sales tax expansion to send a large sum of money to a large corporate power like Enterprise. Thank you, Madame President.

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

Senator **BLISS:** Thank you, Madame President. Men and women of the Senate, I am the least knowledgeable of the three Senators who sit on the Taxation Committee. Both of my colleagues are infinitely wiser and better steeped in the intricacies

of taxation than I. This is an example of a business that tried to do the right thing and that thought it was doing the right thing. Unfortunately, as my good friend from York so clearly stated, sometimes Revenue Services chooses someone to pick on. This time this is the business that they are picking on. It's my belief that this goes a long way to validate what some businesses say about how difficult it is to do business in Maine. We ought to be reaching out our hand to help a business find a solution and right a wrong rather than putting up walls between our Revenue Services and that business. My good friend, the Chair of Taxation, has been working tirelessly to find a solution to this and, frankly, beating his head against a brick wall between Revenue Services and us. I think what he is asking us for is a little bit more time. He's asking us to trust him. He understands that this is an important bill. He understands that it's going to wind up on the Appropriations Table for now if this amendment gets added to it, but he's asking us to help him find a solution so that Enterprise understands that, at least in Maine, the Senate is trying to help them stay here and continue to do business here. I think that is a noble effort. Thank you, Madame President.

The Chair ordered a Division. 24 Senators having voted in the affirmative and no Senators having voted in the negative, the motion by Senator **PERRY** of Penobscot to **ADOPT** Senate Amendment "A" (S-514) to Committee Amendment "A" (H-754), **PREVAILED**.

Committee Amendment "A" (H-754) as Amended by Senate Amendment "A" (S-514) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-754) AS AMENDED BY SENATE AMENDMENT "A" (S-514)** thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/2/10) Assigned matter:

An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments

S.P. 582 L.D. 1504
(C "A" S-501)

Tabled - April 2, 2010, by Senator **RAYE** of Washington

Pending - **ENACTMENT**, in concurrence

(In Senate, March 31, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501)**.)

(In House, April 2, 2010, **PASSED TO BE ENACTED**.)

On motion by Senator **MILLS** of Somerset, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501)**.

On further motion by same Senator, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (S-501).

On further motion by same Senator, Senate Amendment "C" (S-516) to Committee Amendment "A" (S-501) **READ**.

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

Senator **MILLS:** Thank you, Madame President. We went through amendments A, B, and C just to get it right. The underlying bill is quite interesting, but that's not what I'm up to talk about. I was the sole sponsor of the bill and the Natural Resources Council took it over and turned it into a really fine piece of work and it came out as a unanimous report from the Utilities Committee. Basically, it sets standards for defining what a tangible benefit must be when a wind power company applies for a permit within a given region. It allows some flexibility in how those benefits may be conferred, not only in the town or jurisdiction in which the wind project is being developed, but also in the surrounding territories. I thought they did a very fine job and the committee did a very fine job at working this bill through and getting everyone to agree to its terms. This amendment that I am presenting this evening would clear up what I think is a reasonably small matter involving how the regulatory agencies account for the fees that are charged to developers. When a developer comes before LURC or DEP our current law says that not just wind developers but developers in general must contribute towards the cost of reviewing the impact of the intended development. There is a cap on what can be charged at \$250,000. What we found is that quite commonly there are satellite agencies, smaller agencies, that are required to participate in this review and they have no way of participating and recouping their own modest costs for providing this review and service. The departments in question are the Department of Inland, Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, and the Department of Marine Resources. For example, if a deer yard is effected by an application from a wind developer or some other developer, obviously, IF&W has to be involved in evaluating whether the deer yard impact is substantial or not. In any case, the purpose of this amendment is quite simple. It is to allow these small departments that have limited resources to send in their own accounting to the lead department, LURC or DEP, and have their own costs included in the assessment that is made for evaluating the development. Fairly simple, but it may mean a lot to some of these smaller agencies like Marine Resources, Ag, IF&W, and Conservation. That's the purpose of the amendment and I would move its adoption. Thank you for allowing me to speak to it.

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

Senator **TRAHAN:** Thank you, Madame President. Ladies and gentlemen of the Senate, I just wanted to rise to thank the good Senator from Somerset for introducing this amendment. We all know how the small natural resource agencies have struggled with funding. This is an area where I believe there is a revolution going on right now, and that's in energy and the expansion of projects in the state of Maine. These little departments are going to take on a greater and greater burden each year. I think that this amendment addresses the issues that would allow those little agencies to continue to protect the resources for which they were created. I know in Inland, Fisheries and Wildlife we protect endangered species. We do search and rescue. What few dollars that will be provided through this bill will help them commit more of their resources to those very important issues. Thank you, Madame President.

On motion by Senator **MILLS** of Somerset, Senate Amendment "C" (S-516) to Committee Amendment "A" (S-501) **ADOPTED**.

Committee Amendment "A" (S-501) as Amended by Senate Amendment "C" (S-516) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-501) AS AMENDED BY SENATE AMENDMENT "C" (S-516) thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Amend the Laws Pertaining to High-stakes Beano"
H.P. 1322 L.D. 1831

Committee on **LEGAL AND VETERANS AFFAIRS** suggested and ordered printed.

Comes from the House, Bill and accompanying papers **INDEFINITELY POSTPONED**.

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

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

ENACTORS

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

Resolve

Resolve, To Establish the Commission To Study the Rule-making Process under the Maine Administrative Procedure Act
H.P. 1272 L.D. 1784
(H "A" H-808; H "B" H-818 to C "A" H-777)

On motion by Senator **BARTLETT** of Cumberland, placed on the **SPECIAL STUDY TABLE**, pending **FINAL PASSAGE**, in concurrence.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands and the Department of Inland Fisheries and Wildlife
H.P. 1291 L.D. 1803
(C "A" H-723; S "B" S-509)

In House, March 25, 2010, **FINALLY PASSED**.

In Senate, April 2, 2010, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-723) AND SENATE AMENDMENT "B" (S-509)**, in **NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-723) AND HOUSE AMENDMENT "A" (H-824) AND SENATE AMENDMENT "B" (S-509)**, in **NON-CONCURRENCE**.

On motion by Senator **NUTTING** of Androscoggin, the Senate **RECEDED** and **CONCURRED**.

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

REPORTS OF COMMITTEES

House

Divided Report

Seven members of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Ensure Humane Treatment for Special Management Prisoners"
H.P. 1139 L.D. 1611

Reported in Report "A" that the same **Ought Not to Pass**.

Signed:

Senator:
DAVIS of Cumberland

Representatives:
HANLEY of Gardiner
LAJOIE of Lewiston
GREELEY of Levant
PLUMMER of Windham
BURNS of Whiting
SYKES of Harrison

Four members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-763)**.

Signed:

Senator:
GERZOFISKY of Cumberland

Representatives:
HASKELL of Portland
WHEELER of Kittery
MAGNAN of Stockton Springs

Two members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-764)**.

Signed:

Senator:
NUTTING of Androscoggin

Representative:
SCHATZ of Blue Hill

Comes from the House with Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)**.

Reports **READ**.

Senator **GERZOFISKY** of Cumberland moved the Senate **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)**, in concurrence.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#401)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, CRAVEN, DAMON, DIAMOND, GERZOFSKY, GOODALL, HOBBS, MARRACHE, NUTTING, PERRY, SCHNEIDER, SIMPSON, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: COURTNEY, DAVIS, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, TRAHAN, WESTON

ABSENT: Senators: BRYANT, JACKSON

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **GERZOFSKY** of Cumberland to **ACCEPT Report "B", OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)**, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-763) **READ**.

On motion by Senator **NUTTING** of Androscoggin, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-763) **READ**.

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

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, this year marks the 18th year that I've either been in this Body or the other. I have still maintained that I'm probably not the best public speaker in the world, but I do pride myself in being one of the better nose-counters out there and realize that I did not have support enough to pass the particular version of this bill that I'd voted for in committee. I'm in a position now, and trying to accomplish as much as I can with this particular issue. I remain concerned that in the last two years 43 prisoners have been released from solitary confinement directly out into the public without any transition period. I have concerns with some prisoners with severe and persistent mental illness not being on a treatment plan and being placed in solitary confinement for the vast majority of their time, for week after week and month after month. Combining those concerns with my, I still think pretty good, ability to count noses, I've supported the resolve. To me it's far better than an Ought Not to Pass. In the resolve I'm very, very concerned that it's not strong enough. The Commissioner, to me, in the Resolve, in Report B, doesn't have to really go by and follow the recommendations of the Mental Health Sub-Committee of the Board of Corrections. I'm offering this amendment to set up a working group to try to push the envelope a little bit further in getting the department to do, for instance, what they've done in Mississippi. In Mississippi they've taken 80% of their prisoners out of this particular housing situation, the prisoners with mental illness. The same has happened in England, the whole country. To me, this resolve, and this amendment to Report B, just sets up a working group

that's a broad cross section of folks. I think it makes recommendations to the Commissioner that I'm hoping that the Commissioner can follow, and receive in a little more of a stronger presentation than the current resolve that is before us. That's why I'm offering this. I think this moves the ball, so to speak, up the floor a little bit. No reference to the game that is on in 45 minutes, Madame President. To me, this very serious issue does effect more change, I believe, in the next two or three years than the resolve that is currently before us. I would urge your support of this amendment. Thank you.

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

Senator **GERZOFSKY:** Thank you, Madame President. Ladies and gentlemen of the Senate, I rise in opposition to this amendment. I can't be any more against an amendment. Not only does it cost money but also it doesn't get us anywhere. My committee's been studying this subject for the last 10 years that I've been here. We've made several changes over the years. Those changes have resulted in very positive outcomes. This debate is really about something that is called solitary confinement, which I might not even agree we have in the state of Maine. I believe we have special management units that house people that committed serious crimes inside of a maximum security prison. These are people that were adjudicated by the court system to be fully competent to serve that sentence. They knew what they were doing. If they were judged to be not responsible, they'd be over at Riverview Mental Health on the forensic side. This amendment does nothing besides move this down to another committee of the Legislature to have them look at it. First of all, I don't think they have nearly the expertise as the Criminal Justice and Public Safety Committee has that has looked into this. It has looked into it for years. It has made recommendations. It has made changes and has developed the best mental health ward in the United States, so deemed by the people who come here to accredit our facilities. This amendment is not the right amendment for now. This issue, if it came before the Body 10 years or 12 years ago, I would have supported it but I don't today because I know the changes that have been made since then. This amendment, that moves the responsibility to another committee, and that's what this amendment does, that's what I'm speaking to, I think is completely inappropriate at this time or at any time. The committee of oversight is the Committee of Criminal Justice and Public Safety. Madame President, I hope that we can defeat this amendment tonight and I hope that people will follow my light on that. Thank you very much.

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

Senator **DAVIS:** Thank you, Madame President. Men and women of the Senate, I sat through the long and arduous testimony that was given on this. One day we started out at 1:00 and finished at 10:00 p.m. without a break. I've heard all the evidence and read the works and the papers that were offered. I think it's highly ironic, one gentleman offered Mark 5 versus 3 to 5. In that Jesus comes across a man who was insane and hurting himself and others. He takes the evil spirit of this particular man and transfers it to the swine. The swine ran into the river and drowned. Then the people of the area asked Jesus to leave the area because, according to some missionaries that I

associated with in Africa, it costs money, lots of it, to cure the insane. We don't have the money to do all this, to hire more psychiatrists and psychologists, especially at this time. I'm going to vote against the amendment. I think we did the very best job that we could. I agree with my Chair, who is a very fair gentleman. I hope you will vote against this and join us in that way. Thank you.

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

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, I just want to clarify something on this amendment. Yes, this does use OPEGA to convene a working group but the report is still given to the Criminal Justice and Public Safety Committee. We're not changing committees or who would be dealing with this type of issue. I just wanted to clarify that. It's on lines 34 and 35 on page 2. Thank you.

Senator **GERZOFSKY** of Cumberland moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-763).

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#402)

YEAS: Senators: ALFOND, BLISS, BOWMAN, BRANNIGAN, COURTNEY, CRAVEN, DAVIS, DIAMOND, GERZOFSKY, GOODALL, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PERRY, PLOWMAN, RAYE, RECTOR, ROSEN, SCHNEIDER, SIMPSON, SMITH, TRAHAN, WESTON, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: BARTLETT, DAMON, HOBBS, MARRACHE, NUTTING, SHERMAN, SULLIVAN

ABSENT: Senators: BRYANT, JACKSON

26 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **GERZOFSKY** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-763), **PREVAILED**.

Committee Amendment "A" (H-763) **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)**, in concurrence.

Ordered sent forthwith to the Engrossing Division.

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

COMMUNICATIONS

The Following Communication: S.C. 759

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
COMMITTEE ON APPROPRIATIONS AND FINANCIAL
AFFAIRS**

April 5, 2010

Honorable Elizabeth H. Mitchell, President of the Senate
Honorable Hannah M. Pingree, Speaker of the House
124th Legislature
State House
Augusta, Maine 04333

Dear President Mitchell and Speaker Pingree:

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

- L.D. 1594 An Act To Restore Longevity Pay (EMERGENCY)
- L.D. 1748 An Act To Authorize a General Fund Bond Issue To Purchase and Upgrade Trackage of the Montreal, Maine and Atlantic Railway
- L.D. 1761 An Act To Authorize a General Fund Bond Issue To Create a New Electronic Medical Records Infrastructure
- L.D. 1816 An Act To Authorize a Bond Issue for Ratification by the Voters for the June 2010 Election To Create Jobs in the State

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

Sincerely,

S/Sen. Bill Diamond
Senate Chair

S/Rep. Emily Ann Cain
House Chair

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

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

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

Senator **RAYE** of Washington was granted unanimous consent to address the Senate off the Record.

Senator **NUTTING** of Androscoggin was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BARTLETT** of Cumberland, **ADJOURNED** to Tuesday, April 6, 2010, at 10:00 in the morning.