

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

In Senate Chamber
Monday
March 31, 2008

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

Prayer by Senator Richard W. Rosen of Hancock County.

SENATOR ROSEN: Good morning. In religious history it talks about the commencement of the people offering a prayer for their government. History tells us this began in the year 586 BCE. This was after the Jewish nation was expelled from Jerusalem and wandered the desert. When they came back under foreign occupation, it dawned on someone to offer a prayer for their government. I suppose it was a form of insurance and maybe they just thought it couldn't hurt if they would just say some kind words. In that spirit, let us pray.

All mighty God, we pray Your blessing upon the Senators as we continue to promulgate the laws of our state. May we remain steadfast in our resolve to achieve fairness and justice for our citizens, even while we are caught up in the give and take of political realities. May we vigorously pursue the intent of our principles while recognizing that compromise can also be heroic. May our earnest commitment to our constituencies enhance our concerns for the compelling needs of the larger community. Give us the strength to sail beyond the lines of familiar ideologies and the courage to explore the uncharted waters of novel ideas. Give us the vision of a greater day for the State of Maine and the will to bring our considerable talents for its realization. Give us the wisdom to deal compassionately, as well as pragmatically, with the great challenge to government and its responsibility to serve and to care for the governed. Amen.

Pledge of Allegiance led by Senator Elizabeth M. Schneider of Penobscot County.

Reading of the Journal of Friday, March 28, 2008.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009" (EMERGENCY)

H.P. 1547 L.D. 2173
(H "W" H-848, S "K" S-511,
S "P" S-516; S "Q" S-517
to C "A" H-806)

In House, March 27, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-806) AS AMENDED BY HOUSE AMENDMENTS "P" (H-840) AND "W" (H-848)** thereto.

In Senate, March 28, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-806) AS AMENDED BY HOUSE AMENDMENT "W" (H-848) AND SENATE AMENDMENTS "K" (S-511); "P" (S-516) AND "Q" (S-517)** thereto, in **NON-CONCURRENCE**.

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

On motion by Senator **ROTUNDO** of Androscoggin, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

COMMUNICATIONS

The Following Communication: S.C. 722

**STATE OF MAINE
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

March 27, 2008

The Honorable Beth Edmonds
President of the Senate of Maine
123rd Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 123rd Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Charles L. Sidman of Bar Harbor, for appointment to the Maine School of Science and Mathematics, Board of Trustees.

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

YEAS Senator 1 Bowman of York
 Representatives 8 Norton of Bangor, Edgecomb of Caribou, Farrington of Gorham, Finch of Fairfield, Makas of Lewiston, McFadden of Dennysville, Strang Burgess of Cumberland, Sutherland of Chapman

NAYS 0

ABSENT 4 Rep. Harlow of Portland, Sen. Mills of Somerset, Sen. Mitchell of Kennebec, Rep. Muse of Fryeburg

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

YEAS Senator 1 Bowman of York
 Representatives 8 Norton of Bangor, Edgecomb of Caribou, Finch of Fairfield, Harlow of Portland, Makas of Lewiston, McFadden of Dennysville, Strang Burgess of Cumberland, Sutherland of Chapman

NAYS 0

ABSENT 4 Rep. Farrington of Gorham, Sen. Mills of Somerset, Sen. Mitchell of Kennebec, Rep. Muse of Fryeburg

Nine members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Charles L. Sidman of Bar Harbor, for appointment to the Maine School of Science and Mathematics, Board of Trustees be confirmed.

Signed,

S/Peter B. Bowman
Senate Chair

S/Jacqueline R. Norton
House Chair

READ and ORDERED PLACED ON FILE.

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

The Following Communication: S.C. 723

**STATE OF MAINE
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

March 27, 2008

The Honorable Beth Edmonds
President of the Senate of Maine
123rd Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Madame President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 123rd Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs has had under consideration the nomination of Susan J. Hunter of Orono, for appointment to the Maine School of Science and Mathematics, Board of Trustees.

Nine members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Susan J. Hunter of Orono, for appointment to the Maine School of Science and Mathematics, Board of Trustees be confirmed.

Signed,

S/Peter B. Bowman
Senate Chair

S/Jacqueline R. Norton
House Chair

READ and ORDERED PLACED ON FILE.

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

REPORTS OF COMMITTEES

Senate

Ought to Pass Pursuant to Joint Order

Senator BRANNIGAN for the Committee on **HEALTH AND HUMAN SERVICES** on Resolve, Implementing the Recommendations of the Commission To Study Primary Care Medical Practice

S.P. 910 L.D. 2286

Reported that the same **Ought to Pass**, pursuant to Joint Order S.P. 732.

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Ought to Pass As Amended

Senator DIAMOND for the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Resolve, To Prevent Domestic Violence and Protect Our Citizens

S.P. 784 L.D. 1990

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-525).**

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

READ ONCE.

Committee Amendment "A" (S-525) **READ** and **ADOPTED.**

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senator HOBBS for the Committee on **JUDICIARY** on Bill "An Act To Adopt the Revised Uniform Anatomical Gift Act"

S.P. 528 L.D. 1505

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-527).**

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

READ ONCE.

Committee Amendment "A" (S-527) **READ** and **ADOPTED.**

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

SECOND READERS

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

House As Amended

Bill "An Act To Amend the Potato Cull Pile Law"

H.P. 1392 L.D. 1954
(C "A" H-813)

Bill "An Act To Improve the Campaign Finance Laws and Their Administration"

H.P. 1454 L.D. 2070
(C "A" H-824)

Bill "An Act To Prevent Contamination of Drinking Water Supplies"

H.P. 1457 L.D. 2073
(C "A" H-821)

Bill "An Act To Preserve Successful Historic Neighborhood Schools" (EMERGENCY)

H.P. 1468 L.D. 2082
(C "A" H-816)

Bill "An Act To Protect Sellers in Residential Real Estate Transactions"

H.P. 1520 L.D. 2140
(C "A" H-812)

Bill "An Act To Protect Shellfish Waters and Shellfish Resources from Coastal Pollution"

H.P. 1535 L.D. 2160
(C "A" H-822)

Resolve, To Ensure Support for a Model of Consolidated and Integrated Secondary and Postsecondary Education

H.P. 1549 L.D. 2175
(C "A" H-825)

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

Senate As Amended

Bill "An Act To Restore Diadromous Fish in the St. Croix River" (EMERGENCY)

S.P. 751 L.D. 1957
(C "A" S-505)

Bill "An Act To Protect Electricity Consumers of Northern Maine"

S.P. 796 L.D. 2002
(C "A" S-521)

Bill "An Act To Increase Public Confidence in Government by Expanding Public Disclosure"

S.P. 838 L.D. 2178
(C "A" S-523)

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

Sent down for concurrence.

Bill "An Act Concerning Technical Changes to the Tax Laws"

S.P. 823 L.D. 2154
(C "A" S-508)

READ A SECOND TIME.

On motion by Senator **PERRY** of Penobscot, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED.**

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

Senate at Ease.

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

**Pursuant to Statute
Department of Health and Human Services**

The **Department of Health and Human Services**, pursuant to the Maine Revised Statutes, Title 5, section 8072 asked leave to report that the accompanying Resolve, Regarding Legislative Review of Portions of Major Substantive MaineCare Benefits Manual, Chapter III, Section 21, Home and Community Benefits for Members with Mental Retardation or Autistic Disorder, a Major Substantive Rule of the Department of Health and Human Services (EMERGENCY)

H.P. 1649 L.D. 2287

Be **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

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

REFERRED to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218, in concurrence.

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

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

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

On motion by Senator **MITCHELL** of Kennebec, **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 Today Assigned matter:

NOMINATION - of Charles L. Sidman of Bar Harbor, for appointment to the Maine School of Science and Mathematics, Board of Trustees

Tabled - March 31, 2008, by Senator **MARTIN** of Aroostook

Pending - **CONSIDERATION**

(In Senate, March 31, 2008, Communication (S.C. 722) from the Committee on **EDUCATION AND CULTURAL AFFAIRS**, **READ** and **ORDERED PLACED ON FILE.**)

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

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 123rd Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#351)

YEAS: Senators: None

NAYS: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Charles L. Sidman** of Bar Harbor for appointment to the Maine School of Science and Mathematics, Board of Trustees was **CONFIRMED**.

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

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

NOMINATION - of Susan J. Hunter of Orono, for appointment to the Maine School of Science and Mathematics, Board of Trustees

Tabled - March 31, 2008, by Senator **MARTIN** of Aroostook

Pending - **CONSIDERATION**

(In Senate, March 31, 2008, Communication (S.C. 723) from the Committee on **EDUCATION AND CULTURAL AFFAIRS, READ** and **ORDERED PLACED ON FILE.**)

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

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 506 of the 123rd Legislature, the vote was taken by the Yeas and Nays.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#352)

YEAS: Senators: None

NAYS: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

No Senator having voted in the affirmative and 35 Senators having voted in the negative, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **Susan J. Hunter** of Orono for appointment to the Maine School of Science and Mathematics, Board of Trustees was **CONFIRMED**.

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

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

REPORTS OF COMMITTEES

House

Pursuant to Resolve

The Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Implement the Recommendations of a Task Force Convened To Evaluate and Recommend Revisions Regarding the Statutory Definition of 'Service Dog'"

H.P. 1648 L.D. 2285

Reported that the same be **REFERRED** to the Committee on **LABOR**, pursuant to Resolve, chapter 96.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **LABOR**.

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

REFERRED to the Committee on **LABOR**, in concurrence.

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

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Amend the Requirements for Approval of the Use of Physical Restraints"

H.P. 1518 L.D. 2138

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

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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 **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act To Promote the Agricultural Economy" (EMERGENCY)

H.P. 1606 L.D. 2245

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-862)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-862)**.

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

READ ONCE.

Committee Amendment "A" (H-862) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Establish Necessary MaineCare Pharmacy Incentives" (EMERGENCY)

H.P. 321 L.D. 405

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-859)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-859)**.

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

READ ONCE.

Committee Amendment "A" (H-859) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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 **HEALTH AND HUMAN SERVICES** on Resolve, Regarding Legislative Review of Portions of Chapter 120: Release of Data to the Public, a Major Substantive Rule of the Maine Health Data Organization (EMERGENCY)

H.P. 1542 L.D. 2167

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-860)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-860)**.

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

READ ONCE.

Committee Amendment "A" (H-860) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Protect Children from Lead Poisoning" (EMERGENCY)

H.P. 1546 L.D. 2172

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-861)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-861)**.

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

READ ONCE.

Committee Amendment "A" (H-861) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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 **NATURAL RESOURCES** on Bill "An Act To Protect Lake Water Quality"

H.P. 1610 L.D. 2249

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-864).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-864).**

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

READ ONCE.

Committee Amendment "A" (H-864) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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 **TAXATION** on Bill "An Act To Provide Property and Excise Tax Relief to Disabled Maine Veterans"
H.P. 1485 L.D. 2099

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-856).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-856).**

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

READ ONCE.

Committee Amendment "A" (H-856) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

REPORTS OF COMMITTEES

House

Divided Report

Nine members of the Committee on **TRANSPORTATION** on Bill "An Act To Allow Road Associations To Determine Assessments According to Majority Vote Cast at a Duly Held Meeting"
H.P. 1488 L.D. 2102

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-818).**

Signed:

Senators:

DAMON of Hancock
SAVAGE of Knox

Representatives:

MARLEY of Portland
BROWNE of Vassalboro
FISHER of Brewer
THOMAS of Ripley
ROSEN of Bucksport
PEOPLES of Westbrook
THERIAULT of Madawaska

Three members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-819).**

Signed:

Representatives:

MAZUREK of Rockland
HOGAN of Old Orchard Beach
CEBRA of Naples

One member of the same Committee on the same subject reported in Report "C" that the same **Ought Not to Pass.**

Signed:

Senator:

DIAMOND of Cumberland

Comes from the House with Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818).**

Reports **READ.**

Senator **DAMON** of Hancock moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**, in concurrence.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**, 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:

Emergency Measure

An Act To Improve Funding for the State Snowmobile Trail System

H.P. 482 L.D. 633
(C "A" H-773)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 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.

Emergency Measure

An Act To Meet the Emergency Needs of Maine Veterans
S.P. 779 L.D. 1985
(C "A" S-468)

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

Emergency Measure

An Act To Allow Civil Penalties for Damaging Utility Property or for Theft of Utility Services

H.P. 1552 L.D. 2182
(C "A" H-778)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 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.

Emergency Measure

An Act To Provide for the 2008 and 2009 Allocations of the State Ceiling on Private Activity Bonds

S.P. 843 L.D. 2185
(C "A" S-473)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 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:

**Pursuant to Constitution
Public Land**

Resolve, Authorizing the Department of Conservation, Bureau of Parks and Lands To Convey Certain Lands and Enter into Certain Leases with the Federal Government

H.P. 1598 L.D. 2237
(C "A" H-783)

In accordance with the provisions of Article IX, Section 23 of the Constitution, this requires the affirmative vote of two-thirds of the entire elected Membership of the Senate, 35 Senators having voted in the affirmative and no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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:

Acts

An Act to Require the Accommodation of Religious Practices in Correctional Facilities

H.P. 390 L.D. 507
(C "A" H-784)

An Act To Implement the Recommendations of the Commission To Study the Costs of Providing Certain Services in the Unorganized Territories

H.P. 670 L.D. 885
(C "B" H-730)

An Act To Provide for Fairness and Accuracy in Utility Rate Setting

H.P. 1490 L.D. 2104
(C "A" H-732)

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

An Act To Clarify the Exemption of Retail Sales of Kerosene from the Sales Tax

H.P. 1483 L.D. 2097
(C "A" H-754)

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

An Act To Preserve the Cobscook Bay Scallop Fishery
S.P. 774 L.D. 1980
(C "A" S-472)

On motion by Senator **WESTON** of Waldo, **TABLED** until Later in Today's Session, pending **ENACTMENT**, 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:

Acts

An Act To Amend the Cable Television Laws and Establish a Model Cable Franchise Agreement

H.P. 1515 L.D. 2133
(C "A" H-777)

An Act To Ensure That State Government Is a Model Employer of People with Disabilities

H.P. 1527 L.D. 2147
(C "A" H-776)

An Act To Amend the Games of Cards Law

H.P. 1593 L.D. 2232
(C "A" H-787)

An Act To Sustain Maine's Core Wastewater Licensing Program and Adjust Related Provisions

H.P. 1596 L.D. 2235
(C "A" H-779)

An Act To Delete Outdated References to Rule 42 of the Maine Rules of Criminal Procedure from the Maine Bail Code and the Provision Allowing for Appeals by Aggrieved Contemnors

H.P. 1609 L.D. 2248

An Act To Increase the Number of Concealed Firearms Permit Reciprocity Agreements That Maine May Enter into with Other Eligible States

H.P. 1630 L.D. 2267

An Act To Implement the Recommendations of the Joint Standing Committee on Education and Cultural Affairs Regarding Review of the Maine State Museum Commission under the Government Evaluation Act and To Revise the Review Schedule

H.P. 1631 L.D. 2268

PASSED TO BE ENACTED 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:

ENACTORS

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

Resolve

Resolve, Authorizing the Commissioner of Administrative and Financial Services on Behalf of the State To Convey Title and Other Interests in the Stone Buildings Formerly Occupied by the Augusta Mental Health Institute

H.P. 1647 L.D. 2282

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

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (2/5/08) Assigned matter:

Resolve, To Direct a Review of Issues Concerning the Maine Tree Growth Tax Law

H.P. 421 L.D. 543
(C "A" H-656)

Tabled - February 5, 2008, by Senator **MARTIN** of Aroostook

Pending - **FINAL PASSAGE**, in concurrence

(In House, January 31, 2008, **FINALLY PASSED**.)

(In Senate, January 29, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-656)**, in concurrence.)

On motion by Senator **NASS** of York, 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" (H-656)**, in concurrence.

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" (H-656), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-526) to Committee Amendment "A" (H-656) **READ**.

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

Senator **NASS:** Thank you, Madame President, men and women of the Senate. Just very briefly, this has been sitting on the table for a while. A couple of months. Just to let you know, this is the unanimous report from the Taxation Committee to set up a resolve to review the tree growth tax laws. There was some objection later as to the make up of this study group and so we tightened it up. Thank you, Madame President.

On motion by Senator **NASS** of York, Senate Amendment "A" (S-526) to Committee Amendment "A" (H-656) **ADOPTED**.

Committee Amendment "A" (H-656) as Amended by Senate Amendment "A" (S-526) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-656) AS AMENDED BY SENATE AMENDMENT "A" (S-526) thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

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

The Chair laid before the Senate the following Tabled and Later (2/28/08) Assigned matter:

HOUSE REPORTS - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Provide a Felony Penalty for Assault on a Firefighter"
H.P. 201 L.D. 239

Report "A" - **Ought to Pass as Amended by Committee Amendment "B" (H-657)** (6 members)

Report "B" - **Ought Not to Pass** (3 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (H-658)** (2 members)

Tabled - February 28, 2008, by Senator **MITCHELL** of Kennebec

Pending - **FURTHER CONSIDERATION**

(In House, February 14, 2008, Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (H-658) READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (H-658)**.)

(In Senate, February 25, 2008, Reports **READ**. On motion by Senator **DIAMOND** of Cumberland, Report "B", **OUGHT NOT TO PASS ACCEPTED**, in **NON-CONCURRENCE**.)

(In House, February 26, 2008, that Body **INSISTED**.)

On motion by Senator **DIAMOND** of Cumberland, the Senate **ADHERED**.

The Chair laid before the Senate the following Tabled and Later (3/25/08) Assigned matter:

Resolve, Regarding Legislative Review of Portions of Chapter 1, Open Water and Ice Fishing Regulations, a Major Substantive Rule of the Department of Inland Fisheries and Wildlife (EMERGENCY)

H.P. 1602 L.D. 2241
(C "A" H-762)

Tabled - March 25, 2008, by Senator **DAMON** of Hancock

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-762)**, in concurrence

(In House, March 19, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-762)**.)

(In Senate, March 25, 2008, **READ A SECOND TIME**.)

On motion by Senator **DAMON** of Hancock, the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **ADOPTED** Committee Amendment "A" (H-762), in concurrence.

On further motion by same Senator, Senate Amendment "A" (S-498) to Committee Amendment "A" (H-762) **READ**.

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

Senator **DAMON:** Thank you, Madame President. This amendment removes the language that requires that the rule that designates state waters that contain Artic Char as state heritage fish waters be amended to remove from the proposed list Black Lake in Aroostook County, Rainbow Lake in Piscataquis County,

and Floods Pond in Hancock County, but allows the final adoption of the rule without hearings. That is the purpose of the amendment, Madame President.

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

Senator **BRYANT:** Thank you, Madame President, ladies and gentlemen of the Senate. I didn't have my papers with me, but the Committee on Inland Fisheries and Wildlife has looked at the rules that came back. The three lakes that the good Senator from Hancock, Senator Damon, has just proposed to put back in the committee has taken out. There were a number of reasons why we did that. When we created the heritage fish, Brook Trout and Char, one of the rules going forward was that you had to be not stocked with the current stocking program. If you were, you didn't fall under those rules. With those three lakes it was determined that the stocking program that Inland Fisheries and Wildlife currently has drains into those lakes. That's why they would not be included.

On further motion by same Senator, 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 Senator **DAMON** of Hancock to Adopt Senate Amendment "A" (S-498) to Committee Amendment "A" (H-762). 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 (#353)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, ROTUNDO, SHERMAN, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, DOW, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, PERRY, PLOWMAN, RAYE, ROSEN, SAVAGE, SCHNEIDER, SMITH, SNOWE-MELLO, TURNER, WESTON

ABSENT: Senator: NUTTING

11 Senators having voted in the affirmative and 23 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **DAMON** of Hancock to **ADOPT** Senate Amendment "A" (S-498) to Committee Amendment "A" (H-762), **FAILED**.

Committee Amendment "A" (H-762) **ADOPTED**, in concurrence.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-762), in concurrence.

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

Senate at Ease.

Senate called to order by the President.

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

An Act To Preserve the Cobscook Bay Scallop Fishery
S.P. 774 L.D. 1980
(C "A" S-472)

Tabled - March 31, 2008, by Senator **WESTON** of Waldo

Pending - **ENACTMENT**, in concurrence

(In Senate, March 25, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-472)**.)

(In House, March 31, 2008, **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.

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

Senator **WESTON** of Waldo was granted unanimous consent to address the Senate off the Record.

On motion by Senator **MITCHELL** of Kennebec, **RECESSED** until 2:00 in the afternoon.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

HOUSE REPORTS - the Committee on **TRANSPORTATION** on Bill "An Act To Allow Road Associations To Determine Assessments According to Majority Vote Cast at a Duly Held Meeting"

H.P. 1488 L.D. 2102

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-818)** (9 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (H-819)** (3 members)

Report "C" - **Ought Not to Pass** (1 member)

Tabled - March 31, 2008, by Senator **DAMON** of Hancock

Pending - motion by same Senator to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**, in concurrence

(In House, March 28, 2008, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**.)

(In Senate, March 31, 2008, Reports **READ**.)

On motion by Senator **MITCHELL** of Kennebec, **TABLED** until Later in Today's Session, pending the motion by Senator **DAMON** of Hancock to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**, in concurrence.

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later (3/26/08) Assigned matter:

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Enhance Economic Development in Maine's Aviation Industry"

S.P. 770 L.D. 1976

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-485)** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-486)** (1 member)

Tabled - March 26, 2008, by Senator **STRIMLING** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-485)** Report

(In Senate, March 26, 2008, Reports **READ**.)

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

Senator **PERRY:** Thank you, Madame President. I just wanted to take an opportunity to tell the Senate a little bit about what this bill is, what we hope to do, and why I am a minority of one on it. I think we are all familiar that there has been some press and news stories about folks who are not Maine residents that are flying their airplanes into the state of Maine, staying here more than 20 days, and getting hit with a use tax assessment. It has happened a couple of dozen times. Folks do not appreciate getting these tax bills. It comes as a surprise. Inevitably, they get the tax assessment and think it's a mistake. In fact, by law, folks who buy a new airplane, or used airplane but new to them, but live in a state where there is no sales tax on that airplane and within the first year spend more than 20 days in the state of Maine, they qualify for a use tax assessment. I'd like to thank the President for putting this bill in to address this situation.

The difference in the two reports are that the Majority Report eliminates the 20 day rule moving forward. My report does the same thing moving forward but also eliminates the assessments for anyone assessed prior to January 1, 2007. They both have substantial fiscal notes. My report has a much higher fiscal note. I think it's going to be a rocky road for either report. I vote in favor of this particular report but I wanted you to know what this bill did. Thank you.

The Chair ordered a Division. 30 Senators having voted in the affirmative and 5 Senators having voted in the negative, the motion by Senator **STRIMLING** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-485)** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-485) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/26/08) Assigned matter:

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Eliminate the Property Tax on Business Equipment Owned by Small Retailers"

S.P. 318 L.D. 1001

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-459)** (5 members)

Tabled - March 26, 2008, by Senator **PERRY** of Penobscot

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report (In Senate, March 26, 2008, Reports **READ**.)

Senator **PERRY** of Penobscot requested a Roll Call.

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

Senator **PERRY:** Thank you, Madame President. A couple of years ago we worked really hard in the Taxation Committee to repeal the personal property tax on business equipment to encourage investment in equipment here in the state of Maine. As part of the negotiations that brought us to this repeal, the one thing that the business community told us they wanted and needed more than anything to attract manufacturing and other business opportunities to the state of Maine was an agreement on the BETR program that the BETR program would remain for the segment of retail only. The Senator from York, Senator Courtney, brought forth this bill in an effort to extend the repeal of the personal property tax to small retailers, 5,000 square feet or less, with the notion that these folks should not have to put the money up front and wait for a refund through the BETR program. It would be better if we just exempted it for them up front. Initially I was inclined to support that bill. Then I looked at the small retail, 5,000 square feet or under, with small retail but not small business. It was still the Olive Garden, Old Navy, and all these big chains. However, I did move the Ought to Pass report. As long as we are going to have the BETR program, as long as we don't look at where we are investing money for economic development, I've got no program with the BETR program or the exemption for Wal-Mart's Distribution Center. I really don't believe we should even be exempting the retail stores. They need to come here. That money could be used better elsewhere. We don't seem to have the will to take that on and target that money. As long as we've got it, I'm willing to go along with this report. 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 want to thank the good Senator from Penobscot, Senator Perry, for moving the Minority Report forward. For some of us, this is a commitment that we made to the little guys a few years back. I don't want to hurt some little guy because we may want to go after an Applebee's or a larger store. When you drive through your districts across the state you will see that these convenience stores and little guys that are trying to invest their life savings to have a little small business and earn a living are struggling. They are hurting. They are going out of business. They can't afford to pay for their last tank of gasoline that was just delivered. Here's an opportunity for us to send a strong message that this legislature and people of Maine don't just care about big business, that we care about small business. I'd encourage you to vote for this. I'd also encourage you to help us get it off the table, not just vote for it and send it down to the table like we do so often in this building, and make a commitment to take it off the table down in Appropriations. Let's put this policy in place. It's a good policy for National Semi-Conductor. It's good policy for the logging industry. It's good policy for the Mom and Pop's across our districts. Thank you, Madame President.

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

Senator **STRIMLING:** Thank you, Madame President. I rise in opposition to the motion. I appreciate the good Senator from York, Senator Courtney's statement about how hard businesses are struggling because indeed they are. Maine people are struggling as well. I've got to keep them in mind. The thing you have to realize about this bill is that it is not going to do anything to provide any property tax relief for a single business in the state of Maine. What you are going to do is cost municipalities millions of dollars in revenue that they are no longer receiving, that they are now going to have to transfer onto the backs of residents in their communities. We are not providing any tax relief to businesses because the businesses can already apply and get the rebate from the State. All you are saying is, 'Okay, you don't have to do that paperwork anymore.' The municipality loses out on millions of dollars and all of us, as residents of this state of Maine, now have to pick up the property tax bill. Make no mistake, this is just a shift onto the residents of the state of Maine. I rise in strong opposition to this motion because I am not willing to put any more tax burden, certainly not any more property tax burden, on the people of this state. They have got too much already. Thank you, Madame President.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. When we talked about a small retail establishment, the Senator from Penobscot, Senator Perry, mentioned a couple of names such as the Olive Garden and Old Navy. Clearly, that possibly could include them. We perhaps get the wrong impression that there is something about that entire entity that now qualifies for some type of property tax exemption and that's not the case. This only applies to certain pieces of what they do, not to their whole investment in one of these retail operations. That's been the case with the BETR program from the beginning. It does not apply to everything; it applies to just certain capital investments. When you are talking about retail, those are a pretty narrow set of items. Another thing I think you need to recognize is the fiscal note on this. The way the bill is set up the fiscal impact is in the next biennium. It's not small but it is not in the current biennium and that will be one item, or one fact, that the appropriators will have to deal with when it gets there, if it gets there.

On motion by Senator **PERRY** of Penobscot, 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 Penobscot, Senator Perry to Accept the Minority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#354)

YEAS: Senators: BARTLETT, BOWMAN, BROMLEY, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, SULLIVAN, WESTON

NAYS: Senators: BRANNIGAN, BRYANT, STRIMLING, THE PRESIDENT - BETH G. EDMONDS

ABSENT: Senators: BENOIT, TURNER

29 Senators having voted in the affirmative and 4 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **PERRY** of Penobscot to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "B" (S-459) **READ** and **ADOPTED**.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Chair laid before the Senate the following Tabled and Later (3/28/08) Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation, a Major Substantive Rule of the Department of Education (EMERGENCY)

H.P. 1516 L.D. 2136

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-763)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-764)** (6 members)

Tabled - March 28, 2008, by Senator **WESTON** of Waldo

Pending - motion by Senator **BOWMAN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)** Report, in concurrence

(In House, March 27, 2008, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)** Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763) AS AMENDED BY HOUSE AMENDMENT "A" (H-808)** thereto.)

(In Senate, March 28, 2008, Reports **READ**.)

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 Somerset, Senator Mills.

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. This measure that lies before you has a long and needlessly tortured history. I won't even begin to try to recap it this afternoon. Just to give you a quick outline of why this resolve is significant. The state of Maine has one of the highest designation rates for special education in the United States. It is something like 18% or 19%. The national average is down in the low teens. We spend in excess of \$300 million a year, which is over 15% of the \$2 billion K-12 budget, on special education services, which flies in the face, frankly, of current trends. Federal laws have recently been tightened up to suggest that more and more children who have disabilities or special needs should be dealt with, and can be dealt with, successfully in the classroom without designating them as needing special education with all of the procedural paraphernalia, and sometimes litigation, that goes along with that process. One of the requirements of federal law, with respect to many categories of disabled children, is that there be some demonstration of an adverse effect. There is no definition of adverse effect in federal statute. In fact, it's almost as if it were on purpose not to define what it means but to leave it to the states to maybe guess or make certain speculations about what Congress intended by that expression.

A couple of years ago the Department of Education produced a rule which, in its original form, defined what adverse effect might mean in Maine so that the people who have to administer this law in the field might have some guidelines as to how to proceed in deciding whether a child was eligible for special education or not. That rule came before our committee and we, rather collectively, made a determination that the rule was a little more rigid than what most of us wanted to see happen. We took a lot of the language of that rule and suggested to the Department last year that this language be converted into advisory guidelines so that the people who administer this law in the field would have some guidance but they wouldn't be bound by the quantitative provisions of the rule. Even that measure became a cropper in the other Body last year. There was an intervening process. Now the rule has been republished, even again, taking out some of the quantitative elements of the rule and simply describing, in the narrative way, what adverse effect should mean under Maine law. I think that the description, most reasonable people would agree, makes common sense. It says, for example, that it has to be a chronic or episodic condition, not something that is merely detectable but distinctly measurable over a period of time. The findings should be persistent, not transitory, based on objective assessments with results that can be repeated or replicated. It does not include minor effects or transitory effects among those that are commonly experienced by children in the general population. The language that the rule employs is designed to give the 290 school districts that we have some further guidance about how to administer the law in Maine. It goes on to list about ten different kinds of commonly accepted assessments that are used to evaluate children when there is an adverse effect on their educational performance. It suggests that an IEP team, or those who are in charge of designating whether a child has special needs, should rely on at least two of those assessments in

coming to grips with whether the child is eligible for these special services.

The rule, at this point, has been watered down and watered down to the point where it offers mere narrative guidance to those who administer this law in the field and yet, because there are some people who like to gin up the internet and create controversy when there is really not much room for controversy, we have this measure in front of us on a controverted report that at one point in history had all three Senators on board, but apparently not at this time. I would urge that you vote against the Majority Report. The Majority Report, particularly as amended by the House Amendment, completely wipes this rule off the books, says that Maine is content that there be no rule whatsoever to define those two words, or even to give guidance as to what they might mean, and that we should proceed merrily along in a setting where anybody can make up a definition to this term at any point and try to convince local administrators of a child's entitlement. I think that this flies in the face of how we, as a state, should do business. If we can't afford to provide even simple narrative guidance to people who are in charge of administering this very difficult law then what's the point of having rules or laws in the first place? I would urge that you vote 'no' on the pending motion so we can go on and accept the Minority Report.

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

Senator **BOWMAN:** Thank you, Madame President, men and women of the Senate. In the Education Committee, this issue, adverse effect, was second only in controversy to the school district consolidation issue. It's a classic battle between school administrators and parents of learning disabled children. I have never been, I am not, and I never will be a school administrator. I am, and always will be, the parent of a significantly learning disabled young adult. In some ways I wish you that experience because you would learn so much. In other ways I hope you will never be there, never be the grandparent even, because it's such a hard role. I voted for the Minority Report in committee. I am always dazzled by my esteemed colleague and the work that he does. This was another example of what he can do in a short period of time to try to solve a problem. I voted with the minority at that time because I thought that, being a student of statistics, if you define what the issue is the variation certainly will be less. However, I've learned new things since then. I've reflected upon my vote. I know that the only state that has a lot of data in this area, at least to my knowledge, is the state of Vermont. Vermont defines adverse effects and it has no statistically significant effect on special ed identification and the special ed program.

This bill comes to us from the other Body with House Amendment "A", which would restore the status quo. That's the way it has been. It also allows the Commissioner to publish guidelines as to how to interpret adverse effects. Removal of the definition in the Minority Report aligns with the views of most families and advocates, all that I know of, though there may be some exceptions. Some worry that the Department of Education may put the language of their rule in Chapter 101 into the guidelines. It is clear to me, and I hope to the Department of Education, that this would not be what the legislative intent is. Finally, it is my understanding that if the other Body and the Senate fail to reach concurrence on this issue the end results would likely be that the provisions adopted in the rules would go into effect, which is something I think most of us do not want to

have happen. I urge you to vote for the Majority Ought to Pass as Amended by Committee Amendment "A" (H-763) and House Amendment "A" (H-808) Report. Thank you.

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

Senator **BARTLETT:** Thank you, Madame President. I want to speak briefly to this issue in support of the pending motion. When I first started running for office, I starting going around campaigning and knocking on doors. I was stuck by one particular door where I met a very nice lady who was a foster parent for folks with special needs. She said, 'I don't have time to talk now. My house is a circus. Once a month I and a group of other parents in Scarborough get together to talk about special ed because it's so hard to deal with the system.' I said, 'Great, I'd love to come.' I gave her my card. She called me a little while later and I went to a meeting. I talked with the parents and heard how much they struggled to try to maintain the services their kids needed. It simply wasn't enough to get their child qualified for special ed, they also needed to follow through the system every step of the way throughout the school year from year to year. There was constant push back from the school systems, very good school systems, that were constantly trying to minimize their obligations because they were understaffed, overwhelmed, and had difficulty dealing with the students that were coming to them. These parents talked about how they had to stay on top of it all the time. Some of them had to file lawsuits from time to time, or threaten lawsuits, in order to get the kind of action they needed. Since then I've talked with countless friends and families of special ed students. I've heard the same story. I've seen how individuals who did not have the wherewithal or the time to attend monthly meetings to learn from other parents dealing with this, who didn't have the time to be going in regularly to their schools, and who didn't have the money to hire an attorney to push back, how their kids were getting left behind in the system. I guess the point of all this is that there is enough push back in the system, trying to narrow the level of services provided to our students, that I would hate to do anything to make that problem worse or to further narrow the services that are provided. Our parents are struggling. Our kids are struggling. I believe that the Minority Report is the wrong way to deal with that problem.

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

Senator **SCHNEIDER:** Thank you, Madame President, men and women of the Senate. I wish to rise just simply to thank my colleagues on the Education Committee for their hard work on this issue. They are reasonable in supporting this motion, Ought to Pass as Amended. I prefer not to have the House Amendment, myself, however I think it's very important that we make clear, with this vote, to the Department that this issue has been repeatedly brought forward and that narrowing the definition of adverse effect is not acceptable and we hope that this is not the intension of their guidance. I hope that this is made abundantly clear and that it will be made substantially clear by our vote today. The worse thing that we can do is short change the children of Maine by not giving them the attention that they need in order to grow and succeed. It is better to address their issues early on than to see them in a system where they cannot earn a living later on because their issues have not been addressed fully.

We will pay now or we will pay much more later on, not only in the needs of young people but also in litigation. I will join my reasonable colleagues in favor of the pending motion. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Senator **BOWMAN** of York to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-763) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#355)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, RAYE, ROTUNDO, SCHNEIDER, SHERMAN, SMITH, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, ROSEN, SAVAGE, SNOWE-MELLO, WESTON

ABSENT: Senators: BENOIT, TURNER

21 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **BOWMAN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-763)** Report, in concurrence, **PREVAILED**.

READ ONCE.

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

House Amendment "A" (H-808) to Committee Amendment "A" (H-763) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-763) as Amended by House Amendment "A" (H-809) thereto, **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

REPORTS OF COMMITTEES

House

Divided Report

Ten members of the Committee on **TRANSPORTATION** on Bill "An Act To Make Supplemental Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009" (EMERGENCY)

H.P. 1566 L.D. 2196

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-865)**.

Signed:

Senators:

DAMON of Hancock
DIAMOND of Cumberland
SAVAGE of Knox

Representatives:

MARLEY of Portland
FISHER of Brewer
MAZUREK of Rockland
HOGAN of Old Orchard Beach
ROSEN of Bucksport
THERIAULT of Madawaska
PEOPLES of Westbrook

Two members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-866)**.

Signed:

Representatives:

BROWNE of Vassalboro
CEBRA of Naples

One member of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "C" (H-867)**.

Signed:

Representative:

THOMAS of Ripley

Comes from the House with Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-865)** **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-865)**.

Reports **READ**.

Senator **DAMON** of Hancock moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-865)**, in concurrence.

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

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. I have heard over the past few days people rising and saying that they wished to speak briefly to the

motion. I haven't any of that brevity. I thought I would call a spade a spade and read through some of this.

This budget that we have before us, the Highway Fund Budget, is yet another grim reminder of the transportation funding crisis that is gripping Maine, along with the rest of the country, I might add. It reflects a national trend that is all too familiar. There are reduced revenues and these are the result of falling fuel consumption caused by unprecedented fuel prices. There are increased operational costs, especially for fuel and other energy related items, in the cost of doing business. There are increased construction costs driven by the higher energy and material prices due to worldwide demand caused by extraordinary construction in far off places like China, India, and Dubai. I hope you have heard that before. I hope that you understand it. I'm putting it again on the record for us to realize it. We have declining revenues and increasing costs of doing business. That is an alligator's mouth, ladies and gentlemen, that is opening wider and wider. We, the people of the state of Maine, are going to be consumed by that alligator, our transportation infrastructure. These trends have profound impacts on every Maine citizen and they are not going away in the near future. Examples of infrastructure failure are now almost commonplace in our daily understanding and our daily lexicon. In the last couple of weeks I-95 in Philadelphia was closed due to poor bridge support and a bridge in Minnesota was closed indefinitely due to a cracked gusset plate. The Minnesota closure was an eerie reminder of that Minnesota bridge collapse last August that killed 13 and injured about 145. We have been comparatively lucky here in Maine. Lucky to have to deal with smaller bridge closures, bent wheel rims, and missed economic opportunities caused by substandard infrastructure. Lucky to have been able to manage the decline of our transportation system, slowly transforming the Maine Department of Transportation and our road crews into a kind of transportation MASH unit. We've been lucky to deal with potholes, frost heaves, and deteriorating road surfaces. We'll be unlucky when it goes beyond that. This decline will continue until the nation is ready to fundamentally change how much we invest in transportation. That change is coming but the committee, very reluctantly, acknowledged that the supplemental budget is not the best vehicle for such a fundamental change. Again, however, we are sure that this day is coming soon.

Moving to this bill, on the general level, this budget deals with a \$28 million budget gap caused by reduced revenues and unavoidable cost increases. That's 4.1% of a structural decline in our Highway Fund Budget. By comparison, our General Fund Budget, which we have also been struggling with, has but a 3.1% biannual structural gap. Of course it's a larger number to begin with, but I want you to understand that the importance of the structural gap in the Highway Fund Budget is every bit as important as that which we have seen, and will continue to see, in the General Fund. More specifically, this Highway Fund Budget addresses the latest downturn from Highway Fund revenue projections of \$20.4 million since we approved the biannual Highway Fund Budget last June. \$20.4 million in lost revenues since last June. By way of background, this is the sixth downturn project in just two years and all six of them, including this one, totaled \$58 million. We looked to try to get more money into our highway, bridge, and transportation infrastructure. We do it by having the contentious issue of borrowing money, trying to issue bonds, or doing everything else and yet we have had a \$58 million reduction in the amount of money going into the Highway Fund.

The General Personal Services savings in this particular budget is \$6.4 million. We've achieved that by freezing and eliminating some positions. Most notably, 54 positions in the Maine Department of Transportation have been eliminated and people say that we are not eliminating positions here in state government. We've cut and deferred other expenditures also through the Maine Department of Transportation.

It reflects a lower than budgeted health care costs, proportionate to those reflected in the General Fund. Those are some savings. It, again, cuts Maine's DOT Highway and Bridge Capital Program. This time it was cut by \$10 million. We had a report that was presented to our committee, and thus to this entire legislature, that was commissioned by our Chief Executive which dovetailed into a report that the committee had asked for only a year earlier where we had 288 bridges, for instance, that were deemed to be unacceptable, deteriorated, or at risk. The report that was commissioned by our Chief Executive after the Minnesota disaster increased those numbers to 384 bridges that are now at a point where they need to have our immediate attention. I would dare say that if we had that same report commissioned and completed now that this number would be even higher. The reason why it continues to grow is because we are not able to fix what we need to fix.

This is not a position that we ought to be taking as policy makers in this state, to allow our transportation infrastructure to continue to crumble or to continue to deteriorate. When we do that, we have a very adverse effect on our economy, on our public safety, and on our convenience. I'm going to ask you, and I have by virtue of my motion, to support my motion to support this budget. All this has been by way of telling you that even with that support, which I urge of you, we're not where we need to be. In our head, in our collective minds, I'd like to have you think of how we can work to solve this problem. I appreciate the time. I appreciate your attention. I'd appreciate your support. Thank you, Madame President.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. I'd like to ask a question through the Chair to who ever may be able to answer.

THE PRESIDENT: The Senator may pose his question.

Senator **NASS:** Thank you, Madame President. As a person who feels like they've been quite supportive of bond issues on transportation but who has trouble answering to his constituents about the question that I'm sure the Transportation people have heard a lot before, that is the road crew question. My question is, is there anything in this supplemental budget that reduces the size of our DOT folks on the road in order that we might have more money for filling potholes? Is there anything that is happening in the future relative to moving some money, which we now take into the General Fund, such as the sales tax on automobiles, into the Highway Fund? Is there anything in this report that activates those two things, which I have long been interested in?

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

The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON**: Thank you, Madame President. To the question most recently posed, there is nothing in this particular document that would cut out the road crews, which would limit the road crews. There is in this particular document the elimination of 54 positions throughout the entire transportation department. They may or may not be road crew related. I suspect they are more engineer type related. If we are not having quite as much activity, perhaps some of our engineers or planning people have had to suffer that. With regards to the second piece, there is also none of that in this particular budget request. There has been some of that in previous budget requests and in previous requests. You might recall that a bill that has become public law, L.D. 1790, indeed had some of those transfers in it. That was to help fund that. We have a beautiful vehicle that is now public law and it's sitting with a practically empty tank and no way to fill it. We can't move that vehicle. Part of that was to come from a redirection of some sales tax revenues. In this particular budget there is no effort to try to move existing General Fund revenues into the Highway Fund. Though it is a laudable discussion and a laudable exercise, it's a fool's errand given the current condition of the General Fund as it pertains to the current condition of the Highway Fund. Thank you.

On motion by Senator **DAMON** of Hancock, Report "**A**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-865) ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-865) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-865)**, in concurrence.

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (3/28/08) Assigned matter:

Bill "An Act To Ensure Ethical and Humane Dog Breeding in the State"

H.P. 1394 L.D. 2010
(C "A" H-803)

Tabled - March 28, 2008, by Senator **MARTIN** of Aroostook
Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-803)**, in concurrence

(In House, March 27, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-803).**)

(In Senate, March 28, 2008, **READ A SECOND TIME.**)

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-803), in concurrence

Ordered sent forthwith to the Engrossing Division.

The Chair laid before the Senate the following Tabled and Later (3/26/08) Assigned matter:

JOINT ORDER - Directing the Joint Standing Committee on Health and Human Services to Report Out a Bill making technical corrections to the Laws relating to flavored cigarettes and cigars
H.P. 1640

Tabled - March 26, 2008, by Senator **BRANNIGAN** of Cumberland

Pending - **PASSAGE**, in concurrence

(In House, March 26, 2008, **READ** and **PASSED.**)

(In Senate, March 26, 2008, **READ.**)

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

Sent down for concurrence.

Senate at Ease.

Senate called to order by the President.

Senator **WESTON** of Waldo was granted unanimous consent to address the Senate off the Record.

On motion by Senator **MITCHELL** of Kennebec, **RECESSED** until 4:00 in the afternoon.

After Recess

Senate called to order by the President.

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 Make Supplemental Allocations for the Expenditures of State Government, Highway Fund and Other Funds, and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009

H.P. 1566 L.D. 2196
(C "A" H-865)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with 2 Senators having voted in the negative, and 31 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.

ORDERS OF THE DAY

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

HOUSE REPORTS - the Committee on **TRANSPORTATION** on Bill "An Act To Allow Road Associations To Determine Assessments According to Majority Vote Cast at a Duly Held Meeting"

H.P. 1488 L.D. 2102

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-818)** (9 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (H-819)** (3 members)

Report "C" - **Ought Not to Pass** (1 member)

Tabled - March 31, 2008, by Senator **MITCHELL** of Kennebec

Pending - motion by Senator **DAMON** of Hancock to **ACCEPT** Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**, in concurrence

(In House, March 28, 2008, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818) READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818)**.)

(In Senate, March 31, 2008, Reports **READ**.)

On motion by Senator **DAMON** of Hancock, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-818) ACCEPTED**, in concurrence

READ ONCE.

Committee Amendment "A" (H-818) **READ.**

On motion by Senator **DAMON** of Hancock, Senate Amendment "A" (S-531) to Committee Amendment "A" (H-818) **READ.**

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

Senator **DAMON:** Thank you, Madame President, men and women of the Senate. This amendment simply, in the voting process for these private roads, removes the ability for owners to vote in absentee ballots but it does not remove their ability to vote with a proxy ballot, to assign someone else who is attending that particular meeting their vote. That's the only change that it makes.

On further motion by same Senator, Senate Amendment "A" (S-531) to Committee Amendment "A" (H-818) **ADOPTED.**

Committee Amendment "A" (H-818) as Amended by Senate Amendment "A" (S-531) 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-818) AS AMENDED BY SENATE AMENDMENT "A" (S-531)** thereto, in **NON-CONCURRENCE.**

Sent down for concurrence.

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

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

REPORTS OF COMMITTEES

Senate

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Limit the Compensation of Officers and Directors of Nonprofit Corporations"

S.P. 636 L.D. 1792

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-532).**

Signed:

Senators:
HOBBINS of York
HASTINGS of Oxford

Representatives:

SIMPSON of Auburn
BRYANT of Windham
DUNN of Bangor
MILLS of Farmington
CASAVANT of Biddeford
DILL of Cape Elizabeth
BERUBE of Lisbon
JACOBSEN of Waterboro
GOULD of South Berwick
NASS of Acton

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-533)**.

Signed:

Senator:

NUTTING of Androscoggin

(Representative LORING of the Penobscot Nation - of the House - supports the Majority **Ought To Pass as Amended by Committee Amendment "A" (S-532)** Report.)

Reports **READ**.

Senator **HOBBINS** of York moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-532)** Report.

On motion by Senator **NUTTING** of Androscoggin, **TABLED** until Later in Today's Session, pending the motion by Senator **HOBBINS** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-532)** Report.

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

REPORTS OF COMMITTEES

Senate

Pursuant to Joint Rule 309

From the Committee on **JUDICIARY** on Bill "An Act To Amend the Maine Tort Claims Act"

S.P. 462 L.D. 1348

Which was received by the Secretary of the Senate on March 31, 2008, pursuant to Joint Rule 309.

READ ONCE.

Senator **HOBBINS** of York moved to **TABLE** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

Same Senator requested and received leave of the Senate to withdraw his motion to **TABLE** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

Under suspension of the Rules, **READ A SECOND TIME**.

On motion by Senator **HOBBINS** of York, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

From the Committee on **JUDICIARY** on Resolve, To Waive the Tort Claims Limitation on Damages Relative to the Traumatic Brain Injury of Lucas Tolliver

S.P. 463 L.D. 1349

Which was received by the Secretary of the Senate on March 31, 2008, pursuant to Joint Rule 309.

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

On motion by Senator **HOBBINS** of York, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

Senate at Ease.

Senate called to order by the President.

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

On motion by Senator **MITCHELL** of Kennebec, **RECESSED** until 7:00 in the evening.

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

House Paper

Bill "An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009"

H.P. 1651 L.D. 2289

Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

Under suspension of the Rules, **READ TWICE**, without reference to a Committee.

On motion by Senator **MILLS** of Somerset, Senate Amendment "B" (S-534) **READ**.

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

Senator **MILLS:** Thank you, Madame President. Senate Amendment "B" has a single purpose, Madame President. Basically, it is to restore what I would like to call the integrity of the Office of Program Evaluation and Government Accountability. I was concerned in reading the bill that came up to us from the other Body that it takes the staff of OPEGA, a staff that presently consists of four filled positions under the director, and cuts that staff in half and removes one of the open positions. Instead of having a staff of five, they would have a staff of two plus the director. I am, frankly, at a loss to understand why we would cut this agency in half at this juncture. The track record of the agency has been that they have found a number of very interesting deficiencies in the management of some of our larger programs. It seems to me that in these times when efficiency is required of state government that this agency, above all others, should be kept at its present level of activity. I also understand that the director has been able to operate the agency while leaving a considerable surplus and that this surplus has been turned over, and is turned over, for application against this budget. There are a host of reasons that we need not discuss again this evening. I would suggest that this Chamber ought to support the continuation of OPEGA in its present autonomous form. I think the independence of the agency is of extraordinary significance.

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534).

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

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

Senator **RAYE:** Thank you, Madame President, men and women of the Senate. I rise just briefly to support the amendment offered by the Senator from Somerset, Senator Mills. I had also prepared an identical amendment. It is extremely important that we defeat the pending motion and support this amendment because otherwise the integrity of OPEGA will be severely compromised. The language in the budget, that this amendment would remove, directs OPEGA to engage in a process that, frankly, flies in the face of its mission. I think that it would be a very serious mistake, and a very untimely reversal of an important reform to state government, for an agency that has already, in its short time, become a very effective fiscal watchdog. There is no other agency in state government that is receiving as sharp a cut as OPEGA would be receiving with the loss of its staff as a result of

the budget passed by the other Body. It is, as the Senator from Somerset, Senator Mills, mentioned, an agency that has also literally put its money where its mouth is by operating efficiently and significantly under budget. I hope you will join with me in opposing the motion to Indefinitely Postpone.

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

Senator **MITCHELL:** Thank you, Madame President and colleagues in the Senate. It may come as a surprise to some of my Republican colleagues and perhaps some of my Democratic colleagues, no one ever intended for OPEGA to be a deal breaker. I have been associated with that, probably a little more than is fair or that I care to be. I happen to be Chair of the Committee and there were some issues in the past in terms of disagreements I may have had, but the last thing in the world I want is for our budget to fail over something that we don't disagree on that much. My colleagues and Democratic leadership in both the other Body and the Senate have made, and I will say this publicly, and reached out to our Republicans and Democrats who feel very strongly about this issue and have agreed to let an after deadline bill in which would be funded to restore OPEGA to what the sentiments are of the members of the other Body and the Senate. The reason I would be supporting Indefinite Postponement is not in opposition to the substance but the timing. I think we all know we're faced with a midnight deadline or curtailments will occur. I don't think that any of us wants to reach that brink because it's much too important. There is too much at stake here and we've come too far. I've wanted to say publicly, on the record, that we stand ready to work with you but not in the budget because the time prohibits our putting this in the budget. I hope that you will vote for Indefinite Postponement with the understanding that we can correct this disagreement that took place earlier in a separate bill. We can take that up tomorrow.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I guess I'm trying to figure out some of the previous comments a little bit. It seems kind of strange to me that when the budget discussions and deliberations broke down the Majority budget decided that they were going to take OPEGA out. Now all of a sudden it's a bargaining chip in order to get Republican support. I guess I'm having a hard time following that. Maybe I'm completely off base, but it would seem that when we go out and talk to the people of Maine, and they find out that this government oversight organization has been gutted, I think it's something they really are going to enjoy hearing the rest of the story on. I just can't believe that this Body and the other Body would go down this path. They've done some good work. It's not just cost savings, it's about the way our government structure treats children. The guardian ad litem situation in this state. There are so many good things that OPEGA has done and it's just off the ground. To pull the plug at this point, or to completely revamp it, or take away its independence, I believe is just a sad day for the people of this state. Thank you, 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. I perhaps need to add my confusion to the good Senator from York, Senator Courtney's. This cut, decimation, to OPEGA was put into the budget at approximately 11:15 on the night that Appropriations met. I find it very difficult to understand why it has to come in to save it on a separate bill. It seems to me that if the people who voted to decimate it want to save it that now is the time to do it, in the very same document.

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

Senator **SCHNEIDER**: Thank you, Madame President, men and women of the Senate. I appreciate the willingness of the Body to allow me to speak. This issue, which came before our committee and we had a unanimous report to the Legislative Council, was about our commitment to the autonomy of this program. However, we are also committed, as a committee, to find inefficiencies and reductions. It was never intended to in any way take away that autonomy or decimate, in any way, government oversight. I am committed to government oversight. I think most of the people in this Chamber, as well as the other, are committed to governmental oversight. The real question is if we can do for less money and be more efficient, which I believe the people of the state of Maine want. That is the story. Do you want us to be more efficient? Do you want us to cut costs in state government? That is what the people in the state of Maine certainly have said to me. I think that we have to stick by that. When we're talking about what is disheartening, what is disheartening to me is that we have roughly 2% or 3% of the budget that we somehow can't come to an agreement on and politicking is going on. We are playing political football with a budget, which is absolutely outrageous to me. The people of the state of Maine do not want to see curtailments take place because that will be very hurtful to the people of the state of Maine. Many things that we all care about protecting will not be protected. That's the story. We have a responsibility to not play politics with this budget. 98% was unanimous out of the Appropriations and Financial Affairs Committee. We have a duty to stand by that. That was full of compromises. If anybody in this Body thinks I'm happy go lucky with what this budget is they are sorely mistaken. I have compromised a great deal in this budget. I'm asking for you to compromise as well. I'd like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose her question.

Senator **SCHNEIDER**: Thank you, Madame President. I'd like to know if this amendment is added, will they vote for this budget?

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

Senator **MILLS**: Thank you, Madame President. Friday night, Saturday, and Sunday, under the leadership of the Governor's staff, there was a substantial amount of work done on a compromise amendment that would have garnered, I believe, some measure of Republican support. I drove down here this morning at 8 o'clock thinking that maybe that was a prospect. I can tell you with certainty that the last 12 hours we have been

sitting here shoving paper around, waiting for people to get back from fundraisers, and wasting our time was for one reason only. That is to make sure that every single Republican vote on this budget is excluded from the process. That every single Republican in this Chamber, all 17 of us, are excluded completely from this process. It has been insulting to me, personally, and I think it's a very poor way to be ending this session because in the next two or three weeks we've got some other tough issues to get at. I think that the process that we've seen and been witness to, this long day that we've spent here, sets a precedent that people are going to find a lot of difficulty in living with. This is one agency that everybody in this room and everybody in the other Chamber knew was a centerpiece of Republican concern. There are others as well. They could have been accommodated. They could have been agreed to. They could have been worked on to reach towards a bipartisan budget. Those efforts, those overtures, and all the work that went into that was swept out the door this morning. I think it's a very, very poor precedent.

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

Senator **MARTIN**: Thank you, Madame President and members of the Senate. It is amazing to me that good Senator from Somerset, Senator Mills, refers to a breakdown. The breakdown in the system fell apart last Wednesday night when we were informed by Republican leadership that they had no intention of supporting a 2/3 budget. On Thursday evening the Minority Leader in the other Body pulled those members away from the Appropriations process. You wonder why there was no 2/3 budget? Please don't look at us. Look at your leadership and not at us. I resent the condemnation that we have walked away from a 2/3 budget. That decision was made last week and continues tonight. There is no 2/3 budget. There will not be a 2/3 budget, but it is important that we have a budget. I want to comment on the comments of the Senator from Waldo, Senator Weston, and the Senator from York, Senator Courtney. In fact, what took place in this process that evening, when we never got to finalize that budget, were proposals that were outstanding between parties, in negotiations. When the negotiations fell apart, that's when it ended up that way. I personally have no interest in OPEGA. I don't care if it exists. I don't care if it doesn't exist. I believe the responsibility of every committee is to make sure that the work is done for its department. They know it best. I've not gotten involved, either way. The amendment I offered was on behalf of negotiations, trying to resolve the budget. Low and behold, the Republican members took the \$1.1 million saving that was presented at that point and only after we closed up the budget did they realize that it was \$1.1 million they didn't want because they had taken it as well in the final analysis. That's what happened. We never got back to that stage. The bill you have before you restores OPEGA in its entirety, the way it was, except the only thing left is the staffing question. That's all. What we have agreed to, which I agreed to and said publicly to a number of members of my own caucus, was that I had no problem finding the money to ensure that this continued at that level. We are in a position where we have four hours left before the curtailment order takes place. I said that we, and I, would be willing to support the money. I've told the Senator from Washington, Senator Raye, that. It wasn't good enough. Now we have the amendment. I can't do any more than that. That's where we were coming from. If members of the Minority refuse to

accept our word then so be it. That was the commitment that we made earlier today. We had intended to follow through with that.

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

Senator **DOW:** Thank you, Madame President. I rise to bring us back to the topic. I thought we were talking about OPEGA instead of the whole budget process. I'd like to bring us back to that. I guess I'm one of the ones that is not confused on the issue of OPEGA. It has a certain function. I've been on it since it began and it is still in its infancy, by the way, of producing reports and doing its work. It's working quite well. I realized right from the very beginning, from the first report that was ever issued, that I was a good fit for that committee. The reason is that I am very familiar with the style of those reports. Having served on the Board of Directors of one of the largest banks in the state of Maine and served on the Audit Committee, I realize the functions of all types of audits. Let me just remind you what banks and businesses do, especially banks. They have several audit functions. One of them is an internal audit that they do themselves. A second audit is to hire an outside auditor, independent of everything else. That's not enough for the federal government because the SEC, Security and Exchange Commission, also come in and audit the banks. They are completely independent. Nobody on those committees, SEC, never asks if it's all right to publish a certain report before they put it out. OPEGA is pretty much like the SEC audit report. They have to be, and must be, completely independent in order to do their jobs. There is another thing I discovered about OPEGA that is similar to the SEC, they are never on a witch hunt. They just investigate programs that we ask them to and vote for them to do on the Government Oversight Committee. I would ask you to leave that accountability as independent as it was originally set up because it is of no value if they have to ask one or two other committees if the report is okay before it is issued. As I said before, it's never a witch hunt. It's always very good information we get and that information is given to the committee of jurisdiction. I believe that even though OPEGA is just in its infancy it has great future if we would just let it perform the original function as the way it was set up and continue that function. I'm sorry to see some of the funding disappear, but that just shows you how good OPEGA is at their own work and doing it consistently and always under budget. That's my pitch and I'm asking that everything be left the way it is. It needs to be left in the budget. That's where it belongs. If it's taken outside of the budget, and brought up as a separate bill, then we all know that the appropriations that go with that bill will just send it down to certain defeat in the Appropriations Committee. Thank you very much.

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

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I guess I'm amazed this evening too. I'm not the only Senator that is amazed. I was told, until about 2 o'clock this afternoon, that because of time the Majority budget had to be the one that was introduced into the other Body. It would take time to make changes to it, so we had to do that. It had to be drafted just as it was voted out of the Appropriations Committee. Yet, low and behold, what we have before us, what

was passed out just a couple of minutes before we started debating, isn't what came out the Appropriations Committee, the Majority Report. Time was taken to amend this and to add the House Amendment to it before it was distributed. The argument about not having time to make any changes in the Majority Report isn't true, I now know, because the Majority Report combined OPEGA with OFPR. What is before us is the Representative Fisher amendment that keeps OPEGA by itself but cuts the staff in half. I'm now realizing that there really was time to amend this document to fully restore the staff of OPEGA because you took the time to amend it before it was distributed because this is different than what came out of the Appropriations Committee. My question is, if you can take the time to amend it one way, time could have been taken to amend it another, exactly the same.

I'd like, Madame President, to pose a question to anybody who could answer.

THE PRESIDENT: The Senator may pose his question.

Senator **NUTTING:** Thank you, Madame President. I appreciate our leaders commitment here verbally to find funds and to support restoring the positions to OPEGA so they can really do their job, continue to look at upper level positions, and our economic development programs, especially the Fund for Healthy Maine. My question would be, do we have a commitment from the other Body and the Governor's Office to fund this and to sign this into law? Thank you.

THE PRESIDENT: The Senator from Androscoggin, Senator Nutting poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Arostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. First of all, let me respond in part to the first comments of the Senator from Androscoggin, Senator Nutting. What was done today was to take the original bill out of committee with the amendment that had been offered by the Representative from Presque Isle. That is what appears in this document. That's what was put together. In reference to the second portion, I'm not yet a member of the other Body, but in discussions with members of the other Body, they have agreed, my leadership not the other because they have agreed to nothing, with us that we will put the money in. In reference to the Chief Executive, at this point in time I think he'd be more than happy to do anything we ask him even though that question was not asked. I'm going to be honest about it. I can't commit him in this process, but I'd be more than happy to talk about it off the record.

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

Senator **MILLS:** Thank you, Madame President. I rise, if I may, to apologize for my comments concerning the fundraiser. It did not delay our activities. We had a supper hour that was coming anyways. I, frankly, threw that in as a makeweight. It was inappropriate.

I also wanted to say that I've got, I think, four other amendments here. I'm not intending to offer them because I don't want to run into any issues in regards to midnight. However, you've got to understand that this program is fairly important to many of us and there is a widespread division of opinion about

OPEGA. The budget, as written, cuts two positions out of the staff. They've only got four filled right now. It cuts three, actually, including an open one. We just have a lack of confidence that this agency's going to survive this budget process if it's cut this way. I think that's the reason why we're pressing this amendment at this time. I'm sorry that we are doing it at 8 o'clock at night, but those are the circumstances we've been handed. 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. Very briefly, I rise to correct some information that was offered earlier in this evening's debate when it was said that the budget document before us restores OPEGA fully and it's only just about the staff positions. In fact, that is not the case. I would like, if I could, to read from the budget document that we are considering Part LLLL. 'The Director of the Office of Program Evaluation and Government Accountability, referred to in this section as OPEGA, in conjunction with the Directors of the Office of Fiscal and Program Review, the Office of Policy and Legal Analysis, and the State Auditor shall make recommendations by October 1, 2008, to the Joint Standing Committee on State and Local Government and the Government Oversight Committee regarding changes to operating procedures of OPEGA and relevant offices and agencies, including the Office of Fiscal and Program Review, the Office of Policy and Legal Analysis, the State Controller, and the State Auditor, that will facilitate the sharing of resources and coordination of program review across state government.' It goes on further in the Part LLLL to say that, 'The Joint Standing Committee of the Legislature, having jurisdiction over state and local government matters and the Government Oversight Committee, shall jointly report by January 15, 2009, to the Joint Standing Committee of the Legislature having jurisdiction over appropriations and financial affairs and the Legislative Council concerning any recommended changes to the Legislature's Government Oversight functions, including the structure and resources dedicated to those oversight functions and performance measures, to assess the effectiveness of those oversight functions.' As you can see, it was not simply reinstating OPEGA, but rather setting in place a process that, just as this agency is getting off the ground with its important work, would really practically cause upheaval. It would be very difficult, under these circumstances, for OPEGA to perform effectively the function that it is currently performing.

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

Senator **ROSEN:** Thank you, Madame President, men and women of the Senate. Not to take the discussion off topic, but I do feel that I have to respond to the exchange that took place a little earlier and the response from the Senator from Aroostook, Senator Martin, regarding last week's negotiations. I did not respond to those comments a couple of days ago because I really didn't want to get into a 'he said, she said' exchange, but I have to complete this conversation. On Wednesday night, when those of us in leadership met, we came down to a central issue around containment of the MaineCare non-categorical waiver program. We had a discussion and the discussion was whether or not there was movement on either side to accept containment in that program and the response was that Democratic leadership

cannot move off that position and whether Republican leadership would be willing to consider alternatives. We said that as long as it was sustainable, but we needed long term sustainable alterations in these MaineCare programs and our proposal was the non-categorical waiver program. The next morning the Appropriations Committee went back to work and worked all day and into the evening in committee. The expectation was that things would wrap up around suppertime. The work continued and the members were still out there. After suppertime there was a break and there were several hours of behind-the-scenes work. Later that evening, when those two or three House members left to go home, the Appropriations Republican leaders remained, were there at the table, and ready to continue the work. The motion was then made to close the budget after the parties split on those areas of disagreement. I think the record of this session speaks more than the conversation around those two days. The record of this session is that this Appropriations team and this leadership team came together last year and agreed on a budget with a 2/3 majority after the cut-off date, well into 2/3 land, when many people said it couldn't be done and when it had not been done for many years. Previous biannual budgets that have passed by 2/3 have passed under the gun and deadline of the possibility of going into the Majority mode by the end of March. This was the first time in many years that we continued those negotiations past the cut-off date and successfully achieved a budget. The same held for the bond negotiations. We negotiated a two-year package. I think the record indicates that there is willingness, a desire, and goodwill when it comes to trying to work together. The disagreement around the supplemental budget is based on policy. As the Senator from Cumberland, Senator Bromley, mentioned the other evening, there is nothing wrong with disagreeing on policy. I'd like to pose, before I sit down, a question to anyone willing to respond.

THE PRESIDENT: The Senator may pose his question.

Senator **ROSEN:** Thank you, Madame President. On the calendar we have L.D. 2173, which is the budget bill that went through the Appropriations Committee process and the bill that we've been debating and voting on up to this point. This morning a ballot was circulated to allow in the bill that we are discussing now, L.D. 2289. Would someone please explain how and why it is that L.D. 2289 is before us now?

THE PRESIDENT: I will allow this one question to be asked. I will remind members that we are on an amendment having to do with OPEGA, so after this question is answered the discussion has to go back to that amendment. The Senator from Hancock, Senator Rosen poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. Within the confines of the Senate President's ruling a few minutes ago, I'm somewhat limited by what I can say. The agreement to split the two issues was outside this floor.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I had a private conversation with

Madame President before this evening's session began. I remarked that it wasn't our finest hour. I stand by that statement, privately and publicly. I'm reminded of the movie starring Paul Newman where he was a prisoner in a southern state prison work detail. He kept escaping and coming back. The warden pounded the devil out of him one day and leaned into his face and said, 'What we have here is a failure to communicate.' When you think about that, what we have is a failure to communicate and keep talking with each other. To cast about the blame on why we are where we are at this moment, I think we can all look in the mirror and see the reason why. It isn't one side or the other. I think we all have a shared blame.

Now to the issue at hand, Madame President, if I'm able to read this budget document correctly, there is sufficient positive balance remaining in FY 09 to restore OPEGA to its rightful place and I would encourage you to consider voting against the pending motion to Indefinitely Postpone because we can restore this and keep the budget in balance. I would ask you to consider that as we finish up our discussion on this matter. Thank you, Madame President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone Senate Amendment "B" (S-534). 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 (#356)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MARTIN, MCCORMICK, MILLS, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534), **FAILED**.

On motion by Senator **MILLS** of Somerset, Senate Amendment "B" (S-534) **ADOPTED**.

On motion by Senator **MARTIN** of Aroostook, the Senate **RECONSIDERED** whereby it **ADOPTED** Senate Amendment "B" (S-534).

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.

Senator **MARTIN** of Aroostook moved to **TABLE** until Later in Today's Session, pending the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534).

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 (#357)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **TABLE** until Later in Today's Session, pending the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534), **PREVAILED**. (Roll Call Ordered)

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

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

Bill "An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009"

H.P. 1651 L.D. 2289

Tabled - March 31, 2008, by Senator **MARTIN** of Aroostook

Pending - motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534) (Roll Call Ordered)

(Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.)

(In House, March 31, 2008, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

(In Senate, March 31, 2008, under suspension of the Rules, **READ TWICE**, without reference to a Committee. On motion by Senator **MILLS** of Somerset, Senate Amendment "B" (S-534) **READ** and **ADOPTED**. On motion by Senator **MARTIN** of Aroostook, **RECONSIDERED**.)

The Chair ordered a Division.

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 Somerset, Senator Mills.

Senator **MILLS:** Thank you, Madame President. As I understand it, having reconsidered the earlier motion to Indefinitely Postpone the OPEGA amendment, we are back on the amendment and the pending motion is Indefinite Postponement.

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

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I'll try to be brief. I was very apprehensive as far as OPEGA being funded in the next few days. I just had a brief meeting with the leader in the other Body and several other members of my party from the other Body. I now, and just now, am comfortable that I believe there is a firm commitment to restore these positions to OPEGA and to proceed in the next few days to do so. I will be supporting the pending motion. I'm still a little uncomfortable, but not as uncomfortable as I was. This is a very big issue with me and I'm pleased to just learn that there are several members of the other Body in my party that feel strongly that OPEGA should be restored and have the positions restored so they can do their work in the future. Thank you.

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

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

THE PRESIDENT: The Senator may pose her question.

Senator **PLOWMAN:** Thank you, Madame President. Would someone please explain to me in what form and what the staffing will look like as compared with the amendment that we have talked about tonight as opposed to the amendment which was introduced by a member of the other Body who serves as Chair of the Appropriations Committee? I understand there are two different ideas about what staffing OPEGA would look like. Before this goes too far I'd like to have it on the record as to what this will actually look like as this deal progresses. Thank you.

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

Senator **NUTTING:** Thank you, Madame President. It is my understanding that what is going to be presented in a separate L.D. as soon as tomorrow will be the form of OPEGA funding that was contained in Senate Amendment "Q" that was offered by the Senator from Cumberland, Senator Diamond. Thank you.

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

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

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

Senator **RAYE:** Thank you, Madame President. I am wondering if there is anyone in this Body who can tell us what the legislation that has been promised over the next few days will do with respect to the language before us in Part LLLL that I read into the record a few moments ago that sets up a process and requires the OPEGA director to report to two committees and requires the Government Oversight Committee to report out jointly with the State and Local Government Committee in the next legislature recommendations for changes to the legislature's government oversight function because to many of us this language is as deeply troubling as was the budget cut.

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 Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. The question that has been posed by the Senator from Washington, Senator Raye, is not before us. The question before us is the money that we have committed to restore. No one ever mentioned anything beyond that. What we have is the amendment that has been introduced by the Senator from Somerset, Senator Mills. I have no problem discussing other matters, but that is not something that was ever brought to my attention.

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

Senator **PLOWMAN:** Thank you, Madame President. I appreciate that the motion before us is Indefinite Postponement. I'll speak to that motion. I would urge you to defeat the motion. We've heard often about a bird in the hand. Right now I'd rather have a bird in the hand than to rely on the shenanigans that have gone on back and forth between the two Bodies in the last week. There is still sitting before us a bill that was brought before us last week that had this information in it and had this in it. I'd be very happy to actually defeat this motion and perhaps table and bring back the bill that is currently on the table, which has this provision

in it. You can feel free to pass that bill because it has the amendment by the Senator from Cumberland, Senator Diamond, on it. We would be able to proceed with the same issues that are before us with the first bill, which actually passed in that manner. I think that would be the most honest way of approaching this rather than thinking that a promise of what might happen tomorrow or the next day is what we hold on to. As I've said before, and at least we would have this motion voted up or down, it seems to be that there is a certain fear about running things up the flagpole when you don't have the votes. That's what happened last week. I'm very disappointed that we're back in the position of Indefinite Postponement of this and that we're supposed to agree to hallway talk, which has no bearing on the record, which has no votes in this Body, which does not hold anybody accountable, and which is very hard to impress on the people of the state of Maine that it's not a backroom deal. This year people have been asking us for transparency, credibility, and accountability. Those were all the catch phrases for this year. That's what OPEGA stands for. That's what offering amendments to bills stand for. When things break down, and you can't agree on everything, you offer amendments. You vote them up or down. You proceed, because that is accountable, transparent, and ethical. Those are the catchwords of this year. I would urge you to go forward and turn down this motion, to put this on the bill that is before us, and to make it look just like the one we had last week. Wouldn't that be something, because here we stand, and it's a big hurry I understand with only 3-1/2 hours until the deadline when everybody turns back into a pumpkin. We're really not that far apart. The problem is that what's right is losing out to gamesmanship. What the people expect is at the mercy of back hall deals. Whether it happened on this floor or another floor, this is where the votes count. This is were you say, 'I did it the right way and I voted it up or down.' I can stand here, I'm sure, and talk until I'm blue in the face. In fact, I can talk until I'm blue in the face.

THE PRESIDENT: If you continue, and it becomes obvious that you are taking up time merely to take up time, I will object.

Senator **PLOWMAN:** Thank you, Madame President. I could talk until I'm blue in the face but I won't because it doesn't do any good. It doesn't do any good. Gamesmanship wins and hardened hearts win. What the people expect from us doesn't. I'm actually so disheartened with what happened last week and what is sitting before us on this calendar, which is the budget bill with a totally different number. I'm totally disheartened. We have a lot of session left after tonight. We still have to work together on very many issues. They are just as important as this one. I would urge you to defeat the motion on the floor. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone Senate Amendment "B" (S-534). 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 (#358)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-534), **PREVAILS**.

On motion by Senator **COURTNEY** of York, Senate Amendment "F" (S-540) **READ**.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. At the end of last session the legislature gave a charge to a small group of people, members of this Body, and created the Prosperity Committee. The charge was to look at a lot of the different reports, specifically look at the Brookings Report, and some of the recommendations to try to put our state back on track to prosperity. Unfortunately, throughout this session the report has lingered and collected dust while the people of Maine have been struggling to pay their oil bills and fill their gas tanks. These recommendations, which were agreed to unanimously, have lingered. This amendment would propose to add to the budget to create the Maine Government Efficiency Commission and have that commission report back to the legislature, creating the \$75 million savings, develop a long-term plan for restructuring government at all levels, and to reduce the state's overall tax burden relative to similar states. It would take this \$75 million and move the money into the tax relief fund for Maine residents. Furthermore, it would take future revenues above the L.D. 1 cap, which we're going to have some day because the economy is not always going to be like this. There is going to come a time when this state, the economy, and the people of the state are going to have a much brighter outlook.

The great thing about this amendment, which was unanimously agreed upon by the Prosperity Committee, is it puts us on a path that would reduce the income tax down to 4.5% by taking the \$75 million and all the extra money when the economy rebounds. If we had done this back in the late 1990's, when money was flowing in and we couldn't spend it quick enough, we'd have a very different outlook today. In my opinion, we'd be much more competitive. We could attract good jobs because companies would want to be here. People would, perhaps, be more apt to die here. Over the last few years there have been so many people who have decided to move their residence out-of-state for six months and a day. They take their money because they keep their money here, and use legal counsel here, Maine Revenue assumes they are a resident here. We lose their

wealth. We lose their money. We lose that economy. It's been very disappointing.

We worked very hard in the Prosperity Committee. There were 16 members and we all came to a unanimous agreement. We agreed and part of the agreement was that we would bring this amendment forward for a straight up or down vote. Commitments were made. Promises, assurances, that we'd vote for it, but they lingered and when you asked it was always the other guy that was waiting for this person or that person to bring it forward. This might be the only crack we get at this. I want to give you all the chance tonight to vote to bring prosperity to the state of Maine. I want you all to have the opportunity to do what the Prosperity Committee did. They voted unanimously to get on a path to reduce the income tax in this state to 4.5%. What a tremendous goal. Endorsed by Republicans, Independents, the tribal representative, and Democrats. I really want to encourage you. This is about changing the future of the state. You have it within your grasp. We all do. I would just encourage you all to support this amendment. Let's make Maine a brighter state. Thank you.

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-540).

On further motion by same Senator, 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 (#359)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-540), **PREVAILED**.

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

Senator **DIAMOND:** Thank you, Madame President, men and women of the Senate. Before we pass this I wanted to remind everybody that I was proud of the Senate Thursday when we passed an amendment to the budget that allowed at least an effort for a bipartisan approach to the budget. It was one that six Senators worked long and hard on. When the time came we felt we were just trying to make what we considered to be an option

for this legislature. It ended up being that the other Body almost totally rejected it. We're big boys and girls. We can accept that. In fact, it was a very overwhelming rejection. It keeps one's ego in order. I appreciate and respect those disagreements. I did want to say and remind everybody that it was a sincere effort. Contrary to the one low point in the debate Thursday night when the six Senators were accused of meeting in secret, conjoining, and possibly being unethical, that was soundless and ridiculous. We met in room 426 for lunch most times with committee members coming and going, having their lunch, and the public coming and going while waiting for hearings. To suggest for a minute that anything other than what goes on in this building a hundred times a day happened is totally unacceptable. I would remind you, and encourage you, to continue working for things you believe in, bipartisan efforts or whatever they may be, and do not let those types of false accusations, which cause you to be questioned over the weekend about what's going on in Augusta, sway you. Ignore those because they are meant to intimidate. I would say that what we did, what we are doing, and what we are going to do is the process. I would hope that we will continue to do that process in the utmost manner as opposed to that one low point in what otherwise was three hours of good debate. I'll be voting for the budget. We made our honest effort to bring a bipartisan effort to this Body and this legislature. I appreciate, Madame President, the opportunity to speak.

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

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

Senator **MILLS:** Thank you, Madame President, men and women of the Senate. I wanted to say that I didn't intend any blanket condemnation of my colleagues on the other side of the aisle. There were a number of you who did sincerely reach out to see if we could put together a bipartisan budget. I want to go on record as thanking you, very sincerely, for your efforts.

THE PRESIDENT: The pending question before the Senate is Engrossment. 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 (#360)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, **PASSED TO BE ENGROSSED**, without reference to a Committee, in concurrence.

An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009

H.P. 1651 L.D. 2289

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

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

The Doorkeepers secured the Chamber.

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

The Secretary opened the vote.

PAPERS FROM THE HOUSE

ROLL CALL (#361)

House Paper

Bill "An Act To Protect Access to Health Care"
H.P. 1652 L.D. 2290

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.

NAYS: Senators: BENOIT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, was **PASSED TO BE ENACTED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

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

On motion by Senator **WESTON** of Waldo, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

Senate at Ease.

ORDERS OF THE DAY

Senate called to order by the President.

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

On motion by Senator **MITCHELL** of Kennebec, **RECESSED** until the sound of the bell.

Bill "An Act To Protect Access to Health Care"
H.P. 1652 L.D. 2290

After Recess

Tabled - March 31, 2008, by Senator **WESTON** of Waldo

Senate called to order by the President.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence

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

(Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** suggested and ordered printed.)

ENACTORS

(In House, March 31, 2008, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

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

(In Senate, March 31, 2008, under suspension of the Rules, **READ TWICE**.)

Act

On motion by Senator **ROSEN** of Hancock, Senate Amendment "A" (S-541) **READ**.

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

Senator **ROSEN:** Thank you, Madame President. The amendment that is before you proposes two changes to the bill, L.D. 2290. Just for purposes of background, L.D. 2290 is a bill that was introduced as the result of a ballot that was circulated this morning and comes to us from the other Body. For purposes of further description, perhaps I can be allowed to also point out that this is a bill that essentially was known as the 'Janet Mills Amendment' that was attached to the Majority Report in the last series of discussions. My amendment to the bill preserves the portion in the bill that restores the reduction to hospitals by reducing the physician reimbursement rate. L.D. 2290 pays for that restoration of the physician rate reduction by increasing the base year used to calculate the hospital tax and match. My amendment removes that mechanism for funding the restoration and instead applies the reduction in the childless adult waiver program at an amount that is the same as the amount originally proposed in the Governor's Supplemental Budget as an offset.

We've had some serious discussions previously dealing with the tax and match and with containment of the childless adult waiver. I think we're all familiar with the issues that we have talked about in both of those cases. Let me just elaborate on why I feel it's important to introduce this amendment and why it's important for us to be concerned about both of these particular initiatives. As far as generating new revenue from tax and match to pay for yet another offset, in this case the proposed reduction in the physician reimbursement rate, puts this state's MaineCare program at greater and greater peril every year as we continually rely more and more on the tax and match mechanism to draw down more federal money. Tax and match is an effort that we lived through in the 1990's. As the Senator from Androscoggin, Senator Rotundo, pointed out the other evening, it ended up being extremely costly to the state in the late 1990's, when we were finally able to extract ourselves from using tax and match as a mechanism to fund MaineCare. Yet, since 2003, bit by bit, this policy of the state has changed and we find ourselves deep into tax and match again as a way to fund the basic fundamentals in our MaineCare program. This last year we relied on a total of approximately \$138 million as generated through this mechanism. The more we rely on tax and match the more, in my opinion, we put the entire MaineCare program at risk. At some point it seems clear that we will face the same problem that we faced in the 1990's when the federal government said enough is enough. This is nothing more than a mechanism to artificially inflate your costs, to draw down that \$2 federal match, and it is not a legitimate way and an ongoing mechanism to fund MaineCare programs. I think it puts the people that receive services at risk. I think it puts the providers at risk. It puts the state budget at risk because, ultimately, at some point someday we're going to have to bail this out.

As an alternative, I think it is reasonable to put forward the reduction in terms of the dollar amount that was proposed by the Governor as it applied to the childless adult waiver program. We've seen in the short history that this waiver has been extended, that it has had dramatic fluctuations up and down, and has been managed in less than a clear and thoughtful way. If you simply look at the enrollment numbers in this program, in July 2005, shortly after it was opened up, we saw over 19,000 individuals that came in to this new waiver program. Many of

them came in inappropriately. These were individuals that were eligible for other reimbursable services through different channels, yet they fell into this program and over time some found their way to the appropriate mechanism but others did not. When the point was reached that funding this capped waiver program, and it is capped by dollars, exceeded the amount of money that we were able to apply to it, then the enrollment floated from 19,000 all the way down to a low in June 2006 of 10,795. Again, as was pointed out the other evening, that float down to 10,795 people was done without causing great hysteria, without headlines all across the state, and without charges of being unfair or inappropriate in terms of providing services to this population. It was a management mechanism that was utilized by the Administration to help balance that particular budget. When the program was reopened in August 2006, it immediately, in four months, shot back up to an enrollment of 21,000. Some will argue that's an indication of huge pent up demand. What I've seen, in terms of the management of this program, is that it is an indication of poor management, of not understanding the population that floats in and out and whether they are eligible or not eligible. It is a reasonable alternative to simply say that \$8 million, that is the amount, \$8.1 million that the Governor originally proposed, will be the amount of reduction in the non-categorical adult waiver and the Department has at its discretion, as allowed under federal law, every opportunity to manage the benefit package and the delivery of services to achieve that level of funding. It's fair. It's reasonable. Above all else, it is sustainable. We really only have two choices. If it is the position of the majority to maintain this and other programs to stay fully open, with open enrollment, then there is an obligation to fund it, pay for it, on an ongoing basis. If not, then contain it. Thank you.

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-541).

On further motion by same Senator, 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 Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame President, men and women of the Senate. I'm very proud of the fact that the budget that we just passed preserves health care. In particular, health care for childless adults and S-Chip parents. We have had the opportunity recently in this Chamber to be able to debate the merits of these programs and I don't have to go over all of the reasons that I, personally, feel that they are important and worthwhile programs, not at this late hour. We all want to make sure that doctors are receiving adequate reimbursement so that they will continue to take our MaineCare patients. However, it doesn't make any sense to me at all to cut people's access to health care so that we can preserve access to health care. It just doesn't make any sense. I think it's very important to make sure that doctors are reimbursed fairly, but there are other ways to do it that will enable us to preserve people's access to health care. Thank you.

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

Senator **NUTTING**: Thank you, Madame President. I will be supporting the pending motion to Indefinitely Postpone this amendment but I can't help, even at this late hour, to ask the question, why are we even dealing with a treasurer's push of \$9 million in the budget or here we go down the tax and match road again? Frankly, it's because some areas of state government, upper level positions being one, just can't be considered. I appreciate the Commissioner of the Department of Health and Human Services, who I met with this afternoon, committing to try to restore some of the funding, which I had tried to restore funding to with my amendment last week, for the non-MaineCare, non-class members, with mental illness. She's committed, with some of the money contained in this bill and some grant money they've scraped together, to fund this line. This wouldn't be, I think, my first priority to get funding for this group of very helpless people which we have almost totally stopped working with as of the first of February of this year. I'm going to be supporting this motion and supporting this bill later on. I can't resist pointing out that this really shouldn't be the way we should be proceeding. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone Senate Amendment "A" (S-541). 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 (#362)

YEAS: Senators: BARTLETT, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MCCORMICK, MITCHELL, NUTTING, PERRY, ROTUNDO, SCHNEIDER, SHERMAN, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BOWMAN, COURTNEY, DOW, GOOLEY, HASTINGS, MILLS, NASS, PLOWMAN, RAYE, ROSEN, SAVAGE, SMITH, SNOWE-MELLO, TURNER, WESTON

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-541), **PREVAILED**.

PASSED TO BE ENGROSSED, without reference to a Committee, in concurrence

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

Senate at Ease.

Senate called to order by the President.

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:

Act

An Act To Protect Access to Health Care
H.P. 1652 L.D. 2290

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#363)

YEAS: Senators: BARTLETT, BENOIT, BRANNIGAN, BROMLEY, BRYANT, DAMON, DIAMOND, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, PERRY, RAYE, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SNOWE-MELLO, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BOWMAN, COURTNEY, DOW, MCCORMICK, MILLS, NASS, PLOWMAN, ROSEN, SMITH, TURNER, WESTON

24 Senators having voted in the affirmative and 11 Senators having voted in the negative, was **PASSED TO BE ENACTED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

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

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

ORDERS

Joint Order

On motion by Senator **MITCHELL** of Kennebec, the following Joint Order:

S.P. 913

ORDERED, the House concurring, that all matters in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices and gubernatorial nominations, at the time of adjournment of the Second Regular Session of the 123rd Legislature be held over to the next special session of the 123rd Legislature; and be it further

ORDERED, that any public hearing, work session or other meeting to conduct the business of the Legislature that is scheduled at the time this order is passed is hereby authorized to occur.

READ and PASSED.

Sent down for concurrence.

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

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

ORDERS

On motion by Senator **MITCHELL** of Kennebec, the following Senate Order:

S.O. 24

Ordered, that a message be sent to Governor John E. Baldacci informing him that the Senate is ready to Adjourn Without Day.

READ and PASSED.

The Chair appointed the Senator from Kennebec, Senator **MITCHELL** to deliver the message to the Governor. The Senator was escorted to the Governor's Office.

Subsequently, the Senator from Kennebec, Senator **MITCHELL** reported that she had delivered the message with which she was charged.

On motion by Senator **MARTIN** of Aroostook, the following Senate Order:

S.O. 25

Ordered, that a message be sent to the House of Representatives informing that Body that the Senate is ready to Adjourn Without Day.

READ and PASSED.

The Chair appointed the Senator from Aroostook, Senator **MARTIN** to deliver the message to the House. The Senator was escorted to the House of Representatives.

Subsequently, the Senator from Aroostook, Senator **MARTIN** reported that he had delivered the message with which he was charged.

Senate at Ease.

Senate called to order by the President.

At this point a message was received from the House of Representatives, borne by Representative PINGREE of North Haven informing the Senate that the House had transacted all business before it and was ready to Adjourn Without Day.

On motion by Senator **BRANNIGAN** of Cumberland, the Honorable **BETH G. EDMONDS**, President of the Senate, declared the Second Regular Session of the 123rd Legislature **ADJOURNED SINE DIE** at 10:53 in the evening.