

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

In Senate Chamber
Friday
April 16, 2004

Senate called to order by President Pro Tem Sharon A. Treat of Kennebec County.

Prayer by Senator Peggy A. Pendleton of Cumberland County.

SENATOR PENDLETON: Thank you and good morning to all. When I was thinking of today, I was trying to find a prayer that would be soothing to us and would have meaning to us because, having been here for eight years and having had to go through this day sixteen times, I thought maybe I could do a nice short meaningful prayer. This prayer was written by Vienna Cobb Anderson.

Eternal wisdom, source of life and grace, bless all who are seeking the meaning of life. Endow them with courage to risk the unknown. Bless them with wonder to be still and rejoice. Anoint them with wisdom to understand the potential of their dreams. Blessed is Your name now and evermore. Amen.

Reading of the Journal of Thursday, April 15, 2004.

Off Record Remarks

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

PAPERS FROM THE HOUSE

House Paper

**Pursuant to Statute
Department of Conservation**

The **Department of Conservation**, pursuant to the Maine Revised Statutes, Title 5, section 8072 asked leave to report that the accompanying Resolve, Regarding Legislative Review of Chapter 23: Standards for Timber Harvesting To Substantially Eliminate Liquidation Harvesting, a Major Substantive Rule of the Department of Conservation (EMERGENCY)

H.P. 1466 L.D. 1962

Be **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** 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 **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed pursuant to Joint Rule 218.

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

On motion by Senator **BRYANT** of Oxford, **REFERRED** to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed pursuant to Joint Rule 218, 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 Ensure the State's Commitment to Former Students Who Were Physically or Sexually Abused at the Governor Baxter School for the Deaf or the Maine School for the Deaf
S.P. 614 L.D. 1682

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

An Act To Establish the Gambling Control Board To License and Regulate Slot Machines at Commercial Harness Racing Tracks

H.P. 1342 L.D. 1820
(S "C" S-515 to C "A" H-868; S
"A" S-519)

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

An Act To Protect Public Health and the Environment by Providing for a System of Shared Responsibility for the Safe Collection and Recycling of Electronic Waste

H.P. 1402 L.D. 1892
(S "A" S-516 to C "A" H-861)

On motion by Senator **GAGNON** of Kennebec, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

An Act To Promote Intergovernmental Cooperation, Cost Savings and Efficiencies

S.P. 767 L.D. 1930
(S "A" S-517 to C "A" S-510)

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

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

REPORTS OF COMMITTEES

Senate

Ought to Pass

Senator **CATHCART** for the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Resolve, To Renew the Veterans' Emergency Assistance Program

S.P. 350 L.D. 1021

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

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

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

Sent down for concurrence.

Senator CATHCART for the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Appropriate Funds to the Maine Potato Board for the Purchase of Potatoes in Need of Disposal Due to Weather Conditions during the Harvest in 2003" (EMERGENCY)

S.P. 771 L.D. 1937

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

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

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

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

Joint Orders

On motion by Senator **NASS** of York, the following Joint Order:

S.P. 808

ORDERED, the House concurring, that Resolution, "RESOLUTION, Proposing an Amendment to the Constitution of Maine To Require a Vote of 2/3 of Each House of the Legislature To Enact or Increase a Tax," S.P. 280, L.D. 801, and all its accompanying papers, be recalled from the legislative files to the Senate.

READ.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. This an attempt to recall a constitutional amendment from the dead files, so to speak. This is a request to change the constitution to require a vote of 2/3 of each house of the legislature to enact a tax increase. This is something we dealt with last year and it was passed on to the dead files. We are about to enter, today or tomorrow, what debate we're going to have in this legislature about tax reform, tax increases, and taxes in general. We have, I believe, a situation that is rapidly getting out of control in this state. In June the remains of one of the referendum questions will be dealt with. The so-called 1A provision, a provision that would rapidly increase spending on the part of the state to provide funding for education at the local level. We also have in front of the voters of Maine a proposal to rapidly decrease the amount of money that our municipalities will raise. This is also a referendum, the so-called Palesky amendment. To me that is just an indication that the citizens of Maine are extremely dissatisfied and they are willing to sign anything that somebody throws in front of them to control or get their arms around the tax situation in this state. It is our hope that by recalling this, in light of the tax reform proposals that will be coming up to this body today or tomorrow, we'll at least have a fairly complete debate.

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON**: Thank you, Madame President, men and women of the Senate. This is a well-intentioned attempt to get our hands around our responsibilities. While a 2/3 super majority before we are able to raise a tax seems appealing on the surface, the reality is we don't raise taxes without a great deal of discussion and a great deal of debate. My concern with a constitutional amendment is that we know that the bulk of the money that comes into Augusta goes out to the municipalities. If, in fact, we find that the best thing that we could do is to use some tax money to fund back to the municipalities, and we allow a minority of people in this building to stop that from happening, that minority would have raised property taxes across the State of Maine. When you cut services or decrease the amount of funds that the state has access to, either through an expansion of taxes or expansion of a tax base, it takes a tool away from us to be able to do something about the property taxes in the State of Maine. I would encourage you not to support the pending motion. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from York, Senator Nass to Pass. A Roll Call has been ordered. Is the Senate ready for the question?

Pursuant to Joint Rule 404, the affirmative vote of two-thirds of the members present and voting is required for Passage.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#375)

YEAS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

ABSENT: Senators: DAGGETT, MITCHELL

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, and 16 being less than two-thirds of those present and voting, **FAILED**.

On motion by Senator **NASS** of York, the following Joint Order:

S.P. 809

ORDERED, the House concurring, that Resolution, "RESOLUTION, Proposing an Amendment to the Constitution of Maine To Control State Spending Based on Certain Guidelines," H.P. 555, L.D. 749, and all its accompanying papers, be recalled from the legislative files to the Senate.

READ.

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

Senator **NASS**: Thank you, Madame President, ladies and gentlemen of the Senate. Again, for pretty much the same reasons, people in the State of Maine want this legislature to do something about the tax situation in the state. I think that is clear. We're requesting to bring something back from the file, a constitutional amendment to control state spending based on certain guidelines. It will give us an opportunity, I believe, to put out to the voters a proposal to limit the growth in spending that has been the highlight, the most important part, of our tax reform proposal. People back home are beginning to realize that we have plenty of money up here. From year to year, with very few exceptions, do we not have more money than we had the year before? The problem is that we never do anything specific with it. It's get gobbled up in the budget. More and more folks, I

believe, are beginning to realize that. This plan or proposal to limit the growth in spending would enable us to identify it, to use it, and finally to get some control on the spending, and therefore, the tax problems in this state. Thank you, Madame President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. Once again, the intention, I think, is good. In trying to create a super majority to create such a program, we end up with something fairly undemocratic, which is a minority having control over particular programs. Let me give you a good example of how this would have increased property taxes in the State of Maine. A program called the BETR program, which has actually proliferated pretty dramatically. The fact that the BETR program did not received the 2/3 required would have meant that the minority within both bodies could have forced the property tax relief program to not occur. This would have meant that small business, particularly, and businesses that we want to make sure are modernized would have to be paying dramatically more in taxes. That would be done by a minority. Certainly not democratic in my eyes, people in this body forcing municipalities to raise taxes. We have to make sure we have all the tools at our disposal to make sure that we can provide the property tax relief. That is what I am here to do and I hope a lot of other people are here to do that as well. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from York, Senator Nass to Pass. A Roll Call has been ordered. Is the Senate ready for the question?

Pursuant to Joint Rule 404, the affirmative vote of two-thirds of the members present and voting is required for Passage.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#376)

YEAS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

ABSENT: Senators: DAGGETT, MITCHELL

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, and 16 being less than two-thirds of those present and voting, **FAILED**.

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

COMMUNICATIONS

The Following Communication:

S.C. 601

**121ST LEGISLATURE
COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS**

April 15, 2004

Honorable Beverly C. Daggett, President of the Senate
Honorable Patrick Colwell, Speaker of the House
121st Maine Legislature
State House
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

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

- L.D. 337 An Act to Strengthen State Investment in the University of Maine System for Applied Research and Development
- L.D. 1791 An Act To Restore Funding for Certain Nursing Facilities and Residential Care Facilities
- L.D. 1805 An Act To Restore Funding for the Violence Intervention and Prevention Program
- L.D. 1808 An Act To Ensure Adequate Home-based Care Services and Provide the Most Cost-effective Long-term Care for Maine Seniors

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

Sincerely,

S/Sen. Mary R. Cathcart
Senate Chair

S/Rep. Joseph C. Brannigan
House Chair

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

The Following Communication:

S.C. 602

**121ST LEGISLATURE
COMMITTEE ON
EDUCATION AND CULTURAL AFFAIRS**

April 15, 2004

Honorable Beverly C. Daggett, President of the Senate
Honorable Patrick Colwell, Speaker of the House
121st Maine Legislature
State House
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

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

- L.D. 1956 An Act To Establish a School Leadership District for East Millinocket, Medway and Millinocket

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

Sincerely,

S/Sen. Neria R. Douglass
Senate Chair

S/Rep. Glenn Cummings
House Chair

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

Senate at Ease.

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

RECESSED until 2:30 in the afternoon.

After Recess

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution:

H.P. 1465

**JOINT RESOLUTION ENDORSING TAIWAN'S PARTICIPATION IN
THE WORLD HEALTH ORGANIZATION**

WHEREAS, good health is essential to every citizen of the world, and access to health information and services of the highest standard is necessary to improve public health; and

WHEREAS, the World Health Organization set forth in the first chapter of its charter the objective of attaining the highest possible level of health for all people; and

WHEREAS, the achievements of Taiwan, the Republic of China, in the field of health are substantial, including having one of the highest life expectancy levels in Asia, having maternal and infant mortality rates comparable to those of western countries, eradicating infectious diseases such as cholera, smallpox and the plague and being the first country in Asia to eradicate polio and provide children with hepatitis B vaccinations; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwanese counterpart agencies have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years, Taiwan has expressed a willingness to assist financially and technically in international health activities supported by the World Health Organization; and

WHEREAS, recent events regarding the rapid spread of a mysterious virus originating in Asia speak to the dire need for the direct and unobstructed participation in international health forums and programs critical to limiting the spread of various infectious diseases and achieving good world health; and

WHEREAS, the European Parliament called on the World Health Assembly, in Geneva, Switzerland, to accept observer status for Taiwan and on its member states to support the application of Taiwan as an observer to the World Health Organization; and

WHEREAS, the United States Congress has authorized the United States Secretary of State to endorse observer status for Taiwan at the World Health Assembly and President George W. Bush and members of his administration have voiced support for Taiwan's participation in the World Health Organization; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-first Legislature of the State of Maine now assembled in the Second Special Session, take this opportunity to commend and

support the efforts of Taiwan, the Republic of China, on its application as an observer to the World Health Organization; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to President George W. Bush, Secretary of Health and Human Services Tommy G. Thompson, the Director-General of the World Health Organization, the Director General of the Taipei Economic and Cultural Office in Boston and the Members of the Maine Congressional Delegation.

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

READ and **ADOPTED**, 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 **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Appropriate Funds for World War II and Korean War Memorial Plaques in the Hall of Flags"
H.P. 1367 L.D. 1841

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.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, 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 Implement Certain Recommendations of the Governor's Task Force on ATV Issues
H.P. 1413 L.D. 1912
(S "A" S-509 to C "A" H-881)

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

Emergency Resolve

Resolve, Authorizing Professional and Occupational Licensing Authorities in State Government To Defer or Waive Continuing Education Requirements for Military Personnel
H.P. 1459 L.D. 1959
(H "A" H-903)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with no Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President Pro Tem, 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 Define a Scope of Practice for Acupuncture

S.P. 97 L.D. 263
(C "A" S-414)

An Act To Amend the Laws Relating to Property and Casualty Insurance and To Authorize the Superintendent of Insurance To Establish a Mandatory Market Assistance Program

S.P. 692 L.D. 1853
(H "A" H-908 to C "A" S-489)

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

An Act To Support the New Century Community Program

H.P. 1309 L.D. 1787

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

An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners and the Recommendations of the Commission To Improve Community Safety and Sex Offender Accountability

H.P. 1409 L.D. 1903
(H "B" H-884 to C "A" H-860)

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

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Permit Video Gaming for Money Conducted by Nonprofit Organizations"
H.P. 996 L.D. 1354

In House, April 15, 2004, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-814) AS AMENDED BY HOUSE AMENDMENTS "A" (H-830) AND "B" (H-922)** thereto.

In Senate, April 15, 2004, on motion by Senator **BENNETT** of Oxford, the Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

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

On motion by Senator **LEMONT** of York, the Senate **ADHERED**.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Require the Videotaping of Police Interrogations"

S.P. 286 L.D. 891

(H "A" H-880 to C "A" S-405)

In Senate, April 15, 2004, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-405) AS AMENDED BY HOUSE AMENDMENT "A" (H-880)** thereto.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-405) AS AMENDED BY HOUSE AMENDMENT "B" (H-940)** thereto, in **NON-CONCURRENCE**.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#377)

YEAS: Senators: BENNETT, BRENNAN, BROMLEY, CARPENTER, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, LAFOUNTAIN, LEMONT, MARTIN, MAYO, MITCHELL, PENDLETON, ROTUNDO, SAWYER, STANLEY, STRIMLING, TURNER, WOODCOCK, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BLAIS, DAVIS, GILMAN, HATCH, NASS, SAVAGE, SHOREY, WESTON

ABSENT: Senators: BRYANT, DAGGETT, KNEELAND, YOUNGBLOOD

23 Senators having voted in the affirmative and 8 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **STRIMLING** of Cumberland to **RECEDE** and **CONCUR, PREVAILED**.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (4/8/04) Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Give Teachers a Greater Voice in School Improvement"

H.P. 990 L.D. 1344

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

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

Tabled - April 8, 2004, by Senator **DOUGLASS** of Androscoggin

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 8, 2004, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-804) AS AMENDED BY HOUSE AMENDMENT "A" (H-829)** thereto.)

(In Senate, April 8, 2004, Reports **READ**.)

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

Senator **DOUGLASS:** Madame President, women and men of the Senate, this is a bill that concerns the discussions that go on between teachers, school committees, and management, in the form of administrators, in our schools. In our school law we have a division between things that happen in the schools that will be in the terms of the contract either working conditions, wages and hours, or educational policy. One of the difficulties with the education law right now is that certain things are called education policy although they also affect working conditions. These are matters such as planning time, lunch duty, and other similar items. You might ask how could lunch duty be considered educational policy? Well, I could answer that question two ways. I could answer that it is and I could answer that it isn't. We have a precedent that is a legal decision in the courts of Maine that says it's educational policy. Common sense would tell me that lunch duty is really a working condition and not educational policy. Nevertheless, what we have in Maine is some precedent set by case law that sort of ties our hands. The result of that is this bill, most of which is not before you. The original bill is not because the committee amendment is part of the minority report. That amendment would permit school committees and teachers to discuss items that may technically be educational policy during the first two stages of negotiations. Why would we want to allow that? It's particularly because of the case law we have in Maine.

Unfortunately, our teachers have been burdened, and they have performed, in implementing and drawing up our learning results. Most of the educational progress that we have been able to achieve in Maine is a direct result of the work that our teachers do everyday in the classrooms of our state. However, we have also demanded of them, through state mandates and federal mandates, that they also do an exceptional amount of work outside the classroom. By this I'm not referring to the normal work of preparing for your lessons tomorrow, grading the papers, and meeting with students who are having difficulties. I'm referring to the duties that we impose on those teachers when we mandated learning results and the duties imposed on those teachers by the act No Child Left Behind because those require us, in the first instance at the state level, to have determined what our goals are for our educational system. For the most part, many of our communities have managed to accomplish that. Some have not. In the act, No Child Left Behind, our teachers are required to help our school committees determine what our local assessment standards are. I would challenge you to go one day to school, if you haven't, stay there for the entire day, and think about how a teacher, even in a smaller classroom with active learners, accomplishes the goals of learning results every single day. Then they prepare the lessons for the next day, gets ready the chemistry experiment or the social studies exhibit for the next day, and also helps our system and our state define what goals we want to achieve and what our local assessments will be. I could probably describe what they do and I would keep you here for two to three hours just going through what they have to achieve in the course of each day, in the course of each week, and the weekends. I'm not going to go that far.

I want to go back to the first point, which is a great deal, in fact I would say 95% or maybe it's 99%, of what we've accomplished in education in our state is because of the dedication of our teachers. I'm going to once more crow at the top of my lungs that we have been in the top ten nation-wide on many occasions during the last ten years. That is a direct result of the very fine teachers we have in our state. This bill would permit them to discuss matters that, by case law, have been determined to be educational policy. I want to tell you they would like to do that, I'm sure, because in many instances some of those items, like planning time and lunch duty, affect working

conditions. If you vote for this bill you will be saying to our teachers that they have the right to discuss these matters and create a bargain over them with our school committees. I hope you will do that today by voting in favor of Committee Amendment "A" (H-804).

Senator **MITCHELL** of Penobscot moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you very much. Ladies and gentlemen of the Senate, I would like to briefly tell you a little bit of the history, in addition to what the Senator from Androscoggin, Senator Douglass, has mentioned to you, and give you the rationale on why I'm asking you to join me in approving this motion. This L.D. 1344 was brought before our Education and Cultural Affairs Committee the first year of our session. The public hearing that was held during that session revealed concerns that this bill would radically change 35 years of tradition of local control. For 35 years Maine's schools and their employees have negotiated over wages and working conditions, but have been prohibited from negotiating over educational policies. The reason for this is simple. Decisions on educational policies, such fundamental issues such as class size, what children are taught, and when they go to school, are so vitally important that they have been reserved to the public, acting through elected school boards. Adoption of this bill would remove critical issues from the bright light of public deliberation, before elected officials at school board meetings, to close closed-door session between two teams of negotiators. However, we listened to this testimony but we also listened to our teachers. It was brought to our attention that our teachers were very frustrated with their workload, burn out, and the lack of communication.

The committee recognized that they needed to react and do something to help our teachers without changing the law. We were very pleased when the MEA recommended a taskforce be formed to examine these issues regarding teacher workload. The committee then voted unanimously to have this bill carried over and to appoint a taskforce under the direction of our Commissioner of Education. We directed this taskforce and asked the Commissioner to establish it with her as chair. The twelve members of this taskforce is made up of the Commissioner as chair, five teachers, the President of the MEA, one principal, one school board member, two Superintendents, and one director of student and staff affairs. Their goal was to address teacher workload in relation to recent education reform, such as the Maine learning results and No Child Left Behind, to address teacher burnout, and enhance communication for teachers, administrators, and policy makers. The work of this taskforce commenced on their first meeting in September. This year, when we discussed the bill, we have had several work sessions. We've also had an interim report from our Commissioner. When we were about to vote this bill out of committee, the Commissioner did ask us to hold this taskforce open until January of next year. This taskforce has done a study, a survey, on meet and consult, which has been sent out to all the local union negotiators, chairs, and teachers. They need to look at the results and come up with their recommendations to be presented to the Education and Cultural Affairs Committee in January of next year. She asked us to adhere to her recommendation on letting this taskforce complete its work. We don't need this bill and then turn around in January, when the committee comes back with its recommendations, and issue another bill addressing, if we need to, any concerns that have come out of the results of this taskforce. This is supported not only by our Commissioner, the teachers and the members on the taskforce, but also by several others. I'm sure all of you in this chamber have been receiving calls and e-mails from your local school board members, from teachers, from friends, and from administrators of the schools, asking you to kill this bill and allow this taskforce to complete its work so that we may address the issue in January. That is my reason and rationale. We have worked diligently with our people in the MEA and would like to make sure that we listen to these concerns and address them appropriately in January. Please join me in voting to indefinitely postpone this bill and listen to the recommendations of our Commissioner and our people. Thank you.

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

Senator **DOUGLASS:** Madame President, women and men of the Senate, I urge you to vote in opposition to the pending motion to indefinitely postpone this bill and all its papers. I am glad to know that the Commissioner will convene a work group to look at the workload issues and the situation Maine finds itself in which some working conditions are characterized as educational policy by the law. However, until that work group comes back with a report, we have a situation that is intolerable. If you will vote against the pending motion, and then in favor of the minority

report, we can then go on and address an amendment that I have prepared expressly to take care of the situation until the work group comes back with its recommendations. I would urge you to vote against the pending motion.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#378)

YEAS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, HALL, KNEELAND, LAFOUNTAIN, LEMONT, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HATCH, MARTIN, MAYO, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **MITCHELL** of Penobscot to **INDEFINITELY POSTPONE** the Bill and accompanying papers, **PREVAILED**.

Sent down for concurrence.

Senate at Ease.

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

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

An Act To Protect Public Health and the Environment by Providing for a System of Shared Responsibility for the Safe Collection and Recycling of Electronic Waste

H.P. 1402 L.D. 1892
(S "A" S-516 to C "A" H-861)

Tabled - April 16, 2004, by Senator **GAGNON** of Kennebec

Pending - **ENACTMENT**, in concurrence

(In Senate, April 14, 2004, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-861) AS AMENDED BY SENATE AMENDMENT "A" (S-516)** thereto.)

(In House, April 15, 2004, **PASSED TO BE ENACTED**.)

On motion by Senator **SAWYER** of Penobscot, 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-861) AS AMENDED BY SENATE AMENDMENT "A" (S-516)** thereto.

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-861) as Amended by Senate Amendment "A" (S-516) thereto.

On further motion by same Senator, Senate Amendment "B" (S-537) to Committee Amendment "A" (H-861) **READ**.

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

Senator **SAWYER:** Thank you, Madame President, ladies and gentlemen of the Senate. There are two essential changes that my amendment includes. Change one is that the Department shall adopt major substantive rules rather than technical as defined in Title 5. The second change authorizes the committee to report out legislation to implement the recommendations made in the department's report. There are two essential reasons for that. The obvious for the first is that major substantive means the committee of jurisdiction will review the rules as proposed by the department. I think the second is self-evident. The concern that was raised by all of this is that the bill isn't perfect. For instance, we all received sheets of complaints from people like Marden's. I believe the committee probably needs to listen to the complaints from people like Marden's. Did we mean to include salvage operations in this? Did we mean not to include salvage operations in this? It is my belief that these two changes in no other way change the intent or the language of the law. I would ask for your favorable vote on this motion. Thank you.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-537) to Committee Amendment "A" (H-861).

Same Senator requested a Roll Call.

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

Senator **MARTIN:** Thank you, Madame President. This has been a rather difficult bill. The original proposal that came from the people who are trying to get this particular amendment on was basically to delay the whole thing to a study. The committee unanimously rejected that study. What you see in what is now being offered in this amendment is an amendment which would, in effect, get a study because what it does is to send it to rulemaking that would now come back in January to us and then would not go into effect until after we adjourn next October or September. We are getting better than a year delay through the process before this can start. My second concern or comment is that in this legislation there is already an item in the bill that requires the department to report to us. That is already in there. That is why I am moving for indefinite postponement. Finally I need to say to you, the legislation you have before you and the intent of what we did was to eliminate the need for second hand stores to be involved. Anyone who handles second hand goods or salvage will be exempt. For two of the entities that have been discussed, that is not even an issue.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I think it is regrettable that the distinguished Senator from Aroostook, Senator Martin, has decided to oppose this amendment because it is not a very major amendment. In fact, I think what it does is provide a great deal of comfort to people who were concerned, and had some legitimate concerns, over moving aggressively in a new area of policy making in this state. Moving from routine technical rules to major substantive rules when you are making such a change as this, I don't believe is a huge thing to ask. Furthermore, this proposal really wasn't taking effect until 2006 anyway. I really don't understand what the concern is about the delay. This just insures and adds sort of the suspenders to the belt of insuring that the legislature stays involved and engaged in this issue. It doesn't seem to me to be something worthy of even a vocalized opposition. In fact, I think it strengthens the bill to keep the legislature involved in this rather than weakens it. I encourage you to vote against the motion to indefinitely postpone.

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

Senator **MARTIN**: Thank you, Madame President. Let me try one more time. This bill goes into effect on January 1, 2006. If this provision is put in, keep in mind that nothing will happen until September 2005 if we go the way this amendment proposes. That gives very little time to implement what we are trying to do.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#379)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-537) to Committee Amendment "A" (H-861), **PREVAILED**.

Committee Amendment "A" (H-861) as Amended by Senate Amendment "A" (S-516) thereto, **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-861) AS AMENDED BY SENATE AMENDMENT "A" (S-516) thereto, in concurrence.

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

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

Senator **MARTIN**: Thank you, Madame President and members of the Senate. For the record, I want to make sure that this is not missed when someone looks at the legislative record. It is the intent of the legislature that retail stores who sell second hand or salvage goods will be exempt under this law.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#380)

YEAS: Senators: BENNETT, BRENNAN, BROMLEY, BRYANT, CARPENTER, CATHCART, DAGGETT, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, GILMAN, HALL, HATCH, KNEELAND, LAFOUNTAIN, LEMONT, MARTIN, MAYO, MITCHELL, NASS, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, STANLEY, STRIMLING, TURNER, WESTON, WOODCOCK, YOUNGBLOOD, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senator: BLAIS

34 Senators having voted in the affirmative and 1 Senator having voted in the negative, was **PASSED TO BE ENACTED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

The Chair laid before the Senate the following Tabled and Later (3/23/04) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Create Guidelines To Promote Good Science in Rulemaking"
H.P. 699 L.D. 942

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-767)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - March 23, 2004, by Senator **GAGNON** of Kennebec

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

(In House, March 22, 2004, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-767)**.)

(In Senate, March 23, 2004, Reports **READ**.)

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE**.

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Gilman.

Senator **GILMAN:** Thank you, Madame President, men and women of the Senate. I stand in support of the majority report of L.D. 942. This is a supplement to the Freedom of Access Law, as presently only attorneys find it possible to access pertinent information. This law makes it possible for the average citizen to retrieve very important information that they need. It simply streamlines the democratic process. I urge you to support L.D. 942, Ought to Pass as Amended. Thank you very much.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you, Madame President, ladies and gentlemen of the Senate. I also rise to ask you to vote against the pending motion so that we may go on to support the majority Ought to Pass as Amended report. The reason is because this amended L.D. 942 requires state agencies to provide the public with a list of primary sources of information supporting the primary provisions of a proposed rule prior to public hearing, in a written statement at rule adoption. This information is public information that can be obtained using Maine's Freedom of Access Laws. This bill makes the information available to the public without the formalities required by the Freedom of Access Law. It also assures that this information is provided to the public in time to be used in the rulemaking process. I would ask you to, please, support voting against the indefinite postponement.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame President, men and women of the Senate. I rise to ask you to support the indefinite postponement motion. L.D. 942 is designed to fix a problem that doesn't exist. It requires state agencies to make available to the public primary sources of information that supports the primary provisions in proposed rules. The opportunity to get this information exists already through rulemaking. The case has been made that this is a freedom of

information issue. I strongly disagree with that contention. This fall I chaired the committee to study the compliance with Freedom of Access laws. Our work explored the problems identified through a public audit of compliance with these FOA laws. Problems with obtaining information from state agencies never emerged in the audit nor did anyone from the public, at any time during our deliberations, come forward with complaints about this particular issue. In the year of 2003, there were 305 proposed rules that this legislation would apply to. At a time when we're trying to scale back government, why should we add another layer of bureaucracy to our government that nets zero benefit to the people of Maine? I urge you to vote in support of indefinite postponement. Thank you.

Off Record Remarks

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#381)

YEAS: Senators: BENNETT, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TURNER, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, WESTON, WOODCOCK, YOUNGBLOOD

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **ROTUNDO** of Androscoggin to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE, PREVAILED**.

Sent down for concurrence.

Senate at Ease.

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on 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, 2004 and June 30, 2005" (EMERGENCY)

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-904)**.

Signed:

Senators:

CATHCART of Penobscot
ROTUNDO of Androscoggin

Representatives:

BRANNIGAN of Portland
MAILHOT of Lewiston
COWGER of Hallowell
DUDLEY of Portland
FAIRCLOTH of Bangor
PINGREE of North Haven

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

Signed:

Senator:

TURNER of Cumberland

Representatives:

ROSEN of Bucksport
MILLS of Cornville
O'BRIEN of Augusta
MILLETT of Waterford

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935) AND "V" (H-937)** thereto.

Reports **READ**.

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

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

Senator **TURNER:** Thank you very much, Madame President. First of all I would like to draw your attention to my bow tie. For those of you who don't recognize it, it's a Blenheim tie, named in honor of the ancestral home of Sir Winston Churchill. Any similarity between Winston Churchill and myself starts and ends with the bow tie.

I want to talk about failure this afternoon, first in the budget process itself and then the product from it. Budgets, to my way of thinking, are intended to best reflect the priorities of the people of Maine. I don't believe what we have before us today in L.D. 1919, as presented by the good Senator from Penobscot, Senator Cathcart, reflects those priorities. I think these things are best done in good faith and are really best done when broadly supported. We've had a legislative tradition, as you well know, of having budgets broadly supported. We seem to be veering further and further from that tradition in the 121st. I think this represents failure and that failure is because arrogance, obstructionism, and lack of leadership. That leadership really comes from both the Executive and the legislature. While some of you may choose to relax when I say those words, frankly it's the Body that fails. We failed broadly because of this. There has been talk in the press about negotiations that went on during this process. In fact, the negotiations were very one-sided. Myself and the other Republican colleagues in the Appropriations Committee refer to them as the 'family squabble'. Mostly the Republicans waited while the members of the majority party squabbled among themselves, trying to decide how to deal with a situation that necessitated strong action by this Body.

The fiscal reality of Maine is one that I'm fond of talking about among my constituents, my friends, and family. It's one that I categorize as having a caviar appetite and a Spam budget. The Spam I'm referring to is not that which shows up in your e-mail account, but rather that which comes in a can and can be bought very inexpensively. The illusion of having an endless flow of revenues that we can spend easily is long gone. We are saddled with significant problems in Medicaid. It started in the dying days of the King administration and is regrettably perpetuated by the current administration. I think you all know that our current Medicaid spending situation is out of control. It has been for some time. It continues to be, even with the product that is before us this afternoon. Looking ahead of us, we have flat revenues. Looking to the next biennium, we have a tsunami, a huge tidal wave that rolls in towards us and will force us to, yet again, reflect on the problems that are facing us.

We have a supplemental '05 that was intended to deal with the Medicaid problems facing us today. Up the street here, at Exit 31, we filled an entire Civic Center with people who came to complain about the approach that was being taken. Frankly, I think we gave them little comfort. It is my prediction that they will be back; 90 days, 120 days, maybe 6 months, maybe even as long as January, but they will be back because of the structural defects that are causing our problems continue with the product that is before us.

Personally, I believe the best solution for us is to face our problems head-on. We are not doing that with L.D. 1919 as presented to us today. I'm reminded of Paul Volcker, who was the Fed Chairman in the early 1980's when we were faced with rampant inflation. Volcker said to the American people, 'It's best to deal with the pain now because if we don't it will get worse.' He pointed to the South American countries, some of which continue to suffer from the same problems they have had for decades, and said 'Because if we don't deal with them now, we'll end up like Argentina.' Volcker had the stomach to do the touchy things. He happened to have a President who stood behind him and inflation was wrestled to the ground.

So L.D. 1919 is not the solution for us today. It relies far too heavily on one-time savings, by my count some \$67 million worth. The largest single piece of that has to do with the consumption of the retiree health trust. Although there is language you will hear about later in this budget that seeks to put salve on that wound, in fact, I think it causes us even greater problems. Looking at the General Fund aspects of this budget, some \$29 million are tied to taxes, fees, and fines; and from a Governor who hates gambling of all sorts, \$9 million from Powerball. If you look to the special revenues area, you see some \$57 million in special purpose taxes. Those particularly trouble me because they have no other purpose, no useful purpose other than to try to maximize a draw down on Medicaid. If you were selling tax shelters, this would qualify as an abuse and you would either be enjoined from offering it for sale, at best, and at worse, end up going to jail.

The lion's share of those taxes will fall on our hospital system. This tax treats those hospitals as a 'monoly', as a single entity, when there are nearly 40 of them. That tax falls very unevenly and their representation here in Augusta said, 'We'll go along with this, what choice do we have? If we don't take the tax, our expectation is our reimbursements from a fee compensation stand-point will be put in place instead and the money will come out of one pocket or the other.' We don't yet know, even though this was passed over the objections of my party in the supplemental '04, whether or not this hospital tax will ultimately be approved. I suspect, with the work being done by the Center of Medicaid and Medicare Services, that it will be found wanting. It is my prediction that we'll be back to deal with that problem.

There is too little Medicaid restructuring in the product before you, \$53 million worth when we should have had close to \$130 million worth. The emphasis should have been on strong prior-authorization, utilization reviews, medical assessments, a consistent fee structure to deal with the mental health challenges of our people, and the use of proven medical models for treatment. We have lip service to some of that, but because we have not embraced it properly, we'll be back dealing with these problems yet again.

There are other major defects in this program that is before you. It seeks to impose, on a voluntary basis, mail order pharmacy. At its best, that will suck out \$100 million of retail pharmaceutical sales out of Maine's economy. So on a go forward basis, those who are recipients of Medicaid drug benefits will find themselves dealing with an \$8 an hour clerk from Bentonville, Arkansas. In case you don't know where that is or who lives there, that's your friendly Wal-Mart, because they will be delivering prescription drugs to your constituents.

Out of concern with respect to the dealing with the AMHI Consent Decree, in the Appropriations Committee we had both court masters, one from AMHI and former Chief Justice Waltham, and for the Pineland Consent Decree we were in conference call with the court master for that operation as well. One thing that Justice Waltham said to us is, 'I need three things; I need peer support, I need social clubs, and I need funding for rental assistance.' None of which ended up in this budget. Not a high enough priority. Requested by a gentleman who has been directed by the courts to get us on the right track, finally, after all these years with our AMHI Consent Decree.

Lastly, while Appropriations unanimously asked the Executive Branch to come forward with a mechanism to deal with the Baxter Compensation Authority and need to provide monies to those who were so severely injured emotionally and physically, well beyond the statute of limitations, nothing appears in this budget to help fund the Baxter Compensation Authority.

There is not much to like in this. I would urge that you vote against the pending motion so we can begin work to straighten out Maine's budget woes. Thank you very much.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I certainly urge you to support the majority Ought to Pass report on L.D. 1919, the supplemental budget bill. This has been a hard budget, one of the hardest that I've done in my six years on Appropriations. It is always particularly difficult and painful for members of the Appropriations Committee when we cannot reach a unanimous agreement, and indeed, have a partisan division on a budget. In a way you feel like you've tried very hard but you feel like you've failed. In a way we have failed. It was certainly negotiated in good faith by both sides. I do want to thank my colleagues on the committee, the Senator from Androscoggin, Senator Rotundo, and the Senator from Cumberland, Senator Turner, for all their hard work.

This budget required us to make some very hard choices. The proposed budget from the Chief Executive, as we have heard, made some extremely painful cuts, particularly to the state's Medicaid program, which we call MaineCare. There was a great public outcry against these cuts. We did, in the end, through much struggle and anguish on the part of committee members, agree in this majority budget to take about \$60 million in cuts in Medicaid. This is a very large and very difficult cut. With the help of the Health and Human Services Committee, who worked very hard, I believe it is crafted so that the cuts are done in a way that avoids arbitrary limits on the services and focuses instead on management of care, making sure that people get what they need but only what they need on an individualized basis. We are using more prior-authorization, utilization review, and the kind of managed care that our private insurance policies now require.

Along with making painful cuts in this budget, however, we have also made some wise investments. We have been able to invest \$15 million more in General Purpose Aide to Education. We left last year disappointed because the total amount for GPA was going to drop from \$730 million in 2004 to only \$725 million in 2005. I think our schools are really going to appreciate the investment that we have been able to make in GPA. We were able to make a small increase in funding for adult education, which I believe all of us recognize as about the best and cheapest way to educate people, particularly when they want to go back to college but they need to finish their GED and get an education so that they can have a more prosperous and satisfying life.

This budget addresses the overcrowding in our correctional system. We all know that, while our crime rate is down, our incarceration rate is up. I, myself, served on the Sentencing Commission last fall which did a lot of good work and this morning we sent the bill from the Criminal Justice Committee, who worked very hard on those recommendations, down to the Appropriations Table. We invested in more guards at our Maine State Prison, where we felt the situation was growing dangerous. We're spending that money. We're investing in some more prison beds so that some inmates can move down to the prison at Windham and have less over crowding. We also made a really wise investment in community corrections by funding positions for two resource coordinators so that our corrections department can get more people out on supervised community confinement, having them out in the community working at jobs and earning their own way while they serve the last six months, or up to a year, of their sentence. I believe we are making some really important and wise investments in this budget.

The decisions on how to control the MaineCare spending were truly the most difficult that we had to make. We did reach consensus on initiatives to better manage our healthcare programs with the help of the Health and Human Services Committee. I believe we have done these cuts, or reductions, to healthcare in a way that will do the very least harm to the most vulnerable people, our senior citizens. We tried to protect the funding for the nursing homes so that we won't have nursing homes shutting down the way we did several years ago. We tried to protect, and even added funding in fiscal year 2005, for children's mental health that we had cut last year. We put that funding back.

I feel very positive about the outcome. I'm very sorry that we didn't all get together on this budget. It would make me feel much better going out with my term limit if we had all unanimous budgets during my term as chair, but I feel this is a good solid budget and it's one that we can vote for. I hope that you will all support it. Thank you, Madame President.

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

Senator **MARTIN**: Thank you, Madame President and members of the Senate. Let me first begin by agreeing with some of the remarks of the good Senator from Cumberland, Senator Turner. The thing that strikes me right now, and actually struck me when I first saw what was happening in the Appropriations Committee, that it is the first time in my memory and to my knowledge that the minority does not have a proposal to present to us. We don't know what the plan would be or could be. We have no idea of what proposals could be made for us to look at. This is, in effect, an historical moment. One that I hope never happens again. To me, we learn from the process. We learn from one another. We learn from another's ideas. This we do not have today. It's true, we have what is the consensus of the majority of the committee and of one party. This is not what we really ought to have. That is, what is the thinking of the other party. I'll leave that at that and I hope never to see it again.

To the point I want to raise, that is on Medicaid. Frankly, we are known around the country as having one of the best-administered programs to date on Medicaid. Our cost for operation runs about 4%. I might point out that the best insurance company in the world is somewhere around 12.5%. Let us not forget through all of this, we knew we were going to get a \$35 million cut from the federal government on the Medicaid budget. The cut we got was \$70 million. When you take a look at what was our shortfall on the Medicaid budget, if we had gotten what we should be getting from the federal government, we wouldn't have had much money left to cut. That is something over which, unfortunately, this legislature and this Governor had nothing to do with. Unfortunate, but the facts. Just take a look. Take a look at the federal proposed budget that starts in October and you will see it.

Finally, I guess, we should not forget the economy. I'm not even going to talk it about because we all know what it is. That's where we are. Do you think I like this budget? Absolutely not. Do I have anything to compare it with? I do not. Am I going to vote for it? I'm not sure.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO**: Thank you, Madame President, men and women of the Senate. I rise to urge you to vote in favor of the Ought to Pass report. I do want to emphasize the work that the Appropriations Committee has done in balancing this budget. The committee worked hard to create a balance between the responsible management of services while, at the same time, maintaining medically necessary healthcare services for our most vulnerable people, including the working poor, elderly, and physically disabled. The committee worked with the administration, healthcare providers and consumers in developing proposals that helped to reshape our healthcare programs to minimize cuts to services and healthcare providers. In the end, services were restored and initiatives to more responsibly better manage those services and reshape our healthcare programs were recommended. At the same time, we were able to increase funding for other priority areas such as GPA. We did attempt to address areas of importance such as the Baxter Compensation Fund. I must say that I was disappointed that our Republican colleagues didn't come forward with a minority report so that we could see how they would address these issues. I was disappointed that it felt like they weren't concerned enough about those issues to come forward with a report.

Once again, this budget is a balance between more responsible management, cost controls, and wise investments. I urge you to support the Ought to Pass report. Thank you.

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

Senator **TURNER**: Thank you, Madame President. I do want to make a few comments with respect to the things that have just been recently said in the chamber. First of all, with respect to what we would do. I think you get a strong indication of that on the amendments that we will bring forward after the majority report is accepted.

It is true that the Medicaid match that comes to our General Fund side of our Medicaid spending is going down. It is also important that you reflect and understand that it temporarily went up as a result of work done by Senator Collins in an effort to provide relief for Maine and the other states who were struggling with Medicaid. There was a 15 month period when that match went from 66% to 69% and we knew a year ago, when we were putting together the '04-'05 budget, that was a temporary spike and it was to give us an opportunity to fill in some holes and prepare ourselves in an economy that was expected to be repairing itself, as it now is doing. In addition to that, we had \$107 million of monies made available to us to help fill in specific holes in our own General Fund spending. We've talked extensively about that in other venues, more specifically the budget that we dealt with around the supplemental '04. \$107 million of what I like to refer to as the Bush-Collins tax money was sent to Maine and we used half of that to help us launch Dirigo Health, which is

scheduled to go July 1st. I think we've understood the financial picture with respect to what the federal government was going to do. I've looked at the specialized tax for PNMI and the hospital tax as the vehicle that we chose to close that hole. The taxes that I refer to as having no purpose other than try to maximize our draw down from the federal government.

I don't think we have been under a rock, not understanding what was going to be happening with respect to Medicaid matching by the federal government. We've known that for over a year. We've chosen to do something different with a major portion of the monies that were sent to us to help us fill in holes on Medicaid. I could be wrong. There may be others who know better, but we are probably the only state who has been poised to do yet another Medicaid expansion in the environment that we're operating in. Big mistake. We'll talk about that further as we go through the day. Thank you, Madame President.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#382)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-904) **READ**.

House Amendment "Q" (H-932) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

House Amendment "T" (H-935) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

House Amendment "V" (H-937) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **TURNER** of Cumberland, Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904) **READ**.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. The amendment before you would eliminate the eligibility expansion in Medicaid originally scheduled for July 1, 2004 and now deferred in this budget to October 1, 2004. As I said to you earlier this afternoon, Medicaid continues to be the thorn in our side, running at double digit increases. We are poised yet again for an expansion that, in my judgment, should be taken off the books. When and if our financial house is in order and we're in a position to deliver on the three promises of cost, quality, and access, and then we should consider expanding Medicaid at that time. We are a state,

as the good Senator from Aroostook, Senator Martin, has pointed out, that has a reputation well earned for the good things that we have done with respect to Medicaid. Those good things can only be done when there are sufficient resources to deliver the promises and that they are properly managed in a way that they can be efficiently delivered in a cost effective manner. We are not in that circumstance today. I don't expect we're going to be in that circumstance for some time to come. By accepting this amendment, I believe we put ourselves in a position to get our fiscal house in order, allow the merger of BDS and DHS to go forward, streamline its operation, and get control of the financial matters that have been short of control for many years, most notably so in the last 12 months. Again, I know of no state that is expanding its Medicaid opportunities for its citizens in the environment that we have just come through and are currently in. I would urge that you vote in favor of this amendment. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904).

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President. Just to repeat what I said earlier, we have made a large and difficult cut in our MaineCare program already in this budget. Maine's eligibility levels for Medicaid are right in line with those in the other New England states. Both Massachusetts and Vermont cover adults without children at higher income levels than we do. Vermont and Rhode Island do better at covering the parents of the children on Cub Care than we do. I think that the savings that we have already accepted in the committee report are sufficient. I urge you to indefinitely postpone this amendment. Thank you.

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

Senator **TURNER:** Thank you, Madame President. I know there are some in the chamber who care deeply about Dirigo and the promise it provides to us. My abiding fear on this expansion that is currently before us is that there will be leakage around it. That leakage will be caught by the so-called Medicaid wrap-around Dirigo. The funds that we have set aside for this program will be eaten quickly and the program will fail. If we take my amendment and accept it, there will be some flow of non-categorical adults into Dirigo on a much more modest basis. Without this expansion, it will allow both a draw down of federal Medicaid monies and I think ensure a proof of concept so we can go forward with this program that could be of vital importance to the people of Maine. Again, for safety reasons and the fact that we know we will be back to deal with Medicaid as it exists today, either as a supplemental or as a major piece of surgery to the '06-'07 that we'll see later in January. I hope you will join me in voting against the motion to indefinitely postpone. Thank you.

On motion by Senator **CATHCART** of Penobscot, supported by a Division of at least 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 Cathcart to Indefinitely Postpone Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904). 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 (#383)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WESTON** of Waldo, Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904) **READ**.

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

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. This amendment is an attempt to target the problem. When a family is having difficulty making their mortgage payment, it is not the time to buy a larger house. This amendment is directed especially at a problem, the Medicaid problem that we are having. It does two things to target that problem. It will cap the Medicaid enrollment for non-categorical at \$20,000. We are currently at \$19,000. It doesn't cut it back but it does contain the growth. It also contains the eligibility to 100% of poverty, which is the present level, and keeps it within an adjusted factor to stay within the funded amount. We target the problem and we also keep a promise, a promise that we are breaking. It takes the savings from the targeted problem and restores \$5 million that was de-appropriated to deal with our mail order pharmacy, keeps that business in our state. It gives \$2 million to the victims of abuse at our Baxter School for the Deaf, a promise that was made. It restores \$2 million in mental health services to three specific areas that our court master said are essential. Again, to fulfill a promise that was made. Those three areas are peer support, social clubs, and housing assistance. I urge you to support this amendment and keep our promise.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. The group that we have expanded our MaineCare coverage to is not really the cause of all of fiscal problems. In fact, in the bigger scheme of Medicaid programs, it is a very small cost. The eligibility expansions of the last six years to children, parents, and childless adults accounted for 15% of MaineCare members but only 6.8% of the MaineCare expenditures. The real cost is treating the people who are elderly and disabled. It has been that way and still is. Surely none of us would want to cut people who are elderly and disabled off MaineCare.

As to the issue of the mental health, we made far smaller reductions in mental health programs than was originally proposed in the budget. I feel comfortable that we will be in compliance. Regarding the Baxter Compensation Authority, we all recognize that we really need to take care of those people who were victimized when the state just turned its back on the deaf students at Baxter. There is a bill that I sent this morning to the Appropriations Table and I intend to propose an amendment that would fund that. Thank you, Madame President.

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

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

Senator **TURNER:** Thank you, Madame President. I can't resist putting a few more words into the chamber with respect to non-categorical adults. This is a program that came to life as the result of the good work of the previous speaker in the other chamber. It had an estimated expenditure associated with it of \$24 million. That was going to do the trick. A combination of federal and state monies. We are at \$80 million plus today. The program currently, on the basis of the last report, had 19,000 entrants and growing at 500 to 700 entrants a month. It's important for you to understand that this is a waiver program under which Maine had an opportunity to go as high as 125% of the federal poverty level. In someone's wisdom, they chose to go at 100%. It was capped on a total spending basis in the low 80's. Then there was a gift from Washington in the form of the prescription drug benefit to Medicare, of all things. When you read that bill, which I have not, more than half of it deals with reforms for Medicaid and Medicare. The cap on this waiver was increased to \$100 million. Trying to use non-categorical expansion beyond 100% will again lead us to further

difficulties with respect to Medicaid. While the percentages, as it applies to insurance for those who are low income and poor, are different than the percentages used by the good Senator from Penobscot, Senator Cathcart, you need to be assured that we are up against it with respect to this waiver program. The expenditures in it are such that those who oversee this waiver from the federal government have been making repeated queries to our folks at DHS trying to understand what is going on with this program. What is going on with this program is its utilization is significantly higher than was forecast. That continues to be the case. In spite of the best efforts of those seeking to manage the program and redirect people to the proper coverage, it continues to grow better than 500 people per month on a net basis. I would urge that you vote against the pending motion of indefinite postponement so that we can add this amendment to the budget. Thank you very much.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904). 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 (#384)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. This is an extraordinary circumstance that we have presented in our budget. The addition of any positions above and beyond what are currently held in state government. This long budgetary process began with over 90 positions suggested. It was pared down to a figure that really is very difficult to get a handle on because we have temporary positions, we have vacant positions, we have filled positions, and we may even have positions positions. I believe that somewhere between zero and 55.8 positions are included in this budget. This amendment seeks to, by the end of the next fiscal year, defund any of those additional positions. It also seems fairly extraordinary to me that in the process of combining two state agencies, BMS and DHS, that we have included additional positions to do so. It would seem, in combining agencies, you might have fewer positions. That is not the case. I'm aware of the arguments and I'm aware of the justifications for the vacant positions and temporary positions. In the budget, which should be seeking to set priorities for that state that would place us in a more secure and stable position, we have added new positions. In my perspective, this does not, in any way, enhance our fiscal stability. Today I'm urging passage of this amendment as a means by which we might enhance the process of fiscal stability for the state. Thank you, Madame President.

Senator **ROTUNDO** of Androscoggin moved to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904).

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO**: Thank you, Madame President, men and women of the Senate. We were very careful with new positions that were created in this budget. Some were federally funded. Some, as in the case of the Maine Revenue Service positions, will actually generate significant revenue for the state in the future. It is for these reasons that I urge to support indefinite postponement of the amendment. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Rotundo to Indefinitely Postpone Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904). 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 (#385)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

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 "C" (S-521) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **HALL** of Lincoln, Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL**: Thank you, Madame President, men and women of the Senate. There is a school of thought, particularly in majority caucuses in this and other legislatures, which hold that it is folly to offer amendments to a carefully crafted budget bill. In particular, when it comes to majority budgets, that school of thought extends to holding such behavior to be unsound and treacherous and possibly even wicked. Nevertheless, I'm offering one today in an honest attempt to correct an error that I take personal responsibility for; a mistake, which although it is perhaps shared by my colleagues on the Utilities and Energy Committee, I certainly accept the blame for and which I am trying to put right with this amendment.

If I can explain very briefly, many of you will recall the attempt in the original draft of the budget presented by the Chief Executive to raise a tax of 7¢ per month on telephone bills to raise a little over \$1 million. The Utilities and Energy Committee has worked for many years in a bipartisan way to attempt to hold the line on supplemental taxes on utility bills. In particular, the committee felt very strongly that it was important to keep the levy of 50¢ on telephone bills, which currently feeds the emergency 911 fund, to just that number and not to either raise it or to impose an additional or separate 7¢. Consequently, we, the committee, and I, particularly as Senate chair of the committee, offered to the Appropriations Committee to make a raid on the cash in that fund. There is approximately \$3 million in that account at the Public Utilities Commission and we offered to simply change that to transfer \$1,430,000 and change to the General Fund, for great and mysterious work I know not. I have subsequently learned, as has the committee, that it is the intent of the Public Utilities Commission to expand E-911 services in the next two years to include wireless telephones. In the course of this year, the number of phone calls in Maine made by cell phones will exceed, for the first time, the number of phone calls made by land lines. I say that simply to indicate the importance of expanding the E-911 coverage to cell phones.

We consequently looked around for alternatives and the following alternative, that you see reflected in Senate Amendment "N" (S-532), revealed itself. What I would like to do is to take that money instead from the Office of Licensing and Registration's Licensing and Enforcement Fund at

the Department of Professional and Financial Regulations. There is in that account at present \$10.9 million. In the last ten years, that account has only seen a negative net expenditure from that account on two occasions. The worst such occasion saw a half of a million dollars being drawn down from that account. Consequently, if my numbers are correct, there is at present a float in that account for the worst possible case of 21.7 years of net expenditures from that account. By taking \$1,430,000 and change from that particular account, we would reduce that float from 21.7 years to a still very conservative 19.6 years of float worst case. I hope you will see that this amendment does not, of course, imbalance the budget in any way. It has a fiscal note that is a very round number and I hope you see fit to support it and to support the committee. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I hope you will support indefinite postponement of this proposed amendment. I appreciate the intent, however the Appropriations Committee made this decision based on the fact that this emergency services communication fund was solvent. We've heard nothing else from them or from the administration to indicate that they would not still remain solvent were we to take this \$1 million and change. We were certainly opposed to adding any more surcharges onto people's telephone bills for E-911. When the Utility Committee members suggested that we take it from this fund instead, we were happy to advantage of that opportunity. I'm reluctant to take money from the Office of Licensing and Registration in the Department of Professional and Financial Regulation. Unfortunately, last year in our budget we were forced to take some of those license fees and the groups that were affected were very perturbed and angry that this had happened because they felt they had paid those fees for a specific purpose. It seems to me better to stick with what is in the budget and I ask that you vote to indefinitely postpone this. Thank you, Madame President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Youngblood.

Senator **YOUNGBLOOD:** Thank you, Madame President, ladies and gentlemen of the Senate. I want to just take a moment to urge you to support the position of the good chair of the Utilities and Energy Committee. Emergency services communication in this state is very important. The last place we should be stealing monies from is that emergency services area. E-911 is critical throughout the State of Maine. We have spent a great deal of time in the Utilities and Energy Committee looking at whether that fund could be increased, how those funds could be used, reducing the cost of doing this, and we have not yet found a way to do that. I would urge you very strongly to support the good Senator from Lincoln, Senator Hall, who is the chair of that committee, and vote against this motion to indefinitely postpone. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I urge you strenuously to go along with the motion before us today from the Senator from Penobscot, Senator Cathcart, to indefinitely postpone this amendment. I think one of the reasons that this amendment was proposed is the notion that funds are raised for one particular purpose and they are being derailed for another particular purpose. It's the 'robbing Peter to pay Paul' concept that we are all very familiar with. Well, this amendment doesn't do that, doesn't fix that fundamental problem. In fact, it calls on us to rob Patrick so we can pay Peter who will then be robbed to pay Paul. So I strongly urge you to reject this.

Other special revenue accounts, as one who has served on the Appropriations Committee and I know this, are infrequently looked at and they are usually only looked at in a time like we are facing now, when we have budget necessities that present themselves. Suddenly we are desperately looking for cash and we go anywhere we can. This money has not just magically appeared in the other special revenue accounts. People who are licensed in this state, consumers who pay fees in this state, are putting money into this fund for particular purposes, those purposes being consumer protection. We're trying to protect consumers with this money. I hope that it is correct and we're not going to need to use all the money in this account. We don't know that. We don't know when the next scandal in an industry may occur. We had one a few years ago relating to cosmetologists.

This money is there for a reason. There were many legislative fights over the appropriate level of fees that are funding those surpluses now that occurred years ago. Now we're coming in here suggesting that we should take those monies and put it to somebody else's favorite purpose and set aside the notion of the important purpose for which they were collected in the first place. I will remind you, this purpose was consumer protection. This money is coming from doctors, plumbers, electricians, and cosmetologists. There is a huge long list of industries and professions that are affected and the people who use the services of those professions who are affected. I can't urge you strongly enough to indefinitely postpone this ill fated amendment.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY:** Thank you, Madame President. I, too, urge you to support the Senator from Penobscot, Senator Cathcart's position on this issue. As a member of the Utilities and Energy Committee and the chair of the Business, Research and Economic Development Committee, I feel compelled to speak on this issue. Though I certainly support the intent behind the amendment, I do want to point out, as the Senator from Oxford, Senator Bennett, did, that these are not General Fund monies. These are monies from licensees who pay for the licensing and the protection of the public with their license fees. Also it is very important to point out that if this amendment goes forward, we will have fee cap increases because the account that this will come from is where all the license fees go. If we take this money out of there, there will be fee cap increases across some of the boards. Ironically, it is the health professions and allied health professions that are most close to their fee caps. Those will be the ones that most likely will be increased. I urge you to support the pending motion. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President. Very briefly, I do want to point out that within the Department of Professional Financial Regulations' other special revenue accounts there is a total of some \$38 million at present. The majority of those funds are in accounts dedicated for particular boards and particular professions. What I am proposing is that we should take this money from the Office of Licensing and Registration's Licensing and Enforcement Fund. The surplus in that fund is such as to make it, I think, only the remotest theoretical possibility that additional fees might have to be raised from any professional or other entity regulated by this department. I would urge members of the Senate to support my amendment. Thank you.

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

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

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

THE PRESIDENT PRO TEM: The Senator may pose his question.

Senator **TURNER:** It's my understanding that reaching into the E-911 fund runs afoul of some federal statutes. I believe, or at least I've been lead to believe, that is why the members of the Utilities and Energy Committee have suggested an alternative. If that is the case, could somebody speak to that?

THE PRESIDENT PRO TEM: The Senator from Cumberland, Senator Turner poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President, men and women of the Senate. What I believe the good Senator is referring to in his question is legislation that has passed the U.S. House of Representatives and is currently tabled in the United State's Senate. What that legislation would do is require that whenever a state uses funds that have been collected for the purpose of E-911 services, takes that money and uses it for any other purpose, that on a dollar-for-dollar basis Homeland Security grants to that states will have that money deducted. That legislation has not yet passed. The committee has been told that if this budget passes with that provision before the U.S. Congress enacts such legislation, there is no retroactivity clause. Certainly I would have tried to use that excellent argument in my remarks earlier if I thought I was on good grounds. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. Not to prolong this, but I did make sure that the administration checked on this federal legislation that is pending. They felt very comfortable that this is not going to cause any problems or take money away from the State of Maine. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904). 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 (#386)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAVIS, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, PENDLETON, ROTUNDO, SHOREY, STANLEY, WESTON, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: CARPENTER, DAMON, GILMAN, HALL, KNEELAND, LEMONT, MARTIN, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, STRIMLING, TURNER, WOODCOCK, YOUNGBLOOD

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Youngblood.

Senator **YOUNGBLOOD:** Thank you, Madame President, ladies and gentlemen of the Senate. This is an amendment that doesn't cost a thing. It makes something that works for you and I a little bit better. This is a process that has been two years in the making. At some point in time, it will be a real asset to this chamber. When this was being put in process some two years ago, the then President of the Senate, the good Senator from Penobscot, Senator Michaud, who is now our Congressman, and the Senator Pro Tem at that time, the good Senator from Oxford, Senator Bennett, said, 'If this is good, and we believe it probably is, make this the very best working tool that we can absolutely make it. If we need, as a chamber or as a legislature in total, the ability to have better information to put our arms around, then make it the very best you can make it.' It was on that basis that, in difficult economic times, they made money available for three people from this legislature to do some traveling, to look at different programs, and to gather information. A committee worked for a long time putting that together. Last June, during the closing days of that session, some of that information in that was very good and what many people call the most important piece of legislation that the 120th Legislature ended up passing, got changed. I was not here during that period of time. This is an attempt to put some of that information back in the statute.

Some of you will remember I spoke to this issue before. Last summer, John Turcotte, who is a recognized professional in this area, was hired by the legislature to come to Maine and put on a program for the then members of the OPEGA Oversight Committee. He did that and produced a very extensive report that was ½" thick with a great deal of data in it. He had four recommendations. These items, in this amendment, are his four recommendations word for word. It restores the ability of the OPEGA Oversight Committee to say it is not only important to look at the items that are run, the budgets that are run, or the programs that are run by our own state

agencies; it is important to follow the money, whoever is spending state money. I agree with that assessment.

There is a slight change in the use of the auditor, which was requested by the auditor, that clarifies the language for when there is real audit work to be done as part of that evaluation that our own state auditor be looked at to do that, and only if they were not capable of doing it would this group leave the chambers and go outside.

It clarifies an area of confidentiality. I've said before in this chamber and I'll say it again, this committee, this legislature, with these changes in that particular piece of statute, does not give any of us any ability to get at confidential information. You cannot do your work as an independent research professional unless you have the ability and are sworn to the confidentiality of that it not be passed on. If it does, remunerations against you, obviously, can take place.

It clarifies that the director and the office of OPEGA be non-partisan. If this whole legislation, this entire statute, as put together by the State and Local Government Committee under the able direction of the Senator from Cumberland, Senator Pendleton, saw to it that this be a non-partisan group; that the membership of the oversight committee be equally distributed between the two major parties; that it be equally balanced between those two major parties; and it was also put in that each chamber be equally represented, which was a very good change to the Joint Rules back almost a year ago now. That was the original suggestion that came out of that committee. These are all very important issues.

I set here listening to these budget discussions and nothing could be more difficult for us to get our arms around as we set in our own individual oversight committees. My heartfelt thanks go out to all the work of the Appropriations Committee and all the work that they do trying to decipher what is real and what isn't real. We all lack one thing as oversight committees, whether it is Energy, IF&W, Education, we lack the ability of having somebody that works for us, that we can go to and say, 'We need some real research done on this. Is this law being done out in the community as we gave instructions for it to be done two years ago, ten years ago, whenever it may have been or in fact, through technical rule making, has it substantially changed and is no longer meeting the intent of the legislature? What are we getting for the money that we are spending in all of these programs?' We get antidotal information. We get information from the agencies or the departments that they want us to hear. I did a little research on the internet. I understand you can't believe everything you read on the internet. However, our Governor, when he was in Washington, used the Office of Government Accounting a minimum of 25 times to determine whether data that was coming to him was correct or incorrect. Who do we go to when we say, 'Here's a report, how do I get my arms around it to say it is right or not right?' This operation will be in effect. There is an oversight committee. They will do their work. We will have an operation. It will be of benefit to all of us. It is very important that, if we are going to have it, it be the very best department that we absolutely can have working for us. I strongly urge your adoption of this amendment.

Same Senator requested a Roll Call.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904).

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I'll be brief on this. It just gives me a sense of déjà vu. I remember speaking against this same language about two years ago, in the middle of the night. When I see language like this, it just really bothers me because what this says is that it authorizes a legislative oversight committee to direct OPEGA, a state entity, to conduct evaluations of local government. When I think of this and hear this, all I can think of is the Town of Burlington, Maine and how they are going to feel when the state moves into Burlington and starts to evaluate their local government. I think there are probably a few hundred other towns in this state that would feel the same way. I urge you to vote to indefinitely postpone. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinite Postpone Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904). 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 (#387)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, MARTIN, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, HALL, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904), **FAILED**.

On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **ADOPTED**.

On motion by Senator **GAGNON** of Kennebec, the Senate **RECONSIDERED** whereby it **ADOPTED** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904).

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#388)

YEAS: Senators: BENNETT, BLAIS, CARPENTER, DAMON, DAVIS, GILMAN, HALL, HATCH, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

NAYS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, LAFOUNTAIN, MARTIN, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **YOUNGBLOOD** of Penobscot to **ADOPT** Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you very much, Madame President, ladies and gentlemen of the Senate. It's a very straight forward amendment that seeks to change the duties of the State Nuclear Safety Inspector and State Nuclear Safety Advisor and place those duties under the supervision of the Public Utilities Commission. It also seeks to take the monies from the fees imposed on nuclear facility licensees and place them in the General Fund and transfer the funds from the monitoring fees and the power plant licensees to the Public Utilities Commission.

The individual who is currently serving in the capacity of the State Nuclear Safety Inspector and State Nuclear Safety Advisor has a salary and benefits package worth \$92,000. This budget seeks to increase to \$112,000. It is my strong believe that, in this budgetary cycling in which we're now

currently addressing, the Public Utilities Commission should be the rightful place for the duties aforementioned. It is not the time to paying an individual \$112,000 to oversee the nuclear safety and nuclear safety inspection. The Public Utilities Commission is well qualified to undertake these duties. Though I applaud the notions of this office, this inspector, and this advisor, it remains, by my perspective, a duty best served by the Public Utilities Commission. Our budget is in a time of distress. In budgetary times when we are looking to find monies available, this, to me, would be an obvious place to start. Thank you, Madame President.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904).

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Hall.

Senator **HALL:** Thank you, Madame President, men and women of the Senate. Very briefly, if I could speak wearing perhaps three different hats; first as chair of the Utilities and Energy Committee, second as a member of the State's Advisory Commission on Radioactive Waste, and also as the Senator who represents the now decommissioned nuclear power plant in the state. I just want to briefly speak to why I think it is appropriate to maintain both the Nuclear Safety Advisor and the Nuclear Safety Inspector in their current positions with their current tasks.

First, the position of the Nuclear Safety Inspector is a position that will be going away in the year 2006 following the completion of decommissioning of Maine Yankee in 2005 and the establishing of long term monitoring systems. This is a short life span and I think it is appropriate to leave that position intact, funded, and overseen as present.

With regard to the State Nuclear Advisor, that is a position whose responsibilities changed over time as the position of the Maine Yankee plant has changed. Until the closure of the plant was announced in 1997, that position was held by a physicist of some distinction. In more recent years, the position has been occupied by an attorney who has taken a leading role on behalf of the state in negotiating the arrangements for the medium term storage of nuclear waste at Wiscasset. At present, with the completion of the interim spent fuel storage site in Wiscasset, what the state's predominant interest in the nuclear fuel is in having the federal government live up to its commitments and responsibility to take that fuel away and place it in long term storage in Nevada. The individual who holds the position at present is a person well known to many in this chamber who, in addition to his legislative career, has spent the past eight years in Washington working at the Department of Energy on issues including the Yaka Mountain Nuclear Waste Repository. He is the person in this state with by far the greatest knowledge of the long term disposal issues and in a position to assist the state with his knowledge in insuring that Maine Yankee's nuclear waste is moved out as expeditiously as possible. My concern, to be frank with you, is that if Yaka Mountain is completed in the year 2010, we may face a position where the federal government will say that, because Wiscasset has an effective and safe interim storage facility, we will be the last on the list for our nuclear waste being moved to Nevada. That is what the job of the State's Nuclear Safety Advisor is today, to prevent that from happening and to spend a lot of time negotiating in Washington D.C. with the Department of Energy. I certainly hope you will support the indefinite postponement motion on this. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904). 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 (#389)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **TURNER** of Cumberland, Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904) **READ**.

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

Senator **TURNER:** Thank you, Madame President. As some in this chamber very well know, our budget documents are very powerful vehicles. Many things show up in them, not all of which have financial implications as embodied in the dollars and cents that flow with the particular budget document. Such is the case with DDDD. My amendment would seek to strike that language from this budget document. If it is not struck then the follow will occur.

For vested and retired employees and their families the following will be in place. Point one, for those folks, at the moment this budget becomes law, their eligibility criteria can be no more restrictive than at the time vested. Point two, the state's contributions as a percent of coverage can be no less than provided at the time of vestment. Point three, plans between retirees and active employees will be the same or substantially so.

What makes this language particular for us is something known as a solemn contractual commitment. I needed legal advice to understand the implications of that. You would think that a law couldn't fall prey to the notwithstanding provisions of a future legislature. Not the case with a solemn contractual commitment. Once enacted, the three provisions that I have mentioned to you remain in place for those who are vested, active and retired. Can't change it. I know of no organization in this country or any place else that provides such guarantees to its employees. Not the federal government. Not major multi-national corporations, such as GE, IBM, or the like. It would be an unprecedented action, should this language be allowed to stand.

You will be given, I presume, some comfort by being told that this language, in DDDD, makes reference to the ancillary benefits language of the Maine Constitution. In fact, the language in the budget does do that. That ancillary benefit language is specific to our obligations to fully fund, on an actuarially sound basis later in this century, our retirement system not the health care of employees and retirees. You know that in the taking that we've done in this budget to take the health care trust to zero, the Executive Branch said, 'Well, why not do that.' Our actuarially hole associated with putting benefits for retirees on a sound actuary footing is huge. It's \$900 million plus. It is my contention, and those of the other members of Appropriations who are Republicans, that by accepting this language and letting DDDD stand, you are, in effect, creating a contractual commitment to \$630 million of benefits on a go forward basis for those people who are currently vested or already retired. That will be the case if the day after this budget happens to be approved with the current language in it if you were to revoke it. You own it forever for those people. You can only change this on a prospective basis for those who will not be vested at the time. It is very bad language. I think it has profound implications for us in terms of bond ratings. I personally believe that those institutions such as Moody's and Standard and Poor's will look at this as a requirement akin to a bond obligation. For that reason, I urge that you adopt and approve the amendment that I have put before you. Thank you very much.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I believe that this Senate Amendment "F" (S-525) is unnecessary. I do want to refer to House Amendment "Q" (H-932) which we adopted earlier this afternoon that clearly makes this amendment unnecessary. House Amendment "Q" (H-932) clarifies that Committee Amendment "A" (H-904) in Part DDDD does not create a contractual commitment on the part of the state to offer group health plans at all nor to continue to offer health insurance coverage for any type of benefit or to offer a

specific level of benefit payment, however the state may reduce coverage for retirees only if it makes the same or substantially similar reductions for active employees. House Amendment "Q" (H-932) also correct something that was left out and includes the employees of the Maine Maritime Academy in the list of vested employees who would be eligible to receive health insurance as retirees.

I think that this amendment, that has already been adopted, satisfies the concerns of most people who have been concerned about this. I urge you to vote to indefinitely postpone Senate Amendment "F" (S-525). Thank you, Madame President.

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

Senator **TURNER:** Thank you, Madame President. I, too, have looked at House Amendment "Q" (H-932) and I can assure you that this language gives no comfort to the points that I raised earlier. You further should be aware that in the discussions we had in the Appropriations Committee no actuaries came forward, no attorneys were present, no one other than those on the committee, and no expert witness for or against the language that is before us today came forward. References were made to the Attorney General, that he thinks this is a wonderful idea. I can assure you the Attorney General did not appear before our committee. We did have a couple of his surrogates on the Democratic side of the horseshoe in Appropriations who spoke eloquently on his behalf. However, he chose not to appear himself. I believe this is a serious matter and has serious implications for us, financially. It warrants a full thorough public hearing and the soundness, or lack thereof, of the proposition is what this legislature should be looking at and has had no opportunity. As you listen to the good Senator from Penobscot, Senator Cathcart, and myself, I don't believe either of us have a law background. If there is a shred of doubt in your mind, this can be dealt with at a later time when you have a fuller understanding of its implications than I can provide. With a solemn contractual commitment, done a month from now or two months from now or three months from now, the three points that I elucidated earlier would come into vogue, if you then thought on the opportunity of having more information and time to ponder these matters, you chose to vote for them. I think this is a significant mistake if you chose to go forward and not remove this language. I would urge you to support the amendment. Thank you.

On motion by Senator **CATHCART** of Penobscot, supported by a Division of at least 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 Cathcart to Indefinitely Postpone Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904). 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 (#390)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904) **READ**.

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

Senator **MARTIN**: Thank you, Madame President and members of the Senate. This, in effect, borrows \$750,000 from an account in the department. It has not been used in three years. Actually the legislature did dip into it two years ago and took about \$1.5 million. There is actually \$6.5 million left at the present time. None of it is being used. This is a way to fund the bill that is right now going through the process. The committee unanimously reported the bill out of committee from Appropriations without money. Actually it has money. It's from the General Fund, which has no money. This is a way to fund it.

Same Senator requested a Roll Call.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART**: Thank you, Madame President. I hope you will vote to indefinitely postpone Senate Amendment "H" (S-527). There is a bill resting on the Appropriations Table, which we hope to get to later tonight, that provides an appropriate vehicle for funding some help and assistance to the potato growers. They had a public hearing on this legislation. They made a very good case and I certainly hope that we can find a better way to give them the assistance than through this mechanism. I urge you to vote to indefinitely postpone. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#391)

YEAS: Senators: BLAIS, BRENNAN, BROMLEY, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HATCH, LAFOUNTAIN, MAYO, NASS, PENDLETON, ROTUNDO, SAWYER, SHOREY, STRIMLING, TURNER, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BRYANT, CARPENTER, DAVIS, GILMAN, HALL, KNEELAND, LEMONT, MARTIN, MITCHELL, SAVAGE, STANLEY, WESTON, WOODCOCK, YOUNGBLOOD

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904) **READ**.

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

Senator **MARTIN**: Thank you, Madame President. This amendment takes care of the two bills that the Appropriations Committee has voted on and has not funded, one being the Baxter Compensation Authority and the other being the potatoes for Aroostook County. I would urge the adoption of it. I won't make the motion to indefinitely postpone because I know that will be made. I'm not going to ask for a roll call at this point because that will follow. I certainly urge you all to vote for the amendment and against the motion to indefinitely postpone when it is made.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904).

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. While I appreciate the intent of Senate Amendment "O" (S-538), I do ask you to indefinitely postpone it because it is unnecessary. There are the two bills waiting on the Appropriations Table for funding. There is also in the budget we are adopting, from the unappropriated surplus in fiscal year '05, \$3 million for the victims of the Baxter School for the Deaf abuse. Actually I have an amendment that I'm expecting momentarily that would take care of that. As previously stated, the potato growers is resting on the Appropriations Table and we will seek funding for it if we are ever able to take up the Appropriations Table. Thank you, Madame President.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904). 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 (#392)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, GILMAN, HALL, HATCH, LAFOUNTAIN, MAYO, MITCHELL, NASS, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, STRIMLING, TURNER, WESTON, YOUNGBLOOD, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: CARPENTER, KNEELAND, LEMONT, MARTIN, STANLEY, WOODCOCK

29 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904), **PREVAILED**.

Off Record Remarks

On motion by Senator **NASS** of York, Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904) **READ**.

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

Senator **NASS:** Thank you, Madame President, men and women of the Senate. This amendment is fairly inexpensive and fairly simple. It simply eliminates the proposed merit pay increases that were due to some state employees for the current year and instead uses that \$250,000 to begin the building of the Veteran's Cemetery in southern Maine.

The budget process, especially supplemental budgets, is notable for certain things. When we are in a period where we need money, or there are holes in the budget, the effort, I think, is notable, particularly for things that we leave in the budget and don't change. I'll give you an example of that. We'll spend, in this bi-annual budget, millions of dollars at the Muskie School. This supplemental budget, because these needs have been well documented in the press and at public hearings, don't touch that. We've chosen, we've made a public policy decision to leave that money alone in spite of all the other cuts that were made. In this particular case this supplemental budget provides a relatively small amount of money, \$250,000, for pay increases but it leaves us liable for almost \$1

million to fund circuit breaker applications that are currently in the hands of the state government, over \$900,000. It does nothing about the Baxter School, which we've talked about today. It does nothing to use a vacant unit at the Maine Correctional Center in Windham when we are apparently about to let some criminals out, or certainly reduce their time. It does nothing about the vacant unit at the Charlestown Correctional Facility when we are about to let criminals out, or reduce their time. We have the space. We're not using it. This budget does nothing about that. We know there is going to be a short fall in General Assistance payments over the next year. It does nothing about that. These are the priorities we establish in this supplemental budget. I ask that we recognize these; obviously we're going to disagree on priorities, but at least postpone merit pay increases for some state employees in light of what is provided here. Thank you.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904).

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President. Quickly, to say that I think it seems very cruel to take away merit and step increases from state employees who have already been granted those. I hope you will not support this. I do have to correct one error by the Senator from York, Senator Nass. The budget we are adopting does provide funds for opening additional beds in the prison at Windham and the necessary staff to keep security and run that prison with those beds open. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904). 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 (#393)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904), **PREVAILED**.

Senate at Ease.

Senate called to order by President Pro Tem **SHARON A. TREAT**.

On motion by Senator **GAGNON** of Kennebec, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-904) as Amended by House Amendments "Q" (H-

932); "T" (H-935); "V" (H-937) AND Senate Amendment "A" (S-518) thereto, in **NON-CONCURRENCE**.

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

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act To Reinstate a Milk Handling Fee" (EMERGENCY)

H.P. 274 L.D. 345

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

Signed:

Senators:

STANLEY of Penobscot
STRIMLING of Cumberland
NASS of York

Representatives:

LEMOINE of Old Orchard Beach
PERRY of Bangor
McGOWAN of Pittsfield
SIMPSON of Auburn
SUSLOVIC of Portland
CLOUGH of Scarborough
COURTNEY of Sanford
McCORMICK of West Gardiner
TARDY of Newport

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-885)**.

Signed:

Representative:

LERMAN of Augusta

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

Reports **READ**.

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

Off Record Remarks

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

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

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

RECESSED until the sound of the bell.

After Recess

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution:

H.P. 1469

JOINT RESOLUTION PROCLAIMING MAY 27TH AS RACHEL CARSON DAY

WHEREAS, worldwide exposure to pesticides is greater than most people realize; and

WHEREAS, more than 3 billion kilograms of pesticides are spread on the earth annually, exposing both human and wildlife populations to chemicals, with potentially serious repercussions for life everywhere if applied inappropriately; and

WHEREAS, more than 40 years ago, the well-known writer, scientist and ecologist Rachel Carson alerted America and the world to the potential hazards of pesticides in her landmark book *Silent Spring*. Rachel Carson spent many summers here in Maine. Despite the warning, the quantity of pesticides used in our country has continued to grow over the years and poses a potential threat to all life forms if applied inappropriately; and

WHEREAS, it is again time to increase public awareness of the potentially serious dangers of using excessive amounts of pesticides; now, therefore, be it

RESOLVED: That We, the Members of the 121st Legislature now assembled in the Second Special Session, do proclaim that May 27, 2004 is Rachel Carson Day throughout the State of Maine, in honor of her prophetic work, and urge the citizens of the State to focus their attention on the potentially serious hazards associated with pesticides; and be it further

RESOLVED: That We, the Members of the 121st Legislature, invite citizens throughout the State to observe this day, the birthdate of Rachel Carson, by refraining from using pesticides on this day and ask the citizens of the State for their cooperation in seeking alternative methods of pest management.

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

READ and **ADOPTED**, 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 Revise the Fish and Wildlife Laws To Complement the Recodification of Those Laws
H.P. 1421 L.D. 1920
(H "A" H-915 to C "A" H-858)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with no 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 Pro Tem, 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:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act To Conform the Maine Tax Laws for 2003 to the United States Internal Revenue Code" (EMERGENCY)
H.P. 1229 L.D. 1651

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-756)**.

Signed:

Senators:

STANLEY of Penobscot
STRIMLING of Cumberland

Representatives:

LEMOINE of Old Orchard Beach
McGOWAN of Pittsfield
SUSLOVIC of Portland
SIMPSON of Auburn
PERRY of Bangor
LERMAN of Augusta

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-757)**.

Signed:

Senator:

NASS of York

Representatives:

TARDY of Newport
McCORMICK of West Gardiner
CLOUGH of Scarborough
COURTNEY of Sanford

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-757)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-757)**.

Reports **READ**.

Senator **STANLEY** of Penobscot moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-756)** Report, in **NON-CONCURRENCE**.

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

Senator **NASS:** Thank you, Madame President, men and women of the Senate. This is the annual conformity bill. For years, in different times, the legislature has normally conformed. We have to conform to the Internal Revenue Code or else we essentially can't benefit from the fact that we depend heavily on the federal government to collect our taxes. They do most of the work for us. In recent years we have decided, because of rapid changes at the federal level, to not conform in some specific areas. Specifically, the difference between the two reports is non-conformity in childcare credits, tuition reimbursement credits, marriage penalty, and the most controversial, the reduction of estate tax payments. Those have been talked about before. Now comes another opportunity, the so-called health savings accounts, for which there is a federal tax benefit. Maine, under this provision, is not going to conform to that. This is a huge potential benefit for our citizens.

It is unusual that I, from the Taxation Committee, should be talking about this. This is potentially an insurance product. It came to us because of the conformity issue. As it becomes more and more apparent what this product might be, it is surprising to me that it is beginning to look an awful lot like Dirigo Health Insurance. The surprise comes from both sides. Dirigo, at least in my mind, was going to look like a fairly standard insurance product when it first started. The most recent stuff that has come out of that office indicates it has a fairly high deductible. That is essentially the main feature of these health savings accounts. High deductibles. I don't mean to imply they are equal. The health savings account deductible is still somewhat higher. High deductible and reduced premium payments, this is where they are a lot alike. Where they differ substantially is that the health savings account appears to be able to offer affordability and the possibility, if there is money left over from deposits made by either the employer or the employee, which can be carried into retirement.

I will share with you the comment made by the state tax assessor when this bill came into the committee. The reason the State of Maine is not conforming is because, 'This is huge. This could be as big as the IRAs.' What does that mean? That means that it is detrimental to the state budget. More importantly, this is likely to be extremely helpful to the citizens of Maine. This is an insurance vehicle, I feel and I'm somewhat uncomfortable talking about insurance issues, which could be extremely helpful and useful to some uninsured people in Maine. It has the potential not to help everybody but to help some people. We're not going to conform. This is not going to stop health savings accounts. It's just going to deprive Maine's citizens of a small part of the benefit, the tax deductibility.

So we'll see. We're going to say that this is going to come on anyways. We don't know how strong the market is going to be in Maine for this. We don't know if anybody is going to offer it yet. I suspect that they will. It will compete with Dirigo. It looks like it's going to be better than Dirigo. We're denying our people a small extra benefit here along with all the other stuff we haven't conformed to. Madame President, I would a vote against the majority Ought to Pass report. Thank you.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Stanley to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-756) 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 (#394)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAMON, DAVIS, GILMAN, KNEELAND, LAFOUNTAIN, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **STANLEY** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-756)** Report, in **NON-CONCURRENCE, FAILED**.

The Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-757)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "B" (H-757) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-757)**, in 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:

ENACTORS

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

Mandate

An Act To Require Law Enforcement Agencies To Adopt Policies Concerning Recording and Preservation of Interviews

S.P. 286 L.D. 891
(H "B" H-940 to C "A" S-405)

Comes from the House, **FAILED PASSAGE TO BE ENACTED**.

On motion by Senator **STRIMLING** of Cumberland, the Senate **RECONSIDERED** whereby it **RECEDED** and **CONCURRED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-405) AS AMENDED BY HOUSE AMENDMENT "B" (H-940)** thereto.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **RECEDED** from **ADOPTION** of Committee Amendment "A" (S-405) as Amended by House Amendment "B" (H-940) thereto.

On further motion by same Senator, the Senate **RECONSIDERED** whereby it **RECEDED** from **ADOPTION** of House Amendment "B" (H-940) to Committee Amendment "A" (S-405).

On further motion by same Senator, House Amendment "B" (H-940) to Committee Amendment "A" (S-405) **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

House Amendment "A" (H-880) to Committee Amendment "A" (S-405) **READ** and **ADOPTED**, in **NON-CONCURRENCE**.

On motion by Senator **WESTON** of Waldo, the Senate **RECONSIDERED** whereby it **ADOPTED** House Amendment "A" (H-880) to Committee Amendment "A" (S-405).

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

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

THE PRESIDENT PRO TEM: The Senator may pose her question.

Senator **WESTON**: Can you tell me what has just happened? Where are we in this bill?

THE PRESIDENT PRO TEM: The Senator from Waldo, Senator Weston poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING**: Thank you, Madame President. I have to admit I often say the same thing myself about of the legislation going through here. All that we have done is gone back to the bill that this body approved earlier when we receded and concurred. I had to strip the mandate off the bill because it didn't pass in the House. That means there will be a small fiscal note on it, which means it will go to the Appropriations Table. The fiscal note on it is an insignificant amount. However, the content of the bill has not changed at all. It is exactly the same bill with the amendment that the House put on earlier and we approved.

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

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

Senator **DAVIS**: Thank you, Madame President. If I understand correctly, the bill that we are about to vote on is the version where the state is requiring police departments to come up with the policies regarding video taping? I guess that is a question through the Chair.

THE PRESIDENT PRO TEM: The Senator from Piscataquis, Senator Davis poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING**: Yes, that is correct.

THE PRESIDENT PRO TEM: The pending question before the Senate is Adoption of House Amendment "A" (H-880) to Committee Amendment "A" (S-405). 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 (#395)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CARPENTER, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, KNEELAND, LAFOUNTAIN, LEMONT, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, DAVIS, GILMAN, HATCH, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, House Amendment "A" (H-880) to Committee Amendment "A" (S-405) **ADOPTED**, in **NON-CONCURRENCE**.

Committee Amendment "A" (S-405) as Amended by House Amendment "A" (H-880) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-405) AS AMENDED BY HOUSE AMENDMENT "A" (H-880) thereto, in NON-CONCURRENCE.

Ordered sent down forthwith for concurrence.

Act

An Act To Appropriate Funds for World War II and Korean War Memorial Plaques in the Hall of Flags

H.P. 1367 L.D. 1841

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, 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:

Act

An Act To Implement the Recommendations of the Joint Standing Committee on Business, Research and Economic Development Regarding the Board of Dental Examiners Pursuant to Reviews Conducted under the State Government Evaluation Act

H.P. 1457 L.D. 1958
(S "A" S-498; S "B" S-499)

PASSED TO BE ENACTED and having been signed by the President Pro Tem 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:

Act

An Act To Streamline the Sales Tax Credit for Worthless Accounts To Eliminate Unnecessary Burdens on Certain Maine Businesses and Consumers

S.P. 646 L.D. 1714
(C "A" S-451)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, 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:

Act

An Act to Support Domestic Businesses in Publicly Funded Construction Projects

S.P. 217 L.D. 608
(C "A" S-386)

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/5/04) Assigned matter:

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Encourage Cost Savings by State Employees"

S.P. 618 L.D. 1686

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-409)** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-410)** (5 members)

Tabled - April 5, 2004, by Senator **YOUNGBLOOD** of Penobscot

Pending - motion by Senator **ROTUNDO** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-409)** Report

(In Senate, March 3, 2004, Reports **READ**.)

On motion by Senator **ROTUNDO** of Androscoggin, the Majority **OUGHT TO PASS BY COMMITTEE AMENDMENT "A" (S-409)** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-409) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/8/04) Assigned matter:

JOINT ORDER - To Require a Special Election on the Initiated Bill Pertaining to Tax Reform
S.P. 803

Tabled - April 8, 2004, by Senator **GAGNON** of Kennebec

Pending - motion by same Senator to **PASS**

(In Senate, April 8, 2004, on motion by Senator **GAGNON** of Kennebec, **READ**.)

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. The bill, obviously an initiated bill, pertaining to tax reform came in front of the Taxation Committee. I just wanted to share with you what I heard during the hearing.

The issue of whether it should go in June or November, obviously, was on people's minds. I think the Chief Executive had expressed an opinion a short time before that to vote this in June. As I recall, there was some silence in the public sector. Nobody was expressing much of an opinion. At the public hearing shortly after that, because that was on people's minds, everybody spoke to it. No one indicated support for June as a preferable date to vote this. No one. I was surprised to see this request, this joint order, last week. I guess I'm reminded of a conversation that we often have in rural Maine relative to town meetings and dealing with referendums at a special meeting versus a regular town meeting. I think this is similar. We know there is likely to be less people in June. There are lots of things happening in November such as other referendums, the presidential election, and legislative elections. The turnout in November is going to be greater. Usually that is perceived to be a better way to conduct our business. More people turn out and more people are

likely to turn out. That is the better time to vote controversial stuff. More people express their opinion, one way or the other, but for some reason we're going to do this in June. Madame President, I don't know why we're going to do it in June. I would love to hear somebody suggest why we're going to vote this in June. For myself, I would urge voting against this. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I put in this order. The issue about voting this issue in June is because, as we all know, there is going to be a tax reform package in June that was a left over from last November. There will be the 1A question in June. It was my thought, and the thought of many, that you have all of that stuff together. There would be a focus on tax reform at that time in June. November will be consumed with all kinds of elections. Certainly the presidential election will draw the focus away from the issues. That was the primary reason behind putting it in June. We don't have the option of moving the 1A question to November. We only have the option of moving this question to June to try to keep them together and to try to draw more attention to the whole issue.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Gagnon to Pass. 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 (#396)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **GAGNON** of Kennebec to **PASS, PREVAILED.**

Sent down for concurrence.

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

The Chair laid before the Senate the following matter Assigned for Second Reading (4/14/04):

Bill "An Act To Clarify Legislative Pay" (EMERGENCY)

S.P. 806 L.D. 1961

(Committee on **STATE AND LOCAL GOVERNMENT** suggested and ordered printed)

(In Senate, April 14, 2004, **READ ONCE** without reference to a Committee.)

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

On motion by Senator **BLAIS** of Kennebec, Senate Amendment "B" (S-541) **READ.**

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Blais.

Senator **BLAIS:** Thank you, Madame President, men and women of the Senate. I'd just like to explain a little bit about the amendment in as short a time as possible. It has no bearing on the merits of the bill. What it does is address a potential constitutional challenge to the bill by eliminating a retroactivity provision in Section 2. I would encourage your support. Thank you.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-541).

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

Senator **MARTIN:** Thank you, Madame President. This certainly is an appealing amendment. Let's keep in mind that we knew what we were getting when we started this year. It was unfortunate that we ended up having to adjourn and start over again. We knew that this session was potentially going to come to today. I see no reason to have this amendment.

Senator **BLAIS** of Kennebec requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Blais.

Senator **BLAIS:** Thank you, Madame President. I'd like to share with the Senate why we should vote against the motion to indefinitely postpone so we can move on and vote on the amendment. In an April 7th opinion letter addressing the matter that gives rise to this legislation, Maine's Attorney General cast serious doubt as to the ability of a legislature to retroactively pass legislation that would impair rights vested by statute and secured by the Maine Constitution. The Attorney General was clear that the January 30th Joint Order addressing the question of legislative pay was neither constitutional nor enforceable by law since the Maine Constitution, in Article 4, part 3, section 7, requires such pay to be established by statute not joint order. That fact has no doubt given rise to the legislation that we have before us that attempts to address a previous error in the form of an act that must pass both bodies of the legislature and be signed by the Governor. However, the language before us, unamended, runs afoul of the constitution since it includes a retroactivity provision that would have the act apply as of January 30th 2004.

In his opinion, the Attorney General notes that, and I quote, 'The legislature lacks the constitutional power to enact retrospective laws that impair vested rights. Since the previous joint order was not enforceable,' which is why we have this legislation before us now, 'each legislator's right to per diem pay became a vested right the moment the legislature adjourned Sine Die and subsequently was called into special session by the Governor.' The Attorney General's opinion suggests that even if the legislature had enacted the change in legislation contemplated in the first section of this bill as emergency legislation prior to adjourning Sine Die, calling in advance for a kind of retroactive pay from April 21st back to that date on January 30th, there still would be basis to challenge such retroactivity even though rights had not, at that point, been vested.

There are those among us who would promote the notion that the challenge to the joint order of January 30th was about money. I disagree with that. I think that the opinion that we got back from the Attorney General demonstrated that it was a good and appropriate cause. My other concern is that this desire to make this about money may be an attempt to hide the fact that the actions of last January were not conducted in a manner consistent with Maine law and the Maine Constitution. I think it is certainly appropriate that legislatures seek to clarify its intentions with respect to legislative pay in the odd but increasingly frequent circumstance in which the legislature adjourns itself from regular session without having completed its business and long inside the timeframe provided for in the Maine Constitution. However, it is clear that a mistake was made on January 30th and it would be a shame to continue that pattern in this legislation when we have an unambiguous opinion to help guide us. I urge you to dispense with the current motion so that we may go on to the motion to amend. Thank you.

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

Senator **MARTIN:** Thank you, Madame President. Obviously the Senator from Kennebec, Senator Blais, has a different interpretation of the opinion from the Attorney General's Office than I do. I think it is clear, from my interpretation, that the issue is whether or not it is done by order or by bill. From my point of view, that it is about money and I do not believe that we ought to be taking the money at this time.

On motion by Senator **BLAIS** of Kennebec, supported by a Division of at least 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 Aroostook, Senator Martin to Indefinitely Postpone Senate Amendment "B" (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 (#397)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-541), **PREVAILED**.

On motion by Senator **SHOREY** of Washington, Senate Amendment "A" (S-540) **READ**.

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

Senator **SHOREY:** Thank you, Madame President, men and women of the Senate. The good Senator from Kennebec, Senator Blais, just went through the Attorney General's letter regarding these circumstances. He also said that it's not about the money. The Senator from Aroostook, Senator Martin, said it is about the money. Well, I'm here to say it's not about the money. This amendment is precisely what that says. For the Reader's Digest version, 'Notwithstanding any provision of the law to the contrary, \$770,000,' which is approximately the amount of money that would be due the legislature due to the ruling here, 'of an uncovered balance in the legislative account lapses to the General Fund at the end of the fiscal year 2003-2004.' When this first came up a lot of people stood up and said they would like to donate the money to charity. This would take the money and put it in the General Fund. It is not about the money. I encourage you to support this. Thank you.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-541).

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. This is an intriguing amendment. I'm just a little confused as to what we do for confirmation session, which we know is coming. That is a process we all know is in the law now. As a Senate, we expect to have that. We'll be here doing that at least a couple of times, probably before January. I don't know. Do we kind of borrow from each other for this process? I don't know. We're talking now of establishing mismanagement, to some degree. I know some times it is confusing around here. This is not the proper way with which we ought to handle the legislative budget.

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Blais.

Senator **BLAIS**: Thank you, Madame President, men and women of the Senate. In response to the good Senator from Aroostook, Senator Martin, comments in respect to mismanagement of the legislative budget, I would like to just read from the some notes that I have here on the budget. We're looking at the prior year unencumbered balance line here of \$984,000, well within the number that the good Senator from Washington, Senator Shorey, was referring to. The note that is here says that these funds are needed to process the potential payment of the \$100 per day special session pay as well as certain building related projects. I think the contemplation is there. The money is there. I think it would be perfectly appropriate to dispense with the motion before us and move on to accept the good Senator's amendment. Thank you.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Indefinitely Postpone Senate Amendment "A" (S-540). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#398)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

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

On motion by Senator **BENNETT** of Oxford, Senate Amendment "C" (S-542) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT**: Thank you, Madame President and fellow members of the Senate. This amendment seeks to accomplish two things. First, it freezes legislative pay at its current level. We get rid of the autopilot pay hikes that we enacted a couple of years ago. Secondly, it corrects what I believe was a sincere drafting error in the original bill. Let me explain that. The bill before us, which didn't have the advantage of going to a committee so it may be subject to such imperfections, would do something unintentional, which deals with what happens if the legislature finishes its work as customary before the statutory adjournment on a particular year. Let's say this year's statutory adjournment date was April 21st. If we had finished our normal session on April 10th and then were called into a special session, on April 20th, the way the bill is drafted legislators would not get any special session compensation regardless of the duration of that special session if it were called prior to April 21st. That is the way the bill is drafted. We could be in special session for three months and we would still not compensate legislators for service for those days. This bill would correct that error as well.

I know that there will be a motion forthcoming from the Senator from Aroostook, Senator Martin. I would like to just suggest to you that if we follow the logic of this bill and its intentions, this amendment to it ought to be approved. These are not only difficult budgetary times for our state, these are tough economic times for Maine people. In such times, I think it is appropriate for us to examine our own pay. Fortunately we have this vehicle before us to do so. If this amendment becomes part of this bill, I will assure this Senate that I will happily support its enactment with an emergency provision. If this amendment fails to become part of this bill, then clearly, in my view, we will be embracing business as usual, tending to our score cards on petty partisan points with this issue rather than using this as a chance to do more. We will have missed an opportunity to make a bi-partisan statement of leadership to the people of Maine in tough economic times. Clearly Maine working people can't put their own pay hikes on autopilot. Why should we? Let's have the courage to work together, the courage to be held accountable, and the courage to lead. Please join me in accepting this amendment to this bill.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-542).

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. First I'd like to respond to the first part in reference to the second proposal that is made in the amendment in terms of establishing the date. There was a time that we had a statutory date in the law, and it is probably still there. That became the basis upon which we could then go through the motions of five days and then we could go another five days. There was an opinion that was requested and subsequently granted to the legislature that said that those days were meaningless, that each legislature establishes its own schedule. Even though that sounds pretty nice in here, it doesn't make any difference. Unless we want to establish a date and that could be followed or not followed, assuming we don't do what we just did to get the budget passed, we'd have no extra money anyways.

In reference to the second point, that was in terms of the money. Frankly, I'm and always have been one of those who believe that salaries should be much higher than they are. I firmly believe that because I think it would then provide an opportunity for some of us, like the Senator from Oxford, Senator Bennett, or myself to have candidates against us who probably could beat us. It would provide an opportunity for more citizens and people who really would have the desire to really get out there and run a chance to get involved. We all know what it is like trying to get candidates. We run around the countryside and find people to fill slots. It's very difficult. I know that this is going on as we speak. It's unfortunate. I'm one of those that believe that if you pay a little more, eventually you get more candidates. I'll leave the rest for you to finish the sentence.

I certainly feel very strongly that this amendment should be indefinitely postponed.

Same Senator requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. In brief response to the good Senator from Aroostook, Senator Martin, to his first point, frankly I didn't understand it. I don't know if the Senator doesn't understand what the problem is that we are attempting to correct here. It's not related to this particular special session. It is related to the fact that this is not a resolve dealing with this session, it is a statute which has the force of law going forward, not only in this legislature but going forward. There will be a time when the language of this bill, uncorrected, will haunt this legislature, not this 121st but this institution. I don't understand why we would not take the occasion to fix the problem that is in this bill.

To his second point, regarding his feeling that legislators are not paid enough, well let's have that debate. Maybe we should have it out in the light of day instead of just sneaking up on the people of Maine and asking them to clean out a little bit more of their wallet to fund the legislative branch. That is a legitimate question. Legislative pay. We should talk about it. We should be willing to be held accountable for our views on it and not just let incrementalism lift the tide of our paychecks, particularly when, in every single one of our districts, there are people struggling and are not seeing the kind of pay hikes that they would like to see. We have a luxury in this building because we do set our own pay. We decided to abuse that power, not by accepting the authority and responsibility of setting it proactively in the light of day, but rather we decided to use that power just to put it on autopilot. I think it's a shame. I think at this time, this year, this day, this evening we should fix that.

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

Senator **MARTIN:** Thank you, Madame President. I just wanted to make a couple of corrections to the comments. First of all, first and foremost we don't set our own pay. The salary that is passed by the legislature is received by the next legislature. One may recall that is the way the Congress of the United States used to operate until someone found a very obscure constitutional amendment that had been suggested after the constitution was ratified. It was one of those twelve amendments that went out for ratification but only ten were adopted. One was also to say that the pay of Senators and Congressmen would take place only after an election. Subsequently, in the late 1970's, someone discovered that and Maine was one of those states that ratified that constitutional proposal. It is now part of the United State's Constitution as the 27th amendment to the constitution.

Second, I didn't make myself clear. There is no such thing as a statutory adjournment date any more. I'll be more than happy to provide the Senator with a copy of the opinion. We need to clearly

understand that this is meaningless today. I wasn't responsible for that. Subsequently, it is, in fact, the basis under which we operate now. Each legislature, however, can set its' own. The 121st could have said their adjournment date will be a certain date but we can't put it in law and then carry it forward from legislature to legislature.

In terms of the salary, I would just point out that I will admit that some members of the public think we get the same salary as the members of Congress. They also think we are there in some instances. Our salary is about \$18,000 for the biennium. My statement in terms of where the salary ought to be remains the same.

THE PRESIDENT PRO TEM: The Senator from Oxford, Senator Bennett, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **BENNETT:** Thank you, Madame President. I just need to rise and say that, according to the statute, we do have a statutory adjournment date. I believe the Senator from Aroostook, Senator Martin, is misinformed on that point.

The more important point on this legislation and this amendment is that we have an opportunity here to put the whole unfortunate mess behind us. We can do it in a bi-partisan fashion. We can fix the problem in the bill. We can make an affirmative statement to the people of Maine. We can move on in a bi-partisan spirit or we can continue to let this thing fester. If that is the will of this Senate, it is unfortunate indeed.

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

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Indefinitely Postpone Senate Amendment "C" (S-542). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#399)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-542), **PREVAILED**.

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

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

COMMUNICATIONS

The Following Communication:

S.C. 604

121ST LEGISLATURE COMMITTEE ON TAXATION

April 16, 2004

Honorable Beverly C. Daggett, President of the Senate
Honorable Patrick Colwell, Speaker of the House
121st Maine Legislature
State House
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

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

L.D. 1893 An Act To Impose Limits on Real and Personal Property Taxes

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

Sincerely,

S/Sen. Stephen Stanley
Senate Chair

S/Rep. David G. Lemoine
House Chair

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

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned 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, 2004 and June 30, 2005" (EMERGENCY)
H.P. 1420 L.D. 1919

Tabled - April 16, 2004, by Senator **GAGNON** of Kennebec

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENT "A" (S-518)** thereto, in **NON-CONCURRENCE**

(In House, April 15, 2004, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935) AND "V" (H-937)** thereto.)

(In Senate, April 16, 2004, Reports **READ**. On motion by Senator **CATHCART** of Penobscot, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-904) **READ**. House Amendments "Q" (H-932); "T" (H-935) and "V" (H-937) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**, in concurrence. On motion by Senator **TURNER** of Cumberland, Senate Amendment "E" (S-524) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **WESTON** of Waldo, Senate Amendment "N" (S-536) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "C" (S-521) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **ROTUNDO** of Androscoggin, **INDEFINITELY POSTPONED**. On motion by Senator **HALL** of Lincoln, Senate Amendment "M" (S-532) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **READ** and **ADOPTED**. On motion by Senator **GAGNON** of Kennebec, **RECONSIDERED**. On motion by Senator **YOUNGBLOOD** of Penobscot, Senate Amendment "A" (S-518) to Committee Amendment "A" (H-904) **ADOPTED**. On motion by Senator **WOODCOCK** of Franklin, Senate Amendment "I" (S-528) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **TURNER** of Cumberland,

Senate Amendment "F" (S-525) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **MARTIN** of Aroostook, Senate Amendment "H" (S-527) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **MARTIN** of Aroostook, Senate Amendment "O" (S-538) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**. On motion by Senator **NASS** of York, Senate Amendment "J" (S-529) to Committee Amendment "A" (H-904) **READ**. On motion by Senator **CATHCART** of Penobscot, **INDEFINITELY POSTPONED**.)

Off Record Remarks

On motion by Senator **CATHCART** of Penobscot, Senate Amendment "P" (S-543) to Committee Amendment "A" (H-904) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I think this is a very good amendment. I hope you will support its adoption. It's another way to fund the full amount requested on the bill for the compensation to former students who were victims of physical and sexual abuse at the Governor Baxter School for the Deaf. What it does is fund the Baxter Compensation Authority at \$6 million and it repeals the \$3 million that Committee Amendment "A" (H-904) had in the unappropriated surplus for fiscal year '05. Baxter Compensation victims would receive a total of \$6 million. I must give credit to a member of the other Body, Representative Millett, who had the idea of the mechanism to fund it. This amendment requires the Treasurer of the State to structure the June 2004 bond issues into semi-annual payments for a period of not more than nine years rather than the recent practice of annual installments over ten years. That will provide the necessary amount of funding to give \$6 million to the Baxter victims. Thank you.

On further motion by same Senator, supported by a Division of at least 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 Cathcart to Adopt Senate Amendment "P" (S-543) to Committee Amendment "A" (H-904). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#400)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, BRYANT, CARPENTER, CATHCART, DAGGETT, DAMON, DAVIS, DOUGLASS, EDMONDS, GAGNON, GILMAN, HALL, HATCH, KNEELAND, LAFOUNTAIN, LEMONT, MARTIN, MAYO, MITCHELL, NASS, PENDLETON, ROTUNDO, SAVAGE, SAWYER, SHOREY, STANLEY, STRIMLING, TURNER, WESTON, WOODCOCK, YOUNGBLOOD, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: None

35 Senators having voted in the affirmative and no Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **ADOPT** Senate Amendment "P" (S-543) to Committee Amendment "A" (H-904), **PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "D" (S-523) to Committee Amendment "A" (H-904) **READ**.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. You may notice that I had, in fact, two amendments printed that dealt with the issue of the present study that the University of Maine Board of Trustees is conducting. I pretty much decided to offer neither of them. However, yesterday, after these were printed, the Board of Trustees decided to move the period for public comment backwards so that initially the board was going to be handling this issue in November, but it has now been moved back to September. Basically, it shortens the period that the public will have to receive comments. Needless to say, there are some people that are somewhat concerned about some of the things that are going on. Needless to say, the University of Maine at Fort Kent is one of them, along with the University of Maine at Presque Isle, the University of Maine at Machias, and of course, last but not least, the University of Maine at Farmington that now is acquiring an interesting new name. This includes the northern campuses as well. It is the first time in my life, to be honest with you, that I've ever seen Machias classified as being part of northern Maine. I'm not really sure that they want that, even though we wouldn't mind having them. This basically provides an opportunity for the issue to come back to us. I would urge that this amendment be adopted.

Senator **CATHCART** of Penobscot moved to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-523) to Committee Amendment "A" (H-904).

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you, Madame President, men and women of the Senate. I certainly share concerns with the Senator from Aroostook, Senator Martin, and think that the strategic plan should have plenty of time for discussion by the public and by the people affected. As chair of Appropriations, I feel I have to stick with my committee on this and so I'm going to vote to indefinitely postpone. Thank you.

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

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I cannot help but be a little concerned about the amendment and so I rise to urge and encourage its indefinite postponement. This amendment, in my view, may be more than meets the eye. I've seen the Senator from Aroostook, Senator Martin, quoted as saying that the plan that the University of Maine Trustees has tentatively put forward is not only dead on arrival but buried on arrival when it comes to the legislature. I worry about the message that we may be sending in the context of such concerns to the University Trustees and to the many constituencies of the University who have done well managing their own affairs with the assistance and support of this legislature. This is an important issue and it is one that is going to come to the legislature. We are obviously going to be part of it. I know that we've all been contacted about the plan and we have been very much kept apprised of its various considerations and we have the capacity, more so than most citizens, to comment on it by virtue of our ultimate budgetary authority and appointment authorities over University Trustees. I see this as a very strong and unnecessary slap at the university system. I encourage that this amendment be indefinitely postponed.

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

Senator **MARTIN:** Thank you, Madame President. I just want to point out to members of the Senate that it is not a slap, it's basically saying that some of this ought to be done in the light of day. I would also point out and remind you, as I'm sure the good Senator remembers, that he was a sponsor and a co-sponsor of a bill to close the University of Maine at Fort Kent when he was a member of the other Body.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Cathcart to Indefinitely Postpone Senate Amendment "D" (S-523)

to Committee Amendment "A" (H-904). 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 (#401)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, BROMLEY, CARPENTER, CATHCART, DAVIS, DOUGLASS, GILMAN, HATCH, LAFOUNTAIN, LEMONT, MAYO, MITCHELL, NASS, ROTUNDO, SAVAGE, SAWYER, TURNER, WESTON, YOUNGBLOOD

NAYS: Senators: BRYANT, DAGGETT, DAMON, EDMONDS, GAGNON, HALL, KNEELAND, MARTIN, PENDLETON, SHOREY, STANLEY, STRIMLING, WOODCOCK, THE PRESIDENT PRO TEM - SHARON A. TREAT

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-523) to Committee Amendment "A" (H-904), **PREVAILED**.

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

THE PRESIDENT: The pending question before the Senate is Adoption of Committee Amendment "A" (H-904) as Amended by House Amendments "Q" (H-932); "T" (H-935); "V" (H-937) AND Senate Amendments "A" (S-518); "P" (S-543) thereto. 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 (#402)

YEAS: Senators: BENNETT, BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MARTIN, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, Committee Amendment "A" (H-904) as Amended by House Amendments "Q" (H-932); "T" (H-935); "V" (H-937) AND Senate Amendments "A" (S-518); "P" (S-543) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.

Senator **MARTIN** of Aroostook moved the Senate **RECONSIDER** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

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

THE PRESIDENT: The pending question before the Senate is Passage to be Engrossed. 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 (#403)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAGGETT, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LAFOUNTAIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, THE PRESIDENT PRO TEM - SHARON A. TREAT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MARTIN, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE, FAILED.**

Senator **BENNETT** of Oxford moved the Senate **RECONSIDER** whereby the Bill **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

On motion by Senator **MARTIN** of Aroostook, **TABLED** until Later in Today's Session, pending the motion by Senator **BENNETT** of Oxford to **RECONSIDER** whereby the Bill **FAILED PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-904) AS AMENDED BY HOUSE AMENDMENTS "Q" (H-932); "T" (H-935); "V" (H-937) AND SENATE AMENDMENTS "A" (S-518); "P" (S-543) thereto, in NON-CONCURRENCE.**

Off Record Remarks

RECESSED until the sound of the bell.

After Recess

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

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

ORDERS

Joint Order

On motion by Senator **GAGNON** of Kennebec, the following Joint Order:
S.P. 810

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, April 27, 2004, at 10:00 in the morning.

READ and **PASSED**.

Ordered sent down forthwith for concurrence.

On motion by Senator **DAGGETT** of Kennebec, **ADJOURNED**, pursuant to the Joint Order, to Tuesday, April 27, 2004, at 10:00 in the morning.