

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

In Senate Chamber
Thursday
March 22, 2012

Senate called to order by President Kevin L. Raye of Washington County.

Prayer by Senator Barry J. Hobbins of York County.

SENATOR HOBBS: Good morning. It is an honor and a privilege to be here today and to be able to lead my colleagues in the opening prayer. As many of you know, two of my three children graduated from Cheverus High School. My daughter, Delia, in 2005, was the second graduating class that included women, and my son, Liam, in last year's class. Cheverus is an inclusive Catholic college preparatory school which exists to educate students in Southern Maine according to the 500 year old Jesuit tradition of excellence in education by fostering intellectual, spiritual, physical, and personal excellence. The purposes and the objectives of the school finds its inspiration in the insights of the founder of the Jesuits, St. Ignatius of Loyola, who lived from 1491 until his death in 1556. Ignatius' vision of the magis, the Latin word which means more, challenges us to seek a greater good and to embody this vision by becoming people for others. Cheverus High encourages its students to be people for others, persons that find happiness in sharing their talents, especially with those who are less fortunate than they. Father William Campbell, the President of Cheverus High School, has been so kind to share with me three prayers associated with St. Ignatius. I would be honored to share one of these prayers with you in the Ignatius spirit. Let us pray.

We ask You, Lord, to help orient all of our actions by our inspirations and carry them on by Your gracious assistance so that every prayer in every work of ours may always begin from You and, through You, be happily ended. Amen.

Pledge of Allegiance led by Senator Debra D. Plowman of Penobscot County.

Reading of the Journal of Wednesday, March 21, 2012.

Doctor of the day, Barbara Covey, MD of Oakland.

The President requested the Sergeant-At-Arms escort the Senator from Oxford, Senator **HASTINGS** to the rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **DAVID R. HASTINGS III** of Oxford County.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Provide Funding to the Department of Transportation for a Feasibility Study of an East-west Highway" S.P. 570 L.D. 1671 (C "A" S-398)

In Senate, March 14, 2012, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-398).**

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-398) AS AMENDED BY HOUSE AMENDMENT "B" (H-805)** thereto, in **NON-CONCURRENCE.**

On motion by Senator **COLLINS** of York, the Senate **RECEDED** and **CONCURRED.**

SENATE PAPERS

Resolve, Authorizing the Lease of the Guy P. Gannett House in Augusta to a Nonprofit Organization for Use as a Museum S.P. 674 L.D. 1898

Presented by Senator KATZ of Kennebec. Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

On motion by Senator **THOMAS** of Somerset, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

Sent down for concurrence.

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

ORDERS

Joint Orders

On motion by Senator **RECTOR** of Knox, the following Joint Order:

S.P. 673

ORDERED, the House concurring, that Bill, "An Act To Protect Gasoline Marketers from Liability for Selling Federally Mandated Gasoline," S.P. 557, L.D. 1658, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

READ and PASSED.

Sent down for concurrence.

Expressions of Legislative Sentiment recognizing:

Hal Prince, of Canton, Director of the Division of Quality Assurance and Regulations within the Department of Agriculture, Food and Rural Resources, on the occasion of his retirement from public service after 21 years of commitment to the State of Maine. Mr. Prince was appointed Director in 2007 and has served on numerous regional and national boards in his profession. He was also Deputy State Sealer of Weights and Measures for the State and was a long-serving member and voting representative from the State at the National Conference on Weights and Measures. Mr. Prince was the 2001 recipient of a Governor's Safety Award and was the 1991 Employee of the Year for the Department of Agriculture, Food and Rural Resources. We send our appreciation to Mr. Prince for his many years of dedicated service to his profession and to the State. We extend our congratulations and best wishes to him on his well-deserved retirement;

SLS 610

Sponsored by Senator SCHNEIDER of Penobscot.
 Cosponsored by Senators: GOODALL of Sagadahoc, JACKSON of Aroostook, MARTIN of Kennebec, PATRICK of Oxford, RECTOR of Knox, SAVIELLO of Franklin, SHERMAN of Aroostook, THIBODEAU of Waldo, Representatives: AYOTTE of Caswell, BLACK of Wilton, BRIGGS of Mexico, CRAY of Palmyra, DILL of Old Town, DOW of Waldoboro, DRISCOLL of Westbrook, DUCHESNE of Hudson, EDGECOMB of Caribou, FOSTER of Augusta, GIFFORD of Lincoln, GILBERT of Jay, HAMPER of Oxford, HARLOW of Portland, HERBIG of Belfast, HUNT of Buxton, INNES of Yarmouth, KENT of Woolwich, KNAPP of Gorham, LONG of Sherman, McCABE of Skowhegan, NASS of Acton, NEWENDYKE of Litchfield, O'BRIEN of Lincolnville, PARKER of Veazie, PRESCOTT of Topsham, TIMBERLAKE of Turner, TUTTLE of Sanford, VOLK of Scarborough, WALLACE of Dexter, WELSH of Rockport.

READ.

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

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, it's really my pleasure today to rise and recognize my good friend, Hal Prince. I've known Hal for quite a long time, but most recently in this last year I've learned more about bottles and cans; 5¢ deposits; 15¢ deposits; wines; co-

mingling, and that's not a dirty word, than I had in my whole life. I expected probably at one time many of you may have recognized the Seinfeld episode where the gentlemen came from out-of-state, or they decided to drive to Minnesota, well I think Hal helped write that episode. It's really a pleasure and we are going to have a big hole, literally, to fill when Hal leaves and retires. I wish him the best of luck in Florida. Hal, thanks for all your great work for the State of Maine. You will be sadly missed.

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

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, I, too, rise to thank Hal Prince for his outstanding service to the State of Maine. I honestly don't know what any of us would do without his expertise, especially with regards to the Bottle Bill, which is extremely complex. He always conducted himself with a level that no one can surpass of even keeled, wonderful demeanor, and never losing his control and grace when he came before our committees. He was always there whenever we needed him. Whenever we called for him to help he was there in a flash and he always came very well prepared. When we talk about State employees, he exemplifies the best of the best. I congratulate him, wholeheartedly, on his retirement. I also mourn the loss, as I know many of us will, of his incredible knowledge that he will be taking with him. It is honor and pleasure that I rise to thank him and congratulate him on his incredible service and a job more than well done. Thank you.

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

Senator **SULLIVAN:** Thank you Mr. President. Hal Prince, his last name says it all. I had a gift for you, Hal. However, I found out I couldn't bring it in here. I'll give you a hint and see if you can guess. It was a big plastic bag and it had lots of sort of dirty bottles and things in it. I thought maybe you could take it to Florida and cash them in or something. Again, you've all heard that he's known for the Bottle Bill. Well, Hal and I go back a long time, for sure on the Bottle Bill. I would say probably at least a dozen years. At least. I wish I had always controlled my temper the way he was able to control his temper. That was not open for discussion. Please let the record show that Senator Brannigan did make a comment, so they won't think I'm crazy later when we talk about this. Hal knows so much and he's a compromiser. He wants to work out the problem for the little guy and for the big guy. He really sets an example for all of us and a win-win situation, not win-lose. Probably Hal will be the only one that will really appreciate this, but my family owns two vehicles. They are both side-by-side right now in the hospital. I was towed, and got to ride in the tow truck last night, home to Biddeford because the car broke down on the highway. Of course I didn't have my Senate plates on because it was my husband's truck. Today I got a ride up to meet Senator Diamond so I could be here. I rode in a truck that said "Biddeford Bottle and Can Redemption Center". I called my local redemption center and my husband is using that truck so we could have a vehicle. I've made a great friend in Biddeford and I've made a wonderful friend. I do consider you a friend, Hal. I consider and respect the way you do business and thank you so much for representing the people, the little people, that do good things for Maine. Thank you, Mr. President.

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

Senator **RECTOR:** Thank you Mr. President. Men and women of the Senate, I, too, just want to add my voice to the thanks to Hal Prince. I, for eight years, served on the committee that oversaw the bottle bills and Hal was not only a bureaucrat and enforcer, which was the task he was assigned through the Department of Agriculture, but he was also an educator. He educated the committee in a way that made a very, very, very complex issue, as the Senator Franklin, Senator Saviello, has alluded to, an issue that we could understand and take action on. I am deeply grateful to him for that education, for the pleasure of working with him, for the pleasure of understanding something complicated, but also having someone who was so patient in bringing us along and making us, I think, operate as efficiently as we possibly could in this sort of complicated and complex world. Great thanks to Hal and I, too, want to wish him absolutely the very best in his retirement. We'll miss him.

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

Senator **RAYE:** Thank you Mr. President. I rise briefly just to join in the tribute to Hal Prince. When I first arrived here in the Senate, my first assignment was to the Agriculture, Conservation, and Forestry Committee where I came to know Hal Prince as a consummate professional and an ideal public servant, someone that we were always able to count on to help us sort through difficult issues, whose leadership at the department earned him the respect of his colleagues, and, as we've heard here today, the respect of the legislators on both sides of the aisle. He is an ideal public servant. We all owe him a debt of gratitude, as do the people of Maine. I just wanted to rise to say that on the record and to wish Hal and his wife a very happy, healthy, and long retirement.

PASSED.

Sent down for concurrence.

THE PRESIDENT PRO TEM: The Chair is pleased to recognize in the rear of the chamber Hal Prince of Canton. Would he please rise and accept the greetings of the Maine Senate.

Alannah Shevenell, of Hollis, who has had 6 organs transplanted in a single procedure, for the courage and resolve she has shown throughout the course of her illness and for her determination to recover from her groundbreaking surgery. Alannah, now 9 years of age, developed a particularly aggressive form of cancer at 5 years of age, and went through over 4 years of intensive medical care culminating in the transplant surgery that replaced her stomach, pancreas, spleen, liver, small intestine and esophagus. We also acknowledge Alannah's grandparents, Debi and Jamie Skolas, of Hollis, who supported her throughout her ordeal, and spent countless hours at her side in the hospital and made seemingly endless trips to Boston for Alannah's treatment; the Boston Children's Hospital surgical team, led by Dr. Hueng Bae Kim, whose skill and dedication was critical to the success of the operation and Alannah's recovery; and the organ donor, whose

generous gift made the lifesaving procedure possible. We send our best wishes to Alannah for a speedy recovery and a long, happy and healthy life;

SLS 611

Sponsored by Senator DIAMOND of Cumberland.
Cosponsored by Representative: HUNT of Buxton.

READ.

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

Senator **DIAMOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, we have another very, very special guest with us today who I would like to introduce you to. She and her family are here at my invitation, and the invitation of the person in the House who represents the town of Hollis. Alanna Shevenell is 9 years old and she's here today with her grandparents, Jamie and Debi Skolas, along with their long time friend, former State Representative Don Marean who represented the town of Hollis in the Maine House of Representative. Alannah is here because, as you can see in the sentiment order today, four years ago she was diagnosed with a very aggressive tumor. She and her family met that with a great deal of courage and did not step down for the challenge. Last October, she went through 14.5 hours of very, very delicate surgery and had five major organs transplanted; her stomach, her pancreas, spleen, liver, small bowel, and part of her esophagus. It's one of those things that had not happened in New England, certainly, and maybe never; especially replacing the partial esophagus. It was a great challenge for her and her family. She has all kinds of courage, which you will see when you meet her. She and her family are just outstanding. They are role models for all of us. At times Jamie and Debi, her grandparents, had to struggle with various departments in the State of Maine, because what they were doing was on the frontier in trying to save the life of this wonderful little girl. I would just like you to know all about her and I'm going to ask the Secretary if he would read the sentiment into the record and let you know they are here and just say hi to them if you would this morning. Again, I think they demonstrate the kind of courage that we maybe sometimes don't always see, especially in little girls and little children who have to go through these kinds of very difficult times. Thank you for listening, Mr. President and ladies and gentlemen. I would ask you to, after the reading, kindly recognize them. They are sitting behind me, to my right. Thank you, Mr. President.

At the request of Senator **DIAMOND** of Cumberland, the Sentiment was **READ.**

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

Senator **SULLIVAN:** Thank you Mr. President. I will be quick. I have a soft place in my heart for children. I stopped to speak to this young lady. She told me she was a little nervous because of us. I just want to reassure her that she has more guts. That's not a very nice word, but she has more guts to go through what she did. We're a pretty scary looking group. She is great. You really do need to take a change to speak to her, but be kind because I

told her we were all very nice. She's such a sweet, sweet young lady. Thank you.

PASSED.

Sent down for concurrence.

THE PRESIDENT PRO TEM: The Chair is pleased to recognize in rear of the chamber Alannah Shevenell of Hollis. Would she please rise and accept the greetings of the Maine Senate.

Off Record Remarks

Senate at Ease.

Senate called to order by President Pro Tem
DAVID R. HASTINGS III of Oxford County.

Off Record Remarks

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

REPORTS OF COMMITTEES

House

Ought to Pass Pursuant to Resolve

The Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Protect Consumers by Strengthening the Laws Governing Prepaid Home Heating Oil Contracts" (EMERGENCY)

H.P. 1399 L.D. 1895

Reported that the same **Ought to Pass**, pursuant to Resolve 2011, chapter 79.

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**.

Ought to Pass As Amended

The Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Authorize the Establishment of Pilot Projects for Community Paramedicine"

H.P. 1359 L.D. 1837

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-801)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-801)**.

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

READ ONCE.

Committee Amendment "A" (H-801) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **HEALTH AND HUMAN SERVICES** on Resolve, To Create the Task Force on the Prevention of Sexual Abuse of Children (EMERGENCY)

H.P. 1257 L.D. 1705

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-796)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-796)**.

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

READ ONCE.

Committee Amendment "A" (H-796) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Amend the Laws Governing Confidentiality of Health Care Information"

H.P. 1337 L.D. 1813

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-797)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-797)**.

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

READ ONCE.

Committee Amendment "A" (H-797) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **JUDICIARY** on Bill "An Act To Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act"

H.P. 1016 L.D. 1377

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-800)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-800)**.

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

READ ONCE.

Committee Amendment "A" (H-800) **READ** and **ADOPTED**, in concurrence.

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

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act To Apply the Sales Tax on Camper Trailers and Motor Homes Purchased for Rental in the Same Manner as on Automobiles Purchased for Rental"

H.P. 1333 L.D. 1809

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-795)**.

Signed:

Senators:

COURTNEY of York
HASTINGS of Oxford
WOODBURY of Cumberland

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BERRY of Bowdoinham
BICKFORD of Auburn
FLEMINGS of Bar Harbor
HARMON of Palermo
PILON of Saco
WATERHOUSE of Bridgton
WEAVER of York

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

Signed:

Representative:
BRYANT of Windham

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-795)**.

Reports **READ**.

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

READ ONCE.

Committee Amendment "A" (H-795) **READ** and **ADOPTED**, in concurrence.

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

Senate

Divided Report

The Majority of the Committee on **ENERGY, UTILITIES AND TECHNOLOGY** on Bill "An Act To Expand the Availability of Natural Gas to Maine Residents"

S.P. 543 L.D. 1644

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-461)**.

Signed:

Senators:

THIBODEAU of Waldo
RECTOR of Knox
BARTLETT of Cumberland

Representatives:

FITTS of Pittsfield
BEAVERS of South Berwick
CORNELL du HOUX of Brunswick
CRAY of Palmyra
DION of Portland
DUNPHY of Embden
HAMPER of Oxford
LIBBY of Waterboro
LUCHINI of Ellsworth

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-462)**.

Signed:

Representative:
HINCK of Portland

Reports **READ**.

Senator **THIBODEAU** of Waldo moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-461)** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-461)**.

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

Off Record Remarks

ENACTORS

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

Emergency Measure

An Act To Prevent the Theft and Illegal Sale of Copper and Other Metals

H.P. 1260 L.D. 1708
(C "A" H-791)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with 2 Senators having voted in the negative, and 33 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.

Ordered sent down forthwith.

Emergency Resolve

Resolve, To Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services

H.P. 739 L.D. 1003
(C "A" H-788)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Emergency Resolve

Resolve, Regarding Legislative Review of Portions of Chapter 316: Long-Term Contracting and Resource Adequacy, a Major Substantive Rule of the Public Utilities Commission
H.P. 1314 L.D. 1789
(C "A" H-790)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Emergency Resolve

Resolve, Regarding Legislative Review of Portions of Chapter 421: Safety and Operation Standards for Liquefied Petroleum Gas (LPG) Distribution Systems, a Major Substantive Rule of the Public Utilities Commission
H.P. 1317 L.D. 1792
(C "A" H-787)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President Pro Tem, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Acts

An Act Regarding Insurance Adjusters and Reporting Requirements for Insurance Companies

H.P. 1305 L.D. 1773
(C "A" H-735)

An Act To Implement the Recommendations of the Joint Standing Committee on Agriculture, Conservation and Forestry under the State Government Evaluation Act

H.P. 1395 L.D. 1892

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

Ordered sent down forthwith.

An Act To Amend the Tax Laws

H.P. 1290 L.D. 1749
(C "A" H-792)

On motion by Senator **COLLINS** of York, placed on the **SPECIAL HIGHWAY TABLE**, pending **ENACTMENT**, in concurrence.

ORDERS OF THE DAY

Unfinished Business

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

The Chair laid before the Senate the following Tabled and Later (2/28/12) Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Amend the Labor Laws Relating to Certain Agricultural Employees"

H.P. 898 L.D. 1207

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

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-691)** (6 members)

Tabled - February 28, 2012, by Senator **RECTOR** of Knox

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, February 23, 2012, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-691)**.)

(In Senate, February 28, 2012, Reports **READ**.)

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

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

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the Minority Report and would hope that people would vote against this motion. This bill is the DeCoster bill that came before the committee last session and was sent back to the committee to look at it again this year. The original bill was really egregious in the fact that it took away overtime, took away minimum wage, and it took any right to collectively bargain for these DeCoster workers. We had the hearing and we had some people that actually worked at the farm. One of the gentlemen that was testifying, right during his testimony, found out that he was going to lose his overtime. He switched his whole testimony over because he didn't know that and felt that he'd been let astray and, obviously, didn't want to lose the overtime that he was receiving. The whole last session that we heard was that there was a company that wanted to buy this farm, or this factory, and they were not going to buy it if we don't do this, we don't take this away, we don't take away workers' rights to collectively bargain, or if we don't take away their overtime. There were a lot of things said and a lot of people, I think, that were misled. Because of it, the bill was sent back to the committee. Since then, this company has come and has entered into a 10 year lease agreement to take over this factory/farm egg producer. All the arguments we heard last session about how the company wouldn't come here if they didn't have these things removed were false. They did come. They are in a 10 year lease agreement and, as far as I can understand, they are running the place and are doing fine. It is still concerning to me and other people that, with the track record that has gone on at this place and that we only have a lease agreement, there is no one anywhere that can tell me that a lease agreement can't be changed or someone couldn't step back in a heartbeat, because it's only a lease. The actual ownership hasn't gone yet. Why we would want to do something like that, to take away these peoples right to collectively bargain, even though they've never used it, for the idea that a company won't come here unless we do that, is hard for me to understand. It has to be just some philosophical differences in people's minds that collective bargaining is just a poor thing to do because we know that this company is here and they are leasing it, they are operating the farm. Why can't they show their track record? These people have never formed a union, never collectively bargained. There is no danger that they are going to. Why do we have to take away that right from these people? I can't even understand how we need to go there. They are operating the place. They seem to be doing well. If we wanted to talk sometime down the road about doing this, if they had a track record that made people feel comfortable, which I have no doubt they probably will, or if they actually do buy the place, take it over and it's their ownership, then maybe this would be something that would be possible. At least there would be a reason. At this point I can't understand what the reason is why we need to do this to these people. I think they are shell shocked over the last 20, or 25, or 30 years of the type of ownership that went there. It amazes me that this is what we have to do in this building. We have to take away collective bargaining rights for workers that are low waged, their safety is always on the fringe, and they've never even used this ability. I imagine you can argue that they never had it. If they never had it then I don't understand the idea that we have to take it away. There is no benefit, in my mind, because you can argue that it's a deterrent for a business coming. You can't because they are here. They are already taking it despite that. I don't understand, after all the time I've

been here, I've never understood how things like this turn. On Monday this was going to be Indefinitely Postponed. I was going to get up and say a few words about how, after this company had a track record, maybe we would do this somewhere down the road. Now we're here talking about passing it, which is just disingenuous to me. I can't make this right either in my mind. I'll listen to more debate and have more to say, but I certainly can't support this and I certainly hope the rest of you will vote against this motion.

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

Senator **PATRICK:** Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, taking the rights away from workers does nothing to improve our economy. Repealing these workers collective bargaining rights will not create a single job or do a single thing to improve Maine's economy or working conditions. Across the country and in Maine, factory farming like that at DeCoster is low wage and dangerous work. We all want to help Maine workers increase their economic prosperity and improve their lives. What is the path for workers at DeCoster or in low wage sectors? Organizing the joining together to stand up for their basic rights is one of the most successful tools to achieve greater economic prosperity and security. A new company has leased the property from Jack DeCoster and they have a long road ahead to clear the farm's name and establish a good working relationship with their staff and the community. I think that, in itself, having a 10 year lease, is worth killing this bill. Let's not hope that they treat workers fairly, let's make sure they do. Leaving this in place will insure that. Maine lawmakers should be standing up for workers and focusing on creating jobs, not gutting workers rights. Driving up here this morning, Mr. President, I drove by this building over here by the Governor's mansion and looked across and saw this big billboard. That is what this bill is all about. This is one of those bills that is the reason working people vote Republican. Absolutely. This bill is why the Republican Party can say working people vote Republican.

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

Senator **MASON:** Thank you Mr. President. I believe we are supposed to stay confined to the premise of the bill, not political parties.

THE PRESIDENT PRO TEM: The Chair will advise the Senate that proper decorum in debate requires that no person indulge in personalities, impugn motives of members, or those two things. I would simply advise that of the members of the Senate.

Senator **PATRICK:** Thank you Mr. President. I would have to say that it sounded like you ruled in my favor because I did neither of the two. In my opinion, my humble opinion, I have seen that building and I have seen this bill. This wasn't put in by a Democrat. This was put in by a Republican. This bill, just like other bills like it, is the reason why one party votes for working men and women and one party doesn't. This bill is exactly like getting rid of.

THE PRESIDENT PRO TEM: The Chair would interrupt the Senator from Oxford. I believe the Senator from Oxford is moving into the area of personalities and impugning motives of either a sponsor or a party and I would ask that you, please, limit your comments to the subject matter of the bill without doing either of those, bringing up personalities or impugning motives of other members.

Senator **PATRICK:** Thank you Mr. President. I apologize, Mr. President. Speaking of the sponsor did cross the line and I apologize for that. This bill, taking the way the rights to bargain, is not a Democratic issue. Similar bills as this, that do the same thing, are what this last 125th Legislature has been about. I am appalled. From the start of 2011 right through to today, we're seeing the same thing. Gutting peoples rights to form a union. Rolling back child labor laws. Voting against minimum wage. Choosing Canadian loggers over Maine loggers.

THE PRESIDENT PRO TEM: The Chair once again interrupts the Senator from Oxford. I believe you have moved away from the subject matter of this bill and I would ask you to limit your remarks to the subject matter of this bill.

Senator **PATRICK:** Thank you Mr. President. I apologize, Mr. President. I think the bill and the philosophy behind the bill and what is going on, as far as I'm concerned, actually is what I'm speaking about. Mr. President, am I able to talk about the differences between this? I'll sit down and gather my thoughts and then I'll let it rip again in a few minutes. Thank you, Mr. President.

Senate at Ease.

Senate called to order by President Pro Tem
DAVID R. HASTINGS III of Oxford County.

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

Senator **PATRICK:** Thank you Mr. President. I apologize once again. The sound of that hammer is music to my ears. Mr. President, I am in opposition to this because this takes away peoples bargaining rights, those bargaining rights that I believe in and are rights that, I think, all workers in the state of Maine should have the opportunity to have. Those are rights that people should have to better their working conditions. I have a friend at work, a co-worker, Rick LeBreck, who lived through the Jack DeCoster years and went through the only time that DeCoster tried to form a union. The three organizers were seen talking to a bunch of workers. They brought all the workers in. They asked the workers what was going on and what did the people say to them. My friend was sharp enough to say, "Well, I don't know. I don't want any part of it." He saved his job and they fired a bunch of people and fired the organizers. I think that was wrong, fundamentally, just as taking this away the workers at DeCoster is fundamentally wrong. The chance for them to get a raise only comes when the Legislature gives a raise through minimum wage because most of those wages, the vast majority of those wages,

are low paying. I have to drive through Turner in order to get to Lewiston, and a lot of times to get here to Augusta. In the summertime you wonder sometimes if you are going to be able to make it just with the stench. Years ago there were so many flies you could not drive with your car windows down for fear of millions of blowflies and every other kind of bug that was available because of the chicken manure. Those people have to work in those conditions. I actually met an awful lot of them at the little store in Turner, on the corner of 108. They used to cash their checks there. Now they have to drive up to Rumford. I guess they may be charging too much at the other little store. That's a great little store and I love doing business with them as well. It seems that we do things to the lowest of the low that this bill is going to help do more to. I can't imagine not wanting to help someone who has probably got the worse job in the state of Maine just so we can get cheaper eggs. The bottom line on this bill, I think, really boils down to two things. It boils down to putting people first or having more profit. Nothing is going to go on if we kill this bill. They are not going to hire any more people. There is not going to be any more prosperity to the workers. This is a travesty, as far as I'm concerned, against working men and women. It's too bad. A lot of the workers there, I believe, are legal immigrants. I just feel terrible that we're willing to kick them when they are down 10 years in advance. I think that is what this does. Grinds them into the ground. Here these people are working in the lousiest jobs in the state of Maine with a faint, a very faint, possibility that if they so choose they could actually try to better themselves, but they will never do it because the rules and regulations are so hard in order to form a union that they will never have that opportunity and having that law on the books is only worth about as much as the ink that it cost to print it. It is there and I'm hoping that Land O'Lakes will turn out to be a great company. I know one thing. I've taken a vow that I'll never buy their products until this issue gets settled. I'm hoping my family won't and all my neighbors and friends all across the state of Maine won't. If this is what the company is looking for, it's a sad day in the state of Maine. Thank you, Mr. President.

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

Senator **JOHNSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the Minority Report as well. Fifteen years ago, because a factory employer, DeCoster Egg Farms, was found guilty of violating a number of federal and state labor, immigration, safety, and environmental laws, the State Legislature passed a law allowing factory farm workers to unionize. The work can be hazardous and difficult enough without an employer violating worker safety laws. I've worked in hazardous conditions in the mill with old equipment, poor safety training, and I came close to losing a leg once. I still have it only because I had something to grab on to, causing the pant leg to rip free instead of pulling my leg into the gears. I've also worked with a railroad north of Brownville Junction, including one hot, stifling day with still air and a brutal sun, when workers were fainting until, against orders from the foreman, we stopped work and sought shade. As student Summer worker, I wasn't a union member, but I would have lost that job over putting health first if not for the union. L.D. 1207, even with the amendment, would repeal farm factory workers rights to organize. It is our job in the Legislature not only to encourage business, but also to look out for the working men and women, to protect Maine people's

reasonable expectations of working conditions which are as healthy, safe, and fair as possible. Although DeCoster workers have not organized, make no mistake, given the size of the operation and its nature, this is a factory. It is incumbent upon us to preserve their right to organize whenever necessary to secure those reasonable workplace expectations. If this bill is passed it will encourage the kinds of labor, immigration, and safety violations the law was changed to prevent 15 years ago. The ownership has not changed. New operations under a rental agreement may work out well and they deserve the support of workers for their workplace practices and reasonable compensation. However, this is no guarantee and it is a factory. I urge my fellow ladies and gentlemen of the Senate to think back to their own experiences, if they have any, with hazardous working conditions or imagine their own family members working in conditions where personal safety is constantly at risk and to stand with me in support of working men and women, of putting the rights of people first, and voting against this bill. Thank you.

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

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, last year, when this bill first came up, I was against it. I actually took the time this year to go visit because I felt like I needed to know what, in fact, was going on. Most of you know my background, but just to remind you, I was, at one time, the Safety Environmental Manager of one of the largest paper mills in the state of Maine. I dealt with safety and environmental issues literally from the day I got up in the morning to the day I got up in the morning because it was a 24 hour a day job. It never went away. I also went to this facility as an auditor, something that I've done both in the safety perspective and as an environmental perspective. I also went in as an HR person. Although I didn't directly work in HR as a title, I have many responsibilities that are HR, related to the safety of my fellow workers and meeting the environmental requirements. When I went there I went looking and expecting to see just exactly what the good Senator from Oxford, Senator Patrick, described; smells, flies, poor lighting, horrible working conditions, and safety issues that were unfathomable. What did I find? This is what surprised me. One thing that I will tell you, I learned that chickens lay eggs in the morning from about 8 o'clock in the morning until 10 o'clock. I will tell you they don't know what a holiday is, because they do it anyways. I would also caution you, before you buy free range eggs and think they are really good, you might to look at what those birds eat. That's another story. What I did see was a well lighted facility. I found a facility that was extremely serious about safety. Things were posted on the bulletin board, stating that was what their business was about. In fact, on one of their bulletin boards, some of you have seen my files, they have a sign with an 800 number you can call for compliance issues, something that I've also worked with. They had a way that you could go and talk to the management. From what I understand, that did not happen before. I'll tell you kind of an interesting story. The young janitor that was there, cleaning the main office, told me that he had never been asked if he wanted a cup of coffee before. That had changed. Something had changed. I saw a benefit package. I saw a package that was given to all employees about benefits. I saw the safety sign-off that they needed to do and the safety training they were required to do. I saw many, many good things that have taken place which changed my mind. I also

learned that the gentleman we've talked about, Jack DeCoster, is gone. The only reason the 10 year agreement is there is because of tax purposes. I understand what he was. In fact, I'm very glad he's gone and no longer in the state. I think it's time to change. I think, ultimately, when we have the amendment in front of us, we'll be able to look back and see if these people have performed as they say they would. At this time, I don't think they can change the way of their operation because they are not just Maine-wide, they are worldwide. Thank you very much, Mr. President.

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

Senator **GERZOFSKY:** Thank you Mr. President. Ladies and gentlemen of the Senate, I've heard the expression since I've been up here a lot that perception becomes reality. People at home hear what we do, they get a perception of what we do, and in their minds it becomes a reality. The reality is that a company has been sold, a company with a long and very sordid history of labor relations issues, health issues, and safety issues. Now it is going under new management. That company can come back. I don't think anything is going to prevent DeCoster from being in Maine. I don't think anything can protect the workers besides the Legislature. We have had to get involved, the federal government has had to get involved, in some of these issues. Perception of what this Legislature is about is going to play out later in this year. The reality of what we're going to do is really going to play out much sooner. We all need to remember the only industries that organized in the state of Maine are the industries that needed to, the industries that were not being responsive to their workers. People don't organize for the sheer sake of organizing. They organize and they fight for their representation because they feel they have to, not necessarily for the whim of wanting to. I would hope that this Body would represent the workers, the workers that work in these factories and need help and need protection and needs to know that their Legislature, as I've been told today, has their back because that is what we were elected to do. I'm not going to stand here today and get loud, as much as I feel like I'd like to. I'm not armed with the ammunition I need. I am here to stand and say that perception is going to be the reality and we should do what's real and support these workers and we should oppose this. Thank you very much, Mr. President.

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

Senator **BARTLETT:** Thank you Mr. President. In response to the good Senator from Franklin, something has changed because of this law. This law was put in place and it did change the working conditions at DeCoster. It took time, but things have improved and the workers have this law to thank, knowing that if they did not improve they could form a union and fight back. It's often argued that we should repeal the rights of these particular workers because union rights don't apply to other agricultural employees. I think that argument is faulty at a number of levels. First, this facility that we are talking about is not some Mom and Pop farm with a handful of employees. We're talking about a factory-scale operation with hundreds of workers. I think that they ought to continue to have their rights protected. The fact that there have been improvements under this law further support that point. By giving workers the same rights as anyone else to organize and to fight back when conditions get out of hand and

become so poor, we have given them a tool to hold an employer accountable. Secondly, we have to understand the history of the agricultural exemption. The National Labor Relations Act was passed back in 1935 and is the primary federal law that establishes the workers right to organize. In 1935, rationally discriminatory laws prevailed throughout much of our country. In drafting the National Labor Relations Act, Congress had to compromise in order to get the votes. To do that, they exempted two categories of predominantly non-white workers; agricultural employees and domestic workers. When the National Labor Relations Act was passed, to get it passed by Southern states, they had to incorporate some of these discriminatory exemptions. I don't think that's a history we should be proud of and I don't think that's a history we should rely on. The National Labor Relations Act already allows states to grant collective bargaining to agricultural workers. We've done it in this one case. Ten states have done it in all cases. There is an argument that we should get rid of that discriminatory exemption. That's not before us. What we're talking about is having a law apply to a factory-scale farm that has a history of abuses, has a history of violating labor laws, and has a history of treating their employees terribly. The workers of this farm factory currently have a right to organize if they so choose. We now have a new employer who has come into this facility for the moment, which is great. The question, as we approach this law, is: how does the State of Maine or its workers benefit by passing this law? The company has already come in and signed a long-term lease. Operations are currently up and running. Who is benefiting from this change in the law? It is clear the Maine people aren't. It seems to me we are putting corporate interests ahead of Maine people. This isn't a case where we are making a change in the law as part of some deal, as part of some enticement to a business. It's exactly the opposite. A business has come in and signed a long-term lease. We've just learned that it is structured as a lease just for tax reasons, so this sale is permanent. The company has come in. They made the decision to enter into this agreement based on current Maine law. They said, "We understand that your workers are going to have the right to organize, but we're going to enter into a 10 year deal anyways." They did it under current law because it made sense for them to do it. Now we're turning around and giving away this corporate giveaway. There is no reason to do it. There is no reason to do it. Maine workers aren't going to benefit from it. We already have the employer in the state, operating and committed to be here for at least 10 years. Why in the world are we doing this? If it's this corporation that's come in and is asking us to do it, are we asking the tough questions? What's going to change? What rights are you going to take away from workers if they can't organize? Why does it matter? There is no union there. As long as they continue to treat their workers right, the workers will have no incentive to try to form a union or to engage in other collective bargaining efforts. I just don't get it. I don't get why we're making this change in the law after a deal has happened, a deal that seems to be dealing with a good corporation that's treating its people right. Why are we stripping these rights away now? If anyone has a real answer for that I'd appreciate it. I don't think you simply say we repeal a law because we have a good employer. We don't go around and have inspections of every employer in the state and say, "If you pass the inspection we're going to take away the right of workers to unionize." We don't do it in any other area. Why would we allow that here? If over time there is some compelling reason to make a change, bring the compelling reason back to the

Legislature and weigh it. To go after Maine workers just for the sake of doing it, I don't get it. I don't get how Maine people will benefit. If Maine people aren't going to benefit, if Maine people aren't going to see a positive result, why in the world would we make this change? I think it's bad for Maine because it sets a very bad precedent. Thank you, Mr. President.

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

Senator **MASON:** Thank you Mr. President. Men and women of the Senate, we're all sent to represent our districts and I'm here to represent mine today. This bill affects a company in my district that many, many people, residents of District 17, work for. The law before you is based on a really bizarre premise. It's not based on net income. It's not based on the number of employees. It's not even based on a geographical area. It's based on chickens. It's based on the amount of chickens one company owns. Not anything other than that. The law was squarely written for one man, and we've heard that name bantered about all day long. That man isn't there any more. It wasn't written for the company that operates in Turner. It was written for one man and he is no longer there. This law also creates a bar for a firm in my district that no other company in the state to contend with. I have to say, Mr. President, that if one of my colleagues had a business in their district that had to deal with a bar that was higher than everyone else than they would be up in arms about it as well. This law is not an industry standard across the country. It's quite outside of the mainstream. It is absolutely an outlier. A broader federal labor law limits the organization of workers in agriculture, not because of race, but because of economics. The reason for this is because it will create uncertainty in overhead in the farming industry. Farms then pass those costs onto consumers. With food prices rising higher and higher every day, we need to do our part in making sure that food prices become stable. A law like this creates uncertainty. It creates a cloud over an industry. When food prices are high, people scale back. When revenues are down, people get laid off. The question was asked: who benefits? Everyone. Businesses, workers, and consumers. We have a new business partner in the state. MoArk, Land O'Lakes, or whatever you want to call them, has a very good reputation in the farming industry. Within a few months, a lot of us talked about how we hoped that they were good business partners. In just the past couple of months, MoArk has donated over 19,000 dozen eggs to the Good Shepherd Food Bank in Auburn. I think that is the sign of a good business partner. In Androscoggin County we are proud that we have this new business partner. This bill will provide certainty for the farming community in Maine. A business wants security, knowing its operations are stable. We hear a lot about that too. Businesses want stable laws in the state and that they are changing all the time is what bothers them most. Well, this bill creates security and stability. When they have that security, they can pass that on to their employees in the form of higher wages and better benefits and a better working environment. We're also glad that we have a new reputable business partner and a partner who plays by the rules and treats their employees with respect. I've also visited the farm. I can tell you, as someone who went to school in Turner for 13 years, it is vastly improved from what I used to see as a kid. Mr. President, I hope that my colleagues will join me in supporting the Minority Report and creating a more stable business environment for Maine farmers. Thank you.

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

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I rise today with a few simple words and, at the same time, a bit of confusion. It seems to me that it is not bizarre to stand up for workers rights. It seems to me that standing up for people to go and organize and assemble, something that is extremely important to all of us and something that is protected in our Constitution, is something that we should all be standing up for. I, along with, I assume, many of us do not come to this Legislature to roll back worker protections. We've heard arguments that the company has improved significantly and that conditions are not what they were. That is all great news. If it ain't broke, why are trying to fix it? What are we trying to fix? The company is investing here. They have a long-term lease. The Senator from Cumberland pointed out why that long-term lease is probably in place. They are, for all intensive purposes, the owners. They are here to stay. There is not a problem. We are taking rights of people. Are we in that business? I surely am not. I just ask: what are we trying to accomplish here? I am perplexed by the action of this Body at times and the way we throw around the term "uncertainty in business". We're going to hear about it in many bills in the future, over the next few weeks. We've heard about it in the past. There is no uncertainty. The business invested here. They put roots down. They are here to stay. They are improving working conditions. There is no problem. Why are we trying to roll back workers rights? Thank you, Mr. President.

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, it's been said in debates that Maine is outside of the norm. We are one of the few places in the whole country that provides bargaining rights for agricultural workers. Well, that is a myth. There are 9 states that do it, including the state of California, which is the seventh largest economy in the world, which has a statewide agricultural collective bargaining statute for all agricultural workers. Maine is not out of the norm. The idea of business uncertainty. If this business was so uncertain about the deal they were getting into they would have uncovered it before they did the deal. Every business, when you acquire a business or when you start a business, you have a business plan. You work through that business plan. You check off the boxes of what is known and what is unknown. This company knew what it was getting into when it came to the state of Maine. I'm glad they are here. It wasn't because of what this current law, on the books, for them to say, "No, we can't come here." Otherwise they would have come to us and said, "We need something to change." No, this isn't about the business or the business deal. It's about ideology. My ideology believes that workers have the right to organize and collectively bargain. Employees deserve that fundamental First Amendment right to freedom of association so that they can organize on their own to better themselves. That First Amendment right to the freedom of association and assembly should extend to the workplace. My previous statement, I would love to ask anyone how that is bad for business? I don't believe it is. The implication, with this bill, is that we need to remove these workers rights in order to improve

our business climate. I believe that is a falsehood and I couldn't disagree more. Our economy, like our democracy, needs checks and balances. I believe it is a healthy process for workers to be able to come together in an organization and negotiate if they choose. That is not bad for business. Businesses might not always like the ability for workers to organize, but in many cases, including this one, just this being out there has increased productivity, improves morale, and creates a system of mutual respect. What is wrong with that? I don't think anything is wrong with that. I think this is a theme that I've heard from many of my colleagues. I wasn't sent up here to take away people's right to organize and I hope that my colleagues here today will oppose the current motion. Thank you.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just wanted to say a couple of things. It's been said about how this is important to a certain district. We always have that issue. I can't say that I've been to Turner or anything like that, but I think I do understand some of these issues. I've seen this in other regards. I've dealt with it. It's been talked about, how it is a special exemption. It is, there is no doubt about it. I think there's a thought here, there is something driving this, that says this is the nose under the tent. We're going to do this and then we're going to do it on other farms and all that type of argument. This law's been in effect since 1997. There has been no attempt to change it for any other farms or anything like that. It was specifically for this factory farm because of the awful, awful things that were going on there. There has been no attempt to open it up statewide for every other farm like in states like California. I don't believe there is anyone that is sitting back thinking, "Boy, if we can hang onto this we can get the rest of the farms next." This has been in effect since 1997 and no one has tried. Quite honestly, when people treat their workers right, there is no use of this type of law. I have seen it, and this Body's seen it, in other occupations. We did it a number of years ago when it was drafted just for one company, just one company. It was on the books for 4, 5, or 6 years. People ask me, "Well, did it do anything?" I don't know. It was never used, just like this law was never used. There was no attempt to form a union or association. What it did do was it stopped a downwards slide. It kept things at least level and didn't let workers be used poorly any more. It actually, I would say, brought about a change with the way that the business was run, so much so that I'm actually working with that same company to date on other issues. I don't see that as being a problem. You have something, even though it's not used, that just says treat the people right and they're not going to go through with this process, but it's there. It's just, like they always say, another tool in the toolbox. This issue was so egregious back then.

I actually talked to one of the people that was inspecting all through that time. He told me a story about a guy that was like the foreman or the factory boss, whatever you might call him, named Homaro. Homaro was the guy that kept things going. Homaro walked around with a holster and a pistol all the time because the chickens at that factory were killers. He had to have, apparently, some type of way to keep the chickens down. I fail to understand what other reason there could be to have a pistol all day long while you were at a factory egg farm, but that's what Homaro did. Years later, before DeCoster got out of this, Homaro

was shown the door by Mr. DeCoster. For all his good work, in the end he still got the same thing as the people that he was keeping in line. That just shows, to me, what a poor, sad setup there was there.

Land O'Lakes, that I'm sure operates in California and some of these other states that has this same exemptions, came to Maine despite us having that exemption. Let's just say give us a track record. Show us that you are treating people right for more than a couple of months or whatever. I've heard that things are great there and you go there and they treat people really nice. I've seen that in the logging field. I've been on DOL inspections with people. You go to those places and people have been moved to a new jobsite. My point being that sometimes things aren't what they really seem to be. People get changed around. That day everything looks really great and then the next day things go back to the way that they really are. I'm not saying that is the case here, but I'm just saying I know that this happens at times. I think that a couple of year's track record, for a law that has never been used, is not asking too much. Things are going to continue on like they are, but the idea that taking away people's rights, workers rights, is raising the bar, I'm okay with that. I'll do that in my district any day of the week. There is nothing that says that a business owner can't get together with other business owners and create associations to advocate for their positions. I think that if workers have it so bad that they have to set up some type of association also to advocate for their positions, I think that's okay. I don't understand why that's not fair to people. Really, you don't see anyone out in those halls lobbying for these people anywhere. In any of your districts you don't see that. Who is supposed to stand up for these people ever? Just give it some time, and if this is such a great company, you can revisit this. To say that you should just pull these people's rights because you don't like that, you don't like that workers have rights. People before politics, that's what I say all the time. It's become part of my theme now. People before politics. This does not seem like what we're doing here. I'm sorry, it amazes me. It floors me. If there were other businesses in this state that were really in danger, maybe I could see something different. To take away from the people. If anywhere in the world, this place should have had some ability to get together and fight for things that were happening to you, I think these people deserve it.

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

Senator **DILL:** Thank you Mr. President. Men and women of the Senate, I would just like to briefly address the comments that were made by the good Senator from Androscoggin, Senator Mason. I would submit that the law in question was not created for one man. It was created for the workers at DeCoster Egg Farm. The law was not created for the chickens. It was created to protect the people. In the context of our economy, we are currently at a point where we have the greatest income disparity since the Roaring 20's. I would submit to you that the weakening of the labor community is in large part responsible for that. If we care about our economy, if we care about jobs, if we care about people, then we will oppose this motion. Thank you very much.

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

Senator **PATRICK**: Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, I rise today to speak for a second time and to thank the good Senator from Franklin, Senator Saviello, for doing his homework and going to visit the plant from three or four different aspects. I think I'm extremely pleased, and I want to go on the record, now that I haven't visited but someone has and has brought back such raving reviews of the company, I am pleased that we have Land O'Lakes as the entity that took over from DeCoster. I won't bring back the past. I'll just look to the future. I am extremely pleased to hear that things are better at that plant. Things are better despite the fact that this company came into Maine with the possibility of having a labor contract and they signed a 10 year agreement. They made all these positive changes, I would have to theorize, because maybe they took a look and just realized just how bad the conditions were under the previous owner. Any company that is worth its salt would want to try to do the best they can to be profitable. I know under this economy that's going on in this day and age that we have high prices in Maine. Energy is probably the biggest cost, but for chickens it's chicken feed. One of the things that irks me about the chicken feed is directly proportional to the cost of ethanol in our gas. I'm actually against that as well because it gets me 4 miles per gallon less on my vehicle, which in turns puts more pollution on and drives the cost up of food and every aspect of our society, including chicken feed. If we want to try to take a look at doing something for chicken feed, we could probably see if we could get rid of ethanol at 10% and bring it down to 5% and get rid of it. I'm extremely pleased and proud that this company has done something, knowing that there is a possibility of having a labor union any time in the 10 years. They know there is not going to be one because they are doing the right thing. They've already treated people way better than what we need, so there is no need, absolutely, to get rid of the ability to form a union. With that, I'm glad to get back on the record and I hope I can, in the near future, visit the plant after this bill is defeated and I can develop a great relationship with the new owners. Thank you, Mr. President.

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

Senator **HOBBINS**: Thank you Mr. President. Men and women of the Senate, this bill has seen a lot of debate and I thank everyone for expressing their positions, both for or against the bill. For me, it gave me an opportunity to sit here and reflect a little bit about what my father told me the day I got sworn into the Legislature back on January 3, 1973. What he said to me is, because he never wanted me to be too big for my britches, "Don't forget where you came from." What he meant by that is something that is easy to forget when things are going well in someone's life, when you have breaks in life and things have been given to you, both by God and by others and the like. I do have to reflect back about what my father said and what my grandfather told my father and my great-grandfather told my grandfather. That is to think about where you came from. Where I came from is mill towns of Biddeford and Saco. Born, brought up, and raised in those mill towns. I'm proud when I think back at the development of my family. My great-grandfather came from Canada and he went to work at a Biddeford textile mill, one of the mills in Biddeford, the Laconia Mill, at the age of 9 years old. He worked there for 63 years. He holds the record for the most years ever worked by any worker. It's easy for me wearing, I won't say

Marden's suits, my very designer suits to forget about those days. I can tell you that I do remember my grandfather, who worked in those mills, who had respiratory problems. He had asthma. He quit working. There was no disability income in those days. You essentially did what you had to do and worked as much as you could work. He was unable to work. The reason he was unable to work was partly because of safety and work conditions of those mills.

We've made great strides over the years from those days in the 30's when individuals worked in unsafe and incredible conditions where you could barely see the sun through the windows because of all of the fibers from the textile machines, from the cutting on the floors, and the horrible conditions that existed in those days. We were fortunate. We went through the process in my area, like most mill areas of Biddeford, Saco, Lewiston, Auburn, and you name them. We went through the process of where there was organizing of individuals into collective bargaining units that negotiated for better wages, better safety conditions, better health conditions, and better benefits. It seems ironic that we're here today, after we've made great strides in this state and in this country in these areas, going to take something, potentially, away from a group of individuals. As my colleague and Assistant Leader from Cumberland, Senator Alford, said, there are 8 or 9 other states that do have agricultural safety and collective bargaining laws in the country. That has always been an area that we've kept as sacred. Well, in Maine that stayed pretty much that way for many, many years. If you have ever seen a plant, an industrial plant that is in a farm setting, there is no difference from that textile mill in Saco or Biddeford that I remember, not very fondly, in my area and growing up there. I cannot believe that we are sitting here, and standing here, trying to take away some potential deterrents to make sure that companies stay good corporate citizens.

I'm happy and pleased that Land O'Lakes has taken over. I've done a little research, a little homework, thank God for the internet, of Land O'Lakes and the corporate entity. They are good corporate citizens. I think that they made some decisions here in Maine based upon a business plan for themselves, with respect to that plant and in respect to their overall footprint of their company. It is not a question of whether or not they would come here or not. They knew what the rules were. They knew what the laws are. I still remember vividly, if you want to go and check, you will find a Maine's Time article that was written in the Spring of 1977 about the deplorable conditions at the egg farm known as the DeCoster Egg Farm. It took 20 years in the Legislature of controversy, OSHA violations, fines, lawsuits, sanctions by the court, and criminal aspects being alleged because of the working conditions for a bill to be passed in 1997. For the life of me, I cannot fathom that we would, 17 years later, attempt to take away, at least, the law itself, which I think has been a good law in that I think it's improved working conditions at that location and has also acted as a deterrent to anyone else who thought they could come to Maine to do business in the way it was done before the law took effect in 1997. For my own sake and for the sake of my heritage, any time I cast a vote, I will not cast a vote to go backwards; I like to continue to go forward. Thank you.

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

Senator **JOHNSON**: Thank you Mr. President. Ladies and gentlemen, I want to speak out just for a moment against the

suggestion, because it stuck in my ears, that this law has never been used. I would argue that it's been in use for many years now. It is the reason for the change that we've seen. Because it has been so effective is precisely why we should not undo this. The present operating company came to Maine knowing that this law was in place. Thankfully their business attitude is such that they choose to stand up and do the right thing to earn and deserve the respect of their workers and for them to not wish to exercise their rights under this law. That's a good thing. It's a good thing that came about because this law exists.

I remember when I was a youngster. Every now and again you get called aside by your grandmother talking about some sort of scandal or thing that the kids have been doing down the block or something, and saying, "I never want to hear that you did this." I think there are an awful lot of people who never did those bad things in their life because their grandmother called them out and said that. If the grandmother never had, where would we have gone? This is an example of a law that, simple by its existence, has had a profound effect on the quality of work and the lives of the people working in that factory industry and the rights of workers to organize is not something that we should be taking away. Thank you.

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

Senator **PLOWMAN:** Thank you Mr. President. I, too, remember the 70's when Belfast was the chicken and egg capital of Maine. This bill didn't affect Belfast. Land O'Lakes has a worldwide and national reputation that they will not yield because of conditions in Maine. First I want to talk about why this bill was never used. It had nothing to do with the company doing the right thing. It didn't improve conditions one bit. It didn't keep things from going downhill. When it was written, as so many bills have been written, it was written with the idea of controlling one person, one business, or one industry. Instead of doing something for the good of all, it was aimed at a certain individual. When they did that, they said, "If you have 300,000 hens." There was only one farm that had 300,000 hens, I guess Belfast, even though it was just as bad, wasn't run by DeCoster and we were really after Jack DeCoster at that time. When you write legislation like that and you don't think outside the box because you are so intent on that kind of thing and you lose sight of what you wanted to do, which was help the workers, you write it so that somebody looks at it and just divides up their farms and then they don't reach the 300,000 hens. This actually never did apply to Jack DeCoster anyways. It never had applied to any of those workers because they could not access this right that you are so anxious to defend. They never had access to it in the first place. It did nothing. It did worse than nothing. It insulated the owner by letting him do as he was going to do. You enabled it with the legislation by putting 300,000 laying hens and also never thinking about any other person who may live under the same conditions.

Now, since the sale, Land O'Lakes has actually combined all of those. They did not set up their corporation the way Jack DeCoster set up his corporation. They weren't afraid of setting it up that way. They have worked with their workers. Do you know why? Because they have a reputation of taking care of their workers. They are proud of it. They don't need a stick over their head. They are going to do the right thing and they are going to do the right thing for their people and the people are going to go along with it because they are getting what they want without

having to pay union dues. What a novel thought. For all the protection that you thought that you gave, you gave none. If they haven't taken advantage of it since they have had the ability to unionize, it's because they see that they are going to get the same or better and they are going to have protections that they will always have because it's not the 70's any more and we have OSHA inspectors and inspections, we have whistleblower acts, and we have all kinds of protections for employees now that talk and come out and work to protect one another. We have a responsible employer. If I know this employer like I know other employers, the Workers' Comp rates alone have been the most effective thing that pushes down accidents and incidents and pushes up safety ratings. It may be a selfish act on the part of the employer, or it may be just good business, but it works. Under the new Administration in Washington, I should say that it's not new any more, we have hired thousands of new OSHA inspectors. We have tightened up OSHA regulations and we have increased fines to where they are not only punitive, they are excessive. We have done the right things, but we did the wrong thing for the wrong reason way back when. Looking forward, this company doesn't need a stick. It has a reputation. They are too well known to be known for having a place that is substandard and for not treating their employees well. Give them a chance to do it without the stick over their head. I tell you, I have talked to minimum wage employees who swear that their boss never gave them a raise, but only the State of Maine did. They don't want a raise because the State of Maine said it. They want somebody to tell them they got a raise because they deserved it. Well, Land O'Lakes doesn't want to be told that they only did this because of the hatchet over their head. They want to say, "We did it because we respect our workers and we want to do right by the people of the state of Maine." Thank you.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just wanted to say that I disagree with the previous speaker. I think that when bills such as this are crafted, what you see more often or not is that these companies have a lot of money. They hire a big team of legal attorneys and look for some way to get around this law. It isn't about the money at that point, it's about control. They'll waste \$1 million to save a nickel. I think that's exactly what happened here. The fact is, if you can't get to those people because they've seen Homaro with his crack shot for so long. You can't get those people to not be scared and get together. There is no reason to challenge this crack team of lawyers. You see it all the time. We are an "at will" state. Make the mistake of trying to unionize, or trying to get together with co-workers, and go up against a legal team that can make all these arguments and happen to lose; you are not going to be around very long. As far as OSHA fines and all that, we've seen here in this state just recently that fines mean nothing when you can get a company to go into one of the commissioner's office and just get these fines removed, waived, or whatever. It doesn't matter. I think the law was crafted in such a way because it was such an egregious situation. I don't think that it was that this legal team at Decoster came up and actually got around the law. I think that these people were scared and the fact was that they didn't dare to unionize, to push the issue. You see it all the time. I don't think at this point, I'd be amazed, that Land O'Lakes is actually behind this bill now because I think, if anything, it

makes them look bad. I don't think they really are pushing this. I think we're onto something different now. I think we're onto, as has been started before, ideology or something. Land O'Lakes, as has been said, has come in and running the business. They've seen it in other states. They know how it operates. I don't think that they really care about this. It's evident they are operating here. Now we seem to have either got into an ideology or some other people are worried about, like I said before, the nose under the tent. That just seems to be not true, something that isn't going to happen. We've never seen this being tried to be pushed on to any other farm or factory or anything like that. I don't believe if this fails today that there will be a big rush to go out and unionize all kinds of farms across the state. I know there isn't. Really, it just seems to be hatred towards people getting together and unionizing because I don't see Land O'Lakes wanting this type of thing brought down because I think they probably are a good company and they've seen it in other states. It isn't even confusing to me. It seems quite apparent to me what's happening.

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

Senator **BARTLETT:** Thank you Mr. President. I just want to thank the Senator from Penobscot for articulating the two reasons why we ought to defeat this law. By all accounts, we have a good corporate citizen that has come into the state of Maine and is doing business. They are such a good corporate citizen that they came in, signed an agreement, a long-term lease to purchase, with this law in effect. They weren't worried about it. They are good corporate citizens. Why in the world are we doing this? What kind of statement are we trying to make? That we hate workers. We don't workers to organize. There is no need to do it. They are a good corporate citizen. They came here with this law in place. They will stay here with this law in place. I'll bet it will never get used if they remain good corporate citizens. I also do want to correct the record. There was an effort to unionize back in 1997. That effort failed. I think we've heard from the Senator from Aroostook as to why those efforts so often fail. It is extraordinarily difficult to unionize. Having a law in place that allows you to unionize doesn't mean it's going to happen. We see it all the time. It is extraordinarily difficult and workers are only going to undertake that effort if working conditions are pretty deplorable because they are not going to want to put their jobs on the line, they are not going to want to go through the hassle and the fights and have to deal with hiring counsels and hiring attorneys, fighting through the National Labors Relations Board, and going through that whole mess. They are not going to want to do it. They are only going to do it if conditions are pretty terrible. There is simply no reason to do this. If we defeat this bill the message is that we continue to protect the integrity of Maine workers. If we pass this bill it's a pretty clear message to workers that we are leaving them behind. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from York, Senator Courtney to Accept the Minority Ought to Pass as Amended Report, in concurrence. 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: COLLINS, COURTNEY, FARNHAM, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - DAVID R. HASTINGS

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, RECTOR, SCHNEIDER, SULLIVAN, WOODBURY

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

READ ONCE.

Committee Amendment "B" (H-691) **READ** and **ADOPTED**, in concurrence.

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

On motion by Senator **LANGLEY** of Hancock, Senate Amendment "A" (S-460) **READ**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Hancock, Senator Langley.

Senator **LANGLEY:** Thank you Mr. President. Men and women of the Senate, this amendment requires the Department of Labor, by January 15, 2017, to review the status of labor relations in this state between agricultural employees and large agricultural employers, assess the impact of the changes to the laws contained in legislation, and develop any recommendations necessary to promote agreements between agricultural employers and agricultural employees to limit industrial strife, promote stability in the farm labor force, and improve the economic status of workers and businesses. The department is directed to submit its recommendations, together with any necessary implementation legislation, to the Joint Standing Committee of the Legislature having jurisdiction over labor matters and the Joint Standing Committees authorized to submit legislation to the First Regular Session of the 128th Legislature.

I'd like to sort of fill in as to why I came to this amendment. I, like others, had been troubled by the past history of this farm. I was asked one time, "Why do you care?" I do care. I'm an employer. I care to treat my employees well. Everybody's who read the newspaper throughout the past years can say that the previous company was a terrible corporate citizen, from a by-gone era, I would also submit. This amendment recognizes that. However, a new company is taking over and deserves the chance to be a good corporate citizen willingly, and that we would welcome a new philosophy, a new corporate climate, and not hold them responsible for the sins of a previous company. This amendment addresses the concerns of the members that I've

heard speak here today. It just flips it a little bit. Instead of saying to wait until they prove that they've been a good corporate citizen, it has a more positive spin of a deeply held conviction that you are innocent until proven guilty and that you have the chance to be a good corporate citizen of your own doing. Men and women of the Senate and Mr. President, we live in a new hyper-connected world where everything that we do ends up on the internet in a matter of minutes. I would submit to you that Land O'Lakes would suffer more greatly from a negative social media campaign than any narrowly crafted legislation that you might spend time and effort to avoid legally. Men and women of the Senate, I would ask that you would support this amendment and I submit that we are in a new era, with new rules for governing our behavior. Let's give this company a chance to do it with a clean slate. Thank you.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just wanted to thank the good Senator for trying to do his best to make what we did last better. I actually think I am opposed to the amendment because of two reasons. I don't know really for sure, I think a 5 year future report might actually people feel that they don't have to worry about anything until 5 years later. What happens to these workers if things really get bad? Will people just say, "Well, there is a report coming out in 5 years and we'll wait for that report before we do anything." I've seen that type of stonewalling. Also, the very reason why we just passed the bill was that it was going to cause uncertainty and friction for farms. All these farms were going to be worrying about what this report is going to say 5 years later. Maybe we'll just blanketly make farms being able to be unionized. That creates a lot of friction and uncertainty. I don't want that. I've got a lot of farmers in my district and I truly think they work hard and do a good job. The original bill wasn't going to affect them. This amendment actually would affect them. I'm not in favor of that. I'm opposed to the amendment.

On motion by Senator **ALFOND** of Cumberland, supported by a Division of 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 Hancock, Senator Langley to Adopt Senate Amendment "A" (S-460). 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 (#388)

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, RECTOR, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - DAVID R. HASTINGS

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, SULLIVAN, WOODBURY

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **LANGLEY** of Hancock to **ADOPT** Senate Amendment "A" (S-460), **PREVAILED.**

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-691) AND SENATE AMENDMENT "A" (S-460), in NON-CONCURRENCE.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/12/12) Assigned matter:

HOUSE REPORTS - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Require Advance Review and Approval of Certain Small Group Health Insurance Rate Increases and To Implement the Requirements of the Federal Patient Protection and Affordable Care Act"
H.P. 877 L.D. 1179

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-725)** (6 members)

Tabled - March 12, 2012, by Senator **COURTNEY** of York

Pending - motion by Senator **WHITTEMORE** of Somerset to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence (Roll Call Ordered)

(In House, March 8, 2012, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, March 12, 2012, Reports **READ**.)

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

Senator **BRANNIGAN:** Thank you Mr. President. Men and women of the Senate, you may remember that a few weeks ago the Supreme Court denied Anthem's request for a 9.2% increase in the rates on small individual groups. It was excessive they said. Unfairly discriminatory. They reduced it to 5.2%. This isn't unusual. It's happened up until now quite often. They balanced the wishes of a large corporation with the needs of individual people. By the superintendent deciding that this reduction would be in effect and by the Supreme Court saying yes, that the superintendent was correct, they saved millions of dollars, an estimated, I think, \$3 million, to our folks who buy those kinds of insurances. This was based on the law before we did what we did in 1333, now Public Law 90. Probably people didn't realize with all of that going on that you were doing away with the

opportunity for the Superintendent of Insurance to look at rates like these before they went into effect. Now they go into effect and it's a whole different ballgame. This little bill would restore that piece of the law and we should, therefore, allow the superintendent to do his job. I ask you to vote against the pending motion. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Whittemore.

Senator **WHITTEMORE:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'll try to be brief. This bill repeals the optional rate review process under the new insurance law, P.L. 90. The rate review process has been approved by the federal Department of HHS and in no way compromises the rate review process in regards to protecting the interest of the insured. This new process applies rate increases under 10% which are filed with the insurance bureau for their review. Any request for more than 10% will go through a full review, as before. L.D. 1179 would take us back to an expensive and unnecessary process of rate review and the extra cost is passed onto the premiums that we all pay for insurance. I might add if a review process on those that are processed under 10% done by the bureau is found to be out of line, that will be corrected. I would also note that according to the Bureau of Insurance the process used before P.L. 90 can cost \$50,000 or more per review. I suggest you support the Ought Not to Pass Report. Thank you.

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

Senator **BRANNIGAN:** Thank you Mr. President. It's okay that they are able to raise the rates 9.67% a year. I don't think we want that without some real stringent look see. Thank you.

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'm just trying to do the math. I know that it's late in the day. This rate review could cost \$50,000, up to, apparently. Meanwhile, we have saved small businesses and individuals \$3 million. Three million dollars of savings to the people of Maine versus a \$50,000 study looking at if it's an excessive rate increase. I'm always going to side with the people of Maine. It's very disappointing when I hear these numbers. A \$50,000 study versus a \$3 million savings to the individuals and small businesses of Maine. I think the case is quite clear. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Whittemore.

Senator **WHITTEMORE:** Thank you Mr. President. I would like to respond to that. The rate review process for those that are under 10%, if it is found that they are inappropriate, will be addressed. When insurance companies file these rate reviews there are many, many of them that are under 10%. I might add that it is not just because the insurance company wants to make more money all of a sudden. These increases are brought forth by the high cost of health care. That's going up in double digits

every year. That's the reason for these increased rates and their requests. Again, I ask that you follow my light on this.

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

Senator **BARTLETT:** Thank you Mr. President. I think I feel like I'm trying square a circle here, or vice versa. We're told that the insurance companies are simply raising rates because they have to and they are not going to have their numbers get close to that 10% rate. Yet we know that in this last go-round Anthem requested a 9.2% increase that was reviewed and reduced down to 5.2%. That means that they were 4% over what they needed. That is 4% over what was deemed to be appropriate. To me, that rate review process worked very effectively to save Maine people millions of dollars. I feel like we're sort of using today as corporate giveaway day and this is a new corporation, a new set of corporations. We're going to give them up to 10% profit increases every year. They can increase their rates up to 10% without a review. We're going to get rid of a process that we know was effective in saving Maine people, those are Maine individuals, Maine small businesses, Maine self-employed people, and their families, millions of dollars. Why? Because big insurance companies have come in and asked us to. Insurance companies who repeatedly put in requests for rate increases that are excessive, that are found by Maine courts to be excessive. Again, I don't get it, why, once again, we're more concerned about a corporation's profits than we are about protecting the people of the state of Maine. I think if an insurance company comes in and wants an excessive rate increase that should be reviewed. I think asking for 4 percentage points more than you need, more than can be justified in a court of law, is excessive. It does not warrant a change in the law, a change in the law so that the next time the insurance company can put in a 9.2% rate increase and there would be nothing we could do about it. I just don't understand where our priorities are. Thank you, Mr. President.

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, when the next rate increase request goes in there is a way to do something about it. There is an automatic review to determine if it meets the initial threshold. The threshold, by the way, of 10% has been set by the AHC. Obamacare, compliments of the good Senator from Cumberland, Senator Brannigan. The rate is set at 10%. My question through the Chair, Mr. President, is: is there a way for an intervener in this process, including the Superintendent of Insurance, to ask for the more complete review if there is a feeling that the increase is excessive and that it will not pass without review? I would like to restate that question just so I get it right. Is there a way to trigger the review already, whether it be by the Superintendent of Insurance or someone in an intervener status? Thank you.

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

Senator **BRANNIGAN**: Thank you Mr. President. It is the Affordable Care Act, ACA. I do believe soon it we will all be happy to call it Obamacare, including the President, because we're all going to, once we get settled, understand what a great thing it is for our country. I think that answers the question. Anyways, we'll go on to say that, first of all, these rates don't go into effect prior, like the old days, to 90. They did not go into effect until they were reviewed. Now they go into effect right away. Is anybody going to challenge them? I don't know. We do know there will be a review if the Affordable Care Act has a repeal. Then there will be some review. Until that day, we are still going to be saddled with up to 10% increases without justification. Thank you, Mr. President.

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

Senator **JACKSON**: Thank you Mr. President. Ladies and gentlemen of the Senate, I wasn't going to answer that question, and I probably still won't. It sounds like the good Senator said it was Obamacare not etch-a-sketch care that would be covering that. I just got up because I wanted to say that I don't know a lot about the insurance industry, and I don't pretend to. I didn't sleep at the Red Roof Inn or anything like that. I do know that in Aroostook County health insurance seems to be blowing up because of some of the things that we did in this Body. It just seems like I need to bring it down to things that I'm familiar with. I don't deal with these insurance rates or anything on that level. I just hear people telling me, constituents, about how expensive health insurance is. I do understand, like I said, when I bring it down to what I understand, I've had a lot of cars in my time and I've sold cars. It just seems like this is where, when I was going to sell a car, I'd ask for more than what I actually hoped to get. There would be a give and take with a buyer. Hopefully I got what I actually wanted for the car, what I actually needed for a car. Under this plan it seems like you are going to be going out and asking for more for the car and you're going to be sure you are going to get a lot more than what you really wanted for the car.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Whittemore.

Senator **WHITTEMORE**: Thank you Mr. President. I would like to respond one more to the time to the fact that all rate increase requests under 10% will be reviewed by the superintendent. An insurance company can't make a request and just have it be ignored and that premium applied. All requests will be reviewed. Of course, if that request is out of line, it will be adjusted. Also any request over 10% will be reviewed using the same process as before, the expensive one. I just wanted to make that clear. Thank you, Mr. President.

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

Senator **SCHNEIDER**: Thank you Mr. President. Men and women of the Senate, I think we should be moving ahead with anything that reduces the insurance for people. There have been some real problems with what we did with that Public Law that was mentioned. There was a commitment to fix those problems. I think voting against the pending motion will help resolve some of

the problems. Anybody who thinks that a business that is in the business of making profits will not ask for the maximum that they think they can get away with is just denying the obvious. The insurance companies have never been known to be altruistic. I seriously doubt that you will see them asking for very low increases because they answer to their shareholders. We answer to the people. We are supposed to be helping them. I would like all of us to go out into our Senate Districts and ask people if they can withstand continued increases, up to the amount of 10%, on their insurance rates per year. I guarantee you they are not seeing increases in their budgets by 10% to help offset those costs. Whether the superintendent can review, it sounds to me like what we did last time, and what this bill is trying to address, that removed the review process that would take away the responsibility of the people rising up to have this addressed. Now it sounds like all the burden is going to fall on the people of the state of Maine to rise up to answer to the big corporations who control so much of what is happening under the Dome, apparently, today. It really concerns me very greatly that we're not standing for the people. I think we owe it to them to fix some of the problems that we created last year, and I was one of the people who voted in favor of that. I think this bill helps fix one of those issues. I certainly hope that we will vote against the Ought Not to Pass motion. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO**: Thank you Mr. President. Ladies and gentlemen of the Senate, I need to rebut what was just spoken. Indeed, this bill will make things worse. It will make things far worse. What we did last year put reforms into place. We need to be patient. Our reforms, mostly, won't go into effect until July 1st of this year. This bill would just put us back. This bill will reverse steps taken by the Legislature last year to streamline regulations and reduce regulatory burden. This bill will do just that, it will add more regulatory burden. Maine consumers are protected against rates already that are too high because both State and federal law contain minimum loss ratio requirements that strictly limit insurance company profits and requires the insurers to pay rebates if not enough of the premium dollar is spent on medical claims. We have a very good commissioner. He will review any request to increase rates. I have a lot of trust and faith in our current Commissioner of Insurance. This bill simply will not lower costs and that is what I think we need to do. I think this Legislature set out to lower the high cost of health insurance for our consumers. This, ladies and gentlemen, L.D. 1179, will not do that. In fact, it will increase the rates. It might be well intentioned, but believe me, it's not going to do what you think it is going to do. I request that you support the pending motion. Thank you.

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

Senator **ALFOND**: Thank you Mr. President. Ladies and gentlemen of the Senate, with all due respect to the previous speaker from Androscoggin, she mentioned last years Public Law 90 and that we need to have patience. I'll tell you what. After receiving numerous, numerous e-mails, either from my district or from around the state, of double digit increases, premium increases, to small businesses, people are running out of

patience. They are running out of a lot of patience because they have to pay their bills too. The small businesses, they have to pay their bills. What we are doing here is creating the elimination of a safeguard. I believe we do have a good superintendent too, but I believe what the superintendent is going to do is, he is not going to do rate review, he's going to do a rubberstamp of 9.9%, 9.8%, and 9.7%. That is what we're going to get in this state because, you know what, with insurances it's all about probability and it's all about trying to meet your bottom line. That's what they do and they are good at it. That's fine. The bottom line is that this not going to help Mainers at all today. What we're doing is taking the state backwards. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'm not expert at health insurance or health insurance costs, but I think all of us in this building realize that the real drivers behind health insurance increases are the costs of health care itself. Health care itself is going up at much greater rates than the 10% that we're talking about in this bill. Insurance companies are paying much more than 10% in increased health care costs and they come and ask for smaller increases than what they are having to pay. If they are asking for smaller increases than they have to pay, why would we want to go into a real expensive rate review? The Commissioner of Insurance and the Commission of Insurance can look at these and see if they are out of line. The 10% figure is a figure that's set by the federal government. It's not set by this Body. It's not set by the Insurance Committee nor is it set by anyone in Maine. It is set by the federal people. These companies also have to meet a further requirement. They have to be paying out at least 80% of the premiums. They meet those two requirements, then the insurance commissioner will review them. If the proposal looks out of line, then he can ask for a full, very expensive, rate review, costing tens of thousands of dollars. It seems to me like it's a very commonsense bill and maybe we can get our attention off insurance rate increases and get our eyes onto the real driver of all of these increases, which is health care costs. Thank you.

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

Senator **PATRICK:** Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, what this bill is is another working people vote with a wallet bill. This is actually, like the good Senator from Aroostook said, one of those etch-a-sketch bills. Insurance companies will have the ability to turn it upside down, shake it out, and get an extra 4% without any worry about being challenged by anyone. I'm going to be voting on the side of working people who vote with their wallets. Thank you, Mr. President.

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

Senator **BRANNIGAN:** Thank you Mr. President. First of all, it is the Superintendent of Insurance not the Commissioner. Secondly, one of my previous speakers must think the Supreme

Court is something because they reduced it from 9.5% to 5.5%. They thought that was fair, given all the costs as well as all the other factors. Insurance has these terms; file and use, or use and file. Right before this we made the mistake of passing this 1333. It was file and then use. If you file then it's looked at and it is heard. Most of the time it is too high, they go to the courts. They will eventually say, they almost always do, too high. Now we changed it. It is use and file. You put it into effect, it goes on and on until maybe somebody intervenes. It's just not the right way to do things. We've done so well with insurance, health insurance and others, over the years. This is not the way to do it. This just reverses a little bit of the work that was done by 1333. Thank you, Mr. President.

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, I've been getting e-mails about double digit increases ever since e-mails were the way people contacted us. I got the letters back when people wrote letters. Nobody was paying attention then, I don't think. Health insurance in Maine has been the frog in the pan. You've turned it up and you've turned it up very slowly, raising the rates over the last 20 years until you have managed to create a market where people can't afford to buy it. Every year, if people voted with their wallets it was because someone else could afford to pay those bills. That was usually the employer. I remember when employers paid 100%. I remember buying a policy for my guys back in 1992 that cost \$320 a month. That policy has more than doubled 20 years later. All we've done is push people out of being insured by driving up the cost. What I'm trying to say is that I am just thrilled that there is now someone paying attention to the double digit increases in health insurance. It just happens to be the people who drove up those costs over the last 20 years. It's about time the people got your attention. It's too bad they didn't vote with their wallets when you were going whole hog with the mandates and restrictions and raising the cost of health insurance. If they had done it then we wouldn't have to do this now. Welcome to the party. Now it's everybody's problem. We didn't start it, we are trying to change it. Thank you.

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

Senator **BARTLETT:** Thank you Mr. President. I do think there is going to be a party tonight at some boardroom, but not in too many homes across the state of Maine. Let's be clear based on what we just heard. We've heard that we've had increases for a long time, which we probably agree on and we all are very frustrated with and dislike. We're told in this bill that the solution to rising prices is to take the shackles off and let the insurance companies raise rates even more without supervision. It's craziness to say we're concerned about rate increases but we've going to allow insurance companies to go ahead and increase rates without proving they are justified. We have evidence year after year. Just Google Anthem Maine. Rate increases year after year. Anthem goes all the way to court to try to justify increases that are deemed to be excessive. If any of you look at other headlines for Anthem during that same time period, you can see the record profits. We all want to reduce the cost of health care. We all want to increase access to health care. This bill simply

gives insurance companies free rein. It says, "You can do it without supervision even though in the past your rates have been excessive. Go ahead. We're not going to watch. Let's see what happens." I can guarantee there will be a party tonight, but it's not going to be in any Maine home. Thank you, Mr. President.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I was going to jump up and do one of them Point of Order deals that we seem to be getting so anxious on in this Body, impugning and all that. I just don't know the rules as well, so I just let it go. I did want to say that I don't know about double digit increases. I know that health insurance has certainly gotten to be extremely high for a long time. I'll agree with anybody on that issue. I know that, because of the stuff that we did in this Body last year, health insurance costs have gotten a lot higher in Aroostook County. I'm sure we're going to have some issues coming up here that I'll be able to jump up and say, "I told you so." I don't understand why we want to take away the ability for these rates to be looked at before they get implemented so we don't have the mistakes that we created last session that have definitely hurt people in Aroostook County.

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

Senator **JOHNSON:** Thank you Mr. President. Ladies and gentlemen, I completely fail to understand one of the points that was made a moment ago. I've seen small businesses in my own district, because of the change in the bands in the last year, see tremendous increases; particularly in one company in Edgecomb that has mostly older employees. They are very faithful to their employees. They keep them on. They are not pushing them out. They know how to do their job very well. They saw a tremendous increase. Now what you are suggesting is that somehow taking a look at whether a company is filing an exorbitant increase is driving up prices further. I think we should be looking to protect those small businesses from increases that are not necessary, they are not in the best interest. I'm trying to do the math here. I'm seeing a study that cost \$50,000 versus a savings to small businesses and individuals of \$3.5 million. Frankly, I don't see how that action is going to drive rates up.

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

Senator **THIBODEAU:** Thank you Mr. President. Just a couple of things. I think it is important for everybody here to understand that file and use is a process that has been used in the small group markets for a long time, literally decades. This isn't a new concept. Secondly, the superintendent will still use the exact same review process for these rates. He will still use the same set of standards that they currently use. They may still take action if these rate adjustments are not prudent and acceptable. All this does is allow the insurance company to file their new rates and use them so that they don't have to plan ahead, literally, years because sometimes these rate cases take years to go through the process. If they overcharge the insured, there is a process to make sure that that money is returned. I appreciate

your patience. I know it's been a very long morning. I'll try not to delay any further. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, thank you for those facts. I just need to really repeat myself. Rate increases above this threshold are still subject to approval by the superintendent. The rating standards are not unchanged. Rates cannot be inadequate, excessive, or unfairly discriminatory. Thank you.

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

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, wow. I mean, really. I can't believe that. People that are having a hard time to pay oil bills and stuff like that are the ones that have to just arbitrarily say, "Ya, okay, charge me more and maybe somewhere down the road I'll get it back." That doesn't sound like that makes sense. Really. You mean the company that has billions of dollars in profits and pays their executives millions of dollars should be the one that go out and take away from hard working Mainers in this state that are having a hard time to get health insurance already? That does not make sense to me. That is like, not to use a cliché, reverse Robin Hood. Seriously, that is okay. Let those people be the ones that foot the bill until it's determined if it's okay. Wow.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#389)

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, KATZ, LANGLEY, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, RECTOR, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - DAVID R. HASTINGS

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, SULLIVAN, WOODBURY

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **WHITTEMORE** of Somerset to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Establish a Competitive Bid Process for Future Casinos and Slot Machine Facilities"

H.P. 1400 L.D. 1897

Presented by Representative BEAULIEU of Auburn.
Cosponsored by Senator FARNHAM of Penobscot.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Comes from the House, **REFERRED** to the Committee on **VETERANS AND LEGAL AFFAIRS** and ordered printed.

REFERRED to the Committee on **VETERANS AND LEGAL AFFAIRS** and ordered printed, in concurrence.

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

On motion by Senator **COURTNEY** of York, **ADJOURNED** to Friday, March 23, 2012, at 10:00 in the morning.