

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Third Legislature

State of Maine

Daily Edition

First Regular Session
December 6, 2006 to June 21, 2007

Pages 1 - 1266

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

ABSENT: Senator: HASTINGS

No Senator having voted in the affirmative and 34 Senators having voted in the negative, with 1 Senator being absent, and none being less than two-thirds of the Membership present and voting, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of **David C. Shiah** of Bowdoinham for appointment to the Commission on Governmental Ethics and Election Practices was **CONFIRMED**.

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

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

HOUSE REPORTS - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Enable the Dirigo Health Program To Be Self-administered"

H.P. 347 L.D. 431

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-285) (8 members)

Minority - Ought Not To Pass (5 members)

Tabled - May 24, 2007, by Senator **SULLIVAN** of York

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, May 23, 2007, 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-285)**.)

(In Senate, May 24, 2007, Reports **READ**.)

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

Senator **SNOWE-MELLO:** Thank you, Madame President and ladies and gentlemen of the Senate. I stand here in opposition to the Majority Report. This bill really does worry me. I have huge concerns regarding this, An Act to Enable the Dirigo Health Program to be Self-Administered. Let me tell you what some of my concerns are.

First of all, this bill does not provide for any oversight of rating practices or financial solvency. If premiums and reserves are not

sufficient to pay claims the State's General Fund could end up having to pay those claims, imposing this liability on Maine taxpayers. I question if that is a good thing to do. The proposal breaks the public-private partnership that was the cornerstone of original Dirigo Health legislation. It will pull people out of the commercial market, leaving a smaller pool. I don't think we want that. The State should not be in the business of administering health insurance. There is no better example than MECM, the State's Medicaid payment system. We all know we are having problems with that.

The myth is that Dirigo Choice enrollees will be left without health insurance coverage if LD 431 does not pass. The reality is that Dirigo enrollees will continue to have the same insurance available to them even after the contract with Anthem ends. Anthem is required by Dirigo legislation to offer an identical product. Although Anthem will no longer have a contract with the State, it will continue to offer the product and the State will continue to provide income eligible individuals with subsidies.

At the same time the Governor and some legislators are seeking to increase regulation of health insurance for small businesses, LD 431 would exempt the Dirigo Health program and Dirigo Choice from that regulation. Why shouldn't Dirigo be subject to the same rules? This sets up an uneven playing field and I don't believe that is right. Is it not an apple-to-apple comparison to try to compare self-insurance Dirigo Choice to the self-funded plan of a single employer such as the State Employee Health Plan? That is one group with a fairly stable membership and predictable claims. Dirigo Choice is made up of many small employers and individuals with a much higher turn-over rate. What is really being proposed is much closer to an association health plan, not the self-funded plan offered by a single employer. There is no oversight by the Bureau of Insurance with respect to the premiums charged and financial oversight. If Dirigo cannot pay its claims Maine taxpayers could end up paying those bills through the State's General Fund. That, ladies and gentlemen, should be a huge concern for you.

There are key provisions from which Dirigo would be exempt. Remember I told you it sets up an unfair playing field. This program would have Dirigo be exempt from provisions. Let me tell you what they are. They would be exempt from the Unfair Practices and Fraud Provisions, which include non-discrimination against victims of domestic violence or use of genetic information. They would also be exempt from the Unfair Trades Practices and the requirements that the insurance calculation of benefits be based on actual costs. The Dirigo Health Agency would be exempt from complying with the Insurance Information and Privacy Act but other insurance companies would have to be subject to this. The Dirigo Health Agency would be exempt from transparency requirements. The Dirigo Health Agency would be exempt from complying with a majority of the provisions required in the Health Plan Improvement Act. These include providing notice of changes to provider agreements and policies, limits on retrospective denials, hearings to adequate access to provider standards, providing 60-day notice of rate increases, compliance with Fair Marketing Standards and Utilization Review Standards including the penalty provisions included in Rule 850.

I ask you if you really want to go here? This bill is very vague in its requirement that Dirigo meet or exceed the benefit rights and protections for individuals enrolled in health plans. I could go on and on, but I hope that you got the message that you should be extremely concerned. I hope that you will vote with me and not support this piece of legislation. There is also a \$1.8 million to

\$2 million per year fiscal note. Let's be very careful where we go. Thank you very much.

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

Senator **SULLIVAN:** Thank you, Madame President, men and women of the Senate. A couple of things. If you look at your calendar, 5-5 is actually self-administered. I would ask you also to look at page 22 of your calendar where we had voted today under the hammer 6-24. It says certain self-insureds. There is a huge difference between self-administered and self-insured. Self-insured is actually a group. There are two in the state of Maine, the automobile dealers and the bankers. They set up their own. They assess themselves a large pool. They have collateral in case things went belly-up and they have two very successful insurance companies. Those are self-insured. You just voted for those today. The one I'm representing today is self-administered. I'm somewhat concerned that you might be looking at the bill and not at the amendment. Let me read just the summary because the bill has Section 8, 9, 10, 12, 24, and all those things that you need to be a lawyer for. Here is the amendment summary, 'This amendment is the Majority Report to the Committee. The Amendment clarifies that the Dirigo Health self-administered plan must comply with the requirements of the Maine Insurance Code relating to the privacy of insurance information, unfair discrimination against victims of domestic abuse, and unfair discrimination on the basis of genetic information or genetic testing in addition to the other requirements included in the bill.'

This is an option. The way Dirigo was set up if there is only one bidder to Dirigo you have to take that bid. We do not run businesses that way. One bid, you have to take it. You are held as a hostage. This simply says that if the bid isn't acceptable we can administer it ourselves. It still would use Anthem or any other company that wanted to be part of this, but we don't pay the administration costs. We cut out a lot of the middleman. It's good business. There is a huge difference between self-insured and self-administered.

I'm asking you to go with the Majority Report and give the chance, the option, for Dirigo. I am well aware that many people do want Dirigo to exist and this is one way to take away that option. For those people that are insured by Dirigo, that need that safety line, make sure that it doesn't happen because they have no other option. If we do not pass this there is no other option. You have to be the hostage of the one provider, regardless of their price. I would ask you to please go with the Majority Ought to Pass Report. Thank you.

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

Senator **SNOWE-MELLO:** Thank you, Madame President and ladies and gentlemen of the Senate. I'm certainly happy that one of those provisions was exempted, but the others weren't. That's the reality. I think another important part but before I go there let me say that Maine's government is not a business. They are treating us like a business and we're not a business. As a government sponsored plan, and I was talking about the self-administered not the self-insured, a self-insured Dirigo plan would be exempt from both RISA and State oversight. Thus, there would be no regulatory authority, State or Federal, to oversee Dirigos compliance with the law. In other words, this bill would

allow Dirigo to self-insure Dirigo Choice for individuals and small businesses without any regulatory oversight. This is all part of how it would be administered. That's a big concern to me and it should be a concern to you. This bill, I think, also seeks to penalize one of the few insurance companies that we have in this state. That's very unfortunate.

I think the purpose of this legislature should be, in order to provide affordable premiums and assessable health insurance to the people of this state, is to treat it in another way. We should try to bring in other health insurance companies and bring some competition to this state. We need that. Maine desperately needs that, whether we keep Dirigo or not. We need to bring in competition. It's healthy and it's good. Our Insurance and Financial Affairs Committee is working very hard, together, to find a solution. I ask you, the members of this Body, to please not support 'An Act to Enable the Dirigo Health Program to be Self-administered'. Thank you.

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

Senator **MARRACHÉ:** Thank you, Madame President, men and women of the Senate. I rise because I've heard people say over and over that there is no oversight. Having served on the committee last session, we debated this bill as well. There was oversight discussed then and oversight is implemented in the bill itself now. I wanted to address that. Self-insured companies don't have the same kind of oversight that this plan has been willing to put into their program. What I thought I'd add is in the bill itself, if you go to page 9 you will see a long list. They even agreed to have an independent actuary look at their rates and review them prior to even putting them out to the people. They don't necessarily have to do that, but they are willing to do that. If you look at number 9 on page 9 you will see multiple ones, A - E, that are actually things that they are willing to do to try to provide oversight for this entire program. I won't read them all, but I will read a few. People keep making the distinction that they are not going to be the same. Well they are. They are actually agreeing to a guaranteed issue and renewal. They are also requiring a continuity of coverage, coverage of late enrollees and pre-existing condition exclusions. They also are putting in requirements for mandated coverage of specific healthcare services and specific diseases and for certain providers of healthcare services. These are all things they don't necessarily have to do, but they are willingly putting them into the package. If you talk about oversight, it is there. You need to read it. Thank you.

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

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. Briefly, as I looked at this bill I took a look at the fiscal note. What kind of stood out to me was the reduction on what they call the Insurance Premium Tax which is the tax we passed last session on every insurer in the state and the people that buy that insurance. I'm kind of glad to see that this proposal sees the benefit of reducing the tax on insurance premiums to providing health insurance for people. I think that is a step in the right direction.

I do have some other concerns with this bill. In addition, it says here the State would bear an additional financial liability if the reserve and stop loss insurance provisions required in the bill

prove to be inadequate. I was hoping maybe someone would really explain that to me because I'm wondering what type of potential liability we may be getting ourselves into. Thank you, Madame President.

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

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. I had the pleasure of reading this bill for the first time in the last 15 minutes. I am bothered by many of its terms. Every insurance company requires capital. This bill provides for that capital to be derived from legislative appropriations, the Dirigo Health Enterprise Fund, and other sources. All of the sources are public, so we are creating a public insurance company and anybody who says it's less than that I don't think is fairly representing the text of the bill. The risk bearing entity will be the public. This will, in essence, be a high risk pool funded by the General Fund or by such other tax sources as the Board or someone may come up with. You can't provide health insurance, Cadillac coverage, which is what this provides for, to Maine people who need help in buying it without subsidizing it in the heaviest possible way with public revenues through taxation. Why we don't get at this in a much simpler way is beyond me. Why don't we just appropriate \$15 million, \$20 million, or \$30 million a year and give it to the Dirigo Board and say, 'Go out and subsidize coverage.' Don't start an insurance company. We've got half-a-dozen insurance companies in various levels of market penetration already doing business here. Go out and find families that need help. Give them a voucher the way they do for fuel assistance, for rents, for daycare. Create a health insurance voucher system. Start at the top by telling us what you need for money and have us appropriate the money and make a conscience decision about how much money we're going to allocate to this worthy cause because this way, doing it backwards, the cost is practically infinite. You have 141,000 uninsured people in Maine. If half or 2/3 or them can't afford to buy their own coverage, if the cost per person is \$5,000 or \$6,000 per year, you do the math. It's going to take half a billion dollars to insure all these folks who need assistance. We don't have half a billion dollars right now for this. You could do it, I suppose, if you put 2¢ or 3¢ on the sales tax. Maybe we ought to have that debate up front, instead of trying to slide in through the back door by creating some bureaucratic nightmare that tries to set up and bootstrap itself into the insurance business without, I might add, knowing the first thing about running an insurance company, and then send the bill to the Appropriations Committee in some form or another. I don't get it. I just think we're facing an almost impossible problem and throwing verbiage at it and bureaucratic creations that aren't going to solve the problem. I think it's the number one domestic problem in America today, access to healthcare. It certainly is the number one domestic problem in Maine. It's a very costly problem. If we wish to make a conscience decision, I for one would do that. To set aside a certain amount of money from public revenues to go out and try to address the problem of assisting deserving families in purchasing products of various types, I would be for that. To go out and create the product and not have any system in place to tell us what it is going to cost and how to pay for it, I think, is going at it backwards and irresponsibly. I'm going to vote against the bill for

those reasons and I appreciate the fact that this is a significant and serious problem. It's the number one problem in America today, but this isn't the way to solve it, in my view.

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

Senator **DIAMOND:** Thank you, Madame President, men and women of the Senate. I would like to pose a question through the Chair to anyone who may care to answer.

THE PRESIDENT: The Senator may pose his question.

Senator **DIAMOND:** Thank you, Madame President. Will the General Fund be exposed in any manner at any time if this passes and they, they being Dirigo, chooses to opt in to this self-insured self-administration?

THE PRESIDENT: The Senator from Cumberland, Senator Diamond poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I will respond to the question and in addition I want to pursue further discussion after I respond to the good Senator from Cumberland, Senator Diamond. First of all, the General Fund will not be impacted and is not being threatened. I'm always amazed by individuals who talk about free enterprise and are scared of competition and the possibility of creating an insurance company that just might be in competition with what we have on the market today. It just amazes me, absolutely, for those people who firmly believe in the free enterprise system not to believe in free enterprise. That's what it appears we have today in this Body. It seems to me the time has come to deal with reality. We are the last industrial nation in the world not to have universal healthcare. The irony even goes further. When Mrs. Clinton happened to be appointed by her President to be the Chair of a group to try to create healthcare coverage in America I was one of those individuals from Maine that spent time working for the group in Washington. I would go down a couple of times a month. The most amazing part to me was that if I waited the day before I had to go I had to find rooms beyond Alexandria, Virginia, to find a place to stay because every hotel room in the greater Washington D.C. area was occupied by insurance individuals from all over the United States. They certainly weren't working for the average citizen of America. They were working for corporate America and their pocketbook.

What you have before you today is certainly not the way I would go, but what it is for you is a self-administered opportunity as a start. I speak because I was the one who sponsored legislation to create Maine Employer Mutual, which brought back Workers' Comp coverage to this state at rates that we could afford. If we had not done that we'd be in a horrible position today. Is it possible? The answer is yes. Some people will say that there is a difference between Workers' Comp and health insurance. Of course there is, but it is still coverage. I'd bring your attention to page 9 of the bill, section C at the top of the page, which clearly tells you what will happen. The Superintendent reviews the actuarial presentations and provides the authority and the capacity of the Bureau of Insurance to control the market or the rates. This is a beginning, not an end. If

you want to begin you have to start somewhere. This is what this bill does.

Is it surprising who is lobbying this today? By the way, I'm an agent for Anthem, through disclosure, but I am for this bill because it's a start and we have to provide competition. I am a licensed agent with Anthem/Blue Cross. Clearly, if I were really in the pockets of the insurance company you know where I would be, but I'm voting for the people of Maine.

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

Senator SMITH: Thank you, Madame President and members of the Senate. I have taken a look at this for the first time and I have not been lobbied by anybody on this, but there is a concern that I have. It grows out of my experience over the years of being counsel to some of the early Workers' Compensation group self-insurers. In my earlier legislative experience we were in the middle of a huge Workers' Compensation crisis. Prior to the time that the Senator from Aroostook, Senator Martin, introduced the legislation that he described to you, I introduced legislation that would have allowed group self-insurance in the Workers' Compensation setting to occur. It was quite an undertaking. It involved several weeks of work around the legislature here and working with the Bureau of Insurance. We finally were able to put a bill together and almost immediately a self-insure group in Jackman formed around the logging industry. As soon as I was out of the legislature I became their counsel and we had to do an awful lot of shaping up and refining and tinkering with that thing to make it go. One of the things that was very important at that time was to make sure that there was sufficient reserves within that organization so that it would come together, that is the money within the organization to pay the claims would come together with the excess insurance which was required by the Bureau of Insurance prior to allowing this to go forward. There was a huge effort to collect reserves from the members of that group and to get it in to the organization so that we could then qualify for a certificate from the Bureau of Insurance and move forward with it.

My concern, with just looking quickly at this bill this morning, is that what is being required here, if I'm reading it correctly, is that only 2 1/2 months of reserves are being required of this organization, which is very low. If that is the case, I would really doubt whether the kinds of excess insurance that is ordinarily required in the private sector to allow such organizations to self-insure could be procured here. If it cannot be procured to cover any gap between the 2 1/2 months of reserves and wherever we're able to get excess insurance on top, there is going to be a huge gap in between. My question is what is going to fund that gap between where the 2 1/2 months of reserves and the excess insurance, which I presume will be required here, will kick in? I would pose that question to anyone who may be able to answer.

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

Senator BARTLETT: Thank you, Madame President. I rise in support of this bill because I think it corrects an important flaw in the original Dirigo legislation. I think having a system where you have the administration done by an insurance company with whom you may be directly competing, and have every incentive of destroying your program, does not make good sense. One of the concerns I have with the way it currently works is that if there is

only one bidder to administer the Dirigo Health insurance component, regardless of what that bid is, we've got to take it. That means it could be enormously expensive. It could cost the State a lot of extra money and there is nothing we can do about it. What this bill does is but another option on the table. It says, 'Look, if we can't find a private company to administer this at a reasonable rate that is better than what we could do ourselves, then we'll do it ourselves.' To me, that is a reasonable approach and ought to have been on the table from the beginning. To simply say we are going to spend money, no matter how much more expensive it is than it would be to do it ourselves, is foolish.

In response to some of the questions in terms of the liability and the risk issues, another reason I support this legislation is that it carefully builds in components that will help to manage the risk to the State of Maine. One, Dirigo can only self-administer if an actuary determines that there are adequate revenues and rates. An actuary has to first look at it and make the assessment that this can be done at a reasonable risk. Second, Dirigo must buy stop-loss insurance to protect against losses beyond its reserves. There is an additional policy that it will be holding to help protect Dirigo, the Dirigo budget, and Maine taxpayers in the event that it becomes much more expensive. Thirdly, in the highly unlikely event that the reserves and the stop-loss insurance are not sufficient to protect the General Fund, the program will close enrollment. In other words, the program will track the way the reserves, the rates, and the costs and immediately close enrollment before any of the risk concerns that have been raised here happens. This legislation incorporates components of risk management that will ensure that the program is protected, that the General Fund is protected, and that we are not taking on additional risks. All this bill does is gives us one more tool to make sure that we are getting an affordable and reasonable price for the services that are provided and if it can't be done more efficiently by the private market than we could do ourselves then we ought to be doing it ourselves. I just think that is good government and we ought to be supporting this bill to make sure we are not spending a penny more than absolutely necessary to fund this program.

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

Senator COURTNEY: Thank you, Madame President, men and women of the Senate. I would like to respond to the good Senator from Cumberland's question because as I read the fiscal note I get a different answer than the one that we just had. I'll just read the note a little bit here, with regards to converting the self-administered plan, I'll go down to the second bullet, 'The General Fund losing insurance premium tax revenue of approximately \$1.8 million to \$2 million per year annualized based on Dirigo's 2008-2009 proposed budget assumption if the conversion takes place. This loss may be offset partially by a minor increase of less than \$50,000 in corporate income tax revenue paid by a third party administrator Dirigo may use to administer the plan.' While the other good Senator from Cumberland's words were a little more comforting, about capping enrollment if we start to go down a dangerous path, which we ultimately probably will, and we would have to come up with more money for it, I guess the biggest thing that concerns me is the State bearing the additional financial liability. It goes back to the question that I asked earlier but that we were unable to get an answer to. These are my

concerns. I would just submit to the good Senator from Cumberland that there are two answers, I would suspect.

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

Senator **SNOWE-MELLO:** Thank you, Madame President and ladies and gentlemen of the Senate. Thank you to the good Senator from York, Senator Courtney, because he brought up exactly what I was going to add in my comments. I must also remind you that in a world of free enterprise we try to set up a level playing field that all companies must be subject and must abide by the same rules and regulations. This changes that. This gives Dirigo the advantage. They are saying, 'Sure, let us do this, but we don't need to be subject to what every other business or every other insurance company needs to be subject to.' That's wrong. That's absolutely wrong. Thank you very much.

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

Senator **MILLS:** Thank you, Madame President. Just a few points, quickly. The fiscal note very adequately answers the question about the degree of public risk here. What it says, very openly, is that there is a jeopardy to the General Fund but more significantly the underlying program is almost entirely supported by public funds of one kind or another, whether it be a tax on claims, as we've been experiencing through the SOP, or whether it's some other form of support, perhaps one of the forms suggested by the Blue Ribbon Commission which spent all last Summer trying to figure out where the most appropriate source would be for public funding for these folks. There are two things that characterize the typical Dirigo insurer. Number one, they are poor. They can't afford insurance. Most of them are at the level just above 100% of poverty. They need huge influxes of money every month to pay the premium. That's got to come from some place. Secondly, many of them are sick. There is an adverse selection.

You have to ask yourself what insurance company out there, whether it be in London, Zurich, or Philadelphia, is going to step up and say, 'We'll pick up all the risk above a \$75,000 attachment point.' They are going to double or triple any premium that they might otherwise charge to a commercial insurance company. Why? Because of all the adverse selection issues associated with Dirigo and the fact that, and I'm going to be blunt here, it's going to be an incompetently run company by people who have no experience or knowledge of insurance. That's the definition of a public insurance company.

I need to take issue with my good friend from Aroostook County about the genesis of MEMIC. Not one public dollar was spent to create MEMIC. There was public support at the beginning, contingent public support, for its capital, but the employers of Maine paid a surcharge of 15% of premium every month or every quarter on their Workers' Comp bills for I don't know how long until a reserve was built up so the MEMIC could be self-sustaining. In the end there were no public dollars committed to MEMIC and indeed there need not be. Why? Because Workers' Compensation is a burden that we create by law. Every employer, no matter how small, is required to pay into the pool. Sure, you could have a health insurance built like that I suppose, but we don't. This public health insurance company will be entirely at the mercy of public financing. MEMIC was never

that. The history behind MEMIC was that our predecessors, over a period of 20 years, created Workers' Compensation liabilities to employers that drove out practically the entire commercial insurance market and thus it behooved the State to step in and charter a new company. I want to stress that this new company did not cost the State any money in the end and all of the costs that fell to the insurance system ultimately were borne not by public dollars but by private dollars.

I think, in essence, what is going on because of the nature of the insurance pool within the Dirigo program, you are basically creating what I would characterize as a high risk pool. Why high risk? Because these folks have health risks and because they also have fiscal capacity risks of their own in their families. They can't afford to buy insurance elsewhere. The risk is going to be borne entirely by undesignated public sources. My thought was why don't we start like any good bunch of business people and identify the money that we want to set aside to provide insurance to these folks and then figure out how most intelligently to spend that money. No, we're going to make a decision first to go out and provide all sorts of coverage and then we'll figure out later what it might cost. I think that is backwards.

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. When the State goes into business and wants to be a business then it has to pick up some of the business liabilities and expenses that go with it. I will point out to you that if we go into this business of selling insurance we are also going to be subject to our enrollees being able to sue the plan. They are provided this right in this bill, which is a good thing; it's called consumer protection. The enrollee can actually sue for the amount of the damages as well as up to \$400,000 in compensatory damages. They normally can't sue the State. We have the Maine Tort Claims Act that says you can't ask for more than \$300,000 from the State. It limits our liability. It limits what the taxpayers have to put out for damages. This bill says that they may sue and that there are no limits under the Maine Tort Claims Act. In addition to trying to figure out if we have reserves and if we can pay for what we're offering, we have to figure out if we can we afford to withstand one of these suits. I think that the State of Maine is finally going to realize what it is actually like to be a business in the State of Maine. Unfortunately, by opening up the State to law suits you are putting the State at risk and that cannot be quantified but it must be dealt with as they move through the court and as the suits become settled or the answer comes in from the jury. I think you should know that not only have we created something new, but also that we have waived the years long, decades long, Maine Tort Claims Act which protects us from being sued. You cannot factor that in, but it is a reality of life that you must take into account or you are going to have to strip it out of the bill and there will be no consumer protection. I would urge you to keep that in mind when you are trying to determine the final cost of what going into business means. I will remind you that it is not the job of government to compete with business. If you believe in a free market, you understand that government does not belong in a free market, it belongs as far away from it and is only supposed to provide a regulatory oversight. If it's in the yellow pages, it shouldn't be done by the State government and it shouldn't be done behind closed doors and without the information that we've been

demanding to find out for years. So if you would like to take this even further and still have to explain to the people why this program cost so much then you should vote for this. Then you should add that everyone of us should be part of the program and so should the Executive Branch, because until you've lived under it I don't think that you are going to truly understand. Until you know what it is going to cost, and we still don't that, I don't think you are making a responsible decision. I would like someone to actually read into the record that it is the intention that General Fund will never be used for the purpose of this, that you will be always continuing to add a tax onto any other services that are called healthcare insurance products in the State of Maine. That's what this bill says.

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

Senator **SCHNEIDER:** Thank you, Madame President. I'm sorry, I feel compelled to my good colleagues to speak. We are the only industrialized nation not to have a national healthcare plan. The only government that is industrialized not to have a program that protects our citizen's health. Frankly, I would much prefer to see our federal government take this on at the national level, but unfortunately they have shirked their responsibility and have not done that. We have a healthcare crisis in our great United States. This is not just about Maine; this is about the entire United States. We have a major problem. We have a problem with greed. We have a problem with certain healthcare costs that have just skyrocketed. We're not in a position to sit back and not do something at this point. It's with reluctance that I support this bill; because I would much rather see this be worked on at the national level. However, it is an option that I feel that we must provide to try to create a situation to reduce healthcare costs. People are struggling with healthcare costs. We must not stop trying to work to reduce the costs for people's healthcare in the state of Maine. Thank you very much, Madame President.

THE PRESIDENT: The Senator from Androscoggin, Senator Snowe-Mello, requests unanimous consent of the Senate to address the Senate a forth time on this matter. Hearing no objection, the Senator may proceed.

Senator **SNOWE-MELLO:** Thank you, Madame President, ladies and gentlemen of the Senate. This is a really important issue, that is why I am doing this. Remember we are only 1.3 million people in the state. Remember there is 22% of our people on MaineCare. Remember we don't have the best economy in the world. That gives you the answer to the question of whether we should be doing this, I believe. We are not the United States of America. We are not a country like France or Germany or all the other nations that do this. Remember, their populations are far more then ours. Thank you.

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

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I'm not sure how to respond to some of the comments, but let me begin by saying that it is a responsibility of government to provide for its citizens when they are being gouged. That's where we are today. Second, let me just follow up the good Senator from York, Senator Courtney. This clearly

lays out who would be paying and that clearly means that the State is not. Third, just let me point out as well that there is stop-loss insurance that would be provided and that's a safeguard provided for in law.

In the event that there would be a shortfall, pursuant to the law, at that point the program would then terminate, hold, or stop, so there is no involvement. The other part to remember is that we, in this state, are already self-insured. We're State employees. You are covered by Anthem/Blue Cross, but they act only as administrators of this self-insured plan. You are covered by self-insurance. It's amazing you won't let the citizens of Maine get covered that way, but they aren't. In that 2 1/2 months that is exactly what we have under the state system. I suggest that if you don't like self-insurance, quit your health insurance with the State of Maine.

Finally, let me point out one last thing. We are providing out of State dollars close to \$250 million to cover healthcare. Don't tell me we are not paying. That's what we are paying hospitals in PIP payments. That's tax money and you will see it in the budget, if we ever get to it. You will see it and that is what we paid this year and we will pay more next year. We need to be honest about where it is we are and to remember that competition does work.

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

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#81)

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

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

ABSENT: Senator: HASTINGS

18 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **SULLIVAN** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED.**

READ ONCE.

Committee Amendment "A" (H-285) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act To Restrict Use of Trails Designed for All-terrain Vehicles"

H.P. 354 L.D. 455

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-291)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-291)**.

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

READ ONCE.

Committee Amendment "A" (H-291) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **TRANSPORTATION** on Bill "An Act To Promote Transportation Planning, Increase Efficiency and Reduce Sprawl"

H.P. 861 L.D. 1180

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-296)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-296)**.

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

READ ONCE.

Committee Amendment "A" (H-296) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

The Committee on **UTILITIES AND ENERGY** on Bill "An Act To Promote Efficiency in the Use of the Communications Equipment Fund" (EMERGENCY)

H.P. 414 L.D. 536

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-294)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-294)**.

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

READ ONCE.

Committee Amendment "A" (H-294) **READ** and **ADOPTED**, in concurrence.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

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

ENACTORS

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

Emergency Measure

An Act To Allow a Landowner To Erect Installations in or near a State or State Aid Highway

H.P. 696 L.D. 921
(C "A" H-222)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with no 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, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act To Preserve Agricultural Fairs in Rural Maine

H.P. 699 L.D. 924
(C "A" H-227)

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

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

ENACTORS

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

Emergency Measure

An Act To Establish a Special License Plate To Honor Maine Residents Serving Our Country

H.P. 724 L.D. 964
(C "A" H-223)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with no 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, was presented by the Secretary to the Governor for his approval.

Emergency Measure

An Act To Clarify and Update the Laws Related to Health Insurance

H.P. 1053 L.D. 1503
(C "A" H-234)

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

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

ENACTORS

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

Acts

An Act To Provide Native Americans with Lifelong Licenses and Permits to Hunt, Fish and Trap

H.P. 49 L.D. 51
(C "A" H-228)

An Act To Ensure Equitable Geographic Representation on the State Board of Education

S.P. 240 L.D. 791
(S "A" S-107 to C "A" S-43)

An Act To Allow Special Olympics Maine To Conduct an Open Bass Fishing Tournament

H.P. 622 L.D. 825
(C "A" H-230)

An Act Concerning the Taking of Nuisance Animals

H.P. 979 L.D. 1387
(C "A" H-229)

An Act To Protect a Borrower's Right To Use the Borrower's Chosen Accounting Service

H.P. 1022 L.D. 1452
(C "A" H-235)

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

An Act To Support the Maine Patent Program

H.P. 632 L.D. 833
(C "A" H-225)

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

An Act To Create a Service Model for Delivering Career and Technical Education

H.P. 1057 L.D. 1532
(C "A" H-224)

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

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

ENACTORS

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

Resolves