

MAINE STATE LEGISLATURE

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Senate Legislative Record

One Hundred and Twenty-Eighth Legislature

State of Maine

Daily Edition

First Regular Session
beginning December 7, 2016

beginning at Page 1

Representatives:

MOONEN of Portland
BABIDGE of Kennebunk
BAILEY of Saco
CARDONE of Bangor
McCREIGHT of Harpswell
RECKITT of South Portland
SHERMAN of Hodgdon

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

Signed:

Senators:

KEIM of Oxford
WHITEMORE of Somerset

Representatives:

BRADSTREET of Vassalboro
GUERIN of Glenburn
JOHANSEN of Monticello

Reports **READ**.

Senator **KEIM** of Oxford moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#245)

YEAS: Senators: COLLINS, CUSHING, HAMPER, KEIM, MAKER, MASON, SAVIELLO, WHITEMORE

NAYS: Senators: BELLOWS, BRAKEY, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, CYRWAY, DAVIS, DESCHAMBAULT, DIAMOND, DILL, DION, DOW, GRATWICK, HILL, JACKSON, KATZ, LANGLEY, LIBBY, MILLETT, MIRAMANT, ROSEN, VITELLI, VOLK, WOODSOME, PRESIDENT THIBODEAU

8 Senators having voted in the affirmative and 27 Senators having voted in the negative, the motion by Senator **KEIM** of Oxford to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report **FAILED**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-198) **READ** and **ADOPTED**.

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

Sent down for concurrence.

Divided Report

The Majority of the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Restore the Tip Credit to Maine's Minimum Wage Law" S.P. 235 L.D. 673

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-209)**.

Signed:

Senators:

VOLK of Cumberland
LANGLEY of Hancock

Representatives:

FECTEAU of Biddeford
AUSTIN of Gray
BATES of Westbrook
DUNPHY of Old Town
HANDY of Lewiston
LOCKMAN of Amherst
MASTRACCIO of Sanford
STETKIS of Canaan
VACHON of Scarborough

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

Signed:

Senator:

BELLOWS of Kennebec

Representative:

SYLVESTER of Portland

Reports **READ**.

Senator **VOLK** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

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

Senator **VOLK:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I think that this is probably one of the more high profile pieces of legislation that we will be dealing

with in this session of the legislature, so I do want to take a few minutes to talk about the process and then I also want to take some time. I went and got my file in my committee because I really want to take a few minutes to make sure that you hear the voices of the hundreds of servers that have contacted the Labor, Commerce, Research and Economic Development Committee, who showed up for what turned out to be the longest committee hearing that any of the staff here at the State House could remember. It ran about 15 hours, beginning at 10 am and ending at 1:30 in the morning, it was the time that we all finally shut the lights out and went home. So this was historic and I understand that it's very challenging for some people to feel as though the voters voted on something and now we're being asked to change it. I would just like to assert that, unfortunately, there is quite a bit of evidence that a lot of the people who voted in favor of increasing the minimum wage, when they voted on the referendum in November, wanted to increase the minimum wage. What they didn't understand, or didn't really want to do and hoped that we would fix, was the portion that we are addressing today, which deals with the tip credit. In fact, there was a Google consumer survey tool that polled 500 Maine residents who voted on the ballot question either for or against. One quarter of yes voters did not understand that the ballot measure also raised the required base wage for tipped employees by a triple digit percentage, even if they already earned far more than \$12 an hour with tips included. We certainly heard from the testimony of the hundreds, and I'm not exaggerating when I say we have been contacted literally by hundreds of servers who said, "Please leave this alone, we do not want to make minimum wage. We make far above and beyond \$12 an hour in an average shift."

In the words of some folks: Todd, who is an owner of a restaurant, said, "It's not that I don't want my servers to make more money, it's that I don't know where it will come from." It was very interesting, towards the end of, it was probably 11 or 12 o'clock that night, we heard from an older woman who had been with us all day, and she was there because she had actually campaigned for this referendum question. She had, she ardently supported it. She went door-to-door. Took her own time. I don't think she was paid. She was a volunteer. She was an older person. I think she told us her age, she was in her 60's or even 70's. I don't recall exactly. She got up at the end of listening to all of the servers who came up, and the business owners who own restaurants in Maine, and said, "You know, I really didn't understand the business model of restaurants. I didn't understand how restaurants work and I think we should listen to these people." I thought that was pretty amazing from somebody who had campaigned ardently for the passage of this referendum question.

So the people from Moody's Diner, several of their servers came, and Moody's Diner was started in 1927 and a resident of Waldoboro testified that the removal of the tip credit will seriously jeopardize their 90th celebration and they really want to be in business to celebrate their 100th celebration. With the removal of the tip credit, their payroll will increase \$30,000 to \$40,000 in 2017 and it will compound annually until 2024 to create a staggering \$300,000 annual payroll increase. This to a 90 year old business in the State of Maine that really would like to live to see 100 years.

We heard from a lot of servers. I think sometimes there is a perception that people wait tables when they don't have other skills or other choices in life, and I want to tell you that we actually heard from scores of servers who testified and sent e-mails and

phone calls to say this is a lifestyle choice. Many, many, many of them could be doing other things. Many, many, many of them have college degrees. Many, many, many of them have chosen to wait tables because they can earn a good living, they can have a flexible schedule. This is an example: Amber from Kenduskeag, "I think there is this perception that servers end up waiting tables because they have no other viable options. That is not the case. Serving works best for me and my family. I love the opportunity that my industry affords my family. I am able to stay home with my children during the day and my husband stays with them in the evenings. Our children benefit from having the undivided attention of their parents while they're young. Eliminating the tipped wage means I will work longer hours to support my family at the level I have in the past. As a numbers person, I keep track of my daily take-home income and I can tell you 100% that I have lost money due to the confusion surrounding the tip credit." This is something we heard a lot and I believe that if you have taken the time to speak to servers you will hear this also. There's already the perception from some people in the public that servers are earning minimum wage and that they no longer need to either tip at all or tip at the same rate, which is customarily 20%, and many, many servers have seen a decrease in the amount of tips that they are taking home already when they are only now making \$5 an hour. "I have made \$2,717 less so far this year than I had in 2015 and 2016. In 2015, I made \$7,112 in the first quarter, averaging \$647 a week, and that includes two weeks when we were closed to relocate. In 2016, I averaged \$648 a week in the first quarter, and that includes being out of work for the month of March." Because she actually donated a kidney to a complete stranger. "So far this year I am averaging \$439 a week. Can any of you reconcile a 30% loss of income in your budget?"

Heather, from York, said that, "As the bookkeeper, staff is required to claim all their gratuities. If their hourly, with the tip credit, is less than minimum wage it is my job to make up the difference in their paycheck. I have had to utilize this less than 5 times in the 15 years, and only for the valet parking position. The employer is, and has been, required by law to pay minimum wage and not take the tip credit if the tips collected by the employee do not equal minimum wage."

This testimony, I just wanted to highlight, it's a lot, I apologize, but this highlights the fact that a lot of people didn't even understand what a tip credit means. What a tip credit means is that it is illegal for a server to make less than minimum wage. Part of what we did in the amendment to this bill that we are going to be voting on is we clarified that over a week period that is the pay period, and a server's wage, if they do not earn at least minimum wage, then that difference needs to be made up by the employer. That is current law. It's further clarified in the amendment that we will be voting on. So this was, and I promise you I'm almost done, I know there's a lot of other people that want to speak on this.

This is by Christina, who is a resident of Kennebunk, works at a restaurant in Wells. "Last year I made in wages, salary, and tips a total of over \$53,000. \$9,363 of that was my various hourly wages. \$5,200 of that is a salary I received for a management position. \$38,723 of that was in tips." 72.66% of her 2016 income was tipped income. I asked her. This woman works 3 to 5 shifts a week, 7 to 9 hours at a time. She went on to say, "75% of those odd tipped checks were guests I see regularly." She, too, has begun to see a decline. "Not necessarily weekly or monthly, but often enough for me to know what they drink, what

they gravitate to on our menu, whether they've met our new bar back yet, and often enough for me to know they usually tip 15 to 18 to 20%. Of those checks whose tips were far below the norm, half of them were at a 10% tip. This starts to scare me. The food hasn't gone downhill, nor has my level of service. When I'm a server I'm making roughly \$27 to \$28 an hour. If the majority of my tips stop being 15 to 20% and are more like 10% I'm then making only around \$16 an hour. That adds up quickly in a week to a huge deficit. There goes my debt to income ratios for my mortgage. A \$350 to \$450 deficit in a week is tough to make up without taking another job somewhere. There goes the schedule my household needs of me."

Lastly, Kenneth, from Falmouth, who is an owner of a restaurant in Portland says: "I supported Question 4 with a heavy heart knowing that the tip credit was included and still hoping at the time we would be able to reinstate the tip credit. The reason I did support it was I do believe all Mainers deserve a fair wage. That being said, I believe the servers in Maine make a very fair wage." His restaurant had 20,009 server hours in 2016. The average wage for the servers was almost \$20 an hour, for an average of 15.9% of sales. They do 80% of their business between June 10th and October 20th.

So, ladies and gentlemen, I really do hope that you'll be able to follow my lead and follow that of 11 members of the Labor, Commerce, Research, and Economic Development Committee who have sorted through all of the testimony, the 15 hours of testimony, the overwhelming majority of which supported this fix to referendum Question 4. I ask that you listen to the hundreds of Maine servers who are begging us to not change the way that they are paid, to not change their ability to live a lifestyle that gives them flexibility, high wages. It's their choice. And also to the business owners who built their model of business based upon being able to pay, at the time, \$3.75 an hour, it would now be \$5 an hour, which is current law, and allow the public to reward excellent service, which we are all accustomed to in the many restaurants where we enjoy eating. Thank you very much.

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

Senator **BELLOWS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the pending motion and I want to congratulate my Chair as this was a very civil and respectful and long hearing, and we certainly did hear very good and heartfelt testimony for and against this bill from restaurants and restaurant servers alike on both sides. One of the most compelling pieces of testimony I heard was from a restaurant server in my own district, Jenna Rhea of Gardiner, and I read from her testimony because only she can tell her story. "The hardest thing about working a tipped job is the inconsistency, not knowing what you will make when you go to work, not being able to budget. Most of the other women that worked around me were raising families, many of them are single mothers like my sister who has been in the restaurant world for almost 20 years, and like me, she has learned to budget for that inconsistency over the years, because she's come to see a pattern. Saving during busy seasons, fall, winter and the holidays, to prepare for late spring and summer, which are the hardest for restaurants in the Lewiston/Auburn area, and, of course, there are the dead of winter nights when traveling to work is dicey and the tips just aren't there when the customers aren't. But we were there, making less than \$4 an hour. If servers like

my sister and me could count on their tips and more money in their pockets in wages from their employer that would be great. I think it will do a lot for bringing more economic stability to so many families across the state. Both my sister and I have experienced sexual harassment on the job, to be in the position where she felt she had to allow a man to hug her or touch her because if you don't, in her words, they might not come back, or they might not tip well. It's the tipped wage system that puts my sister, a single mother as I said, in a position where she is forced to allow that behavior from her customers. She doesn't have the luxury of walking away when she has to think about paying her bills and feeding her kids. For the economic security it would bring and for the sexual harassment that it could prevent, I ask you to support L.D. 117 and oppose any bill being heard today that would weaken the raise that tipped workers deserve." That's from Jenna Rhea of Gardiner and many other servers like Jenna testified that they had seen their pay increase since voters voted to raise their minimum wage too. For those servers, the increase in take-home pay is a matter of increased economic security and, contrary to fears expressed by proponents at the hearing, many of the servers testified that their tips had not decreased since the law went into effect in January. Indeed, the data from seven other states who have one fair minimum wage for all workers, including tip workers, shows that tips for workers in those states remained equally high. So the net impact in states that have eliminated a sub-minimum wage and established, as the Maine voters have approved, one fair wage for restaurant workers, their restaurant workers saw higher take-home pay and tips. A tips-plus system.

Restaurant owners at the hearing were similarly divided. There is no question that there are restaurant owners who are strongly opposed to what the voters did, but there were other restaurant owners who testified against this bill and urged us to uphold the will of the voters. They pointed to data from the first quarter here in our state that demonstrates that since implementation of the law we have not seen a decrease in the restaurant industry, and they pointed to data from the other states as well. McKinley Jones of the Sun Rise Café and Bakery of Lubec said, in testifying against this bill, "if we can pay my servers a fair wage in Washington County Maine anyone in Maine should be able to."

Ladies and gentlemen of the Senate, I think if we are to overturn the will of the voters we should have clear and overwhelming evidence that the actions of the voters have harmed our state. I listened very carefully and read literally hundreds of pieces of testimony and e-mails from the Maine Restaurant Association and restaurant servers who disagreed with the voters last November, as well as those who agree. I have not seen compelling evidence that the fears expressed have come, or would come, to pass. Voters approved a raise for all workers in November. I don't believe we should do anything to undermine or overturn that. I encourage you to join me in upholding the will of voters and voting no on the pending motion.

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

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, I was proud to sponsor this bill and I'm proud to speak in support of the pending motion. Last November, when voters approved an increase in our state minimum wage, I'm sure they did not intend to drive down the earnings of thousands of

Maine servers and hurt our restaurant industry, but that is overwhelmingly what we are hearing the referendum has done, and we need to fix it. We're hearing it loud and clear. For those of you who've spent time here, if you go to the Downtown Diner in Augusta, and they know you are a legislator, I'll bet you've heard it down there. If you go to the Red Barn for lunch, and they know you're a legislator, I'll bet you've heard it over there. We've heard from this grassroots movement of literally thousands of servers and they are basically saying, "Thanks for trying to help us, but you're not helping us. You're hurting us. Please don't do this to us." So if we don't reinstate the tip credit are bad things going to happen? I think the answer is yes, and we're already seeing it, Mr. President, even if only anecdotally. Menu prices are starting to go up, and you don't need a PhD in economics to figure out why. For a small year-around restaurant with 10 tipped servers the increase in effect will result in an additional expense of about \$20,000 this year, and almost as much every year thereafter. So how does a small Maine business absorb that cost? We know that restaurants operate on a tiny margin. The only way they can make it up is by increasing restaurant menu prices or laying off servers, or perhaps both. Of course we should honor the real intent of Maine voters, but no one intended to hurt servers and no one wanted to hurt restaurants. When we hear from the overwhelming majority that that's exactly what we're doing we have a duty to act. I think we're kind of, in the Legislature, we're kind of like doctors. Our first obligation is to do no harm. If we don't reinstate the tip credit I fear, Mr. President, that we are doing harm. Thank you.

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

Senator **MIRAMANT:** Thank you, Mr. Chair. Men and women of the Senate, I've been working on this issue for many years. I'm sure the votes are pretty set, but a couple of statements came out. There is a lot of misinformation, a lot of people who have been given partial information. It's not about the referendum. It's about the association that spreads lies about the effects. We have many places in the world that don't use tips as a way of compensating employees. They work quite well. We have seven states here that either never had a tip exemption or got rid of it. Servers at both ends of the economic spectrum are making more money. There are restaurants that don't like switching to a model - that their employees are compensated fairly, that people still tip, and they make above minimum wage because it's a combination. There are some that resist any change. It makes it ripe for someone to get misinformation and spread it on and not have it checked. There are restaurants that sent a lot of folks to the hearings by paying them to go and pass on the word that was being spread by their employers. Who wants to resist that? We hear about that all the time. It's part of the problem in any job. Having a wage that gets paid and can be verified and can be challenged if something unfair is happening is a good system. If I want to start a business I have to figure out how to pay my employees. That's a model that we can turn to. If there was no proof that it worked we could change it, but that's why it passed, because there is proof that it works. We will have a chance to change this, but we're starting to see a challenge to every citizen's referendum that passed and saying that the voters didn't know what they were talking about. Well the voters in my district did and they still do, and they come and they talked about this, and they thanked me for spreading the word about how to end

wage theft, sexual harassment on a job, how to improve wages when they understand what's happened in other places. These are all things that they are thanking me for. I've gotten more thank you letters than I have those against, and I never wanted to say that on the floor because they can organize a campaign pretty quickly to flood my in box, but it's okay now because here we are. So I don't like this. The Legislature can fix anything, but we can find what the problems are first. I can't talk about that, so thank you and I'm going to vote against this motion.

THE PRESIDENT: The Chair would caution members not to impugn or question members or organizations motives in the debate here today. The Chair recognizes the Senator from Hancock, Senator Langley.

Senator **LANGLEY:** Thank you, Mr. President. Women and men of the Senate, I rise today in favor of the motion in front of us, and if there's one issue that I know just a little bit about this is the one. Today I rise to speak on the human interest story of this on behalf of the 5,000 plus Maine restaurant workers who have banded together, not unlike the rebels in Star Wars known as the Rebel Alliance to restore the republic. That's how I see them, men and women of the Senate, as rebels who are to stand up against the incredible odds they faced when they learned they were caught up in the middle of a three part question on the ballot that only allowed a one part answer, a yes or a no. These 5,000 plus workers have no objection to raising minimum wage, and the testimony on record will bear out my claim. Linked to that referendum, however, was elimination of the tip credit, a vital credit that has direct bearing on the incomes of servers. As I said, the servers found themselves caught up in a people's referendum, a referendum initiated without input from servers. They found themselves questioning what had happened and how they were ever going to effect change. As it turns out, a single server started a Facebook page to communicate with other servers around the state for the purpose of creating a community, a community that self-organized, a community that questioned why, a community that reached out to supporters of the referendum to explain how their livelihoods would be negatively affected, a community of citizens who just wanted to be heard. A grassroots community of restaurant workers grew, grew into a community of over 5,000 Maine citizens made up of servers and bartenders from Presque Isle to Kittery, from Calais to Bethel, from Mapleton to Porter and beyond. Servers and bartenders from Maine's iconic restaurants such as Moody's Diner, Governor's, Miss. Portland Diner, Dysart's, Helen's, and Geaghan's, just to name a few, and servers from new start-ups, just getting off the ground all wanted their voices heard. The really inspiring thing, this was driven by servers not by owners. Leaders of this rebel alliance emerged. Young and not so young. College educated and high school graduates. A diverse cross-section of Maine that does not exist in many industries. It was really impressive to watch. It's what makes Maine really great. This alliance is not a political alliance. It just is not. It's made up of real Maine people wanting to go to work every day. It took great courage for them to enter into the world of politics. It took courage for them to step outside their comfort zone and it took a great deal of courage to come here and testify. They reached out, as citizens of a democracy should, to their elected representatives. They found likely allies in our caucus, such as myself, Senators Katz and Volk, and others from my side of the aisle in both Bodies.

A true story of courage, however, lies with the sponsors of this legislation from the other side of the aisle. Mr. President, I stand here today to recognize those members who listened to their constituents and cosponsored legislation to reinstate the tip credit. Mr. President, we all cosponsor each other's bills, and that's nothing new, but it takes courage to cosponsor bills that so goes against party lines that retribution is swift and hard hitting. Mr. President, I found disparaging statements on line from those who opposed this legislation calling out my colleagues from across the aisle. The pressure was intense. One sponsor told me that he received phone calls from the west coast, Washington State, that were hostile and the person called him every name in the book. Mr. President, he just happens to be a lobsterman and responded to the caller with salty Downeast insults. The 5,000 plus restaurant workers want very much to thank all the bill sponsors, but want to publically thank Senator Bill Diamond, Senator Jim Dill, Representative Bob Alley, Representative Marty Grohman, Representative Brian Hubbell, Representative Louis Luchini, and Representative Anne-Marie Mastraccio, and Representative Catherine Nadeau. They've asked me to do that.

Mr. President, on April 5th a public hearing was held on this legislation. Restaurant workers filled the committee room at 8 am for a 10 am public hearing. Nearly 200 restaurant workers gave up a day of work and Moody's Diner closed for the day so the whole crew could come to participate. They came of their own doing. They waited for hours to testify. The testimony was heartfelt and written by their own hand. The public hearings that day went well after 1 am. It was the longest day I've ever had for public hearings in my 9 years in the Legislature. Right about now you're all thinking my floor speech is going to last that long. I promise you it will not. I've never been so proud of my industry and the workers who came and testified. Hour after hour they told their stories such as these, and Senator Volk listed quite a number of them so I'm going to pare down mine to just one of two. Terry, from Warren, is a 62 year old server who has spent most of her life as a server and in the 1980s found herself in a position of being a single mother. Serving allowed her to purchase a home and raise her children in a pleasant and safe neighborhood. Keri, from Bangor, started working in a restaurant at 15. At 18, she was pregnant. At 20, was a single mom. Serving was the best option for her to make a fantastic income with a flexible schedule. She testified that she was able to keep her boys at home without daycare, financially provide for her family, stayed involved with school activities because of above average earnings and a flexible schedule. She says, and I quote, "To me, that independence is women's rights at its best." I'm going to pare out the other in the interest of time. The other example, as Senator Volk has done a tremendous job, but one that I wanted to respond to in particular was a server who by night is a server but by day is a sexual abuse counselor. She was appalled that sexual harassment is used in this debate. She took great offense to it and that she took offense that being a server invites sexual harassment. She said we've moved past that. Sexual harassment is sexual harassment no matter where it occurs.

Here's the bottom line, and the end of my remarks for today, reinstating the tip credit is the right thing to do. As minimum wage rises servers get a raise. If servers do not make enough in tips to make minimum wage then the employer makes up the difference, guaranteeing minimum wage. Additionally, reinstating the tip credit enables tipped employees to make well above minimum wage. It's win win. No one loses here. We protect the floor and

allow our tipped employees to rise to their potential. Mr. President, men and women of the Senate, this is the right vote to take. I thank you for your patience today and it is so important that these workers' stories make it into the public record. Thank you.

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

Senator **DILL:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I imagine that almost every one of you has been asked by a single constituent to put a bill in for them, and probably most of you have obliged. Sometimes that bill may impact them only or perhaps it impacts many. The key word here is impact. I've heard a colleague say that I have a constituent who contacted me and asked me to vote against a bill and I'm going to do it. A single constituent. What do you do when 30 or 40 impacted constituents contact you and ask you for your help? Ignore them? What is the magic number? One, ten, a hundred. Evidently it could be one for some of us, depending on the situation. Again, I heard a colleague say sometimes you have to break from party ranks and vote with your constituents. That's exactly what I did. I could have listened to the servers and wait until today and voted for them. No one would have known that the issue was in my mind, and, I'll tell you, my life would have been a heck of a lot easier. But no, I took what I feel is the right way and co-sponsored this bill and stood up for these servers and got blasted for it. Now, early on I heard from lots of people state wide, mostly against me for co-sponsoring the bill. When I talked to them, or e-mailed them back, probably 99% of them weren't even servers. However, over time the numbers evened out, with many servers contacting me and supporting me for standing up for them.

Some of you may not know that I'm on the local school board, two actually with the CTE School in Bangor, and I've been Chair for 20 years. There's always been an issue with which we've had to deal. That's bullying. It may have changed form in some ways - Cyber bullying - but it's still old fashion bullying. But old fashion bullying is still alive and well, so to speak. When there is bullying the parents and other adults are there wanting to know what's being done about it. Adults. I'll tell you, there was major bullying going on over this bill, focused on me, Senator Diamond, and our six colleagues down in the other Chamber. I can take the calls and e-mails saying shame on you or we're going to make you lose your reelection or we're going to primary you. However, some of our allies took us to task for going against the voters' will and it got nasty. So nasty, in fact, in some of the voicemails, with explicit every other word, that my wife was concerned that they'd be showing up on our doorstep. So now our door is locked at all times. I could even run to the store for ten minutes and come back and the door is locked. That's all it was, bullying, and so-called adults at that.

Sometimes we get bills right and sometimes we get them wrong when it comes to impacted people, and I'll give you a quick example, if you'll indulge me for a moment. Last session we had the opioid bill going from 300 milligrams to 100 milligrams. I voted for that. Thought it was the right thing to do. But I'll tell you, when I was out knocking on doors I heard from only about half-a-dozen people "I think you got it wrong." So what did I do? I teamed up with a colleague and we put a bill in to try to make it right and that's what we're doing here. I think we're trying to make this right - that may have been a wrong. So even after all

the vetting, the hearings, the work sessions that have seemed to get it wrong and not totally right. One size fits all is not true. So when there is a problem we can, and should, fix it. If I decided to gather signatures for a referendum that says, let's say, lawyers or doctors can only get \$12 per hour. I might get that pretty easily passed. Is that fair to the lawyers or the doctors? I'm sure they didn't want it passed, and would be upset because they're the ones impacted and the rest of us aren't. No offense to my colleagues, but the point is that there are unintended consequences. The bottom line is this - so in the case of this bill the impacted constituents have reached out to us, including 12 hours plus of testimony. They've asked us to fix this. So let's go ahead and fix the tip credit. If I don't listen to my constituent servers - shame on me. If you don't listen to your server constituents and stand up to bullying than shame on you. To paraphrase Senator Katz from a couple of weeks ago, when they come for you I hope there is someone to stand up for you. Thank you, Mr. President. I hope you all follow my light.

Off Record Remarks

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

Senator **DIAMOND:** Thank you, Mr. President and ladies and gentlemen of the Senate. I am a proud co-sponsor of this legislation and, in fact, I couldn't be prouder. I live in a high tourist area, the Sebago Lake region, and about September of last year servers started to contact me, one at a time and then two or three at a time, as they learned more about what was in the referendum, and they became very concerned. Most of the people that contacted me were women who were heads of their households, and they were becoming more and more concerned about what this would mean to them. I would say to them, "You know, there are studies. I'm hearing about studies that may put your mind at ease." Their response to me was, "Look, we make - I make - \$20 to \$30 an hour. We're not, nor do we want to put at risk, all of that based on some study." To them, it was about mortgage payments and about car payments and about taking care of their kids in a way that they could not do in any other position that they were able to work in, and they, as a result of that, were willing to speak up - speak up for their families and what they were doing. Now the organization, organized effort, against them and me and others was intense, as you've heard. Certainly, in some cases, has got very personal and very nasty and all of that. Mostly bush-league kind of things, but the thing that I think that got me more determined was because, as they were going through some of this as I and others were, they became more determined to speak up and stand up for what they believed in. Some of the telephone calls were so bad that my wife and I had to make sure we got back to the house to erase them before our grandchildren would hear what was left. Pretty bad stuff. Pretty intolerant, actually. I think, for the most part though, people have started to see the benefit of this and, all my constituents and servers have contacted me, all they really want to do is continue doing what they're doing now - earn the money they can earn and are earning now so they can take care of their

families. To me, that's not asking for much. Thank you, Mr. President.

Off Record Remarks

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

Senator **BRAKEY:** Thank you, Mr. President. I will keep my words remarkably brief. A certain Chief Executive once told us the nine most terrifying words in the English language: I'm from the government and I'm here to help. The elimination of the tip credit is proving to be a classic case of government imposed solutions, helping people who never wanted our help and whose lives we make more miserable by it. Mr. President, sometimes I think that with the best of intentions we try to use government to help people so much, whether they ask for that help or not, that we forget our primary purpose here, protecting the liberties and freedoms of the Maine people so they can make their own choices in the marketplace. They don't need a paternalistic government telling them what's best for them in terms of the jobs they work and sometimes we need to just get out of the way. So today I hope we can restore some economic freedom for our restaurant workers here in Maine. Let's restore the tip credit today. Thank you.

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

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'd like to certainly rise and speak in opposition to the pending motion, but I certainly would like to reference the good Senator Dill, the good Senator Diamond. Certainly no one should ever feel that they can't support a position, that they can't support their constituencies. That's something that I believe wholeheartedly and, as a Democrat, I've certainly found myself on the other side of issues that Democrats didn't support and certainly during this whole debate I would hope that both of you would think that I certainly never did anything to force you, but I, first and foremost, just believe that what happened to yourselves and your families is something that's totally unacceptable in politics, regardless of what your party is. You know, I've certainly been at the long hearings. I served on the Labor Committee for ten years. Minimum wage hearings consistently were some of the longest ones, as the Senator from Cumberland, Senator Volk, has said. I don't believe the hearing that they had on this issue, I think it probably was one of the longest ever, but minimum wage issues certainly bring a lot of people out to speak, and I know, in my time, when the minimum wage was asked to raise just 50¢ an hour, a lot of people came and spoke - spoke in favor of that, and over the last ten or so years 50¢ an hour for the minimum wage was rejected time and time again. That certainly has brought a lot of frustration to people out there, and I think that's why you saw such a big effort to have minimum wage, have the CPI, and have tip credit put onto the ballot. That minimum wage referendum that was put on the ballot - one with more votes on a referendum in Maine history, one where the majority of Maine counties and more people voted

on this question than they did for President. In my Senate District President Trump won very convincingly. Representative Poliquin won even more convincingly. But way down on the ballot, this question did extremely well, better than both of them. So I think that, you know, certainly people around the state understood what they were voting on. While they may have had some concerns, I think their frustration certainly bared out that they were going to vote for something to change the way things were going in this building. One may not like those specific policies, but each is a very rational policy with compelling logic behind it.

Regarding the effort to ensure tip workers receive higher base wages with steady tips on top of them, there are a few things that we do know. First, we know that the restaurant industry in Maine is growing and exploding. Secondly, while there are plenty of places in the restaurant industry where one can make very good money, and we've heard that today and I certainly believe that, we also know that in many corners of this industry it's a low wage, precarious industry. The most objective, reliable data we have comes from the U.S. Government Bureau of Labor Statistics, State Occupational Employment and Wage Estimates. Over and over again those numbers show that many occupations in the restaurant industry earn low wages. Ladies and gentlemen, realize that even after the referendum, where we are right today, men and women servers are making \$200 a week after 40 hours before taxes. That's what they have to be paid before tips. That's what you're giving a worker right now, \$200 a week on a 40 hour week, with the restaurant worker having to make up the rest. That seems like quite a bargain. So finally we know that the model the Maine voters adopted is already the model for nearly 1 in 5 Americans. More than 60,000 people live and work in states with profitable restaurants where servers receive a regular, higher base wage with tips on top of it, and that model has worked very well in those places. I can't stress this point enough. We're not going to be the first in the nation with this policy. It is, and has been, the law of the land in seven other states for a long time. I understand it was said earlier that it is not a one size fits all, and I do agree with that, but there are a lot of workers in this state that aren't making the \$20 and \$30 an hour, and I hear from those people consistently. I've heard from them for a long time. I certainly understand that everyone has to support and vote for their constituency, but I believe that the constituency of low wage workers needs to be represented in this building, and that's what I'll do today with my vote.

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

Senator **DOW:** Thank you, Mr. President. I don't have anything to read. I guess that's the usual. I just get up occasionally and speak. We've talked about change and we've talked about models to help out the surviving waitresses. I call them the surviving waitresses because change is coming. It may be the change that we never intended to come. I can remember during this campaign somebody said, "Oh, there is a restaurant down in Portland, they don't have waitresses. They've got machines where you just order on." I thought, "Well, that's something new." I discovered it wasn't new. I came through New York City during Christmas time. As a matter of fact, I took an air flight out of New York City at Christmas. You want to enjoy yourself driving through Manhattan? Go through at Christmas Day. There's no traffic. None. Just zip right through. You go to the airport, there aren't many people there. Plenty of places to eat, so you just go

find a place. So I did. I came to a pretty good sized room that is as big as this. Lots of tables. No waitresses. None. Just tablets. Something I had seen at one of the chain stores in Maine before where you could order your drinks, play games on, but at least we had a waitress at the chain store, but not at this place. There weren't any waitresses. They had been eliminated already because of the tablets. So I sat at the counter. I was the only one at the counter. I'm looking at the tablet. I don't know what to do with it. I'm not very good at electronics. I just kind of looked at it and the lady that was the bartender comes over and she just kind of turned it on for me and says, "Push this button." She walked away, never spoke to her again. She never said another word to me. Well, I got through the menu very easily, even me, I got through it and she just said, "Run your card through here." You dial your order up on the tablet. You run your credit card through the slot and from that point on your order is placed and then you just wait for a runner, one of the very few people working there other than the cooks. A runner to bring your meal. Same as I've experienced in chain restaurants in Maine. You have too if you've been to one. I'll tell you right now, it isn't going to take very long for these chain restaurants in Maine, because they're already doing it in the rest of the country, to add the entire menu onto the tablet and they've taken care of the entire problem of increased wages for waitresses by eliminating them. This is the change that happens when expenses get too large for business. It doesn't matter whether it's the steel industry, the auto industry, or the restaurant business. So somebody, I noticed, that there were some other customers in there. One lady, something wrong happened. She didn't get what she ordered. Took her five minutes to flag down one of the two or three runners that were there. She tried to get ahold of the cooks. They were right there. It's all no walls or anything. She couldn't get the attention of a cook. After five minutes she got the attention of a runner. He wrote directions on a napkin to give to a cook. Well, that was a very pleasant experience. I can't wait until I do that when I go out to eat a nice lobster dinner in Maine. That ought to be fun.

We're worried about restoring the tips and the wages of our waitresses when this whole process has speeded up the inevitable of eliminating them. They shouldn't be worried about whether they're going to get \$40 an hour. That's not ridiculous, by the way. My wife's cousin, 10 hour shift, \$398 and some odd cents. Another friend of my wife's worked the entire summer in Damariscotta. Averaged \$40 an hour. Now we're telling the runners we're going to pay them \$12 an hour when it gets to \$12 an hour. That's a heck of a tradeoff, but that's what's coming. That's the kind of change that sometimes comes when we don't expect it, but we think we're trying to help everybody out but we're not. We're making things go backwards, at least for the State of Maine where people come to the restaurants on the coast to flock, to have conversations, and to get good waitress service. Have we speeded up the process we don't want at all to come to the State of Maine? Are we still going to be a tourist mecca, where people love their waitresses? I go to Moody's because I enjoy the waitresses. Some are old students of mine. Some are classmates of mine. That's why I go. What have we done? This is just one of the few issues of major change that we're going to have to address from the previous year. We should be careful sometimes what we wish for. So have we helped the situation or is it too late because we've encouraged these major chains, and they're going to win, by the way. They are going to win because they have the resources and the know-how. They're already doing it in other parts of the country where they just come in,

changes everything over. You've got somebody at the door that's going to seat you. You're going to place your order on the tablet. You're going to swipe your card through and somebody's going to bring your dinner. When they get there they'll go, "Is this yours?" You've already experienced it; if you've been to them you've already experienced it. That's what's coming and we haven't done our employees of the state any favors by trying to make these huge changes. We should have left well enough alone. We fixed something that wasn't broken and everybody out there said, "I know what I was voting for." No, you didn't because you didn't think past your nose about the consequences that were going to be caused by some of the changes that we made, and this is just one of them. It's unfortunate that I had to get up to speak on this, but there's going to be two or three more coming along where I'm afraid I'm going to have to do that same thing. Thank you, Mr. President.

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

Senator **VOLK:** Thank you, Mr. President. At risk of belaboring this, I just want to point out a couple of things. Wage theft is illegal. It's illegal under current law, but we are actually clarifying that. If you take a look at the amendment, you can see that, for the purposes of the tip credit, wages must be measured in the context of a 7 day work week. That's in rules. With the passage of this amendment that would actually be placed in statute. Maine is a little bit unique in that Part 2 of the summary on the amendment says, it clarifies, that an employer may not deduct any amount from employee tips charged to a credit card, including service fees. So even though the employer is paying a percentage out of those tips to the credit card company the server does not see a reduction at all for any of that service fee. They get all of the tips that they take. Again, there seems to be a little confusion about what a tip credit means. What a tip credit means is that no one in the State of Maine who is a server is permitted to earn less than minimum wage. Minimum wage in the State of Maine currently is \$9 an hour. It will go up to \$12 an hour by 2020. That is the minimum hourly amount that a server is legally allowed to be paid in the State of Maine. If they are working at a restaurant during a snowstorm or, you know, some other day for whatever reason business doesn't come in, and they fail to earn \$12 an hour, their employer has to make up that difference. This insures that no one is taking home just \$5 an hour. That, again, would be illegal under current law, further clarified by this amendment.

I just want to get back to what we're talking about. We are talking about locally owned, many, many times small businesses. From the stack of testimony I have here, this is from a small business owner in Wiscasset. "I've worked in the restaurant business since I was 16 years old," and, by the way, this was common. We heard from a lot of different business owners who started out as servers, or even as busing tables, or working as dishwashers. They, based upon their income they were able to make working in restaurants, they actually became restaurant owners, sometimes purchasing the restaurants at which they served tables. "I've worked in the restaurant business since I was 16. I've worked as a waitress, bartender, counter server, manager, cook, and dishwasher in restaurants between Bath and Wiscasset. I now own a café on Route 1 in Wiscasset. We are a small diner that offers affordable, home cooked breakfast and lunch 363 days a year. Our staff consists of 9 paid employees,

which are 4 waitresses, including the owner herself, 5 kitchen staff. Some of my staff and I have worked together for nearly 20 years. We have a good steady business. Though none of us are getting rich, we all work hard. The restaurant business is hard work, but our wait staff makes good tips, well over the \$12 an hour they will make if this tip credit portion is not repealed, and most of our kitchen help makes over the current minimum wage. When the minimum wage referendum was being discussed last fall I had no idea that it would actually pass, but I realized after the fact that most people had no idea that the tip credit was part of the referendum, nor that its elimination would have such a profound impact on restaurants like me." She goes on to talk about some of her regular customers. "I try very hard to keep my prices affordable, but I have already had to raise my prices because of rising food costs. This referendum will force me to raise prices further, which will be a burden for many of my customers. You may think that dining out is a luxury. For some of us it is, but it is also a necessity for many of our customers who depend on us for a hot meal, and we check in with them if they fail to come on their regular day. Our staff and our customers are a community and it bothers me to know that at the end of my lease, in about a year, I may have to close my business. After running my budget projections for next year, I came to the sad realization that because of the increase in the minimum wage, along with the elimination of the tip credit, this business will no longer be sustainable. I sincerely hope that you, as our elected officials in Augusta, listen to the voices of those of us who understand and have lived this business; those of us who have spent our life preparing and serving food; those of us who think of our customers as an extended family. Please pass this legislation. It is important to me, my staff, our customers, and to our community. Sincerely, Cindy." Thank you.

THE PRESIDENT: The pending question before the Senate is Acceptance of the Majority Ought to Pass as Amended Report. If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#246)

YEAS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DESCHAMBAULT, DIAMOND, DILL, DION, DOW, HAMPER, HILL, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, SAVIELLO, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, GRATWICK, JACKSON, LIBBY, MILLETT, MIRAMANT, VITELLI

23 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **VOLK** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report **PREVAILED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-209) **READ** and **ADOPTED**.

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

Sent down for concurrence.

Off Record Remarks

Divided Report

The Majority of the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Base the Minimum Wage on a New England State Average and To Restore the Tip Credit"

S.P. 277 L.D. 831

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

Signed:

Senator:

BELLOWS of Kennebec

Representatives:

FECTEAU of Biddeford
BATES of Westbrook
DUNPHY of Old Town
HANDY of Lewiston
MASTRACCIO of Sanford
SYLVESTER of Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-210)**.

Signed:

Senators:

VOLK of Cumberland
LANGLEY of Hancock

Representatives:

AUSTIN of Gray
LOCKMAN of Amherst
STETKIS of Canaan
VACHON of Scarborough

Reports **READ**.

Senator **VOLK** of Cumberland moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

Divided Report

The Majority of the Committee on **MARINE RESOURCES** on Bill "An Act To Improve the Enforcement of Maine's Lobster Laws" S.P. 190 L.D. 575

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-200)**.

Signed:

Senators:

MAKER of Washington
VITELLI of Sagadahoc

Representatives:

KUMIEGA of Deer Isle
ALLEY of Beals
BATTLE of South Portland
BLUME of York
HAGGAN of Hampden
HAWKE of Boothbay Harbor
SIMMONS of Waldoboro
TUELL of East Machias

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (S-201)**.

Signed:

Senator:

BRAKEY of Androscoggin

Representative:

SUTTON of Warren

Reports **READ**.

On motion by Senator **MAKER** of Washington, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-200)** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-200) **READ** and **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-200)**.

Sent down for concurrence.