

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 10, 1992 to March 31, 1992

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

December 5, 1990 to December 1, 1992

On motion by Senator CAHILL of Sagadahoc, the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Non-concurrent Matter

Bill "An Act Regarding Maine's Comprehensive Early Intervention System for Infants and Children under 6 Years of Age"

S.P. 921 L.D. 2360
(C "A" S-679)

In Senate, March 24, 1992, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-679)**.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-679) AS AMENDED BY HOUSE AMENDMENT "A" (H-1274)** thereto, in **NON-CONCURRENCE**.

On motion by Senator ESTES of York, Tabled until Later in Today's Session, pending **FURTHER CONSIDERATION**.

Joint Orders

The following Joint Order: H.P. 1766
ORDERED, the Senate concurring, that the Joint Standing Committee on Housing and Economic Development report out legislation to promote economic growth and to provide assistance to businesses.

Comes from the House **READ** and **PASSED**.
Which was **READ** and **PASSED**, in concurrence.

The following Joint Order: H.P. 1767
ORDERED, the Senate concurring, that Bill, "An Act to Extend the Appraisal License Effective Date," H.P. 1734, L.D. 2422, and all its accompanying papers, be recalled from the Governor's desk to the House.

Comes from the House **READ** and **PASSED**.
Which was **READ** and on motion by Senator **BALDACCI** of Penobscot, **PASSED**, in concurrence.

Off Record Remarks

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

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on **APPROPRIATIONS & FINANCIAL AFFAIRS** on Bill "An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government for the Fiscal Years ending June 30, 1992 and June 30, 1993 and to Change Certain Provisions of the Laws" (Emergency)

H.P. 1547 L.D. 2185

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1192)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **FAILED OF PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1192) AS AMENDED BY HOUSE AMENDMENTS "D" (H-1206); "L" (H-1216); "N" (H-1219); "Q" (H-1222); "T" (H-1228); "U" (H-1230); "FF" (H-1252); "OO" (H-1275); AND "PP" (H-1279)** thereto.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-1192) **READ**.

House Amendment "D" (H-1206) to Committee Amendment "A" (H-1192) **READ**.

Senator **BRANNIGAN** of Cumberland moved that House Amendment "D" (H-1206) to Committee Amendment "A" (H-1192) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

Senator **BUSTIN**: Thank you, Mr. President. Ladies and Gentlemen of the Senate. If you will get that amendment it is on whether or not we put language in the budget bill.

THE PRESIDENT: The Chair inquires as to what purpose the Senator from Cumberland, Senator Brannigan rises. The Senator may state his point of order.

Senator **BRANNIGAN**: Thank you Mr. President. Ladies and Gentlemen of the Senate. The Senator from Kennebec, Senator Bustin said that the amendment was H-1230 and mine says it is H-1206. I wanted her to speak to the proper amendment. Thank you.

THE PRESIDENT: The Chair understands the point of order is House Amendment H-1206. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN**: Thank you Mr. President. I stand corrected. I had the wrong amendment in my hand. This is the amendment that would remove the budget bill the \$2,000,000 amount that has been taken out of the Maine Youth Center fundings so that they could request for proposals to privatize the Maine Youth Center. This amendment requires prior legislative approval before the Commissioner of Corrections or the Department of Corrections may issue a request for proposal or enter into a contract for privatization of any part of the Maine Youth Center.

This Amendment also requires an across the board reduction of all but a few General Fund accounts. This is an important amendment. We had a public informational hearing at the Maine Youth Center on Friday of last week - the majority of the Corrections Committee was there. We ran that hearing until 6:00 p.m. that evening. It became very evident to everybody there how disruptive and, yes, even less than cost effective, this kind of action would be. This is an action that is being taken without coming to the Legislature. The appropriate way to do this, if this is going to be done in a very good and transitional manner, is to come before the Legislature beforehand.

There are many, many reports that I could share with you that would tell us - one statement from the American Corrections Association who came to do a technical assistance study on this - was, "you can't save a dime". You won't find this statement in any technical studies or reports given but you will find it was said to many people at the Maine Youth Center as some of the reviewers were leaving. "You can't save a dime." They didn't save a dime in Maryland, nor in Florida.

Now that doesn't mean that the people who testified during the Correctional Hearing weren't willing to listen to a better way to deliver services to the juveniles in the State of Maine. They are more than willing to do that. However, you must understand that what we have here in Maine is looked at by other states as a premier program for

juveniles. Sure, it doesn't meet my standards. My standards would be that you bring in all the families, resolve all the family problems, make them good healthy adults, and they'll never enter into the adult system. That's a standard that we can never pay for.

What we have at the Maine Youth Center is a premier model of what should be done across the nation. Anybody will tell you that. What you are being asked to do in this budget is to disintegrate that. Take that away, get rid of it without doing it in a very studious, and I say, deliberative, way. It is just an incredible intrusion on the delivery of those services. On the impact to the people who receive those services, and most certainly, to the people who deliver those services, whether it be in the community that we already have or in the institution which is at the Maine Youth Center. After that hearing, the Corrections Committee sent a letter to Corrections Commissioner Donald Allen, a copy of which is on your desk, dated March 23, 1992.

There are a number of questions which have to be answered before we get to approving a reduced budget by \$2 million for an institution. I could go through every question in the letter but I think you can read as well as I can. If I have to, I can get into this but I feel you should know that the \$2,000,000 in the budget is really just a paper \$2,000,000. In fact, as I monitored the Appropriations Committee when the Department and the Executive Branch were presenting how they were going to balance this with Medicaid reimbursement funds, it became very clear that they could only account for \$1,000,000 not \$2,000,000.

Another fact even if those Medicaid funds came through, you still would not balance this budget with the \$2,000,000. It is not the way state government should be looking to deliver services to the people in this State. You may want to look for a better way to deliver those services; but this is not the way. You don't create an artificial hole in the budget and then fill it up with artificial money. What I'm fond of saying in the Halls and will say here is: This is the most immorally, fiscally irresponsible act that I have seen; and we ought not allow it. I would urge you to defeat the pending motion.

Senator **BUSTIN** of Kennebec requested a Division.

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

Senator **BRANNIGAN:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I agree, and many members of the Appropriations Committee agree, with the good Senator from Kennebec, Senator Bustin, and we applaud the work that she and the Corrections Committee have been doing. We hope that it will accrue to a good outcome for the Youth Center. The reason I am moving indefinite postponement of this particular amendment is that it just doesn't work that way.

First of all, the good Senator from Kennebec, Senator Bustin, and I agree that cuts across the board don't work even though we may end up doing them before we're all done. Secondly, this bill, when and if it is passed, will only take effect in July or late June. Between now and late June, the Corrections Department intends to proceed to continue what they started and hopefully the outcome will be what they expected to have. No matter what we do, no matter whether we say that have to have our approval or not—they don't. And they won't. Therefore, they will go ahead and proceed. We've decided, given the

fact that they were going on, we would then try to put our trust in them to do this and capture the \$2,000,000 savings.

Many of us have been encouraging the Corrections Department for years to use Medicaid Funds; it's hard for us to say now, "Don't". Those two things combined - they are using Medicaid and they are going to continue their process for the next three months—no matter what we in the Legislature pass because the law we vote on does not take effect until June. Let's see what they can do - hopefully hearing echo after echo of what Senator Bustin and others on her Committee are saying that they need to do - if they hear that and do the best job possible to bring about the use of Medicaid funds for those at the Youth Center, that is their intent.

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

Senator **GILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Senator Bustin from Kennebec, my seatmate, is absolutely correct in that we had a hearing at the Youth Center on Friday. As many of you know, the Youth Center is in my District and I have monitored the Youth Center all of my legislative career and also for many years prior to that, as I have resided in that community all my adult life. I, too, concur with the good Senator from Cumberland, Senator Brannigan. I think that to attach this amendment to the budget will leave a deep hole. I have faith. I heard much from many members of the Youth Center staff, people in the community. It is a very difficult choice that we, as a legislative body, won't have an overview immediately.

I have to trust that the people who are running the facility on a day to day basis will improve services and add services to the youth there that we're trying to straighten out. We've seen so many people in the past go through the graduate program of the Correctional facility at Windham then on to Thomaston. I would like to see expanded services for youth. I would trust the Department of Corrections at this point to provide those changes that need to be made. We heard that there are possibly 40 people who reside at the Youth Center now who could go into the private sector, and we could capture additional revenue from that. For many of us who have worked on Committees in the past dealing with children and families and trying to maximize money, we have continually looked at where we could maximize Medicaid in areas where we have not utilized a program to the fullest extent. There is a possibility that we could generate additional funds from Medicaid if we could do some privatization of the work with the youths. I, too, am very mindful of the types of young people we are dealing with there, services they need, and if it is the best of all worlds. I would like to see more services where we could maximize and get some more services through Medicaid. I would ask you to vote with the good Senator from Cumberland, Senator Brannigan, on this.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. There are a number of things to address. One of the things said by my good seatmate from Cumberland, Senator Gill was that if we did this, we would leave a deep hole in the budget. I remind you that deep hole, up to \$1,000,000 is already in the budget even with all of the fast tracking they've done to research. What happens,

with the Medicaid dollars as it relates to the Maine Youth Center can only bring them on the face of that \$1,000,000. To use the argument that to have this amendment creates a deep hole in the budget is ludicrous.

Also, as the good Senator from Cumberland, has stated the amendment, in fact, funds that deep hole. It may not fund it the way you and I like but it funds that deep hole. And if the good Senator from Cumberland, Senator Brannigan, believes that it should be funded in another way, perhaps he ought to offer an amendment that would do that and recognize the fact that we have the hole anyway—that it's merely paper. It was said that there were about 40 people at Maine Youth Center that should be out into the community. We do not dispute that, that is absolutely true! Forty people! You know why those forty people are there right now? Because, we, the Legislature, took away forty to forty-three community slots in previous years. So we had no other place to put these juveniles but the Maine Youth Center! And now, you're saying to me, "Oh, good, now we've found this pot of gold, Medicaid. I don't know how we get those Medicaid dollars, I kind of think they come out of my pocket and yours—they just fly over to Washington and then fly back here again; and they only come back 60-70%. We still have to put in the 30%.

Let me remind you of something else. When you're talking about Medicaid dollars, you are talking a division of approximately 67-68% which means 27-28% that you are taking out \$2,000,000 out of Maine Youth Center to set up services that are probably going to cost you 70% more; if not more than that. Out of the taxpayers' dollar maybe not out of the State taxpayers dollar. Somehow I think that all of us sitting here who live in the State of Maine are paying the same moneys to the Federal Government as you're paying to the State. All you're doing is getting it back. Let's be clear on how we're using taxpayers money.

In the first place, you are increasing the cost of the service, not decreasing it. If you don't think that is morally and fiscally irresponsible, I do. I think we ought to be very, very clear it that. To indicate that this bill isn't going to do anything because it will not become law until July 1st and they've been assured that they can have these Medicaid dollars in place and the changes done by July 1st is also ludicrous. If you've read the technical assistant report from the American Corrections Association that was requested by the Governor's office, you will find that when you have to incarcerate juveniles, which is called secure detention, Medicaid cannot and will not reimburse. So you will now have to change your laws on secure detention for juveniles and I see nothing before me that addresses this particular question. Nothing.

They are trying to tell us, through the Medicaid office, that they're working with the Federal Government, and Boston's Medicaid Office has said, that they can fund through Medicaid. We have asked in our little epistle of March 23 to give us in writing that the Federal Government is willing to fund secure detention for juveniles in the State of Maine with Medicaid funds. We have not received that letter. I would suggest to you that if this Legislature wants to put their \$2,000,000 on the line, on the promise from the Boston Medicaid office, that we're going to be reimbursed, you probably have

not had the same dealings that I've had with them in my career.

Yes, Medicaid moneys can be accessed to provide different living situations for juveniles who are in trouble and need that kind of help. We do have them right here in Jefferson. We have a wonderful teaching parent's home. We've had some wonderful programs that have been taken away from us in previous years. All of a sudden, because we want to privatize youth services, we've got all this Medicaid money. We had Medicaid money to do that in previous years, why didn't we use some then. It's an incredible thing and to see that there's no affect, and that we should just proceed. I think you should pick up on what was said in Appropriations Committee that it doesn't matter what you do, we're going to privatize anyway. To which the Appropriations Committee promptly replied, well, we're going to show the savings even though we know the saving isn't there. We're going to show it because we're going to take that \$2,000,000. That's how it really went down, folks, and that really happened. I don't think that's the responsible way to do government.

If you don't think that it doesn't have an affect my seatmate will uphold me on this and it is fairly difficult for me to say but when we had that hearing at the Maine Youth Center, a young man stood up and testified. That young man was still at the institution and still receiving services. He was testifying on his own to say how that had helped him. I could not stay in the room. I had to get up and leave because what he was saying was brought up by a single mother, had drug problems, had stolen from his mother, and ended at the Center. He was so grateful that he'd been stopped and was being given the help he needed.

Those are the kinds of service that you are now providing to the juveniles in this State. And what you are doing is upsetting everybody that delivers those services, that receive those services. The courts aren't willing to put juveniles in an institution where they can get those services with all of this kind of stuff going on. The staff was very good and I will tell you of a staff member who was trying to decide if he should apply for a \$80,000 a year job in Florida. He was interested in knowing if privatization was going through. He runs one of the most difficult programs at the Maine Youth Center. I had to say to him, "You might as well apply because I don't think this Legislature is going to do anything to help you out. I don't think this Legislature is going to keep the continuation of the good services they give either." It was a pretty sad day for me to tell that man that. I don't want to lose that kind of expertise in Maine but we're going to. Florida's willing to pay for it. It's unfair to the people, it's unfair to everybody.

I don't usually do what I'm going to do now, but I'm going to do it. I have a communication in my hand right now. It's a request from Richard Silkman, Director of the State Planning Office, to get a contract for a Judith Freidlander, an attorney, who was sent to the Youth Center along with those two technical assistants from the American Corrections Association, to fast-track this privatization. It's obvious to BPI where all this goes. The reply came back - No we can't do that. This is from someone in the Division of Purchases. I'm avoiding naming anyone but will be glad to if I thought it appropriate, dated 3-16-92, the first one is dated in

January. "The contract your department has submitted from Judith Friedlander has been denied and the sole source of justification was not sufficient. Other vendors have expressed an interest in this type of work. The RFP process would be the way to handle this request." The next communication that I see is a transmittal memo. This person was given assignments by the Governor to develop a way to get \$2,000,000 from privatizing the Maine Youth Center activities. Will you advise the appropriate people and get contracts approved. It was from Sawin Millett and has "today" under the date. A reply from Dale on March 18 (so I assume the previous memo was issued on March 16). "Jim/Dick in that we have a directive from the Governor, please approve the contract." Then it was approved. That's the fast track we have, folks; and that's what you're looking at. This amendment shouldn't go through. This kind of stuff should never in State Government. It's happening all too frequently. It's time to stop it.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I feel I must rise and ever so gently say, that I know I have a lot of faults and I know more of them than you do, but I don't think it's proper to characterize the rest of the Committee as morally irresponsible. Maybe some other word or phrase might be more proper. I don't think that any member on the Committee that I serve on fit in that category.

THE PRESIDENT: The Chair would advise the Senator that the pending motion is the indefinite postponement of House Amendment "D" and the only subject to be discussed at this time. The Chair recognizes the Senator from Hancock, Senator Foster.

Senator **FOSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. We as members of the Appropriations Committee have a responsibility to look for Federal dollars in this day of very few. That is exactly what we did, because all too often the Federal Government mandates without the dollars. In this case, we found that the Federal Government will only allow Federal Medicaid reimbursements for care and treatment for private non-medical institutions. That is why we decided to proceed in this manner. It is our duty to look for Federal money rather than use all State dollars for any programs in the State of Maine. That is the bottom line. Thank you very much.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BRANNIGAN** of Cumberland, to **INDEFINITELY POSTPONE** House Amendment "D" (H-1206) to Committee Amendment "A" (H-1192) in **NON-CONCURRENCE**.

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

21 Senators having voted in the affirmative and 11 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland, to **INDEFINITELY POSTPONE** House Amendment "D" (H-1206) to Committee Amendment "A" (H-1192) in **NON-CONCURRENCE**, **PREVAILED**.

House Amendment "L" (H-1216) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "N" (H-1219) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "Q" (H-1222) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "T" (H-1228) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "U" (H-1230) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "FF" (H-1252) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**, in concurrence.

House Amendment "00" (H-1275) to Committee Amendment "A" (H-1192) **READ**.

THE PRESIDENT The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Would somebody explain very briefly this particular amendment. It appears like we have dealt with the flea markets before but this may be a different issue.

Senate at Ease

Senate called to order by the President.

House Amendment "00" to Committee Amendment "A" (H-1192) **ADOPTED**, in concurrence.

House Amendment "PP" (H-1279) to Committee Amendment "A" (H-1192) **READ**.

On motion by Senator **BRANNIGAN** of Cumberland, House Amendment "PP" (H-1279) to Committee Amendment "A" (H-1192) **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

On further motion by same Senator, Senate Amendment "E" (S-708) to Committee Amendment "A" (H-1192) **READ** and **ADOPTED**.

On motion by Senator **ESTES** of York, Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1192) **READ**.

Senator **BRANNIGAN** of Cumberland moved that Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1192) be **INDEFINITELY POSTPONED**.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This would take money to a good end with the school funding formula and being able to come up with a group to help study that. It's certainly admirable and I hope that Senator Estes can carry this out. I move indefinite postponement because of the source of funding. Taking from private school services and geographic isolation grants would, first of all, upset the very delicately balance agreement that has been reached and therefore, would be in itself sufficient. Second, private schools are teetering on a very delicate balance. I hope you will support my motion. Thank you.

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

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. First of all I request a division. Second, I ask you, ladies and gentlemen of the Senate, to seriously oppose the pending motion.

As you know, for the last year, education funding, particularly General Purpose Aid, has come under attack again and again and again. Because of the size of the State's contribution to General

Purpose Aid, 42% of our budget has been the big lumbering target which has been an easy hit. Beginning with education reform back in 1984, the State realized how badly our schools had been neglected. State funding for K through 12 education was increased rapidly. Between 1983 and 1991, we saw the average budget grow by a 15% increase during that period. The state funding formula worked efficiently as we added more money and we gradually raised the State's share to 56.8%. Times were so prosperous during the 80's that the funding formula was adjusted to increase aid, particularly for the low receivers. Because of the economic slump that we have been in at present, in FY91 we were forced to cut \$12,000,000 from education funding and push \$40,000,000 of the June payment into FY92.

Last year, we froze State Aid at \$531,000,000. Almost \$72,000,000 below the certified costs. We did that by a percentage reduction across the board not using the funding formula. In doing so, we compromised the funding formula. When we came back in December, another \$16,000,000 in General Purpose Aid was cut from the budget under the so-called 50/50 plan which was a very contentious fight for the Legislature to finally decide how that distribution plan would take place.

The formula under certified costs would have guaranteed schools for this current fiscal year \$601,000,000. Instead, only \$513,000,000 was spent. Next year, the pain gets worse. The State's obligation for 56.8% of the total cost for education would have been in excess of \$650,000,000. In actuality, the payout under this budget, would be \$515,000,000 which will drop the State's share below 50%. The revisions in the budget that we have made by freezing state valuation in communities at FY92 levels, by freezing pupil count at FY92 level, by freezing program costs at FY92 levels, has effectively suspended the funding formula. In suspending the funding formula, it has made it a non-workable formula for the future.

As important as solving our workers compensation crisis is, and the fact that the Legislature endorsed putting together a special blue ribbon commission, the more than a half billion dollars that we spend annually on education through General Purpose Aid, I believe is important. The funding formula is in suspended animation we will never see the formula revived again. I commend the Department of Education in their work in trying to come up with recommendations for next year, but I think what we need to do over the months ahead is to put together a select commission as I have outlined here—an eight member commission of people with expertise in education funding, to come up with recommendations for a new funding formula and for funding levels for the next Legislature and for the next biennium. I know many people have said that they support this idea but they have difficulty with the method of funding.

We need a select commission that is going to be able to tap in to National expertise. We need a commission that is going to be able to work, and work as diligently as possible from the time the Legislation is enacted until the December 15th reporting date. \$100,000 is a conservative amount of money and I looked and looked; and the area identified that those fundings should be tapped were from the line of adjustments and miscellaneous costs which totalled \$9,000,000. The two items within

those adjustments that I tapped were the private school services and geographic isolation. They were zeroed in on in the Governor's original budget with his recommendation. The Education Committee unanimously supported that. They are extras in a time of very, very tight money. \$210,000 was restored for private school services and \$250,000 was restored for geographic isolation grants.

Asking \$50,000 from each of those categories with the programs still being carried and still being funded, the big picture of a funding formula that is going to work both in good times and in bad times is of ultimate importance to this Legislature and to the people of this State. It is a necessary direction that has to be given to the next Legislature. I urge you to vote against the motion to indefinitely postpone. Thank you.

Senator **ESTES** of York requested a Division.

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

Senator **FOSTER:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I talked to the good Senator from York, Senator Estes, of his concerns about the school funding because I, too, have the same concerns. I worked very hard to restore the private school service money, this is to help our parochial and island geographic isolation communities that I believe need this money to give a good education to the children of those areas. I have to support the motion to indefinitely postpone because I do not believe that is where the money should come from. I asked the Senator from York if there was another bill which he could use for such a thought and he indicated there was none at the time. I firmly believe this is not the bill the money should come from. I ask you to vote in favor of the motion.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BRANNIGAN** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1192).

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-675) to Committee Amendment "A" (H-1192), **PREVAILED**.

On motion by Senator **CONLEY** of Cumberland, Senate Amendment "C" (S-684) to Committee Amendment "A" (H-1192) **READ**.

Off Record Remarks

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

Senator **CONLEY:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. As we proceed here, and although it is not apparent from the debate we've had so far in reference to these amendments, I would like to suggest that anyone who is not tuned in to the fact that this budget is in trouble is an AM person living in an FM world. One has only had to walk around these corridors in the last couple of days to get a feel from people as to how they are looking at this budget and thinking about it.

THE PRESIDENT: The Chair would advise the Senator that the pending question is adoption of Senate Amendment "C". Please keep the comments to the amendment.

Senator **CONLEY:** Thank you Mr. President. This amendment now before us is something this body is familiar with. It is an issue we dealt with last year, essentially this amendment is designed to repeal Part "WW" of the budget and replace it with video game measures which actually was approved by this body last session on a couple of different votes.

In asking you to approve this measure, I believe this is not a gimmick, it is not a push, not a shove; it is real, it is real money. It is money that is there for the State and in offering an amendment, I have really looked at it from a personal position of morality. What is moral for me? What can I accept as something that we should be doing here with this budget as elected officials. I don't place any blame on the Appropriations Committee in reference to the corners they ultimately ended up in, as to where we are going to come up with \$20,000,000 to make up the problem that we have. This amendment is a different answer to that \$20,000,000. Instead of tampering with what I believe is tampering with the Collective Bargaining process to have come up with the solution without going to the negotiating table involving those State employees, without talking to them about what their position might be in reference to the length of hours they would work, their working condition and benefits I suggest that we enact this Amendment. That we put this in the budget. This amendment deals with the putting into place video gaming which would take out the need for reducing our employee hours. This amendment will create jobs about 2000 jobs. It will put our hospitality industry back on its feet.

It will put us ahead of about 26 other states which are now considering or have adopted video gaming in some form. The same type of video games that our neighbors to the north in the Maritime Provinces have adopted. I believe in my heart that this is a much more appropriate way to go and this is how we should raise the money. For those reasons I would ask for its adoption.

Senator **PEARSON** of Penobscot moved that Senate Amendment "C" (S-684) to Committee Amendment "A" (H-1192) be **INDEFINITELY POSTPONED**.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I do appreciate the remarks from the Senator from Cumberland, Senator Conley, in recognizing that we do, from time to time, get painted in a corner, that is sometimes not of our making. One of those corners that we are painted in is represented in this amendment.

Inasmuch as this is not a new subject matter for us, having not been able to work out the difficulties and differences on this subject last session and with the amount of time and attitudes that held by various individuals in this building, it does not appear to me to be an option that would solve the problem. Ultimately and consequently, I see no purpose in continuing to explore something that I don't think is going to be real.

Senator **CONLEY** of Cumberland requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **PEARSON** of Penobscot to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-684) to Committee Amendment "A" (H-1192).

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

22 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **PEARSON** of Penobscot, to **INDEFINITELY POSTPONE** Senate Amendment "C" (S-684) to Committee Amendment "A" (H-1192), **PREVAILED**.

On motion by Senator **ESTES** of York, Senate Amendment "B" (S-677) to Committee Amendment "A" (H-1192) **READ**.

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

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This amendment will allow the public post secondary institutions, a little bit more flexibility by allowing them to expand the opportunity of moving any savings to offset tuition, also to applying that savings to the scholarships with the Maine Academic Programs, if necessary.

Senator **BRANNIGAN** of Cumberland moved that Senate Amendment "B" (S-677) to Committee Amendment "A" (H-1192) be **INDEFINITELY POSTPONED**.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe that this could be done now. We've been trying to avoid things that try to catch savings. We've turned down several bills as a Committee and I would hope that the Higher Education people would give scholarships and those kind of things a high priority if they had the funds available. We do not need to put this in our laws.

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

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I request a Division. The language in Part B is very restrictive, and in applying any savings to tuition, granted it would be fighting across the board, but you also have the possibility of special circumstances where there is more of a need for money and savings and that could be applied for scholarships for those individuals with that need. There is also a very strong possibility that, due to the amount of money that has been cut—\$22,000,000 to the University System and \$4,000,000 to the Technical College System—they if they were able to find savings, they would have that either/or option to apply that money to save essential academic programs which, in my opinion, is as important as maintaining a reasonable tuition rate. I urge you to oppose the motion by the good Senator from Cumberland, Senator Brannigan.

Senator **ESTES** of York requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BRANNIGAN** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-677) to Committee Amendment "A" (H-1192).

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senators having voted in the affirmative and 12 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-677) to Committee Amendment "A" (H-1192), **PREVAILED**.

On motion by Senator **MCCORMICK** of Kennebec, Senate Amendment "D" (S-691) to Committee Amendment "A" (H-1192) **READ**.

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

Senator **MCCORMICK:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. This amendment does not imbalance the budget. In Part WW, there are several Sub-Parts. In Sub-parts 7 and 8 refer to the Highway Fund and to the Federal Expenditure Fund and apply the 37 hour work week to both of those funds.

The savings that accrues there, which is \$4.6 million does not revert to the General Fund, it gets moved from Personal Services within the Highway Fund and the Federal Expenditure Fund to other areas. In particular, when we look at the Highway Fund, that's going to have serious economic development consequences in terms of the large number of construction contracts that the Federal Highway Administration has given to Maine which is going to require Highway employees to muster all their efforts to get out. My Amendment merely deletes Parts W-7 and W-8. It does not unbalance the budget in any way, and does not unbalance the Highway Fund. Thank you.

Senator **BRANNIGAN** of Cumberland moved that Senate Amendment "D" (S-691) to Committee Amendment "A" (H-1192) be **INDEFINITELY POSTPONED**.

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

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. There are two reasons I am making this recommendation. One is that it does affect the General Fund to some extent, we have, in our calculations, moved about savings from the Highway Fund to the General Fund. The rest would accrue in the Highway Fund which also needs funds badly.

Second, and probably more importantly, in all the difficult decisions that were made around furloughs and other things, the parity is very important that workers who are side by side would be treated equally. With this amendment, that would no longer be true. You have to understand that as demoralizing as some of the things we are doing, this would be even more so and continuing. I would hope you would not support this amendment but would vote for indefinite postponement.

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

Senator **MCCORMICK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I will take those objections one by one. The first objection by the good Senator from Cumberland, Senator Brannigan, raised is that there was some moving of funds between the Highway Fund and the General Fund. I took that into consideration, particularly, asked the staff person who was developing this Amendment and I reiterate that the Highway Fund is still balanced and the budget is not balanced if this Amendment passes.

The second point that the good Senator raised which is parity one work a 40-hour week and another 37 hour week. I don't know why we should subject everyone to a bad idea, especially if that bad idea has grave economic development impacts on the State

of Maine which this impact does. Here we have the Highway Fund wherein all of our highway workers fall under. Here we have the main thrust of economic development from the President on down being highway projects in this State and in other states. We know that DOT is going to need every able bodied person available and then some to put these projects out at the rate that the President, the Federal Highway Administration and the Governor want these projects put out.

I ask you, does it make sense then, just for the sake of parity, for appearances, for us to say to the DOT workers, you should work the same amount of hours as all the other workers should, even though it's going to cost overtime to the State, even though it's going to reduce our ability to get these highway and bridge projects out. I believe the answer is no. This state is in the kind of economic crisis where we no longer have the luxury of dealing with appearances the way we've been doing for the last year. I submit to you that it was absolutely silly also for us to ask the institutional employees at the prison and AMHI and BMHI to also work furlough days when their furlough days constantly accrued overtime pay that we now have to pay which further unbalances the budget. It's time we started working smart and this amendment is smart.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BRANNIGAN** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-691) to Committee Amendment "A" (H-1192).

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **BRANNIGAN** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-691) to Committee Amendment "A" (H-1192), **PREVAILED**.

Senate at Ease

Senate called to order by the President.

THE PRESIDENT: The pending question before the Senate is the **ADOPTION** of Committee Amendment "A" (H-1192) As Amended by House Amendments "L" (H-1216); "N" (H-1219); "Q" (H-1222); "T" (H-1228); "U" (H-1230); "FF" (H-1252); "00" (H-1275); and Senate Amendment "E" (S-708) thereto, in **NON-CONCURRENCE**.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, **ADOPTION** of Committee Amendment "A" (H-1192) As Amended by House Amendments "L" (H-1216); "N" (H-1219); "Q" (H-1222); "T" (H-1228); "U" (H-1230); "FF" (H-1252); "00" (H-1275); and Senate Amendment "E" (S-708) thereto, in **NON-CONCURRENCE, FAILED**.

On motion by Senator **DUTREMBLE** of York, the Senate **RECONSIDERED** its action whereby it **FAILED** to **ADOPT** Committee Amendment "A" (H-1102) As Amended by House Amendments "L" (H-1216); "N" (H-1219); "Q"

(H-1222); "T" (H-1228); "U" (H-1230); "FF" (H-1252); "00" (H-1275); and Senate Amendment "E" (S-708) thereto, in **NON-CONCURRENCE**.

Senate at Ease
Senate called to order by the President.

The same Senator further moved to **SUBSTITUTE** the Bill for the Committee Report.

The Chair ordered a Division.

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

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This is a procedure that is not commonly done and what we're doing is returning to the original bill as submitted by the Governor and that is what we will be voting on.

I say that not as Father Time but because we haven't done that this session and people may not know exactly what we are attempting to do as far as parliamentary procedure. We are substituting the Committee Amendment and going back to the original bill.

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

Senator **CLARK:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. Since we have defeated the product of the legislative process, I think it is perfectly appropriate that the Governor's proposal be before us and that the Legislature indicate its acceptance or rejection of that proposal. Thank you, Mr. President.

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

Senator **CONLEY:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. The original bill as it came forth from the Governor was really so long ago that I barely remember much about it other than the fact that I thought it was a lot more irresponsible than the present document the Committee Amendment that we just finished debating. If somebody would like to bring it forward and explain why we should vote in favor of it, perhaps I could find a reason for doing so. At the moment, I really just couldn't.

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

Senator **PEARSON:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I would suggest to the good Senator from Cumberland, Senator Conley, that if he thinks it is more irresponsible, when the Division is taken, that he jump up faster. I don't think I could go for it either.

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

Senator **FOSTER:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. The Governor's budget was presented to me to be a cosponsor and I refused, because the Governor only proposes and the Legislature disposes. For the Legislature not to accept the responsibility of a budget is wrong. It is up to us, and I think we will look irresponsible today if we, indeed, vote for what the Governor proposed. You must each and everyone accept responsibility. The time is now.

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

Senator **BALDACCI:** Thank you, Mr. President. Ladies and Gentlemen of the Senate. I would just like to state I think I heard the good Senator from Hancock, Senator Foster, say that I would be acting irresponsible if I voted for the Governor's budget as was presented to the Legislature. I'm not sure if that's what I heard, but as far as the larger questions which is that we have defeated the bill which was a product of the Appropriations Committee. There was a lot of hard work there and now we are voting on the Governor's budget. I would like to submit to the members of the Senate that it was not only the product but was also the process as it pertains to what happens with the issue that we just defeated earlier. It's that process that is more at issue.

The one thing I hear from my constituents is that whatever you do, do it fairly and equitably and do it across the board. If you're going to have pain and suffering, spread it out. The perception, if not the reality, is that we've centered that pain on one group of people. That isn't fair and I think what should be occurring now is that the Legislature has rejected the budget that is that product. The Legislature's message in that regard is that this process continue in the Committee and come up with an alternative we can vote on—whatever is responsible for that. We have gone through this process and I do not believe we've acted irresponsibly.

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

Senator **DUTREMBLE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. There is no secret plan to do anything but place the original Governor's bill before the Senate because the Appropriation Committee's amendment was rejected. It is very important that everyone understands that the original bill would also be rejected. I do not support the original bill at all. The option before us today was totally and resoundly defeated and we now must put forth that the original bill will be resoundly defeated. At least it is my belief. It is for that purpose that I bring this before you and then we can proceed.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Theriault.

Senator **THERIAULT:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am a bit at sea with this and would request to have you point out which of our rules allow this kind of parliamentary motion.

THE PRESIDENT: The Chair advises the Senator that the pending question before the Senate is the motion of the Senator from York, Senator Dutremble, that the bill be substituted for the Committee Report. The attempt to adopt Committee Amendment "A" (H-1192) failed. Committee Amendment "A" (H-1192) having failed put us back to any motion the floor would want to make and Senator Dutremble made his motion. The Chair recognizes the Senator from Aroostook, Senator Theriault.

Senator **THERIAULT:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I know why it is being done, what I am questioning is, is it an allowed motion under our rules?

THE PRESIDENT: The Chair would answer in the affirmative. The Senate operates under its own Joint Rules and the Mason Rules. This procedure is allowed under "Mason's Manual of Legislative Procedure." The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I would be remiss if I didn't offer this communication which I will read to you now because it was at the request of a constituent from South China.

THE PRESIDENT: The Chair would advise the Senator that the pending motion is that the Bill be substituted for the Committee Report.

On motion by Senator **DUTREMBLE** of York, the Bill **SUBSTITUTED** for Committee Report.

Which was, under Suspension of the Rules, **READ TWICE**.

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

Senator **BUSTIN**: Thank you Mr. President. Ladies and Gentlemen of the Senate. So that I may fulfill my duties to my constituent, I would like to read this communication which is on the budget before us. This is from one of my constituents from South China and she pleaded with me to read it:

"The Legislature is not the employer of State workers. It is the Executive Branch that negotiates collective bargaining agreement and represents the employer for State employees. When the contract expires, according to the Maine Labor Board, it remains in effect until a new contract is negotiated. This is the status quo policy, a Labor Board policy, not law that derives for interpretation of collective bargaining laws based on precedence. It is intended to prevent exactly what is happening now. Willie-nillie tampering with the contract between negotiations."

THE PRESIDENT: The Chair will advise the Senator that the Original budget document does not contain the contract language.

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

Senator **FOSTER**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I take my duties for a balanced budget very seriously. Although, in the beginning I worked hard to fix the Governor's Budget for some things that could be approved here, I am going to vote for this budget. It shows courage that we have something to work with. It isn't the way I wanted it and I have worked for months to get it into a form that you people can look at but you have to take stands. I am going to take a stand and I will vote on the Governor's budget. Thank you.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED** in **NON-CONCURRENCE**.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

14 Senators having voted in the affirmative and 20 Senators having voted in the negative, **PASSAGE TO BE ENGROSSED** in **NON-CONCURRENCE, FAILED**.

(See action later today)

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

SECOND READERS

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

Senate As Amended

Bill "An Act to Restore Maine State Retirement Service Credit to Certain Part-time, Seasonal, Intermittent or Legislative Employees"

S.P. 809 L.D. 2008
(C "A" S-683)

Which was **READ A SECOND TIME**.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER**: Thank you Mr. President. Ladies and Gentlemen of the Senate. This original Bill was defeated and recalled from the Lost file. It was defeated with a unanimous motion. Those of us in the Committee and members of the Aging Committee unanimously agreed to bring this Bill back to have it do several minor things we felt had to be done. I would be remiss if I didn't share with the Senate that I did not attend all the meetings on this issue. I would say if we agreed unanimously to do several things that need to be done to adapt our law to federal law. Unfortunately, this Bill is now what some people refer to as the infamous christmas tree Bill. It has several votes in the committee that are all divided. In my opinion it is too late in the session to begin with this matter so I would ask you to oppose it. Thank you.

Senator **WEBSTER** of Franklin requested a Division.

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

Senator **MCCORMICK**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I urge you to pass this Bill in second reading. It is true that there were many issues that the committee saw fit to put into L.D. 2008, however, we did so for the best of reasons. We did so to save money for the State of Maine. We chose not to request other titles for these very small but important issues to many of our constituents. There was rulemaking through the Board of the Maine State Retirement System that caused great upheaval in two Departments of State Government. There was an inadvertent change that disrupted the prison advocate. There was a loophole that the Education Tech III's fell through that we had to plug. They are all described in the handout I passed out the other day called "Your Guide to the Majority Report on L.D. 2008." I urge you to read it and vote in favor of passage of L.D. 2008. Thank you.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED**.

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Under suspension of the Rules, all matters thus acted upon with the exception of those matters held, were ordered sent down forthwith for concurrence.