

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

*1st Special Session*

OF THE

*One Hundred and Sixth  
Legislature*

OF THE

STATE OF MAINE

1974

Kennebec Journal  
Augusta, Maine

### SENATE

Wednesday, January 16, 1974

Senate called to order by the President.

Prayer by the Rev. Richard Cleaves of Augusta.

Reading of the Journal of yesterday.

#### Senate Papers

##### State Government

Mr. Sewall of Penobscot presented, Bill, "An Act Establishing the Office of Energy Resources." (S. P. 832)

Which was referred to the Committee on State Government and Ordered Printed.

Sent down for concurrence.

##### Veterans and Retirement

Mr. Fortier of Oxford presented, Bill, "An Act Relating to Custody of State Trust and Retirement Funds Securities." (S. P. 833)

Which was referred to the Committee on Veterans and Retirement and Ordered Printed.

Sent down for concurrence.

#### Committee Reports

##### House

The Committee on Taxation on, Resolve, Authorizing the State Tax Assessor to Convey by Sale the Interest of the State in Certain Land in the Unorganized Territory. (H. P. 1717) (L. D. 2110)

Reported that the same Ought to Pass.

The Committee on Legal Affairs on, Bill, "An Act Relating to Number of Directors of Hospital Administrative District No. 4 in Piscataquis, Somerset and Penobscot Counties." (H. P. 1735) (L. D. 2181)

Reported that the same Ought to Pass.

The Committee on Taxation on, Bill, "An Act Relating to Property Tax Appeals." (H. P. 1797) (L. D. 2277)

Reported that the same Ought to Pass.

Come from the House, the Bills and Resolve Passed to be Engrossed.

Which reports were Read and Accepted, the Bills and Resolve Read Once and Tomorrow Assigned for Second Reading.

#### Senate

##### Divided Report

The Majority of the Committee on

Judiciary on, Bill, "An Act to Amend the Motor Vehicle Financial Responsibility Law." (S. P. 747) (L. D. 2159)

Reported that the same Ought Not to Pass.

Signed:

Senators:

TANOUS of Penobscot

SPEERS of Kennebec

Representatives:

WHITE of Guilford

WHEELER of Portland

KILROY of Portland

PERKINS of South Portland

CARRIER of Westbrook

DUNLEAVY of Presque Isle

BAKER of Orrington

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senator:

BRENNAN of Cumberland

Representatives:

GAUTHIER of Sanford

McKERNAN of Bangor

Which reports were Read.

Mr. Tanous of Penobscot then moved that the Senate accept the Majority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I hope that you vote against the motion of the good Senator from Penobscot, Senator Tanous.

This is a bill which I introduced in the special session, honestly feeling that there would be and should be no controversy over it. And I think those of you on the Reference of Bills Committee will remember that when it was discussed, I think there was a general feeling that there would be no controversy, that there should be no controversy, because it is a simple bill and I think provides for simple justice in cases under the Financial Responsibility Law.

In the State of Maine, as you know, we have no compulsory liability insurance in automobile cases. We have what we call a Motor Vehicle Financial Responsibility Law, which briefly provides that if there is an accident involving \$200 or more, and one of the parties carries no

insurance, then this law can be invoked against that person for the protection of the public and to insure the person who was damaged that he will be reimbursed for that damage. The license of the person causing the damage may be revoked by the Secretary of State after a hearing afforded that person unless certain facts or stipulations are complied with. One of those is that the person secure a release from the damaged party or post a bond sufficient to cover any judgment that might be secured by the damaged party, as well as proving that liability insurance is now carried.

All this bill does is provide that the Secretary of State shall notify the damaged party, give him notice of the hearing of the person whose license may be revoked. That is all it does. In other words, A runs into B, and A has no insurance, all the bill does is provide that when A has his hearing as to whether his license is going to be revoked that B be notified of that hearing. B doesn't have to attend if he doesn't choose to, but it is just that B should be notified.

The Secretary of State's office opposed the bill — I was very surprised that they did — and indicated that if B requests that he be notified of the hearing they notify B. So that if B goes to an attorney, the attorney will write the Secretary of State and say that he wants to be notified. But if the individual who is run into does not seek the advice of an attorney, he is not going to get a notice. So the Secretary of State, in determining at the hearing of the person without insurance, it is going to be an ex parte hearing; he is going to hear one side of the case. The Secretary of State's office did not see any reason why they should give a notice to the other party.

The law is designed to protect the damaged party, and I think that it is little enough to make the Secretary of State give notice to him or her of the hearing of the person whose license may be revoked, and I really, frankly do not understand the opposition of the Secretary of State's office. I hope you will reject the motion of the good Senator from Penobscot, Senator Tanous, and that you would accept the Minority Ought to Pass Report of the Committee. Thank you.

The PRESIDENT: The Chair recog-

nizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: If I caught the last part of Senator Clifford's remarks, the notice goes to the individual who is in violation. The individual that is involved, that has violated the statute, does get a notice. It is the other party that doesn't get a notice, under the present law.

I am sure many of you are familiar with the Financial Responsibility Law. Assuming that two individuals get involved in an automobile accident, one of whom has liability insurance and the other one doesn't, now our statutes provide here in Maine that if an individual gets involved in a motor vehicle accident and has no liability insurance covering the damage to the other individual, that his license be suspended. And if that individual desires a hearing, he may apply for a hearing. Now, the other condition is that if he can get a release from the damaged party, in other words, if he would pay the other individual for his damages and get a release from him, and also he must post proof of liability insurance for three consecutive years, then his right to operate is restored to him.

Now, the individual who has no insurance has the privilege of asking for a hearing. The hearing is to determine whether or not he was responsible for the accident, and this is, in a sense, an administrative hearing involving the state against one who has violated the motor vehicle law. It in no way involves an individual who has insurance because he is not in violation, he has liability insurance. What we have done is that we have told the uninsured motorist that if you get involved in an accident you are going to have to comply with the law. In other words, you will have to pay off damages to the other individual and file a bond, and also file proof of insurance for three consecutive years, or else you don't drive on our highways. Basically, this is what the law does.

Now, Brother Clifford seeks to give a notice to the insured party to appear at the hearing if he so desires. Now, the Secretary of State at these hearings, the hearing examiner, as Mr. Wallace Brown from the Motor Vehicle Department told us, has available the 48-hour

report of both drivers before him, so he can pretty well from this report establish what happened. He also has the police report before him, and he has the individual that is in violation before him to tell his story.

Now, I have appeared as an attorney before this department on many, many occasions in situations of this nature, and believe me, if the hearing examiner finds that the uninsured driver was negligent one-hundredth of one percent, he doesn't get his license, or if he found that he has contributed to the accident, he therefore is denied his license and thereafter must comply with the Financial Responsibility Law.

What Mr. Brown objects to, I guess, is that giving a notice to the other party will serve no useful purpose except to give a notice to that individual to come to the hearing to start a controversial arbitrary proceeding, and this is an administrative hearing. He gave us an example of some situations that have occurred and, if I may, with the indulgence of this group, I will perhaps try to point out how the situation occurs. Mr. Brown told us that he has on occasion some of the insured motorists, the other party involved that has insurance, that appeared at some of these hearings, and this is the nature of how they carried it out: he has got a group of people waiting for all kinds of hearings behind, and here the insured driver is one of the people. The hearing is being conducted relative to the individual who is in violation of the law. He is specifying or telling Mr. Brown, the Hearing Examiner, how the accident happened, and up pops that individual in the audience who disagrees and says "That fellow is a liar", and they get into a real roustabout type of a deal, and of course, they don't have contempt powers in these hearings.

As I mentioned, I have never been successful in retaining a license for an individual on a moving violation. I have never been successful in convincing the Secretary of State that my client was not responsible for the accident when it involved a moving violation. So basically, I guess, what I am telling you is that I agree with Wallace Brown. I think he knows his work very well. I think he realizes the problems faced by an adversary controversial hearing and, for that rea-

son, I signed Ought Not to Pass on the report. Thank you.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: Just briefly, I want to explain why I signed the Ought to Pass Minority Report. It is pretty much what Senator Clifford said, that it is presently a one-sided hearing and the hearing officer who only hears one side makes a one-sided judgment. If we want fair play and an even type hearing, both sides should have the opportunity to appear and things of consequence take place there.

I appreciate the arguments of the Secretary of State that it would be easier if this bill didn't pass, but it would be more consistent with justice if it did pass. I think essentially that is what Mr. Brown's arguments are, that it would require a little more time for the Secretary of State. But I think it is worthwhile, so I would again oppose the motion of the good Senator from Penobscot, Senator Tanous.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I was not present at the hearing on this particular bill, but I signed the Ought Not to Pass Report for the simple reason that I did not understand what the relationship would be between the individual who had insurance, what his relationship would be in the proceeding between the state and the other individual who did not have insurance.

I would like to ask a question through the Chair to anyone who would like to answer: what rights of the individual who has insurance might be affected by a finding of the Secretary of State that the individual who does not have insurance was not in any way negligent or at fault for the accident? I think that I would agree that if the rights of the individual who has insurance are in any way abrogated by a finding of the Secre-

tary of State, administrative finding, that the individual who did not have insurance was not at fault or in any way negligent in the accident, that perhaps he should be given the opportunity to be present at that hearing. But if there is no relationship or abrogation of the rights of that individual as a result of that hearing, then I don't feel that it is absolutely necessary for him to be there.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: If I may answer the question of my good friend, Senator Speers, the rights of the insured operator or owner of a vehicle are in no way denied to him. The findings of the Secretary of State's office have no effect whatsoever on the insured motorist's right to recover in the courts. This is an entirely different procedure. His findings are not subject to being introduced in a court of law. So that the insured motorist who wishes to seek to recover from the uninsured motorist in a court of law may do so without being hampered by the decision of the Secretary of State either way, so his rights are certainly protected.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I would disagree strongly with the Senator from Penobscot, Senator Tanous, and I agree with Senator Speers. If in fact, no rights are involved here, it probably would not be necessary or desirable that the person who has insurance be given notice. But in fact, under the Financial Responsibility Law, one of the purposes is to protect the fellow with the insurance who is damaged by the fellow without insurance. This is one of the purposes of the law. The license can be given back if the Secretary of State finds that there is no fault, and the law is designed, partly, to help the fellow who is damaged recover his judgment because the uninsured motorist is unable to get his operator's license unless the uninsured motorist is unable to get his operator's license unless he satisfies the judgment, or posts a bond sufficient to satisfy the judgment, and posts proof of financial responsibility in the form of liability insurance.

So the law does protect his interest. He does have an interest which is at stake because if the Secretary of State determines that the uninsured motorist is not at fault, then the insured gets his license back and the provisions of the law no longer apply. So there is an interest which is affected, and all this bill does is require the Secretary of State to give notice to the other party. I think that is a basic concept of fairness.

In the determination as to whether or not the uninsured motorist is at fault, I think it is a bad situation where you just have one side being given, and this provides the opportunity, if the other side so elects, to give his side to the Secretary of State as well. So there is an interest which is affected. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Anderson.

Mr. ANDERSON: Mr. President and Members of the Senate: I was just wondering how many people involved in an accident that didn't have insurance would know that they had recourse to writing to the Secretary of State and asking for a hearing. I am inclined to agree with the Senator from Androscoggin.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: May I first of all, Mr. President and Members of the Senate, assure you that this is not a platform plank or a campaign speech.

I think the Senator from Androscoggin, Senator Clifford, has very clearly pointed out the situation here but, having some familiarity with this area of law practice, I would like to, if I may, try to bring it into perspective again.

Let us assume, Mr. President, that you and I are involved in an automobile accident and you do not have — let's say that I do not have insurance; that might be better—and the Secretary of State sends a notice to me and says you are going to come in and you are going to have a hearing on whether or not your license to operate a motor vehicle ought to be revoked or suspended because you did not have adequate automobile liability insurance and because you violated our automobile laws. Well, let's assume that this occurs and I go before the hearing

examiner of the Secretary of State's office. Well, I can assure the Senator from Hancock, Senator Anderson, that I have been to some of those hearings, and to hear the person in my position tell the story when he is in there, you would think there never was an accident. I mean, somebody could have been really hurt, and he goes in there and the thing sounds like somebody bumped into him in a parking lot with a shopping cart.

Now, all this bill is going to do, as I see it, it is going to give the other party to the accident, who has a vested interest, of course, in having the truth come out at the hearing, an opportunity to make sure that the true story gets told, that both sides are presented. And I will tell you who has an even better interest in seeing to it that the truth comes out at that license suspension hearing. Everybody in this room and everybody in the State of Maine has a legitimate interest in seeing to it that people who are unfit to operate motor vehicles in fact aren't operating them. And if somebody has caused a serious automobile accident, the Secretary of State's hearing officer ought to hear the true facts, he ought to know what happened.

Now, as I say, I have been to a number of these hearings, as my friends from Penobscot has, and other lawyers here, and there isn't one of you here who hasn't gone to those hearings and come away with the feeling that, gee, there couldn't have been an accident. I mean, to hear the uninsured motorist tell his story, it never happened. So I reluctantly am going to have to differ with the Chairman of the Judiciary Committee, and I can assure him there is nothing political in my disagreement with him on this one.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: It seems to me that we are setting some new ground rules if we pass this type of legislation, and I would like to inquire of the Senator from Cumberland or the Senator from Androscoggin if in fact we are not impeding the pursuit of justice. I hear lawyers complaining about the judges being loaded down with cases. Aren't we setting up another system whereby the adminis-

trative process or the Secretary of State's office is further burdened with additional problems?

It seems to me that you are establishing an adversary situation, as the Senator from Penobscot, Senator Tanous, has very clearly pointed out, and creating another problem for an administrative situation. So it seems to me that what you are doing—and I would pose this as a question to anyone who wishes to answer it — aren't you establishing in fact an adversary court proceeding, which really belongs in a civil court, for an administrative officer of the Secretary of State's office to handle? Is this not a fair question?

The PRESIDENT: The Senator from Franklin, Senator Shute, has posed a question through the Chair to any Senator who may answer if he desires.

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: Needless to say, I agree with the Senator from Franklin, Senator Shute, that we are setting up an adversary proceeding. And by doing so, the responsible uninsured motorist is going to hold his license that much longer, because when you get two parties involved, believe me, they are going to ask for continuances, for hearing dates, for attorneys to be present, and you have got a full court hearing where the law doesn't provide for one. There is no reason for it. It is state versus uninsured motorists. It doesn't involve insured motorists. He has got his insurance he can collect from his insurance company. His method of collection is through the courts, and not through administrative procedure.

My good friend, Senator Richardson from Cumberland, likes to embellish on the way that these hearings are carried on but, believe me, these individuals that appear at these hearings that testify certainly have a difficult time to convince the hearing examiner that there has been no accident, because right before him he has got this person's own report that he filed within 48 hours after the accident, so he doesn't come before the hearing examiner trying to convince him that there was no accident.

As I have mentioned, and I am sure that Senator Richardson from Cum-

berland will agree with me, that if it is a moving violation involved, it is a rare occasion that the Motor Vehicle Department will find in behalf of the uninsured motorist. As I say, I have been before them many, many times, and all they have to find is one-hundredth of one percent responsibility on the part of the uninsured motorist and his license is suspended until he complies with the financial responsibility law.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: A couple of brief points: one is that the Secretary of State's representative at the hearing himself testified, contrary to the good Senator from Penobscot, Senator Tanous, that about half the time in these situations the person's license is given back to him, about 50 percent of the time, so it is not that rare an occasion.

Secondly, as far as the question of the Senator from Franklin, Senator Shute, this still would be an administrative hearing, the issue would still be the same. There would be an opportunity however, for both sides to be heard in the administrative hearing. Thank you.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Roberts.

Mr. ROBERTS: Mr. President and Members of the Senate: I feel as Mr. Shute does, that if we make this an adversary procedure, then the next step is to file depositions, have interrogatories, to have continuances, and it will completely bog down what I feel the Secretary of State's office has been operating well.

Now, it is true they make mistakes, and I am certainly sure that the law court does and the trial courts do, however, I can see where this would bog the whole situation down. We had a few years ago here in the State of Maine a chance to remodel our court system and bring in the federal procedure, which was going to move everything along so swiftly that we would have our cases settled and taken care of by the courts immediately. All it did was to make many more procedures whereby information is made available to one side and the other,

back and forth, so that now our courts are worse than they ever were as far as trying to get the work done, and I feel that we are going to hamper the Secretary of State's office in the same manner.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: In listening to the debate on this particular bill, I think there are certain aspects that are inescapable, certain facts. One is that the Secretary of State is charged with making a determination as to facts. In a sense, that already is an adversary procedure, because one individual involved in the accident comes before the Secretary of State to tell his side of the story, and his side of the story is that he was not at fault in the accident. The other person involved in the accident may feel very differently about it and may feel that the individual who was insured was involved, was at fault in the accident.

If that individual's rights were not affected, I would say it makes no difference whether or not he is there or whether or not he has the opportunity. But if his rights are affected, as we have heard they are because of the financial responsibility law, if his rights are affected by the determination that the Secretary of State has to make at this hearing, then I would say it is extremely unfair and unjudicious to not provide that he at least be given notice that this hearing is taking place and that the Secretary of State is going to be making that determination.

After listening to the debate on this bill, I will change my mind from the signing of the Majority Ought Not to Pass Report, and I intend to vote to keep this bill alive.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought Not to Pass Report of the Committee on Bill, "An Act to Amend the Motor Vehicle Financial Responsibility Law". The Chair will order a division. As many Senators as are in favor of the motion to accept the Majority Ought Not to Pass Report of the Committee will please rise and remain stand-



ing until counted. Those opposed will please rise and remain standing until counted.

A division was had. 10 Senators having voted in the affirmative, and 16 Senators having voted in the negative, the motion to accept the Majority Ought Not to Pass Report of the Committee did not prevail.

Thereupon, the Minority Ought to Pass Report of the Committee was Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

### **Second Readers**

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

#### **House**

Bill, "An Act Relating to Area Directional Sign for Rangeley Lakes — Saddleback Mountain Region." (H. P. 1681) (L. D. 2074)

Bill, "An Act to Provide for Special Motor Vehicle License Plates Observing the Bicentennial of the American Revolution." (H. P. 1720) (L. D. 2113)

Bill, "An Act Providing Funds for Marine Research." (H. P. 1768) (L. D. 2240)

Which were Read a Second Time and Passed to be Engrossed in concurrence.

#### **House - As Amended**

Bill, "An Act to Authorize Satellite Centers for Vocational Education." (H. P. 1757) (L. D. 2216)

Bill, "An Act Relating to a State-wide Food Stamp Program." (H. P. 1774) (L. D. 2246)

Resolve, to Reimburse Sheila Herbert of Chelsea for Damage to Motor Vehicle by State Ward. (H. P. 1704) (L. D. 2097)

Which were Read a Second Time and Passed to be Engrossed, as Amended, in concurrence.

#### **Senate**

Resolve, Providing Funds to Settle an American Arbitration Association Award for Extra Costs in Constructing a Fish Trap on the Union River. (S. P. 784) (L. D. 2264)

Bill, "An Act Relating to Use of Name of State by Nonprofit Corporations." (S. P. 803) (L. D. 2297)

Which were Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

### **Orders of the Day**

The President laid before the Senate the first tabled and specially assigned matter:

Bill, "An Act Creating a Third Assistant County Attorney for Androscoggin County." (S. P. 760) (L. D. 2191)

Tabled—January 14, 1974 by Senator Berry of Cumberland.

Pending—Passage to be Engrossed.

Which was Passed to be Engrossed.

Sent down for concurrence.

The President laid before the Senate the second tabled and specially assigned matter:

Senate Report—from the Committee on Appropriations and Financial Affairs, Bill, "An Act Relating to Payments in Behalf of Maine Students at Out-of-State Graduate Schools." (S. P. 707) (L. D. 2119) Ought to Pass in new draft under new title. "An Act to Encourage Maine Students at Graduate Schools to Become Physicians and Dentists." (S. P. 824) (L. D. 2336)

Tabled—January 14, 1974 by Senator Sewall of Penobscot.

Pending motion by Mr. Berry of Cumberland, retabled and specially assigned for January 22, 1974, pending motion by Mr. Katz of Kennebec to Indefinitely Postpone.

The President laid before the Senate the third tabled and specially assigned matter.

Bill, "An Act to Clarify the Exemption Date in the Minimum Lot Size Law." (H. P. 1731) (L. D. 2175)

Tabled—January 15, 1974 by Senator Berry of Cumberland.

Pending—Passage to be Engrossed.

Mr. Roberts of York then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-314, was Read and Adopted.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I wonder if someone might explain what this bill with the amendment now does?

The PRESIDENT: The Senator from Somerset, Senator Cianchette, has posed an inquiry through the Chair which any Senator may answer if he desires.

The Chair recognizes the Senator from York, Senator Roberts.

Mr. ROBERTS: Mr. President and Members of the Senate: Last year at the regular session, when we passed the law changing the minimum lot size, we repealed all the grandfather clauses which were in the previous law. Those provided that people who had bought lots back years gone by, when the lot size might have been 15 or even 10 thousand square feet instead of the present 20, under the law that existed until last spring, or until October this past year, under that law those people could not build on their lot, if they hadn't already built on them, without going to DEP and trying to obtain a waiver. There was also a provision that if you bought—and this has to do with subdivisions only, bear in mind, it is not to do with unorganized land and it is not to do with any ordinary lot; just the lots that were bought in subdivisions—a lot of these people who bought lots bought lots in a development where they were given in many cases contracts which provided up to ten years in which to pay for these lots.

In the meantime, we have increased the lot size from 10 to 15, and 15 now to 20, and those people, when they finally get their lots paid for, they entitled to a deed. They get a deed, and there is no doubt that they get a valid deed as far as the land goes, but when they try to build on it, if in fact there are lots sold on either side of them so there is no way for them to enlarge the lot, they can't build on it.

This does not, and I want to emphasize this, this does not mean that they automatically are going to be able to build on a lot. They still have to go through the plumbing code and get their lot certified as far as being buildable with respect to the soil tests and with respect to being able to have a waste system; it doesn't affect that in any way. If the lot is no good for that, you still are not going to be able to build on it. But I would say that there are probably at least 1,000 people here in the State of Maine that are paying for lots today and expect when they get them paid for that they are going to be able to build on them, and under the present law they won't.

The PRESIDENT: Is it now the pleasure of the Senate that this bill as

amended be passed to be engrossed in non-concurrence?

Thereupon, the Bill, as Amended, was Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

On motion by Mr. Sewall of Penobscot, Recessed until the sound of the bell.

(After Recess)

Called to order by the President.

Out of order and under suspension of the rules, the Senate voted to take up the following:

#### **Papers From the House**

Bill, "An Act to Apportion the House of Representatives." (H. P. 1844) (L. D. 2351)

Comes from the House, the Bill Passed to be Engrossed as Amended by House Amendment "B" (H-632).

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, a point of parliamentary inquiry: Does this body have to vote on the amendments?

The PRESIDENT: The Senator is correct.

Thereupon, House Amendment "B" was Read.

The PRESIDENT: Is it now the pleasure of the Senate to adopt House Amendment "B"?

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I rise as a member of the Commission on House Reapportionment which worked from August through the early part of January to come up with a plan, which is now being amended. Senator Shute from Franklin was also a member of that House Reapportionment Committee. Its Chairperson was Nancy Masterton of Cape Elizabeth. The report which is now being amended was a bipartisan report. It was an attempt, and I think a pretty good attempt, to arrive at a rational approach to reapportionment.

The first thing, Mr. President, that the Commission did when it first met was to

receive a memorandum from John Kendrick, Assistant Attorney General, relative to the law on apportionment, and we met with Mr. Kendrick and had a long discussion with him as to the criteria which we would have to use. And on Page 7 of the Commission Report the criterion which the Commission used is set out. First of all, we had to use federal census figures and to apply them uniformly. We had to apply a state unit base number of 6,581 directly within counties or combinations of counties, and we had to avoid crossing municipality and county lines as much as possible. In order to preserve boundary lines of our district populations, we attempted to vary no more than five percent above or below the state unit base number. We attempted to have the districts, and successfully so, fall within the permissible population range to remain intact and to be geographically compact. And we also gave consideration to all political and administration subdivision lines whenever needed.

The Commission Report was signed by all the members. It was unanimous, both Republican and Democratic members. And now Committee Amendment "B" which we are asked to vote on is an amendment pertaining to single member districts prepared really at the eleventh hour by one of the political parties, never presented to the Commission, and we are being asked to vote on it. It pertains to single member districts, and I don't think I need to point out to you members of the Senate how I feel about single member districts or how the members of my party in this body feel about single member districts. We feel that single member districts should be dealt with in legislative reform, and we feel that this has been a partisan attempt to create single member districts without any political quid pro quo.

Therefore, Mr. President, I would move the indefinite postponement of House Amendment "B".

**THE PRESIDENT:** The Senator from Androscoggin, Senator Clifford, now moves that House Amendment "B" be indefinitely postponed.

The Chair recognizes the Senator from Kennebec, Senator Speers.

**MR. SPEERS:** Mr. President and Members of the Senate: I would rise in

opposition to the motion of the good Senator from Androscoggin.

The greatest aspect of this amendment, the greatest reason for this amendment, is very clear, and that is single member districts. The reason it is on this particular bill is because this particular bill reapportions the House of Representatives. And if we are going to reapportion the House of Representatives, I feel that it should be done with single member districts.

In support of the idea of single member districts, I would simply like to say that it is just and it is right. In this era of the idea of one-man one-vote, that every individual in the State of Maine should have the equal representation in the House of Representatives and in the Senate as every other individual within the state, I cannot see how multi-member districts can in any way be justified. I think it quite obvious to all of us that someone from the City of Portland, for example, has 11 representatives representing him here in the halls of the legislature. Another individual from some other area of the state in a single-member district has but one representative representing him here in the halls of the legislature. I feel that this is unjust discrimination. When one person has a greater amount of representation in the House of Representatives, it is at the expense of someone else in the state because of that greater representation, someone else in the State of Maine has less representation in the House of Representatives.

We find with multi-member districts a kind of discrimination in reverse. During the 1960's and the great questions of one-man one-vote before the Supreme Court of the United States, the argument was that the cities in this state, the cities throughout the nation, had less representation than did the rural areas, and the great argument was that the legislatures of the states meet not to represent trees, not to represent cows, but to represent people and, therefore, the cities were being discriminated against. I agree with that argument that the legislatures of the states are here to represent people, and I would take it one step further and make it a point very affirmatively that we are here to represent people and that we are not here to represent cities, which

is the case with multi-member districts. With multi-member districts, an individual in a city has far greater representation in these halls than does a member from a single-member district.

I think it is absolutely imperative, in keeping with the constitutional principle of one-man one-vote, that in the next apportionment of the House of Representatives it be apportioned with single-member districts. I would oppose the motion from the good Senator from Androscoggin to indefinitely postpone this amendment.

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

Mr. CONLEY: Mr. President and Members of the Senate: I am sure that the good Senator from Kennebec, Senator Speers, is well aware that the constitutional provision of electing ten or eleven representatives from the City of Portland and other cities has been upheld by the United States Supreme Court as being constitutional. And although I may agree with his philosophy, it is obvious to me that a lot of rhetoric is being wasted here today in trying to run through legislative halls the reapportionment plan, and I think it is unfortunate.

I think it is unfortunate, for one reason, that this House Amendment "B" is before us this afternoon because I am afraid that eventually this is going to the courts anyway. I do believe though that if House Amendment "B" is indefinitely postponed there is a possibility, and it may be a small possibility, but I am sure that it is a possibility that the reapportionment plan without the amendment can be passed. Now, this amendment, which consists of 18 pages, most of us have seen for the first time only a few moments ago and haven't really had the opportunity not only to study it, but not even an opportunity to look at it.

As I turn to Page 4 of House Amendment "B" and look at the first paragraph, it says "Commence Allen Avenue and Forest Avenue, go south on Forest to Stevens Ave, south to New Street, go west to south end of Evergreen cemetery, go west to Boston and Maine Railroad tracks (following cemetery border)", well, I can't picture where the Boston and Maine Railroad tracks are in

that section of the city when the Boston and Maine Railroad stops out in South Portland in Rigby. So it would be very nice for some member who was a drafter of this great amendment here before us to explain to me just where the Boston and Maine Railroad tracks do commence in this section of this city. And I hope I am not speaking with a conflict of interest by reading something about a railroad that I know very little about. I would like, Mr. President, for somebody who is a little bit familiar with this—well, perhaps we would like to railroad the thing through.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: I would like to assure my good friend, Senator Conley, that I will not attempt to try to define the boundaries of the legislative districts as set forth in that paper, and indeed I hadn't seen this draft until this morning, along with the good Senator. And it may surprise my Republican colleagues here in this body to learn that I am in agreement with the Senator from Androscoggin and the Senator from Cumberland, Senator Conley.

I was a member of this Commission. We worked long and hard. We started in the afternoon and finished late at night from August until early in January. It wasn't an easy job, and when you get ten people, five from each party, agreeing on an overall plan for apportionment, I think you have achieved something.

There is one thing different though in this report, as you will notice. I, along with the other Republican members, did urge that an approach be made toward establishing single member districts in the House of Representatives. I think this is an objective that not only Republicans share, but the Governor of this State shared it with us not more than two weeks ago when he addressed a joint convention in the other body. He said that he was in favor of single member districts, if you will recall. So I think this can be established through other means, and I don't think this particularly is the right approach to it.

I think this is just another reason why we are wasting time here. We are just posturing with this amendment and

preening our feathers when we could be getting on with our hearings, which are not being held, and so I will vote the apparent minority on this, that I am opposed to this amendment.

I think, Mr. President, we do have the votes to pass a good Commission plan. I think there are enough votes in the other body and there are enough votes here in the Senate to get a two-thirds majority and at least restore some semblance of legislative integrity and keep it from going to the courts.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion of the Senator from Androscoggin, Senator Clifford, that House Amendment "B" be indefinitely postponed. As many Senators as are in favor of the motion of the Senator from Androscoggin, Senator Clifford, that House Amendment "B" be indefinitely postponed will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Seven Senators having voted in the affirmative, and 16 Senators having voted in the negative, the motion did not prevail.

Thereupon, House Amendment "B" was Adopted. Under suspension of the rules, the Bill was given its Second Reading and Passed to be Engrossed in concurrence.

Under further suspension of the rules, sent forthwith to the Engrossing Department.

On motion by Mr. Sewall of Penobscot, recessed until 5:30 p.m. this afternoon.

(After Recess)

Called to order by the President.

Out of order and under suspension of the rules, the Senate voted to take up the following:

#### **Papers from the House Enactors**

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

An Act to Apportion the House of Representatives. (H. P. 1844) (L. D. 2351)

Comes from the House, Failed of Enactment.

Mr. Conley of Cumberland then moved that the Senate reconsider its prior action whereby the bill was Passed to be Engrossed.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, I would object to that motion and request a division.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I think that each of us would like to see this bill enacted this evening and, in speaking with members in the other body, and whereby this Commission Report is the unanimous report of a bipartisan group, it seems clear to me that this bill can be enacted. I think it is really a travesty if the Senate doesn't try at least to give it one chance to get back into the other house at the end of the hall to see if it can't be enacted.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: The good Senator from Cumberland, Senator Conley, is naive if he thinks this is a travesty. We all know that this report was signed out unanimously by all members of the Commission with the avowed intention of submitting separately a single-member district provision. This is on the bill. This is just the way it has been heralded and this is the way we are acting.

The PRESIDENT: The pending question before the Senate is the motion of the Senator from Cumberland, Senator Conley, that the Senate reconsider its action whereby the bill was passed to be engrossed.

A division has been requested. As many Senators as are in favor of the motion of the Senator from Cumberland, Senator Conley, that the Senate reconsider its action whereby this bill was passed to be engrossed will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. 11 Senators having voted in the affirmative and 14 Senators

voted in the negative, the motion to reconsider did not prevail.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: This bill, for its enactment on the part of the Senate, will require 22 votes. As I cast my eyes around the chamber, it is quite obvious that there are not 22 people present who will vote for the bill. This is, while a regrettable situation, a practical situation too; the weather is inclement. It would be possible for me as Floor Leader to get the votes back here to do it, and I do want to point out this fact, however, I realize the practical problems involved, the driving is very, very hazardous, and I would not want to expose several good members of this body to the hazards of driving on the road under these conditions. I think that this is regrettable, but we all understand the situation.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President and Members of the Senate: I think it is very unfortunate that somehow we have not been able to work out an acceptable compromise to adopt the Commission plan because I believe it really is the responsibility of the legislature, and not the courts to reapportion the legislature, to reapportion itself, and I think we should accept the bill in its present form, although it is something less than acceptable to some of you.

The Senator from Androscoggin, Senator Clifford, has pointed out that the Governor of Maine and indeed many members of the party to which the Senator belongs are in favor of elimination of multi-member districts, as I am, and I can't see why we bog down in this partisan bickering that is leading to the possible rejection of this report. It is a bipartisan Commission, as the Senator from Androscoggin pointed out, we did achieve a rare degree of unanimity through months of difficult effort and, that being true, I think that we should accept the bill in its present form.

Now, realistically, I recognize that many of you have objections to the single-member districts proposal set out in House Amendment "B" which is

before you. I know you object to it and, quite candidly, I can understand some of the specific objections to some specific parts of it. But bear in mind that the opportunities to redistrict ourselves and reapportion ourselves are fast disappearing as the clock moves toward 6:00, and I would hope that you would go ahead and let's try to enact it now, and see what the other body does with it if we send it back in non-concurrence. If they adhere, as my friend, the senior Senator from Cumberland, Senator Conley, seems to predict that they will, then so be it; we made a bona fide effort to reapportion ourselves and to do so in a fashion which I think is consistent with the thing that we are all trying to do, or at least that is what I understood in the earlier debate today.

Mr. President, I request when the vote is taken that it be taken by the "Yeas" and "Nays".

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I would want to concur with the remarks of the Senator from Cumberland, Senator Berry, that this is a bipartisan unanimous report, with a minority report representing the feelings of the majority party to do away with the multi-member districts.

On the other hand, we are all aware of the fact, at least at the last of the regular session of the legislature, that we tried to run a reorganization plan through here which would have done away with the multi-member seating, along with the executive council, and there were several other major changes. But for this House Amendment "B" to be brought before us in the closing moments of a day when this bill has to be enacted, I defy anyone here in this Senate Chamber to be able to get up and speak intelligently on House Amendment "B", because they don't know what is in it. In fact, a gentleman just informed me a few moments ago that somewhere down around Kittery we are in the New Hampshire border, which is great, and hats off to the Republican Party again for another very fine job of House Amendment "B".

It was the unanimous report made up of Democrats and Republicans, it could have been passed in the House, but to show the partisanship of the majority party once again, they are trying to shove something down our throat that not a Republican or a Democrat in this chamber had an opportunity to look over. This came to us this afternoon when we were in recess, sometime during the afternoon, and most of us found it on our desks when we got back. I would hope that if this is the road that we are taking, then let's take it to the courts rapidly and let's not prolong this agony any longer today.

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

**MR. CLIFFORD:** Mr. President and Members of the Senate: Very Briefly, as a member of the Commission, I don't really feel that single-member districts per se is the issue on this amendment "B" and on this vote which is about to take place. No single-member district plan was presented to the Commission for its consideration. This is an eleventh hour plan; I think it has been referred to as an "Alex Ray Midnight Special." As the Senator from Cumberland has noted, no one really knows what is in it. It was prepared at one of the political party headquarters literally at the eleventh hour, and the issue is really a poor plan, and we still have the choice through various parliamentary maneuvers, if we deny the two-thirds on this, to adopt the unanimous bipartisan Commission plan, and I think there would be a good chance of that Commission plan passing in the other body. Thank you, Mr. President.

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

**MR. BERRY:** Mr. President and Members of the Senate: I can understand the enthusiasm of Senator Conley of Cumberland for the amendment, and I would just cite to the good Senator that the bill itself, the result of the Commission work, consists of some eight pages of solid single-spaced directions that I am sure have been read by no one in this room. So what you are talking about in this amendment certainly applies to the basic bill itself.

As to Senator Clifford's maintaining

that the single-member issue was not considered by the Commission, I question this quite seriously. Everybody knew that a single-member district plan was being worked on. This was no secret. I think that the Republican Party has for years adopted the proper posture that single-member districts is a democratic way of representation, and if the good Senator Conley and the good Senator Clifford from Androscoggin feel otherwise, that is their right. The party that I represent has always believed in the one-man one-vote theory, and that is what we are standing for tonight. It would be impossible to get the two-thirds vote necessary to implement the LD without the amendment.

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

**MR. CLIFFORD:** Mr. President and Members of the Senate: As to the chances of passage of this bill in the other body without the amendment, it seems to me we will never know unless we try.

**THE PRESIDENT:** This is an emergency measure and, under the Constitution, in order for its passage it requires the affirmative vote of two-thirds of the entire elected membership of the Senate. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is final passage of An Act to Apportion the House of Representatives, H.P. 1844, L.D. 2351. A "Yes" vote will be in favor of final passage; a "No" vote will be opposed.

The Secretary will call the roll.

### ROLL CALL

**YEAS:** Senators Anderson, Berry, Cox, Cummings, Graffam, Greeley, Henley, Hichens, Joly, Olfene, Richardson, Roberts, Speers and Tanous.

**NAYS:** Senators Brennan, Clifford, Conley, Cyr, Danton, Fortier, Marcotte,

Minkowsky, Shute, Wyman and MacLeod.

ABSENT: Senators Cianchette, Huber, Kelley, Morrell, Schulten and Sewall.

A roll call was had. 14 Senators having voted in the affirmative, and 11 Senators having voted in the negative, with seven Senators being absent, and 14 being less

than two-thirds of the entire elected membership of the Senate, the Bill Failed of Enactment in concurrence.

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On motion by Mr. Berr of Cumberland,

Adjourned until 10 o'clock tomorrow morning.