

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, February 6, 1974

Senate called to order by the President.

Prayer by the Rev. Joe Flippin of Augusta:

Our Father, we thank you for this opportunity we have to assemble together, and we ask for your blessing upon this Senate this morning as they are in session. We pray, Lord, your will be done. Help us, Father, as we try to serve you, and we ask it in Jesus' name. Amen.

Reading of the Journal of yesterday.

Papers from the House
Non-concurrent Matter

Resolution, Proposing an Amendment to the Constitution to Clarify Validity of Municipal Industrial Parks. (S. P. 884) (L. D. 2472)

In the Senate January 31, 1974, referred to the Committee on Legal Affairs.

Comes from the House, referred to the Committee on State Government, in non-concurrence.

Thereupon, the Senate voted to Recede and Concur.

Non-concurrent Matter

Resolve, Authorizing the Commissioner of Educational and Cultural Services to Convey Certain Easement Rights at Southern Maine Vocational-Technical Institute in South Portland. (S. P. 886) (L. D. 2473)

In the Senate January 31, 1974, referred to the Committee on Education.

Comes from the House, referred to the Committee on Legal Affairs, in non-concurrence.

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

Mr. KATZ: Mr. President, the other day in consultation with the Chairman of Legal Affairs, we decided to refer this to Education. I am embarrassed by the House action because the public hearing has been advertised by my Committee on Thursday of this week, in cooperation with the leadership's desire for haste in the session. Therefore, I move that the Senate insist.

The PRESIDENT: The Senator from

Kennebec, Senator Katz, moves that the Senate insist. Is this the pleasure of the Senate?

The motion prevailed.

Joint Order

WHEREAS, Members of the Legislature appreciate the manner in which their quarters are routinely kept; and

WHEREAS, the domestic and custodial staff at the State House have done an exceptional job under difficult conditions brought about by the energy crisis and the current legislative session; and

WHEREAS, carpenters, electricians and countless others have gone beyond the demands of regular duties to aid in the comfort and convenience of the Legislature; now, therefore, be it

ORDERED, the Senate concurring, that the Members of the 106th Legislature join in this expression of thanks to each of you within the several bureaus and agencies who service the Legislature, for your outstanding effort and hope this message will serve as a small measure of our continued appreciation for the services you have so cheerfully rendered; and be it further

ORDERED, that suitable copies of this Order be prepared and presented to members of this dedicated work force to convey the sentiment expressed herein. (H. P. 1948)

Comes from the House, Read and Passed.

Which was Read and Passed in concurrence.

House Papers

Bills today received from the House requiring Reference to Committees were acted upon in concurrence.

(See action later in today's session.)

Orders

On motion by Mr. Tanous of Penobscot,

WHEREAS, it appears to the Senate of the 106th Legislature that the following is an important question of law, and that the occasion is a solemn one; and

WHEREAS, it is the desire of the 106th Legislature to enact legislation that would make workmen's compensation coverage mandatory for all employers not specifically exempted; and

WHEREAS, there is pending before the Senate of the 106th Legislature a Bill entitled "An Act Relating to Applicability of Workmen's Compensation Law to Employers," Senate Paper No. 802, Legislative Document No. 2296; and

WHEREAS, Article I, Section 20 of the Constitution of the State of Maine contains a strong declaration of the right to a trial by jury; and

WHEREAS, the constitutionality of the proposed bill has been questioned as it relates to said Section of the Constitution; and

WHEREAS, it is important that the Legislature be informed as to the answer to this important and serious legal question hereinafter raised; now, therefore, be it

ORDERED, that the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the Senate, according to the provisions of the Constitution on its behalf, their opinion upon the following question, to wit:

QUESTION:

Do the provisions of Legislative Document No. 2296, an Act now pending before the 106th Legislature (Exhibit A) unconstitutionally impinge upon an employer's right to a trial by jury as declared by Article I, Section 20 of the Constitution of Maine?

Which was Read and Passed.

Committee Reports House Ought to Pass

The Committee on Public Utilities on, Bill, "An Act Increasing Indebtedness of the Jackman Water District." (H. P. 1863) (L. D. 2357)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which report was Read and Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on State Government on, Bill, "An Act Creating a Permanent Governor's Advisory Council on the Status of Women." (H. P. 1808) (L. D. 2300)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-662)

Signed:

Senator:

WYMAN of Washington

Representatives:

CROMMETT of Millinocket

BUSTIN of Augusta

CURTIS of Orono

SILVERMAN of Calais

NAJARIAN of Portland

GOODWIN of Bath

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Sensors:

SPEERS of Kennebec

CLIFFORD of Androscoggin

Representatives:

FARNHAM of Hampden

COONEY of Sabattus

STILLINGS of Berwick

GAHAGAN of Caribou

Comes from the House, the Majority report Read and Accepted and the Bill and accompanying papers Indefinitely Postponed.

Which reports were Read and the Majority Ought to Pass Report of the Committee Accepted.

On motion by Mr. Clifford of Androscoggin, the Senate then voted to reconsider its action whereby the Majority Ought to Pass Report of the Committee was Accepted.

Thereupon, on further motion by the same Senator, the Minority Ought Not to Pass Report of the Committee was Accepted.

Divided Report

The Majority of the Committee on State Government on, Resolution, Proposing an Amendment to the Constitution to Provide Appointment of the Attorney General and the Treasurer by the Governor. (H. P. 1854) (L. D. 2347)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

SPEERS of Kennebec

WYMAN of Washington

Representatives:

SILVERMAN of Calais

FARNHAM of Hampden

CURTIS of Orono

GAHAGAN of Caribou

STILLINGS of Berwick

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-664).

Signed:

Senator:

CLIFFORD of Androscoggin

Representatives:

CROMMETT of Millinocket

NAJARIAN of Portland

GOODWIN of Bath

COONEY of Sabattus

BUSTIN of Augusta

Comes from the House, the Majority Ought Not to Pass report Read and Accepted.

Which reports were Read.

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

Mr. SPEERS: Mr. President and Members of the Senate: This particular bill is a bill that was recommended by the Cost Management Survey, and I suppose, if we are playing numbers games, that it will be regarded as just one more bill of the Longley Commission that has received at least a Majority Ought Not to Pass Report from the committee and has been accepted by one of the branches of this legislature.

I think the whole thrust of the Longley Commission, however, and the interest in that Commission of the people of the State of Maine is in cost savings and trying to find where we may save some money for the taxpayers of the State of Maine in state government. I think this particular bill is a perfect example of where the Commission has spilled over into a purely political consideration, at least a philosophical consideration of philosophy of government, rather than focusing strictly upon cost savings in our state government.

We are not doing away, of course, with the Attorney General. The recommendation is not to do away with the Attorney General. The recommendation is not to do away with the Treasurer of the State of Maine. So we still have those two individuals, we still have those two departments, we still have the costs that are involved with running those departments. The recommendation is purely, however, that they be appointed by the Governor of the State of Maine, and I submit

to you that that is a purely philosophical governmental decision to be made, and it is one that this legislature has addressed itself to in the past and has spoken very clearly upon.

I don't think that in putting this bill to rest that we are in any way depriving the taxpayer of the State of Maine of any possible savings, and I would resent any criticism along those lines that might come as a result of this report and as a result of the hoped for action by this body today. If we get to debating the merits of the particular bill, I think that that has been debated time and time again, but I don't believe that it is in the best interests of the people of the state to have the Attorney General particularly appointed by the Governor of the state, and I would move the acceptance of the Majority Ought Not to Pass Report.

The PRESIDENT: The Senator from Kennebec, Senator Speers, moves that the Senate accept the Majority Ought Not to Pass Report of the Committee in concurrence.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: Very briefly, I would oppose the motion of the good Senator from Kennebec, Senator Speers. In the recommendation which is adopted by the Minority Report, the Cost Management Survey recommends that the Secretary of State, the Treasurer and Attorney General be appointed by the Governor. It seems to me that this is not simply a political consideration. This is a consideration on overall efficiency of the Executive Branch. And in view of the fact that it has been recommended by the Cost Management Survey, I would hope that it would not become a partisan political issue in this body.

I think that it will result in a better executive, a smoother running, more efficient executive, and I do think that is certainly within the jurisdiction of the Longley Commission.

Committee Amendment "A" on the Minority Report prohibits a holder of the office of Treasurer or Attorney General from running for state-wide office from that position, which I also think is a good idea which was added by the minority members of the Committee. So I would hope that you would not consider this as

a partisan political issue. I hope that you would accept the Minority Report and the report of the Cost Management Survey, that you would vote against the motion of Senator Speers, and then go on to accept the Minority Ought to Pass as Amended Report. Thank you, Mr. President.

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

Mr. SPEERS: Mr. President, I in no way wish to indicate that this is a partisan political issue by any means, but I do feel that it goes directly to the philosophy of government. If we want to argue about efficiency in government, we could abolish all of the legislative actions and just elect a governor every four years and have him rule by fiat. I certainly don't believe that any of us would go quite that far in arguing for efficiency in government.

Since we are going to debate the merits of this particular bill, I would like to point out that I don't believe that the Attorney General should be the Attorney General for the Governor of the State of Maine. I think he is the Attorney General for the State of Maine. We saw in this last session, in the regular session, a problem arise in which the legislature of the State of Maine wished to have investigated certain aspects of the power petitions, and we saw a very uncooperative attitude on the part of the Governor of this state in directing that the State Police not cooperate with the Attorney General in carrying out that investigation. If the Attorney General himself had been appointed by the Governor, I am sure the directive would have gone directly to the Attorney General of the State of Maine, "Don't investigate this problem", even after having been requested to do so by the legislature. The point that I am making is that the Attorney General is the Attorney General for the people, and not strictly for the Chief Executive of this state.

The PRESIDENT: The pending question before the Senate is the motion of the Senator from Kennebec, Senator Speers, that the Senate accept the Majority Ought Not to Pass Report of the Committee in concurrence. Is this the pleasure of the Senate?

The motion prevailed.

Divided Report

The Majority of the Committee on Liquor Control on, Bill, "An Act Relating to Retail Sale of Fortified Wine." (H. P. 1710) (L. D. 2103)

Reported that the same Ought Not to Pass.

Signed:

Senators:

OLFENE of Androscoggin
SCHULTEN of Sagadahoc
FORTIER of Oxford

Representatives:

CHICK of Sanford
CRESSEY of North Berwick
RICKER of Lewiston
GENEST of Waterville
FARNHAM of Hampden
KELLEHER of Bangor
IMMONEN of West Paris
TRASK of Solon
STILLINGS of Berwick

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

Signed:

Representative:

TANGUAY of Lewiston

Comes from the House, the Majority Ought Not to Pass report Read and Accepted.

Which reports were Read and the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Senate

Leave to Withdraw

Mr. Tanous for the Committee on Judiciary on, Bill, "An Act Relating to Supervised Practice by Third-year Law Students Pursuant to Court Rules." (S. P. 814) (L. D. 2310)

Reported that the same be granted Leave to Withdraw.

Which report was Read and Accepted.

Sent down for concurrence.

Ought to Pass

Mr. Roberts for the Committee on Legal Affairs on, Bill, "An Act to Eliminate Collection of Delinquent Accounts by the Treasurer of State." (S. P. 852) (L. D. 2420)

Reported that the same Ought to Pass.

Which report was Read and Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass-As Amended

Mrs. Cummings for the Committee on Public Utilities on, Resolve, Authorizing the Town of Bingham to Remove Sand Bars at Confluence of Austin Stream and Kennebec River. (S. P. 720) (L. D. 2132)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-337)

Which report was Read.

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

Mrs. CUMMINGS: Mr. President, there is some question as to the actual constitutionality of this bill, and I would ask someone to table it please for two days.

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

Thereupon, on motion by Mr. Berry of Cumberland, tabled and Specially Assigned for February 8, 1974, pending Acceptance of the Committee Report.

Ought to Pass in New Draft

Mr. Henley for the Committee on Legal Affairs on, Bill, "An Act to Authorize the Construction of a District Court Facility in Lewiston." (S. P. 786) (L. D. 2266)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Authorize the City of Lewiston to Issue \$500,000 Bonds for the Construction, Original Equipping and Furnishing of a District Courthouse and to Authorize the City to Lease such Courthouse to the District Court of the State. (S. P. 888) (L. D. 2484)

Mr. Tanous for the Committee on Judiciary on, Bill, "An Act to Clarify the Real Estate Subdivision Law." (S. P. 789) (L. D. 2272)

Reported that the same Ought to Pass in New Draft under same title (S. P. 890) (L. D. 2485)

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

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Prohibit Executive Sessions in Public Proceedings." (S. P. 790) (L. D. 2273)

Reported that the same Ought to Pass in New Draft under New Title: "An Act Relating to Executive Sessions" (S. P. 891) (L. D. 2486)

Signed:

Senator:

TANOUS of Penobscot

Representatives:

WHEELER of Portland

KILROY of Portland

WHITE of Guilford

PERKINS of So. Portland

McKERNAN of Bangor

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representatives:

BAKER of Orrington

CARRIER of Westbrook

GAUTHIER of Sanford

Which reports were Read.

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

Mr. BERRY: Mr. President and Members of the Senate: I think that we have discussed this matter fairly fully in the earlier part of the session. The desirability of legislative committees to make their own decisions on the type of meeting they have appears to be a very extremely important part of the operation of the legislature. We have had no reluctance on the part of committees to open up their hearings to all interested people, be it the press or the public in general.

There are certain circumstances which the committee attempted to outline in their report where they agree themselves that closed sessions are desirable. I think the main thrust of what we are talking about is that it is the committee itself that can make this decision based on the circumstances at the moment they are making the decision. I think the committee, by attempting to define those circumstances under which closed sessions are in order, have themselves indicated the importance of maintaining the autonomy of the committees. Accordingly, I would hope that the Senate would vote against the motion to accept the Ought to Pass as Amended Report.

The PRESIDENT: The Chair recog-

nizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: If you will recall, earlier in the session an order was presented and this matter was fully debated, and I am sure it was discussed in the halls and perhaps in caucus. At the time, if you will recall, I opposed the order because there was a bill that was pending before the Judiciary Committee substantially regarding the same subject matter as that particular order.

At that time I felt that the subject matter ought to have a public hearing so that we could, through various individuals appearing before the committee, hear the reasons why we should have open executive sessions or closed. Now, at this particular hearing we did have several proponents and one or two opponents. The opponents' view was somewhat similar to the debate that I heard where when we discussed the order, as well as perhaps in the hallway and in caucus, and I attempted in committee - or we attempted in committee, I should say - to exclude all of those items that we were concerned with that should be taken up in executive session, behind closed doors with only committee members there.

So if you will take a look at L.D. 2486 as it has been redrafted, you will notice that we have listed all those matters that have, to my knowledge, been the items which you were adverse to insofar as discussing in public.

Now, following the order being debated in this Senate, many of us undertook to leave our doors open in executive session to see what result, if any, there was of people coming in. I know that we have all been generous, we have left the doors unlocked and open, and people have come in and out of our executive sessions and, to my knowledge, not one chairman has run into any problems by following this procedure.

Now, fine, it is nice to say that we are doing this, but why put it into law? Well, I say why have a law prohibiting open executive sessions? Why leave the law as it is if we have no objections to it? We do have the safeguards for executive sessions in this bill that would permit the chairmen and the committees to have closed door executive sessions, not only here in the legislature but all executive

sessions at the administrative or legislative level.

I hate to mention the words "openness in government", but I think it ties in. I feel that merely by having a statute that says executive sessions shall be in private, even though they are not in fact in private, I fear that the statute in itself is somewhat an indictment upon legislative and administrative bodies. I grant you, ladies and gentlemen of the Senate, if you read that bill, the seven various exclusions whereby we may still hold executive sessions, I think, cover every possible single subject matter that come to mind where you can have executive sessions and preserve the protection of innocent people when you desire to discuss matters in executive session. Other than that, they would be open to anybody who desires to come in. I feel, for the integrity of the legislature and the public officeholders, that this bill should be enacted. I ask for your support, and I ask for a division on it as well.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: This bill was debated or a similar type measure was debated a month ago or so, so I won't speak long on it.

I sponsored this legislation to attempt to open up government at all levels. I think we have all seen what secrecy in government can do. I personally find it repugnant for government officials to close their doors to go in and discuss the people's business. I think if we want to restore confidence in government that we ought to do everything we can to open it up.

Now, there are many exceptions in this bill that provide for the situations where maybe it shouldn't be open. It is probably broader than I would like, but I think if we are interested in opening up government that this is the bill we ought to support.

Again, I guess the debate was quite lengthy the last time and, in the interest of expediting the session, I will just ask for a roll call now.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I have some question about what was said by the Senator from Penobscot, Senator Tanous, about the law now that we can have closed sessions. I wasn't aware that there was any law at all at the present time. I also don't think there is any law now that we have to have hearings at all, but we do have hearings, so the public has all the opportunity in the world to come to the hearings and express their opinions.

With 13 or 14 members on every committee, I doubt very much that there is ever anything said that, if anybody wanted to find out about it, they could not find out about it later after an executive session. You just can't keep something between 13 or 14 people a secret forever.

So again, I think this is setting a precedent that I don't like. The time will come that every time the Governor of our state is meeting with some people for the good of the state he will have to have it open and let everybody in. It just doesn't make sense. I mean, we have all talked about it being very hard to do anything with a committee. If you had a committee build an automobile, you never would have had the car that Ford started, and it is the same thing here. There are times when you have to have a small group to do something. There are many times in some of the hearings that I have scheduled -- and some of you have had much more controversial hearings than I have -- we have had some snowmobilers and some others in the past, where during the hearings when someone is testifying someone in the back row gets upset and makes a comment or screeches out something. I can imagine in an executive session when the vote is being taken, the minute someone puts their hand up somebody yells out in the back, and it would just be very, very difficult. And as far as this idea of opening up government, I don't think this is the way to do it.

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

Mr. BERRY: Mr. President and Members of the Senate: I listened with a great

deal of interest to those among us who seek higher office. For myself, I have very mundane aspirations, and I think this magic semi-circle here is perhaps an area that calls for abilities far greater than I can provide to occupy my seat with honor and distinction.

However, I do pay attention to my betters, such as Senator Brennan from Cumberland, and I ask him: are you voting for closed sessions? Here is a bill that provides for closed sessions, and I have heard time and time again from Senator Brennan that he wants open sessions. He wants everything to be above board and open to the public, and this is a principle on which he operates. Am I to understand that Senator Brennan is going to vote for a bill that has seven provisions for closed sessions?

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

Mr. BRENNAN: Mr. President and Members of the Senate: Frankly, I would support a bill that would be much broader and would provide for more open sessions, but I am trying to be realistic to try to handle some of the objections that were brought up the last time, and that is why I am supporting this measure, just so that it might get through.

Again, there are some reasons, I suppose, when you are discussing personalities, so that people won't be hurt, and that is one of the exceptions when they could vote to close the session. Frankly, I would like to see that vote taken in public and, if we accept the Ought to Pass Report, tomorrow I would like to provide an amendment so that the vote would be taken in public.

Again, I am for open sessions and at least this is a start in that direction. I think the public and the press ought to know why someone votes on committee for or against a bill, what is his rationale, and not just the blanket report with the names.

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

Mr. KATZ: Mr. President and Members of the Senate: Confusion, confusion, I think, on whether this bill should call for voting in public on those restricted areas.

The very first day I was elected to the legislature, going back a number of years, I had occasion to call upon my old and good friend, Father Curran, who at that time was up at St. Augustine Church, on another subject completely, and as I was leaving I said, "Father, I am leaving for my very first day in the legislature. Do you have any advice to me?" And the good Father - and I remember so clearly, sometimes the Irish in him came out more than the French he said, "I will tell you the same thing I tell the Bishop: we have got too many laws already."

What abuse is there current in state government that needs correcting? To what extent are people's rights and people's needs being abused by the 106th Legislature? Where are the shortcomings of the committee performance today? What secret shenanigans are going on from which the people need protection? Unless you have a positive answer and tell me that there is something smelly in state government, something where the people's rights are being subverted, what in heaven's name do we need another law for?

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

Mr. MORRELL: Mr. President and Members of the Senate: I think it is awfully tempting to be for this kind of proposal, and basically I think we all believe in openness of government, but I think I concur with Senator Katz. I don't think it is inconsistent to be for openness in government and to feel that somewhere along the way in the governmental process there is a place for quiet - maybe in many instances in some committees not so quiet - but at least private reflection, where you let your hair down to discuss, in a sense off the record, out of the limelight of the media where there is a great tendency to posture and in a sense show off, and I think there is still some place for that.

We have public hearings on bills, the vote out of committee is public, the public discussion on the floor of the House and Senate, and I feel at some stage in the deliberations it isn't inconsistent to feel that you ought to have a place where you can discuss these things in private.

Having said that, I would urge —

and our own committee is doing it more and more — to make them as public as possible. But to formalize it to prevent a committee from reflecting in private for a period of each bill, I guess I am just not in favor of it.

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

Mr. TANOUS: Mr. President and Members of the Senate: The debate seems to be centering on the legislative sessions, but the bill is much broader than this. It reaches down to your administrative levels of government as well.

Certainly I have no feeling that there are any shenanigans or any derogatory actions being carried out in committee meetings in executive session. As I have mentioned, all of us as chairmen have opened our doors to the public and we have permitted the public and the press to come in when they so desire. And after I, as chairman of two committees, initiated this, and I understand many of you have, the press may have come in once or some people may have come in the room or looked in and found it very boring and walked out. So what are we afraid of? If there are matters that we should take up in executive session without the public or press being there, as enumerated principally for the protection of character of individuals or for the preservation of contracts that should be perhaps not made public at a certain point in the proceedings, really what are we afraid of?

As I have mentioned, this bill applies not only to us. We should be also concerned with other levels of government as well. I know that the people on the local levels, your folks back home in your towns, perhaps would like to be closer to their government and this gives them that opportunity. Now, they have an alternative method of doing this, as has been done in some areas, they petition their local government to open up their executive sessions. I just can't see really at any level, unless it falls within the realm of the exceptions in the bill, that there should be any reason for closed door executive sessions by any body of any form of government at any level of our government, and I hope that we would adopt this measure.

If some of you have some constructive criticism as to where the bill may be amended, let's amend it. I mean, let's not kill the bill because you want to pick it apart item by item. Let's accept the majority report, let's table the bill, let's discuss it and amend it perhaps to meet the requirements that some of you feel the bill doesn't presently meet. I would wholeheartedly ask your support on this measure. Thank you.

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

Mr. SPEERS: Mr. President, the remarks of the good Senator from Penobscot, Senator Tanous, raise certain questions when he states we are not discussing simply the sessions of the legislature but that it applies to all administrative bodies as well. That raises the immediate question in my mind as to whether or not the Governor of this state, to which position the good Senator aspires, as well as others in this room aspire, would have to open up, for example, conferences with various cabinet members, should he call a cabinet meeting and the secretaries of the various departments to come in to discuss a particular problem that he might have in mind. I would like to ask that as a question, whether or not the interpretation of this bill would be that the Governor would have to open up any such meetings to the public?

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

Mr. BRENNAN: Mr. President and Members of the Senate: Again, I am not very pleased with the draftsmanship of this bill. That is why I would like to see the majority report accepted, so it could be worked on, but I do not think that it covers the Executive Branch in that fashion. It says "the legislative branch" and it says "administrative agencies".

But what we are talking about is what happens here in the legislature. One committee that I would like to see open up is the decisions that are made in the last two days of the legislature when the leadership of both parties meet. I am not saying they have done anything wrong, but I think the priorities would be different as to which bills would be funded if that discussion took place in front of

the legislators who had bills before that committee and in front of the press. I think it is important. I think the decision as to funding should not just be made by ten people in secret session, and then you go out into the legislature, out into the Senate and out into the House, and if you don't go along with what was said in the private session you are a spoilsport. After all, we are dealing with the public's money here and I think that should be open. Now, the way this bill is drafted, I am not sure it reaches that particular session. That is why I would like to see, again, support for the Ought to Pass Report so an amendment could be prepared to make sure it would cover that.

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

Mr. BERRY: Mr. President and Members of the Senate: The debate certainly becomes more informative as we move along. May I direct a question to the Senator from Cumberland, Senator Brennan: Why did he vote for executive sessions in the Judiciary Committee when they were reviewing the Public Power petitions?

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

Mr. BRENNAN: Mr. President and Members of the Senate: If I did, I don't recall. I would like to see some support for that position that Senator Berry has taken.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Henley.

Mr. HENLEY: Mr. President, I didn't debate this bill, and I am not going to spend much time on it, your time and mine. I ask the question, and I think perhaps I am posing it to my good friend, Senator Katz: Why is this bill? I say it is completely politics. The only thing that would be gained of this bill's passage is votes, and, inasmuch as I am not looking for votes, I am willing to say that it is a dangerous bill.

Where are we going to end with stripping ourselves before the public? I never have done so, and I have won votes. I think this is just another thing along the same line.

Where are we going to go if we continue on this line? Secret ballots: for instance, it seems to be perfectly O.K. to use secret ballots. They are recommended and they have been used for centuries, and this practically puts your secret ballots out the door. They say that the votes of the committee members should be completely open to the public. I say it should not, any more than a secret ballot in any line of elective procedures.

I say, in spite of the fact that this seems to be a law which would allow closing the session if you knew exactly what was going to be taken up, you have got to plan it all up ahead of time and ask and poll every member whether they have got anything to mention that goes along with all of these suggested differences here before you can close your session.

I have sat in on a lot of hearings and a lot of executive sessions. We have public hearing where members can be asked questions by the witness and where nearly anyone who wants to be can be heard. There is no guarantee that we will have public hearings in the Constitution, but we do so. If we pass a bill like this and we purposely and publicly advertise that we are opening all doors of all executive sessions, I think we are going to establish a precedent that in future years is going to come back to haunt us. If for some reason we want to close an executive session now and then, we are going to have to have probably an act of Congress to explain to the individuals that under certain circumstances the law says that we can close the session.

I feel that if we go to extremes to say that all of our executive sessions, no matter what the occasion may be, are open and urge the public to attend, we are going to inhibit members from really letting their hair down and going to town to make their decisions on a lot of these important matters.

I watched this bill go through, and I know that I have agreed on a lot of things with my good friend from Penobscot, Senator Tanous, and we have worked wonderfully in committee together, but we didn't always agree, and I don't agree with him on this. I feel that it is sort of a witch hunt and that it is an unnecessary bill. If I was chairman of a

committee, I don't mind saying, I would not go out of my way to urge the public to attend. If I was running the committee executive hearing, I would probably close the door or ask that it be closed for the executive session. I feel there is established an atmosphere of confidentiality within the committee, which I think should be their right in making some of these decisions. Then if there is a split report, it is published for anybody to find out who signed what. If it is a unanimous report, just like a jury, nobody knows just what the argument is that goes on in a juryroom. All of those things are confidential. I suppose the very next step would be to open up juries to the public in their discussions.

So I hope that we will put this bill to rest and leave it there until some other session when somebody else decides they want to do it to buy some votes.

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

Mr. TANOUS: Mr. President and Members of the Senate: I would like to read from the Maine Statutes, Title 1, Section 401, if you will bear with me. It is a very short three lines. The title of Section 401 says "Declaration of Public Policy", and this is under your "Public Records and Proceedings": "Open meetings: The Legislature finds and declares that public proceedings exist to aid in the conduct of people's business. It is the intent of the legislature that their actions be taken openly and that their deliberations be conducted openly." Now, this is a statement of intent that was adopted by the Maine Legislature some years ago.

We are talking about openness in government in the conduct of people's business. Now, this is the intent of this particular chapter that we are referring to, and the bill before you only fortifies the intent of Section 401. They go on to define public proceedings, and this again, as I mentioned earlier, refers to all of your hearings in the legislature as well as your political subdivisions of the state. And then you go on to executive sessions under Section 404, which is the section that we are repealing. Of course, the Maine Legislature is not subject to Section 404 because of an existing rule in our body here but, again, Section 404

fortifies that. "Nothing contained in this subchapter shall be construed to prevent these bodies or agencies from holding executive sessions, subject to the following conditions", and then you have some conditions in there that such sessions shall not be used to defeat the purposes of this subchapter, "that no ordinances, orders, rules, resolutions, regulations, contracts, appointments, or other official action shall be finally approved at such executive sessions, and that such executive sessions may be called only by a majority of the members of such bodies or agencies."

So I find that this document before you merely fortifies what this legislature has done in the past in having people participate in their business, and certainly state government, as well as municipal and the county government, is the business of the people. We are here representing the people. This is their business, and I find no objection really to conducting our business openly before our constituents. Thank you.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the acceptance of the Ought to Pass in New Draft Report of the Committee on Bill, "An Act to Prohibit Executive Sessions in Public Proceedings." 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 whether the Senate should accept the Majority Ought to Pass in New Draft Report of the Committee on Bill, "An Act to Prohibit Executive Sessions in Public Proceedings." A "Yes" vote will be in favor of accepting the Majority Ought to Pass in New Draft Report; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Brennan, Cianchette, Clifford, Cyr, Danton, Kelley, Marcotte, Richardson, Schulten, Shute, Tanous.

NAYS: Senators Anderson, Berry, Cox, Cummings, Fortier, Graffam,

Greeley, Henley, Hichens, Huber, Joly, Katz, Minkowsky, Morrell, Roberts, Sewall, Speers, Wyman, MacLeod.

ABSENT: Senators Conley, Olfene.

A roll call was had. 11 Senators having voted in the affirmative, and 19 Senators having voted in the negative, with two Senators being absent, the Majority Ought to Pass in New Draft Report of the Committee was not Accepted.

Thereupon, the Minority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Clarify Election Procedure Respecting Jury Trials in Misdemeanor Proceedings." (S. P. 751) (L. D. 2161)

Reported that the same Ought Not to Pass.

Signed:

Representatives:

PERKINS of So. Portland

WHITE of Guilford

McKERNAN of Bangor

BAKER of Orrington

WHEELER of Portland

GAUTHIER of Sanford

KILROY of Portland

CARRIER of Westbrook

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-340)

Signed:

Senator:

TANOUS of Penobscot

Representative:

DUNLEAVY of Presque Isle

Which reports were Read.

On motion by Mr. Tanous of Penobscot, the Minority Ought to Pass as Amended Report of the Committee was Accepted and the Bill Read once. Committee Amendment "A" was Read and Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Repeal Certain Due Process of Law Provisions by Governmental Agencies." (S. P. 717) (L. D. 2129)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-341)

Signed:

Senator:

TANOUS of Penobscot

Representatives:

BAKER of Orrington

WHITE of Guilford

WHEELER of Portland

GAUTHIER of Sanford

KILROY of Portland

CARRIER of Westbrook

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representatives:

PERKINS of So. Portland

McKERNAN of Bangor

Which reports were Read.

Thereupon, the Majority Ought to Pass as Amended Report of the Committee was Accepted and the Bill Read Once. Committee Amendment "A" was Read.

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

Mr. BERRY: Mr. President, I would like to make note of the fact that the Chairman of the Judiciary Committee, Senator Tanous, has done an extremely good job in turning out a report here when it has been very difficult to get the signatures of his entire committee. I think this indicates that he is doing an extremely good job and is not waiting for signatures to hold up the bill and the legislative process.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Committee Amendment "A"?

Thereupon, Committee Amendment "A" was Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act Lowering the Maximum Age of Juvenile Offenders." (S. P. 713) (L. D. 2125)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-339).

Signed:

Senators:

TANOUS of Penobscot

SPEERS of Kennebec

Representatives:

CARRIER of Westbrook

WHEELER of Portland

BAKER of Orrington

PERKINS of So. Portland

WHITE of Guilford

KILROY of Portland

GAUTHIER of Sanford

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representatives:

DUNLEAVY of Presque Isle

McKERNAN of Bangor

Which reports were Read.

Thereupon, the Majority Ought to Pass as Amended Report of the Committee was Accepted and the Bill Read Once. Committee Amendment "A" was Read.

Mr. Tanous of Penobscot then presented Senate Amendment "A" to Committee Amendment "A".

Senate Amendment "A", Filing No. S-336, to Committee Amendment "A" was Read.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: The bill that we are now discussing is on the age of juvenile offenders. At the last session we increased the age of the juvenile offender from 17 to 18 and, as a result, in our existing laws a commitment statute prohibits any judge from exercising any degree of control of being able to commit any individual between the age of 17 and 18 because of the statute providing for commitment. It has caused a lot of problems regarding the juvenile in that age of limbo between 17 and 18. I spoke with many judges and both superior court judges and district court judges felt that the age ought to be returned back to 17, and this bill does this. This is the juvenile age, so once an individual reaches the age of 17 and commits a crime he will be treated like an adult. Originally this body very judiciously defeated that bill last year and then it was brought back and passed, so I guess our original thought and reaction on the bill was proper.

The amendment that I proposed is

another bill that we enacted at the last session, whereby a juvenile could not be charged as a juvenile offender unless the act which he committed would have been a crime by an adult. So what happened is that in fact we repealed the truancy law, and many communities have had an extreme number of problems in this area. Waterville, I know, has had a serious problem. Their mayor has appealed to the legislature to correct the statute. I know they have had this problem in Aroostook County, and I understand they have had it in Androscoggin County as well. Hopefully, this bill, as amended by Committee Amendment and the Senate Amendment, will rectify some of the problems we have caused our constituents at last session. Thank you.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A" to Committee Amendment "A"?

Thereupon, Senate Amendment "A" to Committee Amendment "A" was Adopted and Committee Amendment "A", as Amended by Senate Amendment "A" Thereto, was Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Reconsidered Matter

On motion by Mr. Berry of Cumberland, the Senate voted to reconsider its prior action whereby Bill, "An Act to Register Recreation Professionals," (H. P. 1943) (L. D. 2483) was referred to the Committee on Legal Affairs.

Thereupon, on further motion by the same Senator, referred to the Committee on State Government and Ordered Printed in non-concurrence.

Sent down for concurrence.

Enactors

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

An Act Providing an Enforcement Provision for the Police Training Law. (S. P. 782) (L. D. 2238)

Which was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

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

Resolution, Proposing an Amendment to the Constitution Broadening the Limitation for Revenues Derived from Taxation of Vehicles Used on Public Highways and Fuels Used by Such Vehicles. (S. P. 756) (L. D. 2166)

Tabled -- February 4, 1974 by Senator Berry of Cumberland.

Pending -- Passage to be Engrossed.

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

Mr. MORRELL: Mr. President and Members of the Senate: I won't be long. I will attempt to be brief. I would like to make a couple of quick comments.

One, I think the time is now appropriate for the people of Maine to determine just how they want their gas revenues to be spent and allocated. I think it is obvious that the gas tax no longer is going to provide the kind of funds that have been relied upon in the past to adequately fund highways.

Third, I think within several years at the most the highway industry will be taking the initiative to undedicate highway funds to give them access to the general fund. I think this will be a good thing.

Beyond this, I think that around this country, in the states and on a national level, there is a full awareness that we have to treat transportation as a whole and not as a part. I think highways have been treated as one prime part instead of as a whole. However, I am under no illusions here that this is going to be successful in this session of the legislature, and I realize that this morning it will die.

I realize that we are here for all too long a period, we are in some difficult days, and it is in this spirit, and also with the understanding that there will be an effort made to get through a comprehensive study of highway funds and the funding of transportation generally, it is in that spirit that I move now the indefinite postponement of this bill.

The PRESIDENT: The Senator from Cumberland, Senator Morrell, now moves that Legislative Document 2166 be indefinitely postponed.

The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I wish to commend Senator Morrell of Cumberland on the introduction of this bill. I agree with him that there is no chance of it at this session, but I think I would like to make a few remarks for the record.

At first glance, you might say that Senator Morrell is ahead of his time. Actually we are all away behind. I just finished last night reading a book, "Who Owns America?", by the former Secretary of the Interior, Walter Hickel. I would like to read to you a couple passages from this.

"There are now about 105 million cars, buses and trucks on American roads, more than one wheeled vehicle for every two people in the United States. The automobile has simply had too high a priority in this country. It overwhelms the parks, the cities and the highways, and it may soon overwhelm America. It is also responsible, but by no means entirely so, for polluting the air, attacking men's health, fouling his nest, and undermining his morale. How do we free Americans from their enslavement to road transport? What kind of transport is in the best interest of this country for moving people? The answer lies in high-speed, mass rapid transit, elevated and electrified, over long and short distances. We should be thinking about American needs in the year 2000, and the time to turn this thing around is now.

"It is unthinkable to rebuild the railway system as it was, but it is also unthinkable to lie down and let the automobile and truck continue to run over us. We must build a new system with electrical power and elevated track to take care of the environmental problems and give us a new way out. Railroads are not technologically obsolete. If they were, we might as well forget the argument. They have the permanent advantages of exclusive right-of-ways, simple guidance systems, and narrow route requirements per unit of carrying capacity. These technological advantages readily translate into lower costs of delivering anything. For bulk commodities, rail cost is a tiny fraction of what it costs to

ship by truck and, although the margin is much closer for high valued manufactured goods, the iron wheel still has the edge. The solution is to electrify-elevate where possible to make the iron wheel turn faster.

"As for financing, we built a magnificent railway system once before. At the end of the Civil War in 1865, the United States had 35 thousand miles of rail trackage, more than existed in all of Europe. By 1900 we had more than five times that amount. If we performed this miracle with an industrial capacity much less than what we possess now, we can surely build a modern rail transport system for 300 million Americans by the year 2,000, but we can do it only if we turn it around now."

What I am saying is that the time has ended for us to build and build and build. We were right, I am sure, when we did this in the past. We were right perhaps when we talked about and we are now doing six lane highways in southern Maine, and we are building another road between here and Brunswick. It is going to be convenient, it is going to save five minutes maybe, instead of going by the old Brunswick Road, but how many acres and acres of land are going to be covered with asphalt instead of grass.

Mr. Hickel says in his book that even if we eliminated all the pollution that we now put into the air from our automobiles, you still have two problems: you have the problem of taking up more and more green grass for more and more roads, and you also have the problem with the cars once they become old. We have just got to make up our minds that we are going to turn from this, and I think again I want to say that Senator Morrell is owed a debt of thanks for starting this thing, and we will look back years from now and have more reason to thank him. Thank you.

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

Mr. CIANCHETTE: Mr. President and Members of the Senate: I rise to support the motion by the Senator from Cumberland, Senator Morrell. I would like to state a couple of things for the record though.

Senator Morrell of Cumberland re-

ferred to perhaps some highway interests that might be looking in just a few years to open up the general fund of highways. I am not going to stand here and say that I represent the highway interests because I don't, but I am interested in the highway system in the State of Maine for a number of reasons. My personal reaction to that remark is that over my dead body will we open up the taxpayers' dollars to build highways, rebuild highways or resurface highways in the State of Maine. It's one of the only self-supporting departments the state has now, financed entirely by dedicated revenues paid in by the users of that highway.

If the Maine people don't care to raise money to maintain and reconstruct their roads, or if they don't care to raise more money to improve these things, that is Maine people's decision, and I don't think that the legislature has any business trying to turn that around and saying, "O.K., if you are not going to pay with your fuel tax dollars, we are going to take it out of your income tax or out of your property taxes to build highways." That I think is wrong. I think it always will be wrong, and I think as long as I am around I am going to be fighting any such move to open up the general fund to building highways in the State of Maine.

I wish we all had the wisdom of Walter Hickel. I heard some figures about dollars, values or what we could spend to build a rail system. Gee, I think every one of us here would really love to see an adequate rail system in the State of Maine, but it is not a very realistic idea to think that we are going to have a rail system here in Maine. And I want to quote just one figure for the record. In the Transportation Committee hearings dealing with rail service in the State of Maine, testimony was brought out by the passenger director for the Boston & Maine Railroad that the commuter service into Boston, rail commuter service, is based on rates something like this — and he couldn't pin it down to the exact cents, but it is about seven cents a mile ticket fare to ride a commuter train in the Boston area now. In order to subsidize that commuter service in the Boston area, the state puts up another seven cents a ticket mile, passenger

mile, so we are talking in Boston, where they have a concentrated traffic right now, they have the tracks, they have their cars, and they have their operation going, it is costing 14 cents a passenger mile for commuter service in the Boston area. When you take a concentrated area like that, and develop those kinds of costs to operate this system, I ask you, what do you think the cost would be in a sparsely populated area like the State of Maine?

Sure, we all like to hear about a beautiful railways system, and I would be the first one to support that, great, but we are not talking the State of Maine when we are talking mass transit. And I don't want to see this legislature get kicked off with the idea that they are going to turn this thing around all of a sudden, because they are not because it won't be economical.

Another thing I want to mention is the task force idea that Senator Morrell mentioned. There is a bill coming before the bodies, I expect, that is tied to a revenue bill. And make no mistake about what is going to happen to the revenue bill — I don't care to get involved in that at this time — but in that bill is a very important section regarding the formulation of a task force. That is L. D. 2286, if you care to look it up. That bill would organize a task force to study all forms of transportation in the State of Maine, study the funding of all transportation in the future in the State of Maine. I strongly support that, and I am sure that Senator Morrell is going to strongly support that, and I believe that this is putting the horse before the cart. To simply say that we are going to open up the dedicated revenues to the tune of 20 or 30 million dollars every few years, and have no plan to spend that, I think is highly irresponsible. If we are going to spend some money for other types of transportation, first we need a plan. This task force is a method of developing a plan, and when that comes around I am strongly going to support this task force. Thank you.

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

Mr. MORRELL: Mr. President and Members of the Senate: I apologize for,

after having said I wouldn't, further prolong this discussion, but I would like to respond to Senator Cianchette just briefly. First off, when I used the term "highway interest," I didn't in any sense do so unkindly. I have a great admiration for the people in the industry and the department itself.

Second, what we are talking about here is not action on the part of the legislature in a final sense; it is action to let the people of Maine make the decision.

Third my basic agreement here with Senator Cianchette is the fact that he would refer to those who use the highways and those who pay the highway tax as being separate and apart from the bulk of Maine citizens. In my opinion this isn't so; they are one and the same. What we are talking about here is whether or not this is an appropriate time in Maine's history, after having had the dedicated funds for fifteen or twenty years, and certainly nobody questions the wisdom of dedicating at that point and through these years, the question is whether or not now at this point we want to have the people of Maine make a judgment decision to back up what they initially did back in the forties or to make a change.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Morrell, that S. P. 756, L. D. 2166, be indefinitely postponed. Is this the pleasure of the Senate?

The motion prevailed.

Sent on for concurrence.

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

Joint Order — Relative to Legislative Council review of the spruce budworm control problem. (H. P. 1944)

Tabled—February 5, 1974 by Senator Berry of Cumberland.

Pending—Passage.

Thereupon, the Joint Order received Passage in concurrence.

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

Bill, "An Act Relating to Liability of

Natural Gas Distributors." (S. P. 710) (L. D. 2122)

Tabled — February 5, 1974 by Senator Sewall of Penobscot.

Pending — Adoption of Senate Amendment "B" (S-333)

Mr. Tanous of Penobscot then moved that the Bill and all accompanying papers be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: If you recall, approximately a week ago this bill was thoroughly debated. The pros and cons of the issues, I think, were presented to you quite adequately by Senator Clifford and, hopefully, by myself. I know that you have had an opportunity since listening to the pros and cons and the arguments to have done some research on your own relative to the effect of the enactment of such a bill.

I speak of the bill not only in its original form but in its amended form as well. I had the opportunity to read it and to try to digest it, and I can't see where the amendment really changes any of the debate that was presented the last time we debated this bill. The amendment uses different language, but I think the same problem exists in the amended version of the bill as it did in the arguments which I presented the last time. Also you have a fact sheet before you, that has been distributed, containing somewhat those same arguments I presented to you and, rather than belaboring the issue, I would hope that with the added information and the enlightened view I hope you now possess that we will defeat this bill. Thank you.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: I assume that the research of which the good Senator from Penobscot, Senator Tanous, speaks really is not research but information from the lobby.

It seems to me that the bill with the amendment which is now pending would be changed because it would eliminate the concept of strict liability, which concept this chamber agreed with and the other chamber did not. Now we simply

have, as I explained yesterday, a situation where the victim of a gas explosion could get into court and the situation would allow the gas company, which certainly is in a better position to know its own distribution system, to explain and to be relieved from liability if in fact there is no fault on the gas company.

I think the research or the facts given you by Northern Utilities certainly are not very factual. I think essentially they are scare stories. The fact sheet, No. 1, is simply not true because the bill passed by the regular session of the 106th Legislature simply does not apply to natural gas. No. 2, it says this bill is the only one of its kind in the country. 30 states through their courts have adopted a strict liability law, and Maine is one of only seven states which has rejected that concept. Those natural gas companies in those 30 states, as far as I know, have no trouble in securing liability insurance and no trouble staying in business.

The bill covers distributors of natural gas. It would not cover, of course, an out-of-state distributor, as the fact sheet indicates. The gas company, of course, would not be liable under either version of the bill, and certainly not under the amended version, if there was a defective stove or refrigerator which caused the explosion.

This is the same company which is telling you these scare stories and wants you to believe them. It is the same company which in 1967 and 1968 assured the citizens of Maine when they converted from manufactured to natural gas that there would be no problem, even though they knew that the natural gas was going to dry out the distribution system and cause problems. It is the same company that assured the citizens of my area after an explosion in 1970 that the system was safe and had no problems, even though that system was rapidly deteriorating. And that deterioration, of course, resulted in other problems in 1972. It is the same company that had taken safety precautions only when they were forced to take those precautions, and never in the recent history of that company have safety precautions been taken voluntarily.

There is not much concern shown by that company for the non-user of natural

gas, because the gas mains run through entire communities where natural gas is present and they run through most streets in those cities. A person may choose not to use natural gas, but they have no choice as to the risk which they must take of living in that community. People do not dare in the late winter and early spring during the flooding season in those communities, Mr. President, to take their cellar drain caps off in their cellars to drain their cellars. One family did and they are no longer with us.

So I think that the issue is really one of basic fairness. Allowing the victim to get into court so he can be compensated, and yet at the same time allowing the distributor to come into court and show that there is no fault on its part and be relieved from that responsibility. So, I would hope that you would vote for the amendment and then vote to pass the bill so it can go down to the other body, where I think their reaction to it with the amendment will be a different one. Thank you, Mr. President.

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

MR. RICHARDSON: Mr. President and Members of the Senate: In all this interesting legal debate about what the present law of Maine is, what the law ought to be, and what the law is in other states, I am very concerned that we will lose sight of the fact that the purpose of this legislation, as I understand it, is to protect people who are absolutely helpless in the face of a gas explosion over which they have no control and, as a matter of fact, as the Senator from Androscoggin, Senator Clifford, points out they might not even be a subscriber to the service and they get this little added fringe benefit without even having participated.

I am very concerned about the statements that are made in this so-called fact sheet on this legislation because it quite simply does not correctly state the facts. No. 1, as Senator Clifford from Androscoggin has pointed out, the legislation adopted in the past session of the legislature was the so-called "Restatement of tort strict liability Statute." I was the sponsor of that legislation and did a considerable amount of work on it, and I do not believe it is correct to refer

to that statute as having in any way affected the very serious problem that now exists in certain Maine communities serviced by natural gas distributors. I say to you that I don't think that it is at all the case, and I would hate to have the members of the Senate misled.

Secondly, it is incorrect, I believe, to suggest that this bill in its present form that Senator Clifford is asking you to support, and which I join in asking you to support it is quite incorrect to suggest that we are adopting some new radical, bizarre program for Maine. The law of Rylands versus Fletcher, a very old case, talks about the right of the people to be protected against serious damage occasioned by those who are keeping and using an extra ultra-hazardous substance. This is just exactly that kind of a bill. As a matter of fact, this statutory provision will be weaker, I believe, than the existing laws in most other natural gas states.

Finally, in this so-called fact sheet there is a suggestion that if a defective stove, refrigerator or any appliance blows up through no fault of the gas distributor, this bill makes the gas company, and not the stove or refrigerator company, responsible. As I read the amendment, it provides "the escape of natural gas from the natural gas distribution system." It doesn't have anything to do, as I read it, with stoves, refrigerators, or other appliances that utilize gas as a source of fuel.

I had not meant to be, and perhaps I have, but if I have, I certainly would want to set the record straight, that I don't mean to castigate anyone for their point of view on this legislation, but I do want to suggest that the present law of Maine does not adequately protect the rights of the people who are affected by this natural gas distribution system. I honestly don't feel it is going to make insurance rates unreasonable. I think the protection of human lives and property is worth their absorbing the necessary insurance premium cost to provide. I hope, Mr. President and Members of the Senate, that you will join with myself and Senator Clifford in defeating the motion asking that the bill be indefinitely postponed.

The PRESIDENT: The Chair re-

cognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: As to my good friend Senator Clifford's remark on the fact sheet having been prepared by a lobbyist, he is correct. I assumed that it was a former leader of his party, Severin Beliveau, Chairman of the Democratic Party at one time, that did the research on this particular bill and prepared the fact sheet for my distribution. And knowing Severin for many years, I would never suspect he would do anything to mislead the Senate, for sure, especially being a former Chairman of the Democratic Party.

In any event, there may be some items on here which are not reliable or can't be backed up with fact, I don't know. But in reading the bill with the amendment, the amended form of the bill, I disagree with my good friend, Senator Richardson, and it is my feeling that the escape of natural gas from the natural gas distribution system would include gas that might escape from the stove. Somebody might leave a stove on in their home, for instance, leave the gas jet on when they leave, and while they are gone perhaps in some way or another it causes an explosion and the house blows up. My feeling is that under this particular amended form of the bill, as it was in the original form of the bill, it would be up to the gas company to come into court and prove their innocence. They would have to prove their innocence, and this, in my opinion, is against every concept of criminal and court law that we have here in this country.

I think in an action when an individual has been accused of a crime, or accused of being responsible for a civil act, that the preponderance of evidence must rest upon the plaintiff to prove the defendant is negligent or that the defendant is criminally liable. I don't think we should be shifting the burden of responsibility, regardless of what the case may be.

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

Mr. ANDERSON: Mr. President and Members of the Senate: I am very much opposed to this bill. My concern is that it will spread to other utilities. Perhaps

somebody in an ill-considered moment could stick their finger in an electric toaster and be electrocuted, and then they can sue the company for that. Or perhaps somebody can fall into a reservoir of the water company and fail to come up the third time, then relatives of the victim could sue the water company for not having a fence all the way around the reservoir. So, I am very much opposed to this bill and would go along with indefinite postponement.

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

MR. CLIFFORD: Mr. President and Members of the Senate: This is not a criminal statute, so that the Maine law still places the burden of proof on the state in criminal matters and a man is presumed innocent until proven guilty. In civil matters strict liability is nothing new, but this doesn't even apply to this bill any more if this amendment is added. It is a rebuttable presumption of negligence, and I think, in answer to my good friend, Senator Anderson, it simply applies to natural gas distributors, no other utilities. I think that is very, very clear, and that is the only one we are talking about in this bill.

THE PRESIDENT: The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous that Bill, "An Act Relating to Liability of Natural Gas Distributors", be indefinitely postponed in concurrence.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

MR. CLIFFORD: Mr. President, I would request a roll call.

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

MR. BERRY: Mr. President, I request permission to pair my vote with Senator Olfene. If Senator Olfene were here, he

would vote against the pending question and I shall vote for the pending motion.

THE PRESIDENT: The Senator from Cumberland, Senator Berry, asks leave to pair his vote with the Senator from Androscoggin, Senator Olfene. If Senator Olfene were here he would be voting "No", and the Senator from Cumberland, Senator Berry, would be voting "Yes".

The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that Bill, "An Act Relating to Liability of Natural Gas Distributors", be indefinitely postponed. A "Yes vote will be in favor of indefinite postponement; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS — Senators Anderson, Conley, Cox, Cyr, Fortier, Graffam, Greeley, Henley, Hichens, Huber, Joly, Katz, Marcotte, Schulten, Shute, Tanous, Wyman.

NAYS — Senators Brennan, Cianchette, Clifford, Cummings, Danton, Kelley, Minkowsky, Richardson, Roberts, Speers, MacLeod.

ABSENT — Morrell, Sewall.

A roll call was had. 17 Senators having voted in the affirmative, and 11 Senators having voted in the negative, with two Senators being absent, the Bill was Indefinitely Postponed in concurrence.

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

House Report -- from the Committee on Health & Institutional Services Bill, "An Act Amending Laws Relating to Pineland Center." (H. P. 1745) (L. D. 2204)

Tabled — February 5, 1974 by Senator Sewall of Penobscot.

Pending — Motion of Senator Hichens of York to accept the Committee report.

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

MR. BERRY: Mr. President and Members of the Senate: I would hope that we would defeat the pending motion of Senator Hichens to accept the Leave to Withdraw Report of the Committee and that this bill would be referred to the Committee on Judiciary.

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

Mr. HICHENS: Mr. President and Members of the Senate: I rise in opposition to the motion. This committee report came out, was accepted by the other body, it came to us and was tabled twice, and yesterday I gave quite a lengthy report on the proceedings. Yesterday afternoon there was a lengthy meeting held by the Legislative Council, and several things came out of that meeting which I do not think helps our legislative system whatsoever.

There was a precedent set in which a committee was called before the Legislative Council. Of course, up until this year we never had a Legislative Council, so it couldn't have been done by that branch before this. And with all the department heads, some called from Pineland, Augusta, and all department heads here in the state office in attendance, with several interested people from all over the state in attendance, we were given a quiz and given an opportunity to explain our reasons why we had the audacity to come out with a leave to withdraw report against department wishes.

It was also discovered that the Legislative Council had overstepped their authority in allowing a department to bypass statutory laws in the closing of the CPH hospital at Pineland. I intend to check with the Attorney General to find out the legality that they have to do such a thing.

But if a department doesn't like a committee report, they now have a chance to take the opportunity to run to leadership and cry on their shoulders and try to get that report overturned. Apparently leadership believes every word they say.

One of the members of the Legislative Council attended a union meeting last fall at Pineland, heard the employees and the parents complaining about what was going on, and said he would do something about it. He then went to the department and the department convinced him that everything was rosy at Pineland, so he let the thing drop. I don't know where they get their influence over the leadership because they certainly don't influence many of the other legislators.

Now we have an attempt this morning to have the bill heard by another committee so that a department can have another chance to have their own way. I would remind you that during the special session nine bills usually assigned to the Health and Institutional Services Committee have been assigned to other committees for one reason or another. Possibly because the Health and Institutional Committee is doing too good a job studying these bills, so busier committees with less time to delve into them are getting the assignments.

Maybe the Governor, the department and leadership don't like the committee's work but, from the letters, the calls, and personal contacts that I have had, the people of Maine certainly do. I hope this morning that you will go along with the committee report, Leave to Withdraw, and get on with other business.

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

Mr. BRENNAN: Mr. President and Members of the Senate: I would urge the members of the Senate to vote against the motion to accept the Leave to Withdraw Report. I think the bill ought to be referred to Judiciary. Traditionally Judiciary has heard these bills dealing with the release of patients from the hospitals.

I know there was a lengthy hearing and discussion yesterday and a lot of charges were thrown around, and everybody was calling everybody else a liar. It really didn't make a great deal of sense. An Assistant Attorney General, Cortland Perry, whom I have a great deal of respect for, he spoke and he said this bill is needed, and I would like to give him a chance to put his case on before the Judiciary Committee. Several weeks ago we spent about three hours in Judiciary listening to something dealing in the same field in regard to release of patients, so I think it would make a great deal of sense. Again, I would urge you to vote against the pending motion.

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

Mr. HICHENS: Mr. President and Members of the Senate: I would refute

the statement just made by the Senator from Cumberland, Senator Brennan. During my first session of the legislature, I presented a bill about the release of patients. The bill was referred to the Health and Institutional Services Committee which was operating at that time. Last year there were two bills relating to the release of patients, and they both were referred to the Health and Institutional Services Committee. Now all of a sudden they should go to Judiciary. I think there is something wrong in Denmark.

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

Mr. MINKOWSKY: Mr. President and Members of the Senate: Having two assignments in this legislative session, being on the Education Committee as well as being on the Committee on Health and Institutional Services, I have a great deal of admiration and respect for these people on the Committee for Health and Institutional Services. They are lay people, but they have taken the time out to weigh, to evaluate, to analyze and to disseminate L. D. 2204. I think they spent somewhere in the area of about three hours on this particular bill, and I think also that they were really concerned with the welfare and wellbeing of the youngsters in Pineland and any other institution here in the State of Maine.

I look upon it really as a slap in the face for this particular committee to have this assignment, not have their intelligent report accepted, and then all of a sudden have this transferred to another committee simply because the experts, so-called, from the Department of Mental Health and Corrections were a little more eloquent in their evaluation as to what they have done and why they have done it. I think these people have done a very commendable job on this legislative committee, and I would sincerely hope that this Senate would accept the Leave to Withdraw Report as recommended by the committee on Health and Institutional Services. I would ask for a division, Mr. President.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and

Members of the Senate: I am a little disturbed here today about some of the remarks that have been made about wanting this bill to come to Judiciary. Being Chairman of the Committee, perhaps I ought to have a few words to say. We work on the committee system here. I have been here for three terms and have great confidence in the committee system, and it is a rare occasion that I oppose a committee report, believe me.

I have known Senator Hichens for many years since I have been in politics. He is Chairman of the Health and Institutional Services Committee, and I know of his devoted work in this area. He has gone to all of the institutions in the state, visited the centers, and has done much work in the interim, and I am sure if he says this bill is not needed at this time then I would certainly feel his opinion is worthy of an expert type of opinion that I would certainly follow. Granted, I know that Senator Berry has perhaps more confidence and faith in the Judiciary Committee, and I am pleased that he does. Unfortunately, I couldn't guarantee you people that you would get any better decision, cooperation, attendance, or report from the committee than we have from his committee. Thank you.

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

Mr. CONLEY: Mr. President and Members of the Senate: I share the feelings as expressed by the good Senator from Androscoggin, Senator Minkowsky. If the Committee on Health and Institutional Services did spend three hours — and in talking with several members of the committee, that is my understanding — I have a great deal of faith in the committee system myself, and at this time, Mr. President, I move this bill and all accompanying papers be indefinitely postponed.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that Bill, "An Act Amending Laws Relating to Pineland Center," be indefinitely postponed.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I think the im-

pression that has been given here that the Health and Institutional Services Committee was called before anybody in any way, shape or manner, is an erroneous impression. The meeting yesterday was an attempt to get all interested people in one room at one time to discuss the problems, and at no time was anybody saying before, during, or after the meeting that the committee had done a poor job or that they were asked there to account for what they did.

I was very much impressed by the reports of the Committee, particularly Representative Dyar, the House Chairman of the Committee. I think the committee had done an outstanding job and I would argue against anybody who says they haven't done an outstanding job.

The bill, if you will look at 2204, brings up, and yesterday were brought up, many legal problems. We are talking about the constitutional rights of people at Pineland, mentally retarded people, people who now are finding that they have their day in court, and it is a legal question as to what their constitutional rights are and how they are determined. When we are told by an Assistant Attorney General that the state needs this bill, I pay attention to it. I would like to see the Judiciary Committee tell us that the state needs the bill or that the state does not need the bill.

I have absolutely no quarrel with the outstanding job that this committee has done. Senator Hichens and Senator Minkowsky have done yeoman's service, and not just during this session. They spend a lot of time on very, very difficult subjects. I would ask that we do this to protect the constitutional and legal rights of these people for whom the state has tremendous obligations, obligations at the present time that are far from crystal clear. I want to emphasize once again that this is absolutely no repudiation of the Health and Institutional Services Committee.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Conley, that Bill, "An Act Amending Laws Relating to Pineland Center," be indefinitely postponed. The Chair will order a division. As many Senators as are

in favor of the motion to indefinitely postpone the Bill will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. 19 Senators having voted in the affirmative, and seven Senators having voted in the negative, the motion prevailed.

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

Bill, An Act Providing Emergency Funds for Staffing a Fuel Allocation Office Within the Bureau of Civil Defense for the Fiscal Year Ending June 30, 1974. (S. P. 834) (L. D. 2366)

Tabled — February 5, 1974 by Senator Berry of Cumberland.

On motion by Mr. Berry of Cumberland, retabled and Tomorrow Assigned, pending Enactment.

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

Bill, An Act Relating to Municipal Fire Protection. (H. P. 1707) (L. D. 2100)

Tabled — February 5, 1974.

Pending — Enactment.

On motion by Mr. Tanous of Penobscot, and under suspension of the rules, the Senate voted to reconsider its action whereby the Bill was Passed to be Engrossed.

The same Senator then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-338, was Read.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: Just a brief explanation of this minor amendment. In reviewing the bill yesterday prior to reaching its enactment stage, I noticed one section in the bill that I feared extended a greater liability upon municipalities than the bill intended. The amendment is only to clarify the language so that they would not be subject to a greater liability, as far as accidents are concerned in dealing with fire trucks, than anybody else would be. I think this is the intent of the bill. I spoke to the Chairman of the Legal Affairs

Committee and he agreed that the intent of the bill was not to impose upon the municipalities a greater liability than already exists, so the amendment clarifies this. Thank you.

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

Thereupon, Senate Amendment "A" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Mr. Berry of Cumberland was granted unanimous consent to address the Senate:

Mr. BERRY: Mr. President and Members of the Senate: I thought you might be interested in some of the calendar dates we have here and the times when the Senate will be meeting and in recess and not meeting. The 18th of February is a holiday and the Legislature will not be in session. On February 22 there is a very important meeting relative to the energy crisis that the legislative leadership wishes to attend, so there will be no meeting of the legislature on Friday, February 22nd. On Fridays we will meet at 9:00 o'clock when we meet, and on Mondays we will continue to meet at 4:00 o'clock. On February 21, Thursday, the session will start at 1:00 o'clock, and all committees are urged to either hold public or executive sessions in the morning of Thursday, February 21, for those purposes.

Mr. Hichens of York was granted unanimous consent to address the Senate:

Mr. HICHENS: Mr. President and Members of the Senate: Last evening at the Senator Motel there was quite a birthday celebration that went on for one of the members of the other body, and I don't know whether I dreamed it or not,

or whether somebody told me, but I was informed that yesterday was also Senator Greeley's birthday. I have been informed since then that was incorrect, but seeing I took the time to compose a verse for him, anyway I am going to read it. So whenever his birthday is, it may apply.

Birthdays come and birthdays go, and the years pass swiftly by.

Some show their age in early years, while others safely lie about how old they really are, but one can never tell, as 39 or slightly more fits them very well.

So it is with one today who sits here in our midst, who acts and looks quite young enough to by all the girls be kissed.

His stories we all love to hear and, when all is done and said, we must admit there will never be another one like Ed.

Mr. Greeley was granted unanimous consent to address the Senate:

Mr. GREELEY: Mr. President and Members of the Senate: My birthday will be May 13, and maybe we will be in session. But on my next birthday I qualify to join the three-quarter century club, and I would like to say that if I had known I was going to live this long I would have taken better care of my hair.

Mr. Berry of Cumberland was granted unanimous consent to address the Senate:

Mr. BERRY: Mr. President and Members of the Senate: one final bit of information: We will meet at 10:00 o'clock Tuesday morning, February 19th. It will be the Tuesday after the holiday, 10:00 o'clock February 19th.

On motion by Mr. Sewall of Penobscot, Adjourned until 10:00 o'clock tomorrow morning.