

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Legislative Record

OF THE

One Hundred and Seventh Legislature

(First Special Session)

OF THE

STATE OF MAINE

1976

KENNEBEC JOURNAL
AUGUSTA, MAINE

HOUSE

Wednesday, March 31, 1976

The House met according to adjournment and was called to order by the Speaker.
Prayer by the Reverend Herbert Reid of Fairfield.

The journal of yesterday was read and approved.

Papers from the Senate

From the Senate: The following Communication:

**THE SENATE OF MAINE
AUGUSTA, MAINE**

March 30, 1976

Honorable Edwin H. Pert
Clerk of the House
107th Legislature
First Special Session
Augusta, Maine 04333
Dear Mr. Pert:

The Senate today voted to Adhere to its action whereby it Failed of Passage to be Engrossed Bill, "An Act Relating to Charitable Solicitations" (H. P. 1983) (L. D. 2165).

Respectfully,

Signed:

HARRY N. STARBRANCH
Secretary of the Senate

The Communication was read and ordered placed on file.

Non-Concurrent Matter

Bill "An Act to Prevent Impoundment of Funds" (H. P. 1985) (L. D. 2173) on which the House accepted the Minority "Ought to Pass" Report of the Committee on Appropriations and Financial Affairs and under Suspension of the rules the Bill read twice and passed to be Engrossed on March 30, 1976.

Came from the Senate with the Majority "Ought Not to Pass" Report accepted in non-concurrence.

In the House: On motion of Mr. Rolde of York, the House voted to insist and ask for a Committee of Conference.

Non-Concurrent Matter

Bill "An Act to Implement a Central Licensing Division within the Department of Business Legislation (H. P. 2153) (L. D. 2294) which was passed to be engrossed as Amended by House Amendment "A" (H-1111) as amended by House Amendment "A" (H-1116), thereto in the House on March 30, 1976.

Came from the Senate, the Bill and accompanying papers indefinitely postponed in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Hallowell, Mr. Stubbs.

Mr. STUBBS: Mr. Speaker, I move we recede and concur.

The SPEAKER: The Chair recognizes the gentlewoman from Freeport, Mrs. Clark.

Mrs. CLARK: Mr. Speaker, Men and Women of the House: I would hope that the House would not recede and concur so that we may insist and ask for a committee of conference.

The SPEAKER: The pending question is on the motion of the gentleman from Hallowell, Mr. Stubbs, that the House recede and concur. All in favor will vote yes; those opposed will vote no.

A vote of the House was aken.

22 having voted in the affirmative and 57 having voted in the negative, the motion did not prevail.

Thereupon, on motion of Mrs. Clark of Freeport, the House voted to insist and ask for a Committee of Conference.

Messages and Documents

The following Communication:

March 30, 1976

To the Members of the House of Representatives and Senate of the 107th Legislature:

I disapprove of H. P. 1996, L. D. 2177, "An Act Concerning Transit District Buses Used for Elementary Pupil Transportation".

I am returning this bill because it would grant to transit districts powers generally delegated by Maine law to superintendents of schools and school committees. This bill would benefit the Greater Portland Transit District and the Cities of Portland and South Portland and put more money into the Transit District by making each trip optimally profitable without a corresponding increase in service, dependability or safety.

I do not approve of legislation that amends our school bus safety laws for the convenience and profit of a transit district to the potential detriment of the safety and health of their elementary school children. Children being transported on these buses should be entitled to the same level of service and safety as all the other school children in Maine.

I am also vetoing this measure because of the strong feeling of Sawin Millett, Commissioner of the Department of Educational and Cultural Services, that this legislation attempts to weaken our school bus safety laws. Therefore, I oppose this legislation and urge you to sustain my veto.

Very truly yours,

Signed:

JAMES B. LONGLEY
Governor

The Communication was read and ordered placed on file.

The SPEAKER: The question now before the House is, shall this Bill "An Act Concerning Transit District Buses Used for Elementary Pupil Transportation" House Paper 1996, L. D. 2177, become law notwithstanding the objections of the Governor?

On motion of Mr. Rolde of York, tabled pending consideration and tomorrow assigned.

Orders

Mrs. Mitchell of Vassalboro presented the following Joint Order and moved its passage: (H. P. 2266)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of Mildred H. Harris Who Is Retiring After 20 Years of Faithful and Efficient Service as the Librarian of the Vassalboro Public Library

We the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

Order and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence.

Mr. Hobbins of Saco presented the following Joint Resolution and moved its adoption: (H. P. 2267) (Cosponsor: Mr. Rolde of York)

Joint Resolution Concerning the Decision of the United States Department of Defense to Award the Contract for the Manufacture of the M-60 Machine Gun to a Belgian Firm Instead of to the Maremont Corporation of Saco, Maine

WHEREAS, the largest single employer in York County is the Maremont Corporation of Saco, Maine; and

WHEREAS, the continued employment of the workers of Maremont is a grave concern to the State of Maine at a time when the state unemployment rate is 10 percent; and

WHEREAS, the Department of Defense has now officially declared that a contract to manufacture the M-60 machine gun will not be awarded to the Saco firm but instead will be awarded to a Belgian firm; and

WHEREAS, the taxpayers of the United States will pay \$14,700,000 more to the Belgians

for this contract than they would have paid to the Maremont Corporation; and

WHEREAS, 18,000 Maine citizens have signed petitions protesting the possible loss of the Maremont contract, which protests have been personally delivered to President Gerald Ford; now, therefore, be it

RESOLVED: That we, the Members of the 107th Legislature in Special Session assembled, do hereby express our consternation and dismay at the decision of the Department of Defense to award the M-60 machine gun contract to a Belgian firm instead of to the Maremont Corporation; and be it further:

RESOLVED: that we urge and request the members of the Maine Congressional Delegation to convey our sentiments to the President and to the Department of Defense and to use every possible means to bring the Department of Defense to a reconsideration of its ill-advised action; and be it further

RESOLVED: That duly attested copies of this Resolution be immediately transmitted to those Congressional Delegates with our thanks for their prompt attention to this important matter.

The Resolution was read and adopted and sent up for concurrence.

On motion of Mr. Albert of Limestone, it was ORDERED, that Donald Hall of Sangerville be excused March 30, 31 and April 1 for personal reasons.

**House Reports of Committees
Divided Report**

Later Today Assigned

Two Members from the Committee on Education on Bill "An Act to Provide for a Line Budget Procedure for all School Systems" (H. P. 2208) (L. D. 2308) reporting in Report "A" that the same "Ought to Pass," as amended by Committee Amendment "A" (H-1150)

Report was signed by the following members:

Mr. BERRY of Androscoggin — of the Senate.
Mrs. LEWIS of Auburn — of the House.

Eight Members from the same Committee reporting in Report "B" that the same "Ought to Pass" as amended by Committee Amendment "B" (H-1151).

Report was signed by the following members:

Messrs. KATZ of Kennebec
THOMAS of Kennebec — of the Senate.

Mrs. MITCHELL of Vassalboro
Messrs. CARROLL of Limerick
LYNCH of Livermore Falls
TYNDALE of Kennebunkport
CONNOLLY of Portland
INGEGNERI of Bangor

— of the House.

Three Members from the same Committee reporting in Report "C" that the same "Ought Not to Pass"

Report was signed by the following members:

Messrs. BAGLEY of Winthrop
POWELL of Wallgrass Pt.
FENLASON of Danforth — of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker, I move that we accept Committee Report B, "Ought to pass" as amended by Committee Amendment "B".

The SPEAKER: The gentleman from Livermore Falls, Mr. Lynch, moves that the House accept Report B.

The gentleman may proceed.

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: Report B is permissive legislation and would allow the voters in a municipality to go to a line budget veto on

school budgets if they follow the procedure outlined in the Committee Amendment.

Report A mandates that the line item veto must be introduced on school budgets.

Report C is "ought not to pass" on the bill.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I have never done this before, since I have been in the House, but I am going to move that this be indefinitely postponed and I would speak to my motion.

The SPEAKER: The gentleman from Winthrop, Mr. Bagley, moves that this Bill and all its accompanying papers be indefinitely postponed.

The gentleman may proceed.

Mr. BAGLEY: Mr. Speaker and Members of the House: I want to tell you first, I usually speak from notes and I don't try to read anything, but today I was saying some things that I thought the people down in the office on the second floor should know, so I left a copy of my remarks down there this morning when I came in, and I am going to read them so that the record says the same thing that my notes did. This is only a very small part of my argument, but it is an important part.

I understand that I have opposition in the June primaries, and that if I get by that I face a well known liberal in the fall. The one thing this speech may do is to enable me to spend next winter in Florida rather than here in the House.

One of my constituents recently wrote that he considered this bill a "vindictive attack" on those who supported the override of the school funding bill. It could be. There had been no reference to line budgets for schools, as far as I can find out, until after this override. The bill was put in so late that it would not have been admitted had it not come from the office on the second floor. There has been a continuous barrage against those of us who voted for the override, culminating in the advertisement in a recent copy of the Bangor News. The Governor's staff state that they did not know about that until it appeared, and I believe them, but it certainly was a logical reaction.

I resent the implication of the advertisement, and of much material we have been hearing from the second floor, that a vote for the override was a vote against the Governor and a vote against the override was a vote for the Governor.

I have voted both ways on vetos, entirely on the basis of my judgment concerning the bill — never because of any personal feelings. I voted against an override yesterday on a bill I voted for when it came through the first time. I believe I was selected to vote my best judgment, as the Governor was elected. I would suggest that it is just possible that the judgment of 99 men and women in this House, elected from throughout the state, may be as good as the judgment of one man on the second floor.

I wish this bill had been entered at the beginning of the session or, better yet, at the beginning of the 108th session. Coming late, with the rush of important problems and more important matters, it seems too important a measure to handle hastily.

I have got to change my prepared speech considerably, because I spent last night going over some things and I am not going to use some of the arguments that I was going to. I do want to use one.

We have had a lot of comments about wild spending. In 1973-74, the latest figures that we have available, in the per capita expenditure for public schools, Maine stood 34th. In per capita expenditure — and I want you to listen to these carefully — in per capita expenditure for highways, Maine stood 16th. In per capita expenditure for fire protection, Maine stood 13th, and per capita expenditure for public welfare,

Maine stood 11th. We are 11th in public welfare and 34th on public schools, I can't believe the public schools are spending us poor.

As far as increases are concerned, over the last 10-year period, 1964-65 to 1974-75, the United States per capita expenditures for school purposes went up 157 percent, Maine went up 152 percent. Maine is 28th in increase and 22 states increased more than we did in that length of time, so we are about in the middle of the group.

The next item is that this line item is nothing new. In the Winthrop Town Warrant of 1950, there were eight separate articles in regard to schools. In Island Falls, in 1946, there were five, and they were pretty detailed.

The next item is that the thing would save money. Well, I will take a little more time on that later on.

There are three things that I want to mention particularly. Our municipalities are divided mostly between cities or towns having town or city councils, SAD's and the single towns. I have just been down to the Attorney General's Office this morning, and I find that as far as they can tell, there is no reason why a single town, Sanford, Wells or whatever, cannot put in a warrant any one year a statement that the school board is directed to present a line budget at the next town meeting. Apparently it isn't needed for the single towns.

I do not believe that the sponsors of this bill, none of whom live in cities, expected that this was going to mean that we were going to substitute the judgment of school boards in the cities for the judgment of the city council. The school board is elected to run the schools. They spend weeks, hours and months on this budget and they present it to the council. All the council can do is change the whole amount, but in city after city after city, the people tell me that the city council and the school board do sit down together and the council does have the opportunity to suggest changes. All the city council does finally is appropriate a lump sum.

I can't believe that anyone wants to substitute the line budget power to the city council. You are not going to present it to the people of a city anyway. The people are not going to have any vote on the council and the people are going to elect the council and they are going to elect the school board. If they are not satisfied with the way things are going, they simply do not reelect those people. As far as I can see, that means that the only people that will be affected by this particular bill are the SAD's, and I wish to read to you an item in the present law in regard to SAD's.

"When requested by 10 percent of the number of voters voting for the gubernatorial candidates in the last statewide election in each municipality comprising a school administrative district, the board of directors shall place specific articles not in conflict with existing state statutes in the warrant for consideration at the next annual meeting in accordance with this section." In other words, the people in the towns, single towns, are already empowered to put an article in the warrant this year to require a line budget next year.

The SAD's may be empowered by 10 percent of the voters of each town in that district to require the directors to put in a line budget for the next year. In the cities I don't think we want to turn the budget power, the individual line budget power, over to the people who are not elected for that purpose. Therefore, it seems to me that this bill is neither needed nor wanted. It seems to me that it is superfluous, it was brought in so late that there hasn't been time to study it. I hope you will vote for my motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Stonington, Mr. Greenlaw.

Mr. GREENLAW: Mr. Speaker, Men and Women of the House: I stand this morning in opposition to the motion of indefinite postponement just made by the gentleman from Winthrop, Mr. Bagley.

I am, in fact, one of the three cosponsors of this legislation. The original legislation, I believe, is Report A. I am perfectly willing to accept Report B, which I think is a perfectly acceptable compromise.

I would remind the gentleman from Winthrop, Mr. Bagley, that I, too, voted for the override of the Governor's veto on the education funding bill. I thought that bill, for the coming year, had a more positive effect upon the ten municipalities that I represent than did the alternative of raising the uniform property tax to 14¹/₂ or 14³/₄ mills.

I do not believe that this bill that was introduced was an attempt at a vindictive attack against those who voted to override the Governor's veto.

Let me remind the good gentleman from Winthrop, Mr. Bagley, that I, in fact, did introduce a similar bill before the legislature a year ago and that bill received a 17-A from the Education Committee. I introduced that bill at the request of the selectmen of my home town of Stonington for the people in the community to have an opportunity to examine the school budget the same way they examine the municipal budget.

I attended a good part of the hearing a week ago Monday on the education bill. I think there were good arguments on both sides of the issue, whether we should have line budget procedure or not.

My one and only reason for cosponsoring this bill is that the people in the municipalities that I represent, and I suspect in many other municipalities in the state, perceive, whether they are right or wrong, they perceive that they have very little input into the educational budget. I think we ought to all clearly understand that they in fact do not have any control over the uniform property tax, and I think there is a great deal of misunderstanding about that. The legislature sets the uniform property tax. It is applied to the state valuation in each municipality, and there is just no recourse to that unless you want to violate the law and have the Attorney General take you to court or take your town to court.

My one reason for supporting this piece of legislation is that I hope that if a town elects to have a referendum and go to school item budgets, it will encourage the people in a given municipality to examine more carefully a school budget, to ask questions about it, to understand it, to examine the reasons why additional funds through the mechanism of maintenance of effort or local leeway appropriations need to be raised.

I think Report B, as I indicated, is a good compromise bill that I am ready to support. The good gentleman from Kennebunk, Mr. McMahon, who is one of the other cosponsors of the bill, is ill today and he asked me, yesterday afternoon before he left and he knew he probably wouldn't be here today, to indicate his support for Report B. So I do hope that we will defeat the motion to indefinitely postpone this morning so we can accept Report B, we can put it on the books and see if we can't encourage more public involvement in the school budget process. I think it is a very, very critical, important matter, and I urge you to vote against the motion to indefinitely postpone. Mr. Speaker, when the vote is taken, I request the yeas and nays.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Najarian.

Mrs. NAJARIAN: Mr. Speaker and Members of the House: I agree with everything Mr. Bagley has said, including his motion to in-

definitely postpone, except for one issue. He said that Maine was 11th in the nation as far as public welfare is concerned. The latest statistics I have from the Department of HEW, June 1975, shows us to be 36th.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I think Mr. Greenlaw gave you about all there is on this bill. I do want to say that there has been tremendous as far as letters coming for this and telephone calls and people even coming down to the State House here in Augusta to confer with the sponsor, myself and the cosponsors.

Also, to Mr. Bagley. I would like to make two corrections in what he said to the House. He said, number one, I believe, that in Title 20 it says school boards are elected to operate the schools. I don't think it says quite that. I think it says school boards are elected to see that the schools are operated properly.

Number two, when he cited the section in Title 20, where on petition of 10 percent of those voters voting in the last gubernatorial election, can cause an article to be placed in the warrant, that is well and good, but there are the other words in there "not in conflict with existing statutes." I know that section quite well because I was the sponsor of it in the previous session, so I think I am quite aware of what it does. It was not done at that time to allow line budget systems be set up for school systems, it was done to get at special programs, if someone wanted to initiate a special program or do away with a special program that the school board had enacted. But even then, with that section, it really didn't do much good because other parts of the law would negate that part which would allow the people to do it.

It seems strange to me today that there would be any opposition to a bill such as this, because I think the previous speaker said the municipalities run quite similar to a line budget article by article and I think we have pretty good government in our municipalities throughout the state, and I think the people of the State of Maine are quite capable of making decisions at budget meetings. It surprises me that anyone would have a fear of the citizenry of this state making a decision when, after all, it is the same people that make that decision that would be making the decision to send the representatives here to Augusta or elect selectmen.

This is a good bill. If this bill were to pass, it would give the people of this state a chance to really participate in the budget meeting. As it is now, the only ones that go to the budget meetings are the school officials and the teachers and the average citizen, the taxpayer, feels left out, so there is nothing they can do under the present setup to a budget anyway, other than cut a total figure.

There is a crying need for this bill. There is a lot of support from the people of the State of Maine. As Mr. Greenlaw said, we can go along with Report B, and I would hope you would not vote to indefinitely postpone and we could accept Report B.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: I can't understand why the public or the citizens could not go to those budget hearings now. I would like to ask one of the supporters of this bill, what happens — I am looking at Committee Amendment "B" — and I was wondering what would happen to special education and vocational education which are mandated by the state? If it is voted down, the school budget prepared by specific line categories, each category shall be included in a separate warrant article. Could someone answer the question, what happens to the man-

dated programs, special education and vocational education? How would that work out?

The SPEAKER: The gentlewoman from Waterville, Mrs. Kany, has posed a question through the Chair to anyone who may care to respond.

The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker and Members of the House: In answer to the question, I think the purpose of this whole bill is to bring back to the communities that the legislature, in the actions that it has taken, have not been stupid. I think the only way you can recognize that on the local level is to have the voters in the municipality be exposed to the type of legislation that the legislature is exposed to. If they attempt to cut special education programs, they will be bombarded with law suits, and that will bring it home to them, that there is a law providing for education of exceptional children and that there is a limited amount of cutting that they can do.

I think the whole purpose of this bill is the reaction of the people in the State of Maine that the legislature, by itself, has increased the cost of education biennium by biennium. The cost of education is initiated at the local level. That is where we begin to get the increased costs in education, and the legislature is faced with the total accumulation of all these school budgets.

What can you do at the local level? You can't cut debt service. You can't cut contractual obligations. There are limited areas in which you can operate. Transportation, for one, we are now up to \$15 million a year from \$9.5 million in 1972-73, because we are transporting kids from across the street to the school building. Other states don't do this. Shouldn't there be some input from the voters in the municipality as to how much transportation they shall get involved in?

Salaries — I think it might be good for the voters of a municipality to get involved in some of the salary negotiations and learn first-hand what the problems are.

Vocational education — there are other areas in which the people of this state are completely unaware of what they can and what they cannot do. There has been an outcry, and I am sure it comes in every municipality in the State of Maine, that the legislature by itself is increasing the cost of education, and I think somehow that has to filter down to the local level, that there are areas in which the local municipalities can make some reductions in the cost of education. Let's give them an opportunity to try. They are going to learn by their mistakes, the same as the legislature learns by its mistakes.

Mr. Bagley said that the single town has the opportunity to do this. What we want to do is make it permissible for all municipalities to do something in this particular area. I think Report B does accomplish this.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, one bright spot about this whole thing, much of the input on this Report B came from the Maine Municipal. I am delighted that at last the gentleman from Skowhegan and the Maine Municipal are working hand in hand. However, my main point is that all of these things are possible now. I hope that all of you people, if you want to improve the picture that the general public has of the legislature. I hope that each one of you that represent a school administrative district will be sure to go home and tell those people that they now can, if we can get 10 percent of the voters in each municipality to sign a statement, they can get a budget, and contrary to the statement that we just heard, this includes everything not precluded directly by the

statutes and the Attorney General's Office tells me that it does permit a line budget.

Only about 42 percent of the students in Maine are in school administrative districts, and yet this bill would include everyone. I haven't heard anyone say they want to turn all the direct line budget items in the cities over to the council, they are already quite busy. I think one of the best statements we heard at our hearing came from a man who is a business manager in the town and who says he has been on the board of selectmen for quite a number of years. He says the reason why a line budget is practical for a town is, to use his expression, practically every item there is owned by the town lock, stock and barrel. The town can decide how many street lights, the town can decide which streets they are going to improve, the town can decide this and this and this, but a high percentage of the items in the school budget are mandated by the state: therefore, that would make a difference.

I am not opposed to having the line budget voted by the town in any way, shape or manner. I am simply saying that it can be done under the present statutes. I am saying that this thing was in so late that we didn't have time to study it. I am saying that I am perfectly willing, if I do survive and get back here next time to work on the bill, if you want to improve the bill in regard to permitting the school administrative districts to do this. Although, as I say, I am sure, and the Attorney General's Office is sure, that they may do it now.

I hope you will vote to indefinitely postpone this.

The SPEAKER: The Chair recognizes the gentleman from Kittery, Mr. Kauffman.

Mr. KAUFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: I hate to disagree with the Representative from Winthrop when he says that line item budgets are permissible; that is not so. We in Kittery have a town manager-council form of government under a charter. When we implemented this charter, in it it says that all departments shall be on a line item budget. The first year that the school budget came up, the council, which I was a member of, decided that we would hold the school department to the line item budget. The school department took it to court and got a ruling that it was not permissible under the statutes of the State of Maine.

I was a member of the School Board in Kittery for six years, a member of the Board of Selectmen and Town Council for 13 years. When I was on the school board, I fought against line item budgets, which, evidently, the retired superintendents and so forth are doing here today. However, I think the time has come when each town, whether it is a town meeting form of government or a town council, they should have the authority to tell the school board where the cuts shall be made.

Under the present law the school departments submit their budgets. The town council, in my case, and I assume it is the same in town meetings, can cut that budget x-number of dollars. They do not have the power to say that you can not cut the athletic fund X-number of dollars and so forth. We have instances right in my own town, and I brought this up at a meeting with the council and the school board where a principal had gone out and purchased a \$3,300 item for the athletic program and the school board didn't know anything about it. I say, if we had a line item budget, this would have been brought to the attention of the council who represents the voters of the town and I hope you will support the line item budget.

The SPEAKER: The Chair recognizes the gentleman from Bridgton, Mrs. Tarr.

Mrs. TARR: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair to Mr. Lynch or anybody that might be able to answer it. On this

line item budget. I have heard people say that we could cut, but are we also allowed to increase?

The SPEAKER: The gentleman from Bridgton, Mrs. Tarr, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I believe the answer to that question is yes.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mrs. Lewis.

Mrs. LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: The answer is yes. I would also urge you to support B. You might notice that my name is one of those that signed Report A and I did it because I wanted to be very certain that the bill did come to the floor in that form. That is the way the bill was presented to us. Actually, both Reports A and B are permissive. It is just that the burden of proof is reversed. In Report A, a city or a municipality would have a line item budget unless the voters voted otherwise. In Report B they will not have a line item budget unless the voters vote to have one.

Since the sponsors are perfectly agreeable to Report B, although of course it was Report A that was presented to us, I hope that you will go along with Report B. I think that it might not be a bill that would stay on the books for very many years, but I think it would prove a point to many people who feel they are not really getting a handle on education spending in their towns and maybe if they found out just what it is like to have a line item budget, they might not be as crazy about it as they think they are right now. I would urge you to support Report B.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: A few moments ago my good friend Representative Dam indicated that he trusts the voters of a community to make decisions in school program financing. Well, a few weeks ago he would not trust the same people to decide on service charges to fraternal organizations. The majority of this House agreed with him. I would think that consistency would require this House to vote in this case against this particular bill. If we would not trust the voters to raise funds, should we leave the highly charged question of details of school finances to bodies other than the elected school board?

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: First, in answer to Mr. Cox, if that bill had had everything in it without any hanky panky done, I could have supported that bill, but when you hanky pank and single out anybody, I do not support any bill. That answers that question. I would have wanted the people in the community to make the decision and I could have lived with the decision, but I don't live with hanky pank.

Now, as far as what my good friend Mr. Bagley says, that the Attorney General has said that you can do this now, have a line budget system. I don't know what this Attorney General has said. I have not asked this Attorney General, but in two previous sessions I posed the question to the Attorney General and it cannot be done because the budget is set forth in a form where it does not allow for getting at individual items on that budget.

Now, if anyone can show me a letter from the A.G. where it says this can be done under the present system, then maybe we don't need the bill, but I can show you two letters from the previous A.G. that says it cannot be done and it has been tried and it has not been allowed.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: In reference to the one item which is under debate right now, whether or not a group of citizens may petition the directors to have an article placed into the warrant, I would like to make reference to a decision made by the Superior Court of Somerset County made last Monday whereby over 200 petitioners had asked the board of directors for a recall vote on a school building warrant. The judge said there was no law and thereby denied the petition. They did not have to put the petition before the voters because there were no provisions in the law to require it. You can check this with the Somerset Court on that decision.

In reply to Representative Kany's asking about mandated programs to the schools, they would be handled in the same manner as the mandated programs to the towns are now. It is explained very fully to the towns people that this is a mandated program and they must vote affirmative on it.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question in the same vein. If the school board negotiates a contract, does this contract fall within the line item budget that a town could actually reverse the contract?

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: The initial officials have absolutely no control over what is contracted for. I had the same question come up last night by one of the councilmen. I left here last night and had a public hearing on a \$7 million school budget until midnight last night, so I am fairly well primed for meeting with you this morning.

What the school board negotiates for, the municipal officials cannot undo. That is strictly a responsibility of those particular elected officials.

If I may continue, Mr. Speaker, I was very impressed with the comments that Mr. Cox from Brewer made and it was obviously intended to muddy the waters and to try to distract us from this particular bill by bringing up something else. I am surprised he didn't bring out the 200 mile limit or something while he was on his feet.

The remarks from the gentleman from Winthrop, Mr. Bagley, were very interesting and while districts, even if it were true, Mr. Bagley, the districts could very well petition with 10 percent to do whatever they wanted with the line items. I would think that you might be aware that at least municipalities under a different form of government other than the beautiful district SAD's that we have would not be able to do that. So, in fairness to all communities within the state, I would hope that you would be paying as much attention to those municipalities that don't have SAD's as well as those areas that are entrapped in the SAD system.

Mr. Bagley has mentioned that he doesn't want to bother the councils, as he put it here, who are quite busy now with this burdensome task of going through line item budgeting with the school department. I would point out that if it is not done by the municipal officers, it is certainly not going to be done by the school board people.

My school board, last night, admitted to me that they have held absolutely no public hearings whatsoever on their \$7 million budget. They have, in fact, not even talked to teachers. They have been talked to by the superintendent of our school system who has relayed to them the information that the budget has been cut along the route, that the teachers have asked the different principals for appropriations, that

the principals have made some cutbacks and the principals have advanced a budget to the assistant superintendent of schools who has met with the principals, has made some cutbacks, the assistant superintendent has gone to the superintendent, he has advanced a budget proposal to the superintendent, the superintendent supposedly has made some cutbacks and then the superintendent finally presented this package to the school board and the school board may, in effect, make some cuts there. But in no event have they talked to the individual teachers, there is no requirement that they do, and we went through a formality last night which is not much unlike the way that Dave Stevens used to conduct his public hearings at the State Highway level when he was going to build a piece of road someplace. Dave Stevens would conduct a public hearing in a location on a particular project that the Department of Transportation was going to do because the law said he would conduct a public hearing. The plans were already drawn, the contracts were already to go out, and in most instances there would be absolutely no change and the input that was made at the public hearing was not conveyed, apparently, to the engineers of the department, because the plans would go ahead as they were originally proposed by Dave's engineers. Whether or not that is a good aspect or not, I am not sure.

We held five hours of public hearings last night on the school budget and we got some very interesting remarks out of the school department and, as a matter of fact, a couple of the school board members were amazed at the tremendous knowledge that some people that sit on the city council can acquire, not only for municipal affairs, Mr. Bagley, but also for school affairs.

We are not asking for too much, I don't believe. I have been a very strong proponent in this legislature to try to fix the cost of construction of school buildings. Now, that is entirely related to these particular items that we would like to get involved in when we get involved with line item budgeting. Simply because the maintenance of the plant is one of the items that we would like to be able to control.

Right now, my city council will take this budget, they will have a figure of \$7,098,000 to deal with, they will recommend a cut to the school board and the school board will immediately say, well, we are going to cut out sport activities, we are going to make the kids living within two miles of the school walk to school, we are going to cut out adult education, we will cut back on the number of things that we are offering in vocational ed. I have been at it for 14 years so I am quite familiar with the routine, it is almost like a broken record to me now and I can place each category almost it's the same. I could take out last year's rejection letter and just sign the new chairman's name under it and that is about all.

One of the reasons, obviously, that we have had problems and have had to construct new schools is because one of the very first things that the school board cuts out is the maintenance of the plant. So, what are you doing? You are forcing yourself into reconstructing or building a new school in 40 years rather than 50 years because you haven't maintained the building that you put money in. You wouldn't do that to your home.

I think that city councils are extremely capable of handling school budgets. In the City of Waterville they are handling some \$4 million of municipal funds, and I assume that they are also able to handle some \$4 million of school funds. I am talking of the \$7 million as an 18-month budget.

You can walk down the streets of Waterville and you can ask anybody on the street, who is your school board member? They can't tell you. You can ask them, give me the names of the

people who are on the school board? And I would say that 90 percent of the people can't identify two people who are on a seven-man school board, yep you can ask those very people who is sitting on the city council and several people can name all of the members on the school board but over 75 percent of the people will name at least three or four people who are on the city council. I think that you will find that the visibility is much higher for the members of the city council and one of the reasons that the visibility might be higher is simply because the taxing authority rests with the city council. No matter what you finally appropriate for funds, it is not the school board that gets blamed for an increase in the tax rate, it is the guy that is sitting on that city council. He is responsible for whatever the school board spends, so he is the one who gets up and he is the one who is finally responsible to the voters for how much money is spent city wide for schools, streets, streetlights and what have you.

I think that the members of the city councils in this State of Maine are fairly responsible people and I don't think you will find them abusing the privilege. One of my councilmen last night, she happens to be a councilwoman, but the charter says they are all councilmen, so she is a councilman, one of my councilmen last night made the very astute observation that she particularly liked Report B which allowed us the freedom at the local of shall we have line item budgeting or not, because she said, let's try it and if we on the council ourselves don't like it, where it is not mandatory, we can vote it back out and we can go back to doing without it. This is the one feature that she liked about it. I think Mrs. Kany will recognize this woman, she is the only woman we have on the council. She is brand new at it but she is going to end up being the most capable person that I have on the city council before her two years are up.

I would certainly hope that you vote against the motion to indefinitely postpone. I think the municipalities need this power. I think when you gave the schools at the local level 55 percent state funding, as we have it now. I think you were basically mandating, that you were giving them the money and you were leaving the municipalities with the responsibility of taking care of their budgets. They cannot have that responsibility unless you give it to them line by line. I would certainly hope you go against the motion for indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Jay, Mr. Maxwell.

Mr. MAXWELL: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you do pass this bill, and one or two reasons why. I received just recently a petition from people in the town of Jay, 180 some odd names, asking me to vote for it. So how do I do anything different? Not only that, but last year we had a town meeting in which an article asked for line budget. The Attorney General's Office said we could not do it. I hope you pass this bill.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: The gentleman from Waterville gave a very interesting and informative exposition. I am not sure he totally answered my question. In this particular legislation, can a contract that has been negotiated by a school board be overthrown through the action of a town legislative body?

The SPEAKER: The gentleman from York, Mr. Rolde, poses a question through the Chair to any one who cares to answer.

The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I think what the gentleman is asking, I will try to explain it this way and it may get to the very heart of the mat-

ter. We will say that the school board negotiates a contract with the local teachers association and a sum total of salaries, fringe benefits and what have you, comes to \$3 million, which is generally the area we are talking about as far as the city of Waterville is concerned. If the municipal officials, by line item budgeting, or those people that are involved in SAD's, cut the appropriation for the 200 code and the 200 code is the instructional code which happens to contain the salaries as well as textbooks and paper and supplies and what have you, if a municipality happens to cut the expenditures by line item, the \$2 million for that particular code, it does not relieve the municipality of the responsibility of fulfilling those commitments to those teachers. If they don't buy a textbook, if they don't buy any paper, the first commitment is to fulfill the contract.

Mr. Bagley of Winthrop was granted permission to speak a third time.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Kauffman referred to the court case in Kittery. I planned to use that as one of my main points and I decided I didn't need it any longer. Actually, the court case was under the present charter of the city of Kittery. Now any charter may be changed, and if the people, the town fathers in any city or town that has a charter may wish to change that charter or permit this line budget, there is nothing in the world to prevent them from putting out a referendum to the people suggesting that change. That change is not contrary to any particular statutes, it is simply the way the charters are now written and they can be changed.

Mr. Dam has told us that the present statutes refuse to permit changes in the form of the budget. I would remind him of the other day when we passed over the veto for a school funding bill. That school funding bill repealed Sections A, C, D, and E of the section to which Mr. Dam was referring so they are no longer on the books and the one section that is left is a section that includes this 10 percent provision which I reported.

In regard to Mr. Carey, I agree with practically everything he said. The only thing is, apparently Waterville is a horrible example of the fact the school board members and city council members do not sit down and work this thing out.

I was talking with the Representative from Bangor and he says the Bangor School Board, of which he is a member, and the Bangor City Council spend hours and hours going over things item by item. When they finally get through, the council appropriates a lump sum of money and the school board may change it. But in the meantime, they have based that thing on an item by item study and have spent much time on it. So, it seems to me that all of these things can be accomplished under the present law and I don't think we need this.

Mr. Carey of Waterville was granted permission to speak a third time.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to get into some kind of a contest here with Mr. Bagley and we are going to keep answering each other back and forth. I know, throughout the rest of this session and hopefully through many more sessions to come, Mr. Bagley.

I would certainly say that the point to be brought out is that last night was the first time the general public, the first time the general public in the City of Waterville got to see \$7 million worth of expenditures, some of it is paid out of the State Treasury, some is through the uniform property tax and obviously some \$3.4 million of it will come from the local taxpayers pocket over and above whatever he is paying in state taxes. As the Governor has said time and again, a tax is a tax is a tax. I think this is

true in other communities, Mr. Bagley, that there is no such thing as a true public hearing on a school budget.

The SPEAKER: The Chair recognizes the gentleman from Wallagrass Plantation, Mr. Powell.

Mr. POWELL: Mr. Speaker, Ladies and Gentlemen of the House: I just want to make a couple of comments. This is a John Salisbury bill, in case the legislature didn't know it yet, and Item B is the easy way out, it is a buck-passing deal that says nothing about negotiations by teachers and what might happen after a contract was negotiated and then cut. I would like to see, as a former school committee member, a chance for those people to work for the budget that they plan on, they are just as responsible as the town council or the city council is.

This bill is aimed at the CSD's and the SAD's. It doesn't really affect the cities that have home rule and that sort of thing.

I urge you to vote this thing down.

The SPEAKER: The Chair recognizes the gentleman from Rangeley, Mr. Doak.

Mr. DOAK: Mr. Speaker, Ladies and Gentlemen of the House: I heard school board mentioned and that is dear to my heart. I have already won one election this year as chairman of the school board in my community. I don't know if it is a feather in my hat or whether it was a booby prize but anyway, as chairman of the school board in a local school in a small rural area, which I don't believe has been addressed at this point, I am firmly convinced in my mind and in my heart that the people of the State of Maine in these municipalities should be able to have more say how their tax dollars are spent for education, so much so that I didn't even like this uniform school property tax funding, I still don't. This may be one way to get at that some time in the future to rectify or eliminate or clarify the thing so it is workable.

If the people of this state could understand the real funding of education in this state, I think they would be much better off and the educational process would be better off.

For many years now I have felt that it would be important for all of the departments to stand up and justify to the people and the taxpayers of this state any program which they present. I don't believe we should be presented with a program and a budget and accept it. I think we should have a chance to get at it. I know, for instance, in my own little school they wanted to get at salaries, they voted a small cut in the budget, overall budget. I was a member of the school board, what we did, we didn't do two or three projects, and we saved that money there but the salaries weren't touched. The people didn't really get at what they wanted to get at.

I would like to have this available to the people of this state so they could get at it and work at it line by line, and I am not afraid, as a school board member, to stand up in any meeting and justify any program which we present as a school board. I think that we can justify it to the people of this state. I don't think they are dodos; I don't think they are against education, I think they are for it but they want their tax dollar's worth and I don't blame them a bit. I hope that you do not vote to indefinitely postpone this bill.

The SPEAKER: The Chair recognizes the gentleman from Dixfield, Mr. Rollins.

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: I am not a school board member but I believe in school boards. The school committees have been traditionally charged with the general overall direction of the local school system. The major part of this charge is the responsibility to become sufficiently knowledgeable and informed so as to insure compliance with law while adjusting priorities and programs for effective and ef-

icient school management. Passage of this bill would be the end of school committee decision making. It seems singularly unique that a bill of this type should be devised and proposed solely for public education, that it is representing an attempt to resolve some local difficulties at the expense of the entire state, what are the real motives behind this proposal?

One of the current bills, the sponsor proposed similar legislation last year which was subsequently defeated. Have conditions so drastically changed that the concept now merits passage?

I have noted on numerous occasions that the Governor has complained bitterly about the limitations imposed upon the executive branch, thusly impairing his managerial expertise. He has lamented about the constraints and inflexibilities which have affected his proposed appointments and decisions. All of them he justified as being in his judgment for the best interest of the state. He has appealed for expanded power in latitudes in which his business concepts would be best utilized for increased efficiencies. By reasonable analogy, the Governor, as the state's executive, is comparable to a school committee, being the local-school system executive within the respective perimeters of their specific areas for concern. If there exists merit in the Governor's complaints, then I respectfully suggest that a school committee situation is no less meritorious. I would hope that you would support indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Freeport, Mrs. Clark.

Mrs. CLARK: Mr. Speaker, Men and Women of the House: The three towns comprising House District 27, Freeport, Pownal and Gray, must be unique. They must be unique in that in these three towns local control exists today. School board members, members of school committees and SAD boards of directors are publicly elected for limited terms. School board meetings are open public forums, and if the citizens of this state don't attend the public school board meetings in your towns, then I offer you my sympathies and condolences. School board meetings and budget hearings are well attended in the three towns in my legislative district. Public hearings, as I have stated, are held regularly. School board and school board budgets are voted either by the people in the town of Pownal or by their directly elected town officials in the towns of Gray and Freeport.

I support indefinite postponement of L. D. 2308, for this bill appears to be in direct conflict with certain existing legislation holding school boards, school committees and SAD boards of directors responsible and liable for the funding of specific programs. Moreover, should it pass, it would undermine the effectiveness of school boards, school committees and SAD boards of directors, which spend many, many hours exploring and planning effective educational programs for their schools.

To stand by and see their efforts sometimes negated and even one hour of sometimes ill thoughtout and emotion-packed line budget cutting will be so demoralizing that I fear few capable conscientious people will consider serving as school board officials.

It has required over 100 years to bring Maine school boards, school committees and boards of directors to their present state of combined professional and representative local control, from, yes, a sad earlier period wherein un-directed local control was responsible for widely varying quality in textbooks, curricular, buildings, programs and teachers. Educational programs and their quality were often dictated by the emotional whims of sometimes ill-informed, but well intentioned, citizens.

This bill represents a step backward toward

that sad earlier period and I have been urged by those officials in my three communities un-animously to oppose passage of this measure.

This bill singles out education for special treatment which is required by no other governmental function. I would suggest to you, that again, education is being portrayed as the scapegoat of all that is ill, with not only our economy, but our society. I believe, ladies and gentlemen of the House, that is unfair and unreasonable.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I am a cosponsor of this piece of legislation. I disagree very strongly with the gentlelady from Freeport, Mrs. Clark, in her belief that education is being singled out. I think the environment has been singled out. Any government programs that are currently proceeding today have been singled out because the money isn't there to support them in the manner in which some people would like to see them supported.

I think, just as I think, with environmental laws, that if you don't allow people to participate and be able to comply with the laws that you are going to see them go down the tubes, I feel that with education if you don't allow people to participate and to try and understand why the vast amounts of money that are being spent on education are being spent, then they are going to be unwilling to raise them. I think that, as a representative, I have seen that. I certainly saw it as I traveled around talking to my constituents, after this last school funding crisis.

I feel that a school budget that will be tried by the fire of the voters of this state, the people who are raising the money and it is a very good one. School board directors and SAD's, school superintendents or school superintendents of cities and so forth, if they do their work and have done it properly and they explain it at the school district budget meetings, I feel that the voters of this state will support them in their efforts to provide a good education for our children. I don't feel that they will support them if they can not participate. Representative democracy is in a rather precarious position these days and I submit to you that one reason it is in a precarious position is because that people don't have the opportunity to participate as much as they really should be able to do so.

I feel that this is a good piece of legislation for those reasons.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: I think you heard Representative Clark say that it took 100 or 200 years for school boards to reach their present position. I would like to point out to you that between 1972-73 and 1974-75 education has increased \$50 million dollars. In the next two years, another \$20 million.

I would also like to recall to your mind that we passed an education funding bill this year. If you will look at the latter portions of that bill, there is absolutely no assurance that the next state legislature, the 108th, is going to fund automatically, under any formula, increased costs of education.

Now, if the 108th decides for any reason to maintain the present level of funding or to reduce the current level of funding, the only possibility of maintaining educational programs in this state is the local property tax.

Now, if you don't give the voters in the community an opportunity to have some say in how their tax dollars are going to be spent, you are going to have more outcries than you have had in the last year around this state.

The SPEAKER: The Chair recognizes the gentleman from Buxton, Mr. Berry.

Mr. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: I support this legislation and I think it is very important for some of the reasons that Mr. Lynch just outlined to you. I think that at the way that the cost of education is rising that the people in the local communities have got to become more involved or they are just not going to foot the bill any longer. They have been saying that for quite some time now. In the district that I represent, SAD No. 6, we have a current operating budget of \$3,481,119. When that budget was adopted, there were 51 people present, out of a potential 10,000 voters, 51 people, 40 voted for the budget, 11 voted against.

If you call that involvement, I don't know just what kind of involvement it is. I think that, as a matter of fact I know, out of the people that were present, that 40 of those people are employees of the district, 11 of them were not.

When the concept of SAD's was first thought up and written into law, I think the people that drafted that legislation were correct and they outlined procedures whereby the public could have an input. But one of the problems that they apparently didn't foresee was that the public feels that they don't have any input when they come into a district budget meeting, reduce the budget by a certain number of dollars, thinking perhaps that it ought to be applied to one item in that budget.

Then as other speakers have outlined, when the board goes back and decides where that cut will be made, often it is made in maintenance areas or in the case of SAD No. 6, one time it was made in the contingency account. I think it is actions like this that frustrate the voters to the point where they just won't attend a district budget meeting.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: A point that I wanted to make was that the school budget, this year, had increased. It was a total of \$262.5 million and ten years ago, our total of the general fund budget was \$199 million, that is 63½ million more for the school budget than our entire general fund budget of ten years ago.

Something else I wanted to touch upon was what it takes to become a political activist. I am reminded of what it took for me to become a political activist, which was many years ago when I was 13 years old. The town that I lived in didn't pay our bus transportation to high school. It was \$100 a year, was all it would take, and yet they wouldn't raise the money to do so. It was always a close vote in town meeting and I mean everybody turned out, there was always one or two votes that would put it down every time. So, consequently I had to, along with some of the other people my age, had to hoof it to school, 15 or 16 miles one way. We hitchhiked both ways morning and night. I vowed at that time and so did some of my fellow classmates that when we got old enough we were going to change that, that we would get involved in town meetings and we would vote to have the money raised for high school transportation. As it turned out, a year or two after I got out of high school, the town finally passed it by one or two votes and so we didn't have to do that. It illustrated to me the fact that you have to be willing to participate and you have to have something, a way, to really participate and affect the outcome before you do so. I feel that being able to participate in a line item school budget is healthy for the system. I think anything that is healthy for the system, at this point is well worth our attention and our very sincere consideration. I guess that is about all I have to say.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I guess in answer to my questions, my previous questions about contracts, I have been assured that contracts would be honored even under this legislation and that would not be a line item that could be changed.

I now have a further question, I just happened to note in the paper this morning a story out of Sanford about their school board actions and there is a statement in there that 80 percent of their expenditures is in the nature of teachers salaries. Now, does that mean that only 20 percent of the budget would be open to line items, if contracts are inviolable under this legislation, because I really believe that some of the popular thrusts for this legislation is that people believe that they will be able to get in and reduce teachers salaries, but if that is not the case, are we still only dealing with that 20 percent of the school budget which is not contracts that we will get in the same situation that the gentleman from Buxton, Mr. Berry, complained about where the cuts will have to be made in maintenance or even in popular programs like athletics that are not specifically education programs?

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I was on the school board for 25 years. We have never had too much trouble with the teachers and so forth. We had good relations, but now at the present time it has come to the point that the people in Sanford would like to attend, like Mrs. Clark, mentioned, — I am sorry that she isn't here, — that the people should participate much more than they have been when they go in for a school board meeting. Well, now it has come to the point that every time that the people would want to attend, I know it came out in the Portland paper that we had 100 to 150 people who wanted to attend the meetings, but every time that they did or quite a few times that they attended, the head of the teachers association asked for a closed session. So, how can they go, — they have discouraged the people by going to these meetings and I think it would be a good for the teachers themselves instead of closing the door, I think if the people went in there and they knew what was going on, there might be better relations all along but not by closing the door to the people who are paying for it, you are not going to make good relations.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to prolong this debate and I am not an expert on education but I felt that that being the case that I should arise and tell why I am going to vote the way I am, particularly since my good friend and colleague from Brewer, Mr. Cox, is against this legislation and even more so, my old principal and teacher Mr. Bagley from Winthrop, who I do follow in most education matters and pay attention, but today I am going to have to move away from my two friends.

I am disturbed with this thought, because it seems to be something against the school boards and one of the reasons I got up was to say that the school board in Brewer just passed, last night, I was at the school board meeting, a \$3 million budget and after two public hearings and the public was certainly there and they did it in an open meeting, the voting was open and above board so the citizens would know, not only that, the city council was there, they were invited to be there and they were there and I sat through this meeting and it was done in exemplary fashion and no one could say anything against the time and the effort that these people put in. They, of course, the school board, is

against this legislation. The city council is for this legislation to amend, they voted their resolve unanimously. So, the only thing I could do was to talk to the people last night that were there and the thing that is going to influence my vote on this legislation and I have talked to several people and I have had several letters and several phone calls, the people want this, and I feel the people in my area want it. The reason I wanted to get up was to say that I am going to vote in order to provide it for them. At this point, I don't know that it is really the best way to go but I think that we are at a point in time that if the people want this, and want to make more of a determination, then I should go along with them.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: The thing that disturbs me about the previous speakers' remarks is that I don't think that he realizes or many of the people who are in the house here who come from chartered cities realize, that they can have that power now, they have it now, they can go out to home rule. In the City of Old Town we have gone out to home rule the last two elections to change our charter. If you want to change your charter to do this, so be it, do it in your town.

Mr. Wilfong, my very good friend, told me some time ago that because I was on the opposite side of the issue that he told me the train was moving out and that I was going to be left at the station and that very well may be, but, you know people, city school boards or town school boards are elected by the same people that elect city councilors. You must forgive me if you live in a town meeting type of town where you have selectmen because I am not that familiar with it, but I am on the city council, I have been for six years. The same people who elected me, elected the school board, and they elected the school board to run the schools. We have, on a number of occasions in Old Town, told the school board you must cut your budget, it is too much. One year we cut it by \$50,000 on my motion, and I am a school teacher, I don't teach in Old Town, I teach in Brewer. They went back and made the determination of where that cut was going to be and that is where it probably ought to be done, in the school board and not in the city council. If your expenditures go so far that your taxes have to go up, then the city council has the responsibility of saying you have gone too far. But the school board should have the responsibility of saying where the cuts may occur because they spend hours and hours and hours and days and days and weeks and weeks, at least in my town, and they are all public meeting and they are all well attended and they are all covered by newspaper reports. We have a local Penobscot Times which Mr. McKernan from Bangor's mother used to own and operate, and they report those meetings and they are very open and everybody has an input into that process.

I would urge you to vote to indefinitely postpone this bill.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to inform the gentleman from Old Town that there is, at the present time, by the chairman of the finance board in Sanford, a letter that was sent to the Attorney General to find out why that they wouldn't have open doors so they would know what is going on. What I said a few minutes ago is, that we have. The school system in Sanford is one of the best, I would say, in the state, but the people of Sanford, the taxpayers, would like to get in there and have something to say. I think that if it was open instead of asking to be closed like it has been — you can read it in

the paper this morning, there is a lot of trouble because the taxpayer can't get in and express themselves or hear what is going on. Give them a chance to get in there and I agree with you, that probably through the home rule, but there must be something that is hanging on because the chairman of the finance committee has already sent the letter this week in the paper to Mr. Brennan, the Attorney General, to find out about this law, the open door law, where people should know what is going on.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. DeVane.

Mr. DeVANE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to offer two brief observations and two brief predictions. Mr. Lynch, I think, is entirely correct in what he says except his opening remark which said education has increased. I think that is subjective. I don't think there is any question but educational "costs" have increased. I think there is a very real question if education has increased.

I would observe in Mr. Berry's remarks where his concern for who attends the meetings. Attendance at a public meeting, I think, can be characterized just one way, it is voluntary. If two people go, that is their business and the communities business. If everybody in the community goes, that is fine too. I think we should not be concerned with who or how many people attend a public meeting. I think they do so for their own reasons, and when they think there is a need. If they don't, I suspect that most people think things are fine.

I would predict, I think, hopefully and rightfully so, that this act will pass. I think it should but I will predict also that it won't reduce the cost of education in the community or in the state. All that is required for passage of this act, I think, is confidence in the public that they will, in fact, do what is right. Every competent administrator, in my experience, who has come before an elected body or the public themselves directly and presented a defensible budget and has asked for funds to do things that need be done, I observe that the community not only gives it to them, but strains to give it to them. I have not one fear that passage of this act will cripple education. It will not.

The people of the communities in Maine will do as they have been doing, they will fund everything that is necessary, they will fund everything that they think is desirable, and they will not put upon those who educate their children.

I hope you will support passage of this act. It will not reduce the cost of education but it will restore confidence with the public and I think that the public may not even participate to any degree greater than what they are now, but the measure is called for in terms of the public attitude and it will have a good result.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, in answer to my young colleague, from Old Town, Representative Pearson, as far as the home rule charter change goes, I think that has been an area that some people have been confused with. I really think that is one of the reasons, one of the major reasons, that I am going to vote for this legislation because this is going to clearly give any municipality the right to change their charter and the right to go to line budgeting. It is permissive if they don't want to do it, in Old Town or the people in Brewer don't want to do it or the people in Bangor don't want to do it, that is going to be their right, they don't have to do it. I think that there has been some confusion and I think that is one of the major reasons for this legislation.

Mr. Lynch of Livermore Falls was granted permission to address the House a third time.

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: I would like to address a few comments to a question raised by the Majority floor Leader in regard to negotiations. I think there is a difference between negotiations carried on in the private sector and negotiations carried on in the public sector. In the private sector, the negotiating team does not totally disregard the company executives, the board of directors. They have to negotiate within the ability of the industry to pay for any benefits given. In the public sector, I think there has been some disregard in some municipalities over wage increases given by school committee men without real consideration of the impact on the locality.

I would also address and correct a point that I made earlier that the school funding law, that we are no longer controlled by a formula except that for increases given in salaries to teachers, the state is automatically controlled by law to put a little more than 10 percent of that increase into the state retirement system. The difference between 1973-74 and 1974-75 for instructional salaries alone was \$13.176 million which meant that the state was automatically obligated to put in excess of \$1.3 million. Now, I don't know what the last increase was but I think the state was automatically obligated to put in excess of \$1 million.

Somehow this legislature and the municipalities in this state have to have some control over the cost of government including education. I think we have an obligation to provide an education for all children including the exceptional, but I think we have to do it within the means that we have available. I think we have to exercise prudent judgment on the legislative level and on a municipal level. You can not exercise this on a municipal level unless you have some control given to the voters in the municipalities and that is the only thrust that I have to support this legislation. If it creates chaos in any municipality, they will learn the hard way what they can do and what they can not do. The same as legislatures have learned over the years that they have made mistakes and that they have to correct them.

The SPEAKER: The Chair recognizes the gentleman from Danforth, Mr. Fenlason.

Mr. FENLASON: Mr. Speaker, Ladies and Gentlemen of the House: It is with considerable fear and a lot of trepidation that I address this body this morning on this subject and you will probably notice that I was one of the signers of the "ought not to pass". I have given this issue much thought and long consideration. There are one or two things I want to clarify before I tell you what I think I will do.

The gentleman from York, Mr. Rolde, spoke of 80 percent being spent for teachers salaries, I think that figure is a little high. My impressions is it is somewhere between 65 and 70 percent and I don't know that this makes a great difference. I thought I would correct that.

There seems to be some question about what is the legal possibility at the present time whether the change can be made or can not be made, such being the case, that would indicate that perhaps this bill should go with Report B.

If I were, at the present time, a superintendent of schools, I would be fighting any sort of a line budget intensely and I don't blame my former colleagues for doing that because I know that it creates a lot of difficulties.

I also hear much from citizens who say they don't get input into what is going on in the schools and I am inclined to believe that is right. I also realize that if all of the citizens were much concerned and if they would bother to find out the procedure, they could under existing rules go to the meetings, they could discuss the budget, they could do a lot of things,

but somehow or other they don't. I would concur and I know that it is true what the gentleman from Buxton, Mr. Berry, said that a budget would pass with 40 people in the audience and this is pitiful. If the people are concerned about educational costs, and I think they have a right to be concerned about educational costs, I have that concern too and if they are concerned, I think they ought to be able to do something about it. The mechanics do not seem to be clear, so without keeping you any longer, after giving this much thought and realizing the thoughts on both sides, I think that when I vote I will vote for Committee Amendment "B" and those are my reasons.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Winthrop, Mr. Bagley, that "Bill An Act to Provide for a Line Budget Procedure for all School Systems," House Paper 2208, L. D. 2308, and all accompanying papers be indefinitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Ault, Bachrach, Bagley, Bustin, Chonko, Clark, Cox, Curran, P.; Garsoe, Gould, Hennessey, Hobbins, Immonen, Kelleher, Mahany, Martin, A.; Najarian, Powell, Rollins, Susi, Talbot, Torrey.

NAY — Albert, Bennett, Berry, G. W.; Berry, P. P.; Berube, Birt, Blodgett, Boudreau, Bowie, Burns, Byers, Call, Carey, Carpenter, Carroll, Carter, Churchill, Connors, Connolly, Cooney, Cote, Curran, R.; Curtis, Dam, Davies, DeVane, Doak, Dow, Drigotas, Dudley, Durgin, Dyer, Farley, Farnham, Faucher, Fenlason, Finemore, Flanagan, Fraser, Gauthier, Goodwin, H.; Goodwin, K.; Gray, Greenlaw, Henderson, Hewes, Higgins, Hinds, Hunter, Hutchings, Ingegneri, Jackson, Jacques, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelley, Kennedy, Laffin, LaPointe, Laverty, LeBlanc, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Martin, R.; Maxwell, McBreairty, McKernan, Mills, Miskavage, Mitchell, Morin, Morton, Mulkern, Nadeau, Norris, Palmer, Pearson, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Quinn, Raymond, Rideout, Rolde, Saunders, Shute, Silverman, Snow, Snowe, Spencer, Sprowl, Strout, Stubbs, Tarr, Teague, Theriault, Tierney, Tozier, Truman, Twitchell, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship.

ABSENT — Hall, Hughes, McMahon, Peakes, Smith.

Yes, 22; No, 123; Absent, 5.

The SPEAKER: Twenty-two having voted in the affirmative and one hundred and twenty-three in the negative, with five being absent, the motion does not prevail.

Thereupon, Report B was accepted and the Bill read once. Committee Amendment "B" (H-1151) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, I have been contacted by several members who would like to make amendments to the committee amendment, and I would ask that this be tabled until later in today's session.

Thereupon, on motion of Mr. Rolde, tabled pending adoption of Committee Amendment "B" and later today assigned.

Mr. Pierce of Waterville was granted unanimous consent to address the House.

Mr. PIERCE: Mr. Speaker, Ladies and Gentlemen of the House: It is with extreme pleasure that I rise this morning to introduce to you Mr. James Boyle and his wife who are with us this morning and before I do that, I would just like to tell you a little bit about Mr. Boyle. He is the founder of Dirigo Boys State in the State of Maine and he coordinated it from 1948 until 1975. He was the Adjutant General of the American Legion from 1919 until 1964. He graduated with an LLB degree in law from the University of Maine in 1912. He wrote the first workmen's compensation act adopted in the State of Maine in 1915. He was the legislative agent for the American Legion from 1919 to 1964. I could go on and on and on telling you about the merits of Jim Boyle. But I think very simply I could just say that he personifies the American Legion in the State of Maine and it is with great pleasure that I introduce to you Jim Boyle and his wife who are with us today in the balcony. (Applause, the Members rising.)

Divided Report

Majority Report of the Committee on Fisheries and Wildlife on Bill "An Act to Clarify the Fish and Game Laws" (H. P. 1933) (L. D. 2121) reporting "Ought to Pass" as amended by Committee Amendment "B" (H-1050)

Report was signed by the following members:

Messrs. GRAFFAM of Cumberland
McNALLY of Hancock

- of the Senate.

Messrs. KAUFFMAN of Kittery
PETERSON of Caribou
CHURCHILL of Orland
MILLS of Eastport
WALKER of Island Falls

- of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1049)

Report was signed by the following members:

Mr. PRAY of Penobscot

- of the Senate.

Messrs. USHER of Westbrook
MARTIN of St. Agatha
MacEACHERN of Lincoln
DOW of West Gardiner
TOZIER of Unity

- of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, I move we accept the Majority "Ought to pass" Report with Committee Amendment "B" and would speak further to my motion.

The SPEAKER: The gentleman from Eastport, Mr. Mills, moves that the House accept the Majority "Ought to pass" Report.

The Chair recognizes the same gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker and Members of the House: I suggest the membership of the House allow this to go to second reading where it will be in a position for amendment which I am expecting.

Thereupon, the Majority "Ought to pass" Report was accepted and the Bill read once. Committee Amendment "B" (H-1050) was read by the Clerk and adopted and the Bill assigned for second reading later in the day.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Marine Resources on Bill "An Act Concerning Shellfish Licensing" (H. P. 2131) (L. D. 2277) reporting

"Ought to Pass" as amended by Committee Amendment "A" (H-1158)

Report was signed by the following members:

Mrs. CUMMINGS of Penobscot
Messrs. BERRY of Cumberland
REEVES of Kennebec
— of the Senate.

Messrs. WEBBER of Belfast
JENSEN of Portland
MACKEL of Wells
GREENLAW of Stonington
CONNORS of Franklin
CURTIS of Rockland
JACKSON of Yarmouth
MILLS of Eastport
BLODGETT of Waldoboro
— of the House.

Minority Report of the same Committee reporting "Leave to Withdraw" on the same Bill.

Report was signed by the following member.
Mrs. POST of Owl's Head
— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Stonington, Mr. Greenlaw.

Mr. GREENLAW: Mr. Speaker, I move the House accept the Majority "Ought to pass" Report and would speak to my motion.

The SPEAKER: The gentleman from Stonington, Mr. Greenlaw, moves that the House accept the Majority "Ought to pass" Report.

The gentleman may proceed.

Mr. GREENLAW: Mr. Speaker, Men and Women of the House: This bill is the result of a long committee study that the Marine Resources Committee did this summer on shellfish sanitation and the licensing structure of the Department of Marine Resources. The bill has seen eight drafts, and as you can see today, it has received the majority support of the committee.

With the possibility of two exceptions, there are basically no changes or additions to the existing law but rearrangement of the sanitation laws and the licensing structure. It is a rather long bill. I would ask today that we would accept the committee report with the House concurrence, when Committee Amendment "A" is read, I would like to have it tabled for a day so that you can all examine the bill. A member of the committee, I am sure, will be glad to answer questions and we can debate it tomorrow and dispose of it one way or the other tomorrow.

Thereupon, the Majority "Ought to pass" Report was accepted and the Bill read once. Committee Amendment "A" (H-1158) was read by the Clerk.

On motion of Mr. Greenlaw of Stonington, tabled pending adoption of Committee Amendment "A" and tomorrow assigned.

Orders of the Day

The Chair laid before the House the following item of Unfinished Business:

Bill "An Act Redistributing the Powers of the Executive Council" (H. P. 1997) (L. D. 2197) (C. "A" H-1115)

Tabled — (Till Later Today) March 30 by Mrs. Najarian of Portland.

Pending — Passage to be Engrossed.

On motion of Mr. Kelleher of Bangor, the House reconsidered its action whereby Committee Amendment "A" (H-1115) was adopted.

The same gentleman offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-1140) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Thank you for allowing the reconsideration motion.

This amendment, if you look at the statement of fact, provides that each commissioner of a department affected by this bill shall serve coterminous with the Governor appointing them and shall be removable for cause. But it goes one step further in the bill, and let me very briefly explain to you.

The members of this House that are sitting on Joint Standing Committees of the Legislature are going to be in a position to advise and consent the governor on any appointee that comes before your respective committees, be it Judiciary, be it Public Utilities, be it Agriculture, or be it Finance. The reason that I want to put this amendment on, it is simply that a person that is nominated by the governor and approved by the said committee that he or she goes before and then approved by the Senate cannot be arbitrarily dismissed by the governor without going back for advice and consent from the committee that heard it. I think this is a protection not only for the individual that is being — but in other words, the way I look at it, the governor couldn't appoint any puppets that could serve at his pleasure, that could be removed for any reason whatsoever. I think it gives guarantee to the individual that is being appointed to a department to serve there with the ability to disagree with the governor without arbitrarily being thrown out of his position because he or she doesn't happen to agree with this individual. If the governor has reasonable cause to remove these people that he will be appointing, then they go back to the committee that gave them the advice and consent to agree to this individual's appointment and then in turn can either agree or disagree with the governor for removal.

It further states that the governor, once he assumes office, has to appoint his department heads within 120 days, and this is not an unreasonable time limit. Because the governor is elected in November, he has the month of November, December and then three more months to reach the decision on who he wants to put into these particular positions in government.

Another thing he won't be able to do is dangle anybody on a string and keep them as a department head. A very good example would be Emilien Levesque who was on the string for six or seven months before the governor finally decided to appoint him. I think this is in fairness to the men and women who are now serving in these various departments and it is also fair to the governor.

The amendment also provides gubernatorial appointments to the posts. The Secondary Education Commission shall be subject to review by the Joint Standing Committee on Education and to be confirmed by the legislature. I don't feel that this is unreasonable. Ladies and gentlemen, I commend the State Government Committee for the work they have done on this bill that is before us today. This amendment is not new to them, it was an amendment that was put together by Councillor Charles Jacobs, presently serving on the Executive Council, and myself. It was presented to the State Government Committee. I understand at the time that there was some support and I can understand the judgment of the committee, rather than having two different reports coming out, amendments would be offered on this floor.

I think this is a good amendment, I think it is a safe amendment, I think it is a good amendment as far as government is concerned and I would appreciate your support.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, Ladies and

Gentlemen of the House: I would move the indefinite postponement of the gentleman from Bangor, Mr. Kelleher's, amendment and would speak briefly.

The SPEAKER: The gentleman from Sabattus, Mr. Cooney, moves the indefinite postponement of House Amendment "A" to Committee Amendment "A".

The gentleman may proceed.

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: The bill as reported out by the State Government Committee provides for the coterminous appointments of all top executive office personnel as well as the appointment of judges to serve at fixed terms. All of these people, and there are 152 actual jobs involved, must be approved by Joint Standing Committees of the Legislature as the Constitution provides.

The committee, and I might point out to the gentleman from Bangor that the committee feels, I think, much more unanimously than it did last summer when we discussed the idea that he has presented, feels that the governor is elected by all of the people. He must have top aides who he can work harmoniously with, and I think you know as well as I do that sometimes the appointees, after a period of time, there are difficulties in their relationships and the governor is unable to carry out the policies that he has promised the people that he would try to carry out.

What Mr. Kelleher would offer is the alternative of removal for cause. You have to go back into judicial decisions to see what 'for cause' is, and it is not a very carefully delineated thing, and I think what you find is that most governors, most administrators, simply will not remove someone because it can become very, very messy, indeed, it can end up in the courts and a whole department can just grind to a halt as a governor might try to remove someone for cause. So what the committee has provided for is that the commissioner serve at the pleasure of the governor, just as the cabinet officers serve at the pleasure of the president, we have provided that the system would work the same in the State of Maine.

I don't think that there would be many cases where a governor would be firing or asking for the resignation of a top commission, but in those few cases where it occurs, I think it is essential that the chief executive have the opportunity to have working with him people who he can in fact work with.

In terms of the provisional appointments that have been mentioned by Mr. Kelleher, the committee has provided that all appointees serve coterminous, but a governor may appoint, for a six-month provisional period, someone to act as acting commissioner. This would mean that if he was unable to find someone to serve in a position quickly, he could appoint a deputy commissioner or some person from the classified service to act as acting commissioner for a period not to exceed six months. So there is a provision in the committee bill for interim appointments.

One final thing. If you feel that there is some merit to Mr. Kelleher's arguments, there is another amendment which Mrs. Kany of Waterville has to present that we also discussed yesterday in caucus which would provide for a one-year trial period for a commissioner. That, to me, is a middle ground. But I, philosophically, feel that the governor would have the power to have the aides day in and day out who he can work with. Mr. Kelleher's amendment, although it may protect those top aides from whim and caprice of a top chief executive, I think that whim and caprice is a very, very minor situation and in most cases the governor acts responsibly and appoints good people and works with those good people, and I think he

ought to have the power to remove them without the 'for cause' provision.

So, I urge you to support the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker and Members of the House: I rise to back the motion of the gentleman from Sabattus, Mr. Cooney, that this amendment be indefinitely postponed. This was a subject of long discussion in the State Government Committee. Early in the stages, there were people who felt as Mr. Kelleher does. We did come around to unanimous thinking on it, and I think evidence of that is that this amendment was not sponsored by anyone on the committee.

It makes a difference, a little bit, in your philosophy as to whether or not you in your positions in life have ever been in a management position. The manager is the man held responsible and accountable. He should, therefore, have the authority to dispose of people who will not work with him. This does not mean, as the gentleman from Bangor said, that you do not tolerate anyone who disagrees with you.

When you meet in your cabinet sessions, as the governor does and as I did in industry in a top level management discussion, there were always frequent decisions. Sometimes we changed the top manager's thinking. Other times we compromised, but when he stood firm on his position, we had no choice, and we shouldn't have any choice but to go out and work for the position he has taken, because he is the man who is going to be held responsible if that position that he took turns out to be a lemon. But it is our duty and it would be the duty of every commissioner, once the decision is made in that cabinet room, that he work for the position taken by the governor. He has an alternative. If he is completely in disagreement with it, he has the opportunity to resign and resign he should.

In some respects, you could compare this a little bit to the military. The colonel gives orders, the captains, lieutenants, so on down the line, the colonel is the man responsible if that captain goes behind his back and says, boys, don't pay any attention to this order, we are going to run this show our way, what kind of an army would you have? Maybe the colonel was all wrong, time only will prove that. So the idea that there can be no disagreement, the disagreements take place at cabinet meetings. After you come out, you follow the decision of the chief executive, whoever he may be.

Another little weakness in this amendment is this — on appointment, these people are to go before the proper legislative committee to be checked and approved. They are then to be approved by the Senate. This normally is going to occur in the first three or four months of the new administration. The legislature is all here, it is not calling anybody back or whatnot, but under this proposal, if you want to get rid of somebody in August, you have got to call in that legislative committee to hear all the reasons why this man should be discharged and then you have got to call the Senate into special session and that could happen a number of times and be a very expensive procedure. The procedure we have adopted, as compared to the old way the council acted, is going to be quite expensive as it is.

The gentleman spoke of the men who were left dangling a year ago. Well, I was one of those people who went to the governor on two of the commissioners, Commissioner Mallar and Commissioner Levesque, and I think I had a little part in selling him on the merits of these men. But each of these men had a choice which would have forced the issue right off, and I am sure if either one of them had gone in and said, I am resigning, I am not hanging on like this, the governor would have acted much quicker and I

think he would have reappointed these men to their positions. I thought it was a little bit harsh and I don't think it was necessary. As it is now, the governor who had some doubts about the ability of Mr. Levesque is sold on him 100 percent, because those of us who know him know that Emilien Levesque is a diamond in the rough.

My notes have run dry, and I would urge you, in behalf of good management, forget who is governor now, who knows who is going to be the next governor, but he is the man you will hold responsible and he should have people as commissioners and working for him who are going to do what he says.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I always appreciate the remarks of the kind gentleman from Hampden, but not very often do I agree with him.

The amendment that I offer here today was not put together in a hasty manner, it was put together after some careful consideration and some input by a member of the present executive council and a member from Bangor in this legislature who is concerned about redistributing the powers and the authority of the executive council back onto this legislature and its individual committees.

We are not dealing with management today, we are dealing with government. We have a variety of departments in government and we have a variety of individuals serving in departments who have personalities, who have decisions, who have feelings, who may not necessarily agree with the present chief executive or whoever the next chief executive may be.

Nevertheless, as I look at this amendment, it gives him an opportunity to express a difference of opinion before legislative committees that hear bills. We know in the last session the governor himself attempted to handcuff commissioners in going before legislative panels and speaking for or against various pieces of legislation. I don't think this is fair. I don't think it is fair that one individual in government can have the thumb applied to various department heads and limiting their ability to deal with the legislature, limiting their ability to deal with the various committees that affect their own departments or being able to express their own personal feelings on issues.

I am not saying that this governor would arbitrarily dismiss anyone because he disagreed with the person that has taken an opposite viewpoint to his. Maybe this isn't necessary for this governor, I don't really think that it is, but who knows that this type of amendment may not be necessary for the next governor or the governor that is following him.

The legislative committees, in their wisdom, are going to be passing on to the Senate their support for individual commissioners or department heads. I think it is important to those various people that we approve as legislators, that we give them an opportunity to come back before the respective committees that approved them to hear why they should be dismissed. This is not an unsound amendment, and I would hope that this House would support it and I request the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: At this point in time, I think I am going to take the position of voting against this bill, because as far as I can see, it is just too big, it is too unwieldy, we are talking about power and nothing else. We have only had one caucus on this bill, and I think it is probably one of the most important bills that has come before us. We don't know what is in here and I think we should. Unless we change our position,

I think I am going to take the position of voting against this bill.

I would like to address myself to this amendment, though, because I feel deep down that the words of the gentleman from Bangor, Mr. Kelleher, are absolutely true and they are very factual and very fundamental.

The words of the gentleman from Sabattus, Mr. Cooney, that this is a very minor point is utterly untrue. I think probably one of the most important parts of this amendment is the security and the protection that is afforded in this amendment of Mr. Kelleher. I say that because I have also worked for the general public in the private sector. I have also worked as a member of the union, and it makes a great deal of difference between the two. In other words, I think what Mr. Kelleher is trying to get through to you is that there is that ounce of protection and an ounce of security going along with that kind of amendment.

If I understand correctly, the gentleman from Sabattus, Mr. Cooney, is saying that if a gentleman from Agriculture or from the Attorney General's Office or one of those commissioners happens to come into a meeting late one morning, the governor can arbitrarily say, you are all done. Or, as the words of the gentleman from Bangor are saying, that particular individual cannot voice his true opinion against the governor or for the governor, as a matter of fact, without the thinking of some kind of reprisal of one kind or another. Whereas if he had that ounce of protection and that ounce of security, where he can't just be arbitrarily fired or let go, it would make that much difference. I think it is a very important part of that amendment that we are talking about. Therefore, I would hope, because I support the amendment, you would vote against the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry that the good gentleman from Portland feels that I indicated this was a minor point; it is not a minor point at all and I don't believe I said that. It is a major point, and I think it is getting good consideration. I see everyone here is paying attention to this debate and it is an important one.

I would like to point out that there is one feature of the bill that I didn't mention previously and that is that those commissioners who are presently holding positions or who will be appointed to positions before the effective date of this bill, which is January 4, 1977, will be removable for cause only. They will be removed under the process by which they came into the system, so there is that built in protection for those people who are on board now or who will be on board before the opening of the next legislative session. So it is only those people who will be appointed after that that will serve at the pleasure of the governor.

I would like to just address one point that has been raised by both Mr. Kelleher and Mr. Talbot, and that is that the commissioners are unable to speak their own minds and tell us how they feel. I think you know that regardless of the governor, commissioners are occasionally under pressure to speak a particular way. I think you know as well as I that they have a way of getting their views and their feelings to us, privately if need be, but publicly in most cases. I don't foresee that there is a situation where the whim and caprice that people seem to be afraid of would become a major problem. We don't see the President of the United States firing people because they are five minutes late to a cabinet meeting, and I can't imagine that a governor of this state would fire people for being five minutes late to a cabinet meeting. I think you can imagine the horns nest that would erupt in the legislature and the press and among

'the citizenry if any governor chose to dismiss somebody for such minor reasons.

I think that it is important that the governor have people working with him who he can depend on and who are responsible to him, and that is what the committee has presented to you.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mrs. Bachrach.

Mrs. BACHRACH: Mr. Speaker and Members of the House: I would like to pose a question to anyone who wants to answer. I would like to know in what way this particular bill differs from the undated letter of resignation that came under fire to such an extent at the beginning of this term?

The SPEAKER: The gentleman from Brunswick, Mrs. Bachrach, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, after the effective date of this bill, no undated letters of resignation would be required in that the governor would have the power to dismiss at his pleasure. Right now, the commissioners and other officials who are appointed and confirmable by the executive council must be removed only for cause, so the only way that a governor right now can be sure of the power to dismiss would be to have an undated letter of resignation, and that is a technique that is sometimes used. But if this amendment is turned down, then that would never have to be the case again.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mrs. Snowe.

Mrs. SNOWE: Mr. Speaker, I want to pose a question through the Chair. Does this amendment apply to all the 150, approximately, positions that we will be confirming?

The SPEAKER: The gentleman from Auburn, Mrs. Snowe, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, the major ones.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Sabattus, Mr. Cooney, that House Amendment "A" to Committee Amendment "A" be indefinitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Berry, G. W.; Berry, P. P.; Berube, Birt, Burns, Carpenter, Carter, Churchill, Conners, Cooney, Cote, Curran, R.; Curtis, Dam, DeVane, Dow, Drigotas, Dyer, Farnham, Faucher, Fraser, Garsoe, Gauthier, Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Higgins, Hinds, Hobbins, Hunter, Immonen, Jacques, Kany, Kelley, Laverty, Lewin, Littlefield, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBreaity, McKernan,

Miskavage, Mitchell, Morton, Palmer, Perkins, S.; Peterson, P.; Pierce, Rollins, Shute, Silverman, Smith, Snow, Snowe, Stubbs, Susi, Teague, Torrey, Tozier, Usher, Wagner, Walker, Webber.

NAY — Albert, Ault, Bachrach, Bagley, Bennett, Blodgett, Boudreau, Bustin, Byers, Call, Carey, Carroll, Chonko, Clark, Connolly, Cox, Curran, P.; Davies, Doak, Dudley, Farley, Fenlason, Finemore, Flanagan, Goodwin, H.; Hennessey, Hewes, Hutchings, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kaufman, Kelleher, Kennedy, Laffin, LaPointe, LeBlanc, Leonard, Lewis, Lizotte, Mahany, Martin, A.; Martin, R.; Maxwell, Mills, Morin, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Peterson, T.; Post, Powell, Raymond, Rideout, Rolde, Saunders, Sprowl, Strout, Talbot, Tarr, Theriault, Tierney, Truman, Twitchell, Tyndale, Wilfong, Winship, The Speaker.

ABSENT — Bowie, Durgin, Hall, Hughes, McMahon, Norris, Perkins, T.; Quinn, Spencer.

Yes, 69; No, 73; Absent, 9.

The SPEAKER: Sixty-nine having voted in the affirmative and seventy-three in the negative, with nine being absent, the motion does not prevail.

Thereupon, Mr. McKernan of Bangor requested a vote on the adoption of House Amendment "A" to Committee Amendment "A".

The SPEAKER: The pending question is adoption of House Amendment "A" to Committee Amendment "A". All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. McKernan of Bangor requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. McKernan.

Mr. McKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief, but I did have some comments that I wanted to make and I didn't make on the original motion because until I saw the Speaker's light go on, I assumed that the motion would be defeated.

I do have one point that was not raised during the initial debate and I do feel it is important before we vote on acceptance of this amendment, and that is, what is the purpose of confirmation of the appointees of the governor? The whole purpose of checks and balances and therefore a confirming body is to guarantee qualified people running our departments. Therefore, we had the executive council and we are taking great pains to make sure that we have a confirmation process that people feel will serve that purpose.

What these committees and then the Senate after that are looking for is people who will be able to run the departments competently, people who do not have conflicts of interest and people who will serve the interest of the people of the State of Maine and the governor who appoints that person. That is the only role that these confirming bodies should have.

They should not have to worry about personalities and whether that confirming body likes one person better than another, because

that is not the role of that body. Therefore, I don't feel there is any need for this amendment, because we will always be able to make sure that the governor appoints qualified people. If he has a personality dispute with someone whom he has already appointed and therefore feels that that department and his administration would be better served by asking that person to resign, the chief executive ought to have that right and we, as representatives of the people of the State of Maine in the legislature, do not have to worry about somebody incompetent taking over as the head of that department, because we have the right to confirm his next appointment, and that is the whole key. We are assured of getting qualified people, and that should be our only concern, not on the personalities of whether one person will do it in a way that we consider better than another. So there is no need for this amendment, because we will be assured by the confirmation process alone that we will have qualified people that will be appointed.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: My good friend from Bangor has raised a good point, and I am sure that the good Governor of this state or any other governor would nominate qualified people to serve in the various departments that would be open for consideration. I am sure that this legislature or the next incoming legislature would have the ability to determine who was qualified and not qualified.

But one thing that we are doing to insure even a better quality or a better confirmation procedure is to guarantee the applicant, the nominee, whatever you want to call him, that the governor is presenting to the various committees, an opportunity to be able to express himself or herself freely. "For cause," if the governor wants to remove an individual, then, in fact, the individual would be going back to the committee that approved him to hear what the cause is. And I think Mr. McKernan knows very well, as the members of this House know, the importance of an administrator to be able to run his government, but it is also equally important that an administrator in the various departments could have a difference of opinion with that person without fear of removal. I don't believe this governor would ever remove anyone for that reason, but who knows what we may have down in the chief executive's office another term?

I would urge the House to stand by its vote and adopt my amendment.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, a parliamentary inquiry. If there is an amendment which is prepared and has been passed around which would be in direct conflict to this amendment, could that still be proposed if this amendment passed?

The SPEAKER: The Chair would answer in the affirmative.

Mrs. KANY: Mr. Speaker and Members of the House: I don't know if it is clear to you all that within the bill itself the people in the sensitive quasi-judicial regulatory bodies are quite protected. I don't know if you are aware of that, and that a much more complicated dismissal procedure has already been set up for those sensitive positions. So we are basically just talking about the commissioners or those in the top administrative posts.

The SPEAKER: The pending question is the adoption of House Amendment "A" to Committee Amendment "A". A roll call has been ordered. All those in favor of House Amend-

ment "A" to Committee Amendment "A" being adopted will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Bachrach, Bagley, Bennett, Blodgett, Boudreau, Bustin, Byers, Carey, Carroll, Chonko, Clark, Connolly, Cox, Curran, P.; Davies, Dudley, Fenlason, Finemore, Flanagan, Goodwin, H.; Hennessey, Hewes, Hobbins, Ingegneri, Jackson, Jacques, Jensen, Joyce, Kauffman, Kelleher, Kennedy, Laffin, LaPointe, LeBlanc, Lewis, Mahany, Martin, A.; Martin, R.; Maxwell, Mills, Mitchell, Morin, Mulken, Nadeau, Najarian, Peakes, Pearson, Pelosi, Post, Powell, Raymond, Rolde, Saunders, Smith, Strout, Talbot, Tarr, Theriault, Tierney, Tozier, Truman, Twitchell, Tyndale, Wilfong, Winship, The Speaker.

NAY — Ault, Berry, G. W.; Berry, P. P.; Berube, Birt, Burns, Call, Carpenter, Carter, Churchill, Connors, Cooney, Cote, Curran, R.; Curtis, Dam, DeVane, Doak, Dow, Drigotas, Durgin, Dyer, Farley, Farnham, Faucher, Fraser, Garsoe, Gauthier, Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Higgins, Hinds, Hunter, Hutchings, Immonen, Kany, Kelley, Laverty, Leonard, Lewin, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBreairty, McKernan, Miskavage, Morton, Norris, Palmer, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Rideout, Rollins, Shute, Silverman, Snow, Snowe, Spencer, Sprowl, Stubbs, Susi, Teague, Torrey, Usher, Wagner, Walker, Webber.

ABSENT — Bowie, Hall, Hughes, Jalbert, McMahan, Quinn.

Yes, 67; No, 78; Absent, 6.

The SPEAKER: Sixty-seven having voted in the affirmative and seventy-eight in the negative, with six being absent, the motion does not prevail.

Thereupon, Mrs. Kany of Waterville offered House Amendment "B" to Committee Amendment "A" and moved its adoption.

House Amendment "B" to Committee Amendment "A" (H-1152) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Would the gentelady mind explaining her amendment. I know some members got into it prior to action on mine, but I would like to hear just exactly what it does.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: Basically, the amendment before you is not being offered as a compromise between those who would prefer dismissal anytime by a governor of the top administrative posts or those who would like to see continuous security, but it is being offered as a common sense, reasonable approach. The greater security during the first year, basically just being able to be dismissed by cause, might help our present situation in which few are willing to chance taking more responsible positions in state government. Some are hesitant to leave the classified services and others hesitate to move their families to Augusta for what might be an extremely brief stay.

This is the present situation and we can expect that that situation might continue in the future, particularly when people would be going through the more arduous confirmation procedure which we have adopted now in the Constitution.

I think a governor should be allowed to dismiss his top aides but recommend this amendment as at least providing some security briefly to those who might consider being nominated for our top administrative posts.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Pierce.

Mr. PIERCE: Mr. Speaker, I would ask for a division.

The SPEAKER: All those in favor of House Amendment "B" to Committee Amendment "A" being adopted will vote yes; those opposed will vote no.

A vote of the House was taken.

22 having voted in the affirmative and 91 having voted in the negative, the motion did not prevail.

Thereupon, Committee Amendment "A" was adopted.

Mr. Talbot of Portland requested a roll call vote on passage to be engrossed.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker, Ladies and Gentlemen of the House: From the earlier remarks of the gentleman from Portland, Mr. Talbot, I got the feeling that he didn't realize that if we don't pass this bill in some form or another, we are in one awful mess because we have killed the council effective next January and this is to take over the duties. If we don't pass this bill in some form, the governor would be running the state and doing just as he pleased because there would be no council or input from the legislature. I don't think you realize that.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I am not trying to persuade anybody to vote for or against this bill, I have my own reason for doing that. The gentleman from Hampden, Mr. Farnham, said we would be in one big mess if we didn't vote for this bill. It is my contention that we have been in one big mess since we have been here.

I don't think some of you know, just dealing with the portion of that bill that we just got done discussing, if a confirmation goes before your committee and two or three members from the Senate vote against that, it is dead, the confirmation is dead. It has to go back before the Senate for two-thirds vote, if I understand correctly, although the majority of that committee are members from the House. That kind of thing bothers me knowing what that room down the hall is capable of doing.

The other reason that I think I agree with the gentleman from Hampden, Mr. Farnham, that this is one of the most important bills to come before us. We had one brief caucus on it, which was yesterday. I want to know more about the little innuendoes that are in that bill. I want to know where a lot of the little hidden power is going. I want to know what we can do, what we are doing. I want to know what we have got to say and how much we have got to say about it, and I don't.

For me to vote on that particular bill this fast, I won't do it, but that is just my personal feeling. I am not trying to persuade you one way or the other. I have to live with myself and I think by doing this I will be able to live with myself just a little bit better.

If a time comes, either tomorrow or the next day or next week, that we are going to sit down, either through a joint caucus or a Democratic caucus, whatever you want, and discuss this bill in its entirety, piece by piece, so that when we go home from here we will know exactly what is happening with this new body that is taking over, that is fine. I have no problems with that. I will take part in that and I will learn what I can learn and then I will vote accordingly. But for

me to do otherwise, and this is the first time I have taken this position, for me to just sit in my seat and vote, I won't do that.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: Just to clarify a point for Representative Talbot, the Senate has to have a two-thirds vote to override the decision of the majority of the legislative committee. In other words, the problem isn't there that he thought exists.

The SPEAKER: The Chair recognizes the gentleman from Houlton, Mr. Carpenter.

Mr. CARPENTER: Mr. Speaker, Ladies and Gentlemen of the House: We are arguing the merits of a constitutional amendment, really, that was approved and passed by the voters last November. I hate to say our only alternative, our only alternative is certainly not this bill. This is the bill that came out of the State Government Committee as a result of that constitutional amendment.

Certainly there was opposition in both — more so here than down the hall, of course, as to the passage of that constitutional amendment, but I would urge you not to vote against this bill simply because you disagree with that point. That is a finished product.

We are more than willing to accept amendments. The State Government Committee has worked all summer on this bill and certainly we don't have all the answers and certainly probably this isn't a perfect bill, and I for one am certainly willing to sit down with any member of this body and discuss an amendment. There were divided opinions on the committee as to certain points, and as the gentleman from Bangor did mention earlier, we came out with one bill prepared to accept amendments.

I would appreciate it, if we have problems such as the one that the gentleman from Portland has, I would appreciate it if someone would table this and perhaps we can get a caucus going to discuss the finer points of the bill. I don't think there is anything hidden in the bill. I think the committee and the legislative assistants who drafted the bill went out of their way to bring everything out in the open, above board, so we could see exactly what we were doing. But we must pass this or some similar type of legislation or we will be in a very chaotic situation.

The SPEAKER: The Chair recognizes the gentlewoman from Old Orchard Beach, Mrs. Morin.

Mrs. MORIN: Mr. Speaker, I move this be tabled for one day.

Thereupon, Mr. McKernan of Bangor requested a vote on the tabling motion.

The SPEAKER: All those in favor of this Bill being tabled pending passage to be engrossed and tomorrow assigned will vote yes; those opposed will vote no.

A vote of the House was taken.

29 having voted in the affirmative and 89 having voted in the negative, the motion did not prevail.

The SPEAKER: A roll call has been ordered. The pending question is on passage to be engrossed as amended by Committee Amendment "A". All in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Bagley, Bennett, Berry, G. W.; Berry, P. P.; Berube, Birt, Blodgett, Boudreau, Burns, Bustin, Byers, Call, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Connors, Cooney, Cote, Cox, Curran, P.; Curran, R.; Curtis, Dam, Davies, DeVane, Doak, Dow, Drigotas, Durgin, Dyer, Farley, Farnham, Faucher, Fenlason, Finemore, Flanagan, Fraser, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw,

Henderson, Hewes, Higgins, Hinds, Hobbins, Hunter, Hutchings, Immonen, Ingegneri, Jackson, Jacques, Jensen, Joyce, Kany, Kaufman, Kelley, Kennedy, Laffin, Lavery, LeBlanc, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBreairty, McKernan, Mills, Miskavage, Morton, Nadeau, Najarian, Norris, Peakes, Pearson, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Powell, Raymond, Rideout, Rolde, Rollins, Saunders, Shute, Smith, Snow, Snowe, Spencer, Sprowl, Strout, Stubbs, Susi, Tarr, Teague, Theriault, Torrey, Tozier, Truman, Twitchell, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship.

NAY — Bachrach, Connolly, Dudley, Hennessey, Kelleher, LaPointe, Mitchell, Morin, Mulhern, Post, Silverman, Talbot, Tierney.

ABSENT — Bowie, Hall, Hughes, Jalbert, McMahon, Palmer, Quinn.

Yes, 130; No, 13; Absent, 7.

The SPEAKER: One hundred and thirty having voted in the affirmative and thirteen in the negative, with seven being absent, the motion does prevail.

Sent up for concurrence.

The following paper from the Senate was taken up out of order by unanimous consent:

The following Joint Order: (S. P. 782)

WHEREAS, children who are mentally retarded need every advantage to develop confidence in themselves and to succeed in building a positive image; and

WHEREAS, special olympics have been designed for the mentally retarded to give them a chance to develop skills and experience success through an organized programming of physical fitness; and

WHEREAS, through this unique program mentally retarded boys and girls of the State can share experiences of athletic competition not otherwise available; and

WHEREAS, the special olympics program for mentally retarded children is scheduled to be held in the City of Portland on June 4 and 5, 1976; now, therefore, be it

ORDERED, the House concurring, that the Members of the Special Session of the One Hundred and Seventh Legislature, now assembled, commend the continued development of the special olympics program and express our thanks to all those who participate, support and make possible, through this special olympic event, new hope and a better way of life for the mentally retarded; and be it further

ORDERED, that suitable copies of this Joint Order be forwarded to the olympic officials in token of our commendation and support.

Came from the Senate, read and passed.

In the House, the Order was read and passed in concurrence.

The Chair laid before the House the second item of Unfinished Business:

Bill "An Act to Revise and Clarify the Freedom of Access Law" (H. P. 2226) (L. D. 2316) — In House, Passed to be Engrossed as amended by House Amendments "A" (H-1034), "B" (H-1044), and "E" (H-1110) — In Senate, Passed to be Engrossed as amended by House Amendments "B" and "E" in non-concurrence.

Tabled — (Till Later Today) March 30 by Mrs. Najarian of Portland.

Pending — Further Consideration.

On motion of Mr. Faucher of Solon the House voted to recede from its action whereby the Bill was passed to be engrossed.

Thereupon, the same gentleman offered House Amendment "F" and moved its adoption.

House Amendment "F" (H-1137) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, I wonder if this amendment could be explained?

The SPEAKER: The gentleman from Madison, Mrs. Berry, has posed a question through the chair to anyone who may care to answer.

The Chair recognizes the gentleman from Solon, Mr. Faucher.

Mr. FAUCHER: Mr. Speaker and Members of the House: This amendment was first drafted by a lobbyist for the Maine Municipal Association and asked me to offer it. I spoke to the members of the Legal Affairs Committee and they didn't see any problem with this amendment. This amendment makes it clear that public notice is to be given only for meetings of official bodies that consist of three or more persons. It does not require notice of meetings that merely deal with policy but only those at which policy will be adopted.

The SPEAKER: The Chair recognizes the gentleman from Bridgton, Mrs. Tarr.

Mrs. TARR: Mr. Speaker, I don't like the sound of that amendment. If Mr. Faucher can say anything else to convince me, but is this that three people could get together and discuss policy and so forth without any meeting, is that what you are saying?

The SPEAKER: The gentleman from Bridgton, Mrs. Tarr, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This has reference only to the advertising of the meetings. As I stated the other day, this law no longer is applicable to committees and subcommittees of those agencies or boards or commissions. However, there are some agencies that are one man or one individual, and the way that the law was written, it would mean that if that one individual came into town or contacted anyone, he would immediately have to post a public notice that he was going to do so. We didn't think that this was what they wanted.

This only involves the committees, agencies, boards and commissions that have the authority to either impose taxation, appropriate funds or set policy on those individuals governed and a committee would be one less than a majority, meaning that the commission couldn't go in and say, we are now a committee so these rules do not apply. But a committee or subcommittee of one of these boards, agencies, groups can only be one less than a majority so, therefore, the entire board must meet before any major decisions are made. Then this law does apply.

Thereupon, House Amendment "F" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, I would inquire to any member of the Legal Affairs Committee if they could explain to me if a body, say a school committee or a council, could say that they were not having an executive session or not even an official meeting, that they were having what they might call a work shop meeting, could they get together and have such a meeting without notifying the public or making it open to the public?

The SPEAKER: The gentleman from Bangor, Mr. Henderson, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This is one of the problems that we had with this bill in dealing with it, and we hoped that we had taken care of

it under Section 401. The last sentence says, it is further the intention of the legislation that clandestine means conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not to defeat the purpose of this subsection.

Mr. Shute of Stockton Springs offered House Amendment "G" and moved its adoption.

House Amendment "G" (H-1146) was read by the Clerk.

The Chair recognizes the gentleman from Stockton Springs, Mr. Shute.

Mr. SHUTE: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of this amendment is pretty well explained in the Statement of Fact. It says the purpose of the amendment is to provide greater flexibility and notification of the media in the event of an emergency meeting. This is amending Section 406 of the bill under Public Notice, which reads at the present time: "Public notice shall be given to all public proceedings as defined in Section 402 whenever these proceedings deal with expenditures of public funds, taxation or policy. This notice shall be given in ample time to allow public attendance" which is all right with me and that is the way it should be and I find no fault with that section. The next sentence, however, deals with the emergency situation and this is the section that I am amending.

"In the event of an emergency meeting, local representatives of the media shall be notified of the meeting" and this is where my amendment comes in: "whenever practical" were those words. The notification to include time and location by the same means or faster means to notify members of the agency conducting the public proceedings.

Some of the small towns naturally would have to comply with this if an emergency situation did arise on water damage to a bridge or road repair or anything. I can think of one town next to my town that would have to notify three newspapers, four radio stations and three TV stations, and I think that is a little impractical if there isn't time to notify these people of the meeting. If the notification is given in person, it would also be impractical to notify the media in person.

It is not the intent of this amendment to in any way defeat the purpose of the bill because they would still be required to notify the media whenever they could possibly do that. I do think there is a little need for flexibility in the notification section when an emergency arises.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I was wondering if any member of the committee was concerned about this, and I am not quite sure but I think I am concerned about it in that what practicality is can sometimes be a very broad discretionary judgment on the part of people who might be holding meetings where people will not be able to attend. Unfortunately, this kind of a law is being passed to deal with those marginal cases where people do hold meetings where they are not quite as forthcoming as we would like to have them and this might give them what I would think is possibly a gaping loophole.

I wonder though, since it does talk about local representatives of the media, whether a small town which does not have a television station located in its district but may have a local correspondent of the newspaper, whether they would only be obligated to notify the latter and not all these other groups. I would ask for a division on the motion and hope, unless we hear some more convincing arguments, that we do not adopt the committee amendment.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I am not really sure whether I support Mr. Shute's amendment or not, but I would point out to Mr. Henderson that I think he suffers from Bangoritis and that is that all three channels of television serve the area that we both live in are in Bangor and so is the newspaper, but what if you live in Danforth or a number of areas like that? It is very difficult — I think perhaps Mr. Henderson is just looking at it from a city's point of view.

The SPEAKER: The Chair recognizes the gentleman from Solon, Mr. Faucher.

Mr. FAUCHER: Mr. Speaker, Ladies and Gentlemen of the House: We had a study on this bill and we worked hard. The whole committee worked hard. We did the best we could with this and I don't see why we should study it. If there is anything wrong with it, maybe next time around we can correct it, but we tried to do a good job on it, that is about as much as we can do on it.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: In response to Mr. Henderson's question, the intent of the public notice would be to the same media which would normally be notified of the meeting in the first place, so I am sure that up in the Forks they are not going to call Channel 5 or Channel 13 and tell them about the meeting because it is not a normal procedure. They would, however, contact the local news representative, that is the intent.

The SPEAKER: The Chair recognizes the gentleman from Freeport, Mrs. Clark.

Mrs. CLARK: Mr. Speaker, Ladies and Gentlemen of the House: I, too, share some concern with the thrust of this amendment and I would ask the members of this House, who have all so overwhelmingly supported citizen involvement and access to our public records, what is an emergency so great that it is impractical to notify the representatives of the local media so that the people might be aware when their funds are going to be expended?

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Shute.

Mr. SHUTE: Mr. Speaker, Ladies and Gentlemen of the House: To answer a couple of questions of the gentlelady from Freeport, Mrs. Clark, there might be an emergency that the telephone lines were out and it would be rather difficult to notify the media, that might be the emergency.

In reference to the remarks made by the gentleman from Bangor, Mr. Henderson, he seemed reluctant to allow this degree of latitude to municipal officials. I wonder if he doesn't feel that municipal officials have as much credibility as this legislature has. I feel that the elected officials in my area do and I think that they would comply with the law whenever possible to do that.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I want to give you an example why this is a good amendment. The town of Hampden has agreements with abutting towns that in case of fire we can call on them for support, they can call on us, and when that happens, you don't have to call a meeting or anything, but if the City of Old Town was burning down and they called Hampden, will you send some pumpers up, under this bill, we would have to go to the radio stations, the newspapers and what not, to get permission. I know what would happen. Our town manager would call just two people on that council because he knows that the other three are going to say the right thing anyway but two he would have to worry about and that pumper is going up and save Mike Pearson from being burned to death. This is all that I can see this amendment is trying to do.

At our council meetings, we have to beg the Bangor Daily News to send a correspondent down. They say, we do have a problem, there are 8 or 9 councils meetings the same night each month and we don't have that many people, so our people in town kick that we don't get the coverage but the paper is not able to supply it half the time. It is a good amendment.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: Let me just put it on the record that I am not in favor of burning Old Town down, but I would like to say that this does talk about local news media and I don't think there are any radio stations located in Hampden or any television stations located in Old Town and that if this does mean local news media, I would like to preserve that, those people should be notified by whatever means. I don't think it is an overwhelming burden. If the telephone lines were down, for instance, still the members of the board of selectmen or whatever would still have to be notified some way, and if it is by smoke signal, then the local correspondent of the daily blat can also be notified by smoke signal. It just seems that that would be possible and also I would clearly imagine that if it was absolutely physically impossible to communicate, that the liability on the part of the local officials would be extremely limited.

The only other comment is, yes, I have great confidence in local officials, as much as I do with ourselves, but if we were completely confident across the board, we would not need this law at all. It is for those cases where there might not be as much public access as we would like and this is attempting to assure that without the possibility of a loophole.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: You are all familiar with the territory that I come from. I think this is a good amendment. When we had that gale down through there recently with the poles down, lines gone, radios out and everything else, there was no way that we could reach any news media to tell them you had an emergency. The local town people simply had to turn to and form their own gangs and get out and do the work, and that is the way it was done.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I would ask the gentleman from Bangor, Mr. Henderson, is this the same piece of legislation that he just put before the Bangor Council, that there was so much discussion the other night about notifying the media when they held a meeting?

The SPEAKER: The gentleman from Brewer, Mr. Norris, has posed a question through the Chair to the gentleman from Bangor, Mr. Henderson, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. HENDERSON: Mr. Speaker, no.

The SPEAKER: The pending question before the House is the adoption of House Amendment "G". Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

79 having voted in the affirmative and 10 having voted in the negative, the motion did prevail. The Bill passed to be engrossed as amended by "A", "B", "E", "F" and "G" in non-concurrence and sent up for concurrence.

On request of Mr. Rolde of York by unanimous consent, unless previous notice was given to the Clerk of the House by some member of his or her intention to move reconsideration, the Clerk was authorized today to send to the Senate, thirty minutes after the

House recessed for lunch and also thirty minutes after the House adjourned for the day, all matters passed to be engrossed in concurrence and all matters that required Senate concurrence; and that after such matters had been so sent to the Senate by the Clerk, no motion to reconsider would be allowed.

(Off Record Remarks)

On motion of Mr. Rolde of York,
Recessed until two-thirty in the afternoon.

After Recess
2:30 P.M.

The House was called to order by the Speaker.

The Chair laid before the House the second item of Unfinished Business:

Bill, "An Act Relating to the Form of Ballots" (H. P. 2063) (L. D. 2233)

Tabled — (Till Later Today) March 30 by Mrs. Najarian of Portland.

Pending — Passage to be Engrossed.

Mr. Faucher of Solon offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1153) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mrs. Boudreau.

Mrs. BOUDREAU: Mr. Speaker, Ladies and Gentlemen of the House: I move the indefinite postponement of this amendment. This amendment is exactly what the minority report of the Election Laws Committee was on this particular L.D. This L.D. came out of committee 11 to 2 "ought to pass" without this amendment.

All we are trying to do with this bill is to make the voting process uniform, to have the box on the left hand side of all ballots, including the municipal and referendum ballots. The form of the ballot has been changed this time, the name of the candidate, the last name will appear first on the ballot. It will be in big bold letters so that it is going to be very easy to see. The space between the name is going to be bigger than it was the last time.

We felt that more people vote in a general and a primary election than they do in local elections; therefore, people are accustomed, in the last few years, of marking their ballots to the left. This was the reason that the majority of the committee voted to keep it that way in all elections. Therefore, I would hope that you would indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Solon, Mr. Faucher.

Mr. FAUCHER: Mr. Speaker, Ladies and Gentlemen of the House: I believe that my amendment is a good amendment. The purpose of my amendment is to make all ballots consistent by having the square on the right in all cases, for all candidates that are running for the state county, municipal officers and referendums.

When I first went to school, I was taught by the teachers to start reading from the left to the right, not right to the left, and I still believe in it. I don't see why this was ever changed. I believe it was two or three years ago when former Representative Whitzell from Gardiner was here and this bill, I don't know how it became a law, but it is, but I feel that at the last election people were saying what is the matter with you people in Augusta, why are you making us vote for you on the left and when we vote for referendum, municipal officers, we have to vote on the right. With my amendment, the cities and towns around the state, they have voting machines, if this becomes law with the other bill, they would have to get rid of the voting machines and buy new ones. This was testified to in our committee.

When we get questionnaires in the mail from different people and we got one on our desks

from the Speaker of the House today, the square is on the right, where it should be. It is like any other questionnaire that we get in the mail, and I believe that we should have this square on the right so the people that have been voting for 40 or 50 years can do the same again.

I can see where some people who are running for office just want people to read their names, they don't want them to read what party they belong to, but I am not ashamed of the party that I belong to and I would like to see the people read my name, where I am from and my party, so I would hope that you go along with my amendment.

The SPEAKER: The Chair recognizes the gentleman from Mexico, Mr. Fraser.

Mr. FRASER: Mr. Speaker, Ladies and Gentlemen of the House: I have to oppose the indefinite postponement of this amendment. I took part in some of the recounts in last year's elections and quite a few of the ballots were spoiled because of that mark on the left and it got to the point where you had to use your own judgment or your opinion as to the intention of the voter, there were so many ballots spoiled. I don't believe that we should leave the results of an election to someone's intention.

The SPEAKER: The pending question before the House is on the motion of the gentlewoman from Portland, Mrs. Boudreau, that House Amendment "A" be indefinitely postponed. The Chair will order a vote. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Carter of Winslow requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I do have a question on this. The gentlelady from Portland, Mrs. Boudreau, said that the committee was concerned about the question of uniformity. As I understand the amendment, the amendment would uniformly have the box on the right-hand side. I do remember a discussion that we did have in this body concerning votes that had been disputed because many of the people were used to voting on the right-hand side and had gone over and voted on the right-hand side anyway, and I guess the Attorney General had ruled that they were valid but then there was some question as to whether they were valid or not. So, I do know that changing to the left did cause us a lot of confusion and problems.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I would hope today that we did not indefinitely postpone this amendment because when this change was first made, the Municipal Courts Association of the State of Maine opposed the change in the first place and it is still their position that they would like to have the box on the right-hand side.

I can appreciate their position because for years and years, as long back as I can remember and I brought a specimen ballot here today just in case anybody questioned it, the box has always been on the right and now to start talking about putting it on the left just to make it uniform, this is going to change a lot of the procedures in the towns as to their elections and the balloting. I can see no sense — the majority of the people anyway, I think, in this state and maybe in the country are right handed. It is a lot easier to see the name of the person run-

ing and make the mark on the right-hand side than it is to be right handed and try to make a mark on the left.

I think as the gentleman from Solon said, that maybe there is a time coming, because of the political climate or whatever you might want to call it, when certain people might be ashamed of their party they are running for and by putting your hand over the ballot to mark it, you wouldn't be able to see whether it was an R or a D or just what it was. I am sure that that does enter into the discussion somewhat.

But I would hope today that we would go along and put this back on the right-hand side, leave it there, as it has been in the past with the municipalities of the state, so that we can take out the confusion of changing these laws every time we come down and let the municipalities know that finally we are going to leave something alone and they can set up their mechanism to follow that pattern that we have set.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I appreciate the gentlelady from Portland being a little slow in getting up on her feet because I would address a question to her and this will save her a trip.

Obviously, legislative intent is extremely important should there be court challenges to some of these questions. The City of Waterville has some 25 voting machines. We have an investment of well over \$100,000 in voting machines, the box is on the right-hand side of the ballot and I would hope that somewhere during this debate here or possibly when Mrs. Boudreau gets up to answer some other question or make a statement, that she would indicate, for the record, that the city, for instance, or those people who have that type of voting machine, would not be forced to get rid of those machines. They are not the type that are interchangeable, we cannot move the box over to the left hand side and that somehow or other the municipalities would be allowed to continue to use those machines. Does the bill refer to voting machines at all?

The SPEAKER: The gentleman from Waterville, Mr. Carey, has posed a question through the Chair to the gentlewoman from Portland, Mrs. Boudreau, who may answer if she so desires.

The Chair recognize that gentlewoman.

Mrs. BOUDREAU: Mr. Speaker, Ladies and Gentlemen of the House: First, to address Mr. Carey's question, the present law says that for general elections and primary elections the ballot is now on the left. The areas that have voting machines are still voting on the right. This would in no way change that. This is not dealing with the section that has voting machines, this is dealing with paper ballots.

To answer Mr. Dam's question concerning city and town clerks, I think the Election Laws Committee probably sees the cities and town clerks more often than any other committee in this legislature. In fact, they live with us practically. They have no objection to this uniformity.

To answer Mr. Rolde's remarks, there were a lot of problems in the last election and it was due to the form of the ballot, it was a very poor ballot. The names were squeezed in together, they were not distinctive, the box was not clear. We have changed the form of the ballot so that it will be much easier for everyone. I am not ashamed of my party, I am proud of it and I usually vote with it, too.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will go along with Mrs. Boudreau here on this measure. If there was confusion in the last election

in changing from the right to the left, why should we add to it now by changing it from the left back to the right? The major argument for the decision to leave it on the left is that the box is right next to the last name of the candidate, which is in capital letters, and the worst thing that we could do is to put this bill in non-concurrence, because if we have it on the right and the Senate puts it on the left, there will be a Committee of Conference and it will end up in the middle, so why don't we just indefinitely postpone this bill?

The SPEAKER: The Chair recognizes the gentlewoman from Kittery, Mrs. Durgin.

Mrs. DURGIN: Mr. Speaker, Ladies and Gentlemen of the House: I do believe that there is one point that hasn't been brought up, that is, by having the box on the left, it is a big help to anybody who has poor eyesight. The box is right there next to the last name, it is very easy to discern, rather than to go across and find the box on the right and many ballots have been spoiled by getting the box down below. I urge you to vote for this.

The SPEAKER: The pending question before the House is on the motion of the gentlewoman from Portland, Mrs. Boudreau, to indefinitely postpone House Amendment "A". A roll call having been ordered. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Albert, Bagley, Bennett, Berry, G.W.; Berry, P.P.; Berube, Birt, Boudreau, Bustin, Byers, Call, Carroll, Chonko, Churchill, Clark, Conners, Cooney, Cote, Cox, Curran, P.; Davies, DeVane, Doak, Drigotas, Durgin, Dyer, Farnham, Finemore, Flanagan, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Hewes, Higgins, Hinds, Hobbins, Hughes, Hunter, Immonen, Ingegneri, Jackson, Jalbert, Joyce, Kauffman, Kelleher, Kelley, Kennedy, Laffin, LaPointe, Laverty, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, R.; Maxwell, McBrearty, McKernan, Mills, Miskavage, Mitchell, Morin, Morton, Mulken, Norris, Peakes, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Powell, Quinn, Rollins, Saunders, Shute, Smith, Snow, Snowe, Spencer, Sprawl, Stubbs, Susi, Talbot, Tarr, Teague, Tierney, Torrey, Truman, Twitchell, Usher, Wagner, Walker, Wilfong.

NAYS: Bachrach, Blodgett, Burns, Carey, Carter, Curran, R.; Curtis, Dam, Dow, Faucher, Fenlason, Fraser, Jensen, Kany, Lovell, Martin, A.; Nadeau, Pearson, Raymond, Rideout, Rolde, Silverman, Strout, Theriault, Tozier, Tyndale, Webber, Winship.

ABSENT: Ault, Bowie, Carpenter, Connolly, Dudley, Farley, Hall, Hennessey, Hutchings, LeBlanc, McMahon, Najarian, Palmer.

Yes, 109; No, 28; Absent, 13.

The SPEAKER: One hundred and nine having voted in the affirmative and twenty-eight in the negative, with thirteen being absent, the motion does prevail.

Thereupon, the Bill was passed to be engrossed and sent up for concurrence.

The Chair laid before the House the fourth item of Unfinished Business:

An Act to Enable Counties to Hire County Administrators (H. P. 2092) (L. D. 2251) (H. "A" H-1051)

Tabled — (Till Later Today) March 30 by Mr. Birt of East Millinocket.

Pending — Passage to be Enacted.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the fifth item of Unfinished Business:

Bill "An Act to Clarify the Retirement Statutes" (Emergency) (H. P. 1860) (L. D. 2027)

Tabled — (Till Later Today) March 30 by Mr. Theriault of Rumford

Pending — Adoption of House Amendment "B" (H-1133) to Committee Amendment "A" (H-1105)

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, I move this item be tabled for one legislative day.

Whereupon, Mr. Theriault of Rumford requested a vote on the tabling motion.

The SPEAKER: The pending question is on the motion of the gentleman from York, Mr. Rolde, that this matter be tabled pending adoption of House Amendment "B" to Committee Amendment "A" and tomorrow assigned. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

68 having voted in the affirmative and 37 having voted in the negative, the motion did prevail.

The Chair laid before the House the sixth item of Unfinished Business:

Bill "An Act Relating to Property of Survivor where Joint Deposits or Accounts are Involved" (S. P. 664) (L. D. 2102) (C. "A" S-460)

Tabled — (Till Later Today) March 30 by Mrs. Clark of Freeport.

Pending — Motion of Mr. Pierce of Waterville to Indefinitely Postpone House Amendment "B" (H-1147) to Committee Amendment "A".

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker and Members of the House: I guess you know that I hope you don't indefinitely postpone my amendment. I think I explained in detail pretty much the reasons as to why yesterday. I won't repeat myself, because I begin to sound pretty bad even to myself when I do.

However, I do think it is important to keep in mind that what we are doing is statutorily deciding how each and every individual in the State of Maine will dispose of his estate if he has a joint account with a child. In my amendment, I restored the \$5,000 limitation which we have done in the past; that has been on the books for a long time, and that states that regardless of what I do with my will, or regardless of what my intent may otherwise be, by operation of law in regard to a joint account with my child, this \$5,000 will automatically go to that child, and I don't approve of that. I think that I should be able to decide for myself how that should go.

I recognize the needs in respect to having joint accounts or having a convenience account, if you will, with a child, and I have recommended within the past two months to two elderly persons who had established joint accounts with their children that they set them up on a power of attorney basis so that when they die at least those funds will all go through their estate and be distributed in accordance to their wishes, which is equally to their children.

I think that the \$5,000 or \$10,000 or \$20,000, I am not sure just what the purpose is in saying that it should automatically go to a child. I have no objection and I pointed that out because I do like the bill as it pertains to husband and wife. Someone said to me, and I said I wouldn't mind if this was the only child or there was only one child in the family. I was asked by a member of the House, would I object if there was something put in there that said that if there was an only child, then the ten or twenty thousand would be appropriate. I said, well, I really don't object to that part but I really don't see any need of it either. The reason I say that is, you know, by law we have said that if I die without a will and I don't have a wife, my

children will take whatever I have. If I have a will and I choose to leave everything to that child, then that child will get it. So if we had a joint account basis or a conditional one where we were talking about one child alone, it really wouldn't make any difference, because he would get it, period.

It doesn't make any sense to me to pass a law that deals in this fashion with giving a child any sum, by operation of law deciding what people in the state will do with their property. I just object to it along those lines.

Again, I have seen so many sibling rivalries develop in families where there has never been any problem at all merely because the brothers and sisters who weren't included on that account and had no reason to suspect that mother or father had, by operation of law in setting up a joint account with one other brother or sister, given that child an extra sum of money.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Peterson.

Mr. PETERSON: Mr. Speaker I would pose a question through the Chair. There seems to be some question between my seatmate and myself as to the effect of this legislation on a joint account held by spouses. Is there or is there not a limit? If there is a ceiling, what is it, please?

The SPEAKER: The gentleman from Windham, Mr. Peterson, has posed a question through the Chair to the gentleman from South Portland, Mr. Perkins, who may respond if he so desires.

The Chair would recognize that gentleman.

Mr. PERKINS: Mr. Speaker, here again, let's get this straight, that under present law there is a limitation as to what may pass directly in a joint account basis between husband and wife. The bill that has been proposed and is before you today, and dealing nothing with my amendment, provides that in case a husband and wife set up a joint account, the entire sum will go to the surviving spouse, and that is the part of the bill I like very much and the reason I don't want to see this bill die. I do think in that instance that we should say the surviving spouse takes everything.

My amendment deals strictly with the situation of parent and child, because in the parent-child situation, we are not dealing strictly with a parent and one child, in most instances we are talking about a parent who has children. I hope that clears up the question.

The SPEAKER: The Chair recognizes the gentleman from Freeport, Mrs. Clark.

Mrs. CLARK: Mr. Speaker, Men and Women of the House: I support the motion to indefinitely postpone the amendment as proposed by Representative Perkins from South Portland, because for as many classic examples as he can present to you about the inconsistency of the intentions of a parent and the amount of money that that parent wishes to leave his child or children, we had before the Committee on Business Legislation a number of cases that reflect just the opposite, cases where the will of the parent indicates that the amounts left in the estate would be divided equally between the children and three of the children hadn't seen their parent or taken care of the parent in their lingering and senior citizen years.

The gentleman from Waterville, Representative Pierce, has ready an amendment which would effect, actually, a compromise. We have a committee amendment that increases the amount left in a joint account between parent and child from \$5,000 to \$20,000 and where, in effect, Mr. Perkins would revert to the current statutory law. The Committee on Business Legislation, as stated by Representative Pierce yesterday in a spirit of compromise and in light of today's money value, do support the amendment which will be presented, should this amendment be defeated, which would, in fact,

decrease the amount left in joint accounts between parent and child from \$20,000 to \$10,000.

The entire bill liberalizes and just makes more understandable the provisions of the Maine statutes regarding joint bank accounts. Those statutory provisions have received a number of modifications over the years, albeit with some opposition from the members of the legal profession, in order that the provisions be made more liberal from the point of view of the depositors.

The fact situation that the bill, L. D. 2102, proposes to treat is a fairly classic one, leaving the entire amount of money between spouses in an open joint bank account at various institutions with the understanding that the proceeds of those accounts would be payable on the death of one over to the other.

Unfortunately, because of the statutory limitations, not all of the amounts could be paid over, and this has created some opposition, confusion and sometimes resentment among persons who opened the accounts and relied upon what appeared to be common knowledge of the disposition of the monies.

The proposition involved ought to be a rather straightforward one, and that is the intent of a joint bank account.

The SPEAKER: The Chair recognizes the gentleman from Yarmouth, Mr. Jackson.

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: There is something that bothers me here. The intent of a person who makes a will is shown in the intent of the will. Are we in the legislature to make a decision that when they make their will, they didn't make the right decision? It seems to me that regarding children in this, you can end up with a disbursement of money that is completely different from what they had intended in their will. Maybe what they did in the will isn't right, but that is not for us to judge. They made a decision, they drew up legal will and we, in this case, can cause \$20,000 to be disbursed, which might be a whole estate, in a totally different way than the will had intended. This bothers me.

The SPEAKER: The Chair recognizes the gentleman from Newcastle, Mrs. Byers.

Mrs. BYERS: Mr. Speaker and Members of the House: I support the indefinite postponement of this amendment and I will try to address Mr. Jackson's problem in explaining why I would like the indefinite postponement.

First, Mr. Perkins has said that sometimes the intent of a parent was to have all the money divided up and even though the child was in the joint account, the money should have been divided among those children. I would like to mention that this bill says "in each account," so if a child were trying to deceive a parent and trying to get this money by some deceptive method, I would suggest that they open, if there was \$20,000, four accounts. Then, where the bill says "in each account," then they could get all the money anyway. So I don't think that we can legislate the morality between a parent and a child.

Secondly, this bill says that \$5,000 may go directly to a nonrelative that someone has a joint account with and certainly the relationship between a parent and child is closer and I would say dearer than that between someone who was a nonrelative, and a nonrelative can have \$5,000.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker and Members of the House: I would like to just respond quickly to Representative Byers' remarks that dealt with deception, and I have yet to see a situation — I take that back, I have seen one — in all the instances that I have dealt with, and it is 99 percent of the cases that I have had insofar as joint

bank accounts in an estate with parent-child. There was no deception, absolutely none at all.

As I told you yesterday, it is more often than not that the bank tellers are telling the little old lady, as she comes up to the window shakily and gives her passbook to the teller to make her deposit, they suggest to her, kindly, why don't you, Mrs. Jones, open a joint account with your daughter here in order that she may be able to assist you when and if it becomes impossible for you to get in and make your deposits or draw on your account? They mean very well in doing this, there is no deception.

Mother didn't intend that anything be wrong, just that she wanted that convenience of being able to say that if she was in a nursing home or if she wasn't able to get out in that storm, her daughter could go into the bank and draw the money she needed for whatever purpose she needed it for. The daughter meant well by it, she wanted to perform that service. It wasn't until Mrs. Jones died that that daughter even knew she had \$5,000, as it is now, or \$10,000 as we may decide we want it, or \$20,000 as was proposed in the original bill. It was only then, when they came into the office and sat down, brother, sister and brother, that they found out, the will is there in front of them, mother is dividing everything between the three of them, and I say, please, I am sorry to tell you this, but \$5,000 goes directly to daughter because she is on that joint account.

As I told you yesterday, daughter one quite often says, well that really wasn't what mother intended. I will divide that equally with the other two. I have to say, before you jump that gun, remember that you have to deal with some other consequences. One is, you may have an inheritance tax in your situation because you increased the amount of beneficial share, so it may well be subject to inheritance tax that is not true of the other two because there is the exemption level. I have seen a case where there was an inheritance tax because one child got more.

Secondly, you have got to remember that there are Internal Revenue codes dealing with gift taxation. And grant you, there are exemptions or limitations on that that protect you, but you must file returns. Those returns you are going to have to pay for. Possibly if you are considering making gifts of your own, you have got to consider this in that, and I have got to advise you because that is what I am here for, that before you go distributing, cutting up that one third of that amount, make sure you understand just exactly what you are doing. You are not just giving it because out of your heart you want to do what mother wanted you to do and then poor daughter number one is in a very, very precarious spot of having to try to decide to do what mother would really like her to do or cutting back expenses, and very often the brother and sister that are sitting there say, somebody hoodwinked me and if I, as an attorney, happen to represent that daughter that is getting that extra \$5,000, they usually point the finger at me. They then run out and get themselves a lawyer to confirm what I have said and they have incurred additional costs.

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Susi.

Mr. SUSI: Mr. Speaker, Ladies and Gentlemen of the House: I believe that the gentleman from South Portland, Mr. Perkins, made a very explicit and comprehensive explanation of this whole thing, and I support his amendment. I believe that most people, when they draft their will, certainly would think of a savings account, even though one of the children might have been on it, basically their savings account they consider part of their estate, and in the division that they indicated in their will, they would want their children or relatives would share according to the will.

It is my understanding that whatever amount we exempt here today, the five, the ten or twenty thousand will be exempt from the effect of the will, and I think that should be kept at a minimum amount. Of the choices available here to us today, the amendment that is now before us, sponsored by Representative Perkins, would keep it at the minimum level, \$5,000. I hope that we allow this amendment to be attached to the bill so that as much as possible of the total estate of the person can be subject to the will.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Pierce.

Mr. PIERCE: Mr. Speaker, Ladies and Gentlemen of the House: I think Mrs. Clark did an excellent job in explaining to you at length why this amendment should be indefinitely postponed.

The bill, with my amendment, with Mr. Perkins' amendment, or no amendment at all, I think, is a good bill. It certainly is a step in the right direction.

I would like to just very quickly point out the only area of difference between my amendment and Mr. Perkins' amendment. The present law allows \$5,000 in a joint account with a child. The committee felt unanimously that it should be put up to allowing \$20,000. After hearing some of Mr. Perkins' concerns, we reconsidered that position and felt that perhaps the \$10,000 limit was a good compromise. If for no other reason, the present law is now \$5,000 and the decreasing value of a dollar, I don't think that \$10,000 is too much to ask. So I would ask that you do indefinitely postpone this amendment so that we may address ourselves to the next one.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the committee that has been studying the uniform probate laws, the committee addressed this but it is my recollection that they never addressed the children, they were talking about the spouse. There are nine lawyers on that committee, and I guess they have had experiences whereby someone with a joint account and only one third of that joint account went to the spouse and the other two-thirds went to the children, and if the children refuse to sign over the money to the mother, many times the mother was left without the necessary funds that her husband had intended for her to have.

We have studied this. When I first saw the bill I thought it was a little premature because I know it is going to be addressed by the Uniform Probate Law Commission, and I am sure in the next session of the legislature you will have a solid law put on the books if this legislature decides to accept it.

I think it is a fair compromise, the compromise of the gentleman from Waterville, and probably we should address it at that level. I am sure that at the next session, as I say, next January, we will probably come in here with a bill that will really clarify this.

The SPEAKER: The pending question is on the motion of the gentleman from Waterville, Mr. Pierce, that House Amendment "B" to Committee Amendment "A" be indefinitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken. 15 having voted in the affirmative and 77 having voted in the negative, the motion did not prevail.

Thereupon, House Amendment "B" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" and House Amendment "B" thereto was adopted in non-concurrence.

The Bill was passed to be engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" and House

Amendment "B" thereto in non-concurrence and sent up for concurrence.

The Chair laid before the House the first tabled and today assigned matter:

Joint Order Relative to Amending Joint Rule 11 (H. P. 2264)

Tabled — March 30 by Mr. Birt of East Millinocket.

Pending — Passage.

On motion of Mr. Birt of East Millinocket, retabled pending passage and tomorrow assigned.

The Chair laid before the House the second tabled and today assigned matter:

Bill "An Act to Clarify the Laws Relating to Marine Resources" (H. P. 2010) (L. D. 2192) (C. "A" H-1135)

Tabled — March 30 by Mr. Greenlaw of Stonington

Pending — Adoption of Committee Amendment "A" (H-1145)

The SPEAKER: The Chair recognizes the gentleman from Stonington, Mr. Greenlaw.

Mr. GREENLAW: Mr. Speaker, I move indefinite postponement of Committee Amendment "A" and would speak very briefly to my motion.

The SPEAKER: The gentleman from Stonington, Mr. Greenlaw, moves the indefinite postponement of Committee Amendment "A".

The gentleman may proceed.

Mr. GREENLAW: Mr. Speaker, Men and Women of the House: The reason for moving indefinite postponement of Committee Amendment "A" is that there is one section that needs to be changed and I have a House Amendment that is being prepared. It is at the printers now and if we can indefinitely postpone Committee Amendment "A", perhaps later in today's session I can offer House Amendment "A" which also adopts all the additional changes in the Committee Amendment with the one exception.

Thereupon, Committee Amendment "A" was indefinitely postponed.

Thereupon, under suspension of the rules, the Bill was read the second time.

On motion of Mr. Greenlaw of Stonington, tabled pending passage to be engrossed and later today assigned.

The Chair laid before the House the third tabled and today assigned matter:

Bill "An Act Repealing the Expungement Law and Providing for the Control of Access to and Disclosure of Criminal History Record Information" (S. P. 773) (L. D. 2326)

Tabled — March 30 by Mrs. Najarian of Portland. Pending — Passage to be Engrossed.

On motion of Mrs. Najarian of Portland, tabled pending passage to be engrossed and tomorrow assigned.

The Chair laid before the House the fourth tabled and today assigned matter:

Bill "An Act to Revise the Laws Relating to the Maine Traffic Court (Emergency)" (H. P. 2257) (L. D. 2327) (H. "C" H-1160)

Tabled — March 30 by Mr. Rolde of York.

Pending — Adoption of House Amendment "A" (H-1144)

The SPEAKER: The Chair recognizes the gentleman from Perham, Mr. McBreairty.

Mr. McBREAIRTY: Mr. Speaker and Members of the House: I am sure it will surprise some of you when I say I believe I know something about a motorcycle. My wife and I have one of the hottest machines on the road. We have a B.M.W. 900. I learned to ride a motorcycle when I was 55 and I never had a driver ed course.

My wife and I take at least one fairly long trip every summer. We have been to Nova Scotia, Quebec City, Vermont, New Hampshire, and

many other places the last few years on our B.M.W. If we accept this amendment today, we will be mandating a new program for our school departments which will be very expensive and I believe not needed.

We will be mandating that students between 16 and 17 will have to complete a driver ed course to get a license to drive a car, then take a second driver ed course to get a motorcycle license. This will be forcing the age group, which has just completed a driver ed course and should already be the best qualified age group, at a great expense to the state and the students, to take two driver ed courses, while no other age group will have to take any training whatsoever to get a motorcycle license.

Many students get jobs during the summer. It will make it very expensive if they have to take time off for a second driver ed course which might be dragged out over several weeks. By the time they take the course, get a permit, then a license, the summer will be over.

I feel sure that due to the expense and time involved, many will wait until they are 17. The insurance alone to cover such a program statewide would, I believe, be very expensive.

I think it is safe to say that Section 39A was put in this bill at the request of several of my constituents and Secretary of State Gartley.

I have talked several times to the State Police and they have no problem with Section 39A of this bill. I have here the 1975 motorcycle fatalities given me yesterday by the State Police.

We had 18 fatalities in 1975. Not one fatality was in the 16 year age group. 58.8 percent was caused by alcohol; 66 percent was caused by speed. I can't see one here that would have been saved by an extra driver ed course. The regular driver ed course surely has already taught them the rules of the road.

I don't believe an extra Driver Ed Course will teach any young folks not to drink or speed. In fact, I have had my B.M.W. to 95 with Mom on the back. If I live until summer, I intend to try to hit the 100 mark. What fun would it be to have a motorcycle that will do 120 miles an hour, if we didn't speed once in a while.

I believe the deficits we experienced the last two years in education plainly indicates that we need no more mandated programs until we find a way to finance the ones we already have. I don't have to worry about the money for my district this coming year, because last Saturday the teacher who plans to start the course this spring told me we might as well put the course in because we have a surplus.

During our conversation I asked the young man what he could teach that hadn't already been taught in the regular driver ed course. As an example, he asked me what I would do if I was riding my bike and saw a dog by the side of the road. He had me stumped first thing.

I have never been quite sure what to do, because every dog seems to be different. When I finally gave up, he informed me that the thing to do was to swing over close to the dog, and after passing, swing back. I tried that once and came close to losing my right leg. When I hurriedly turned away to keep the dog from biting me, I nearly got run over by a Mack truck.

This law has been on the books since 1973. I am sure if school officials, State Police, and parents had felt it was needed, it would be in full swing by now.

I would hope we might kill this amendment and eliminate at least one mandated program we cannot afford.

As the school teacher said, I don't have to worry about the money this year because we have a surplus. What I am worried about is next year. If the fishing happens to be poor along the coast, we may have to pay for the program ourselves.

The SPEAKER: The Chair recognizes the gentleman from So. Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies and Gentlemen of the House: There have been a few misconceptions that have just been stated on the Floor of this House and I would like to try and clear these up and explain to you what is happening as I did yesterday.

First of all, I guess I will explain where we are right now. In the 106th, I introduced a program to establish driver education for motorcycles. We accepted it, we sent it up identical to the way we have it for automobile licenses whereby if you are 16, you have to have motorcycle driver ed to get your permit for a motorcycle. Once you hit your 17th birthday, you can get your license and permit without ever having to sit on a motorcycle, the same way as without ever having to drive a car. Okay, so we are only going to deal with 16 year olds to begin with.

There is nothing in the law that says that the schools have to run this program, there is nothing in the law that says the schools have to run an automobile driver training program. This is something that they have opted to do, through pressure, granted, and through help from the Department of Education.

Now what happened, when I introduced this bill, there was a person working in the Department of Education as a consultant in drivers ed. He has since left and that position has not been filled. Therefore, there was no one that was immediately responsible in the department to go around developing these programs with the local school district driver ed programs.

The Secretary of State's Office did license instructors and they taught and right now we have approximately 80 people qualified to teach driver ed and there can be more coming in, there are courses available the same as there are courses available in the summer at colleges for people to learn how to be instructors in automobile drivers ed. When we passed the bill, we said we wouldn't let it go into effect until September 1, 1975. It did, and now we are getting into a little bit of a problem because there are 16-year-olds trying to get their permits and they can't because they have not had drivers ed, and this is a real problem. So, another misconception that was stated was, granted this wording was worked out by the Secretary of State's Office but then after I talked with them, we agreed on another compromise and that compromise was just to move the implementation of this program up another two riding seasons, to September of 1977 and then the people in the Department of Education have agreed that they will start working and they will try to shift some resources around and the person in charge of bus safety who is having to take over the additional duties of drivers ed will attempt to work with the school systems, the driver ed school systems now, to get this program on board and operating.

This has been brought before the Judiciary Committee in a hearing on their Errors and Inconsistencies Bill and the general feeling that I have gotten from members of that committee was that they don't seem to have any problems with this and I expect it to be on the Errors and Inconsistencies and if it isn't, I would offer an amendment from the floor to put it on because I realize there is this problem. We are not mandating anything on the schools.

Where I took drivers ed when I was in school, it was not my system, it was in a neighboring one, and I had to pay the full cost of that and many kids have to do that today so it is no additional cost on the schools.

There are many dealers out there that I have talked to that are willing to donate the bikes. I was hoping to get all my material on this but, as I say, I found out about this yesterday and was not able to, but most of this course is hands on

time. True, they have had the book work, the rules of the road and this type of thing but most of the drivers ed course will be hands on operating a motorcycle in a parking lot and through pylons and then out on the street under the supervision of a person in back of them while riding in a car or following them or something of this nature.

What happens is, we see this come through and again, as I stated yesterday, I talked to members of the Judiciary Committee, who seemed to be a little confused on how this got on and I guess it upsets me because here we are basically killing a program and I have not had a chance in a public hearing to bring people in to explain this, to defend it, to explain the benefits.

Mr. McBreairey has given you one set of figures, one set of figures on the fatalities for one year in the state, or for a couple of years, I didn't catch it. Most of those age groups, I looked at that, are — I guess there are no 16-year-olds but there are some 19 and 20-year-olds, younger people, does it address the fact that in our nationwide studies we have seen that something like 70 percent of accidents that are caused by motorcyclists are caused by a motorcyclist in his first 6 months of operation. This is a serious problem. Many of us — I did it — we get on our bikes, get a permit, you pass ten questions to get a permit to drive a motorcycle, you get on that bike and you can go out. There are a lot of us who are responsible and can handle it but there are a lot of people who can't, especially when you get that age group, I think there are a lot more. They get on a big bike and, sure, they may be able to ride it for awhile but then they come to that first corner with some sand on it or their first dog, and I am not sure what the Representative from Perham has mentioned is accurate or what they were teaching in the course — I haven't seen the actual course instruction and I would like to bring some instructors in here to a public hearing to explain what they would say in a situation like that. I know that in my case and many others, a lot of people don't know what to do and I just feel that it is really important to have this.

I would like to have the opportunity to defend this program with statistics. I would like to see what the statistics are just on motorcycle accidents, not the fatalities but the accidents across the state last year. Were there a lot of 16 or 17-year-olds that had accidents on motorcycles? Why? What was the reason? Before we kill a program like this, let's have these reasons, let's find out what is going on.

So what I am saying is, let's give the state a chance to work with the districts and some of the private schools to implement the motorcycle drivers ed. If we do that, we are not mandating a thing. We are saying that we are going to give some time, we are going to work with these people and if we develop some programs, then maybe in two years, some 16 year olds still can't get the program because there may not be any in their area, but we are not saying to the districts, you have to have those programs.

If you will pass my amendment, it wipes out this section 39A which, in effect, nullifies those reasons for ever having motorcycle drivers ed and then we will, in effect, hold off the implementation of this while we develop the programs, and if the gentleman from Perham has a real problem, let him come back in the 108th with a bill to eliminate this and let us come to a public hearing and explain. Let's bring out some of the facts, let's see what happens in other states that do have motorcycle drivers ed. Let's see what happens, we can look at the facts and figures on automobile drivers ed, the insurance rates go down.

I got a break when I got my license because I had automobile drivers ed. I have talked to some insurance people, they say they have the

mechanism all set up to give breaks for people who have motorcycle drivers ed.

I hate to belate this, but it is something that I really feel strongly about because there is a definite need for this to educate people, not just motorcyclists but people in general that motorcyclists are for equality on the highways, when we are out on that highway, that we treat automobile drivers with an equal regard and that they treat us with an equal regard. I think by having motorcycle safety programs, driver ed programs, this is going to help accomplish this goal.

The Secretary of State is willing to go along with the compromise on the Errors and Inconsistency Bill; I talked with him this morning and he is going to apologize if this ever got on, the traffic code had nothing to do with it, he said. I talked to people in State Police and they are not willing to make a policy statement, they have not had a chance to go over it with their policy board. One member of the State Police that I talked with said that he is in favor of drivers ed but he can't give any definite say on anything because they have not decided this in a policy group.

I guess what I am asking is for you to vote for my amendment. We will postpone the effective date of this and we will try and work this out.

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Shute.

Mr. SHUTE: Mr. Speaker, I would like to pose a question to the gentleman from South Berwick, Mr. Goodwin. I apologize because I was out during part of the debate, but how many public schools in the state offer the motorcycle driver ed course and how many private driving schools offer the driver ed course?

The SPEAKER: The gentleman from Stockton Springs, Mr. Shute, has posed a question through the Chair to the gentleman from South Berwick, Mr. Goodwin, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. GOODWIN: Mr. Speaker, as far as I know, there are no public schools that are operating motorcycle drivers ed now and I tried to explain the reason for this. There has not been any help from the department in trying to aid these schools in setting up these programs.

These programs can be set up at no cost to the schools. There are many automobile driver ed programs that are run specifically in the summer that is totally self-supporting. The ones usually run during the year are not but the ones during the summer are.

As far as the private schools, I don't know. I have heard at times that some driver schools have gotten motorcycle trainers and stuff like this, but I don't know of any per se, I haven't checked. The point is, and I can't emphasize, this any more, the Judiciary Committee has dealt with a possible amendment on Errors and Inconsistencies that will push this ahead until September of 1977 before any 16-year-old will have to have motorcycle drivers ed before he gets his permit. And again, we are only talking about 16-year-olds. I think we should keep that in perspective to the fact that we are trying to push this ahead so that we don't run into a problem right now. The Secretary of State's Office agrees with this method to postpone it for two riding seasons or about a year and a half or so, but until September of 1977, and then by that time it is hoped that we can work this out so we can offer these programs throughout the schools.

The main thrust in the past few years was to get the people trained to teach the courses.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: The older gentleman from Caribou scares me to death. The young gentleman from South Berwick seems to have

the sensible program. I hope you will support him.

The SPEAKER: The Chair recognizes the gentleman from Perham, Mr. McBreairty.

Mr. McBREAIRTY: Mr. Speaker, Ladies and Gentlemen of the House: There are two or three questions that have been raised here that I would like to try and answer. If this program is self-supporting, the Department of Education informed me that it would cost from \$40 to \$45 for each student and this you would add in my area the time lost because most of these young people are working in the summertime.

Now, as to how this got onto this bill, I am going to try and go through it as near as I can. I had some constituents ask me about this law and they were quite upset because they had a youngster that had bought a bike and he couldn't get a license because he had to have a course that wasn't there. I said I would see what I could do. So I came down and I tried to find a bill that I could put an amendment on that might take care of it. In doing this, I checked with Transportation and finally went down to Secretary of State Gartley's office.

He said, Jim, we were just talking about that and we have problems with it too. He had a piece of paper in his hand. Before I got through talking, he passed me the piece of paper; it was the amendment that has been put on this bill. He gave me the number of a bill that he thought it might go onto. He said to take it to the Judiciary Committee, Sam Collins is chairman. I went to Sam Collins, I said, how is chances of getting this on? He said, Jim, would this be kind of an economy move and I said, I think it would because I think it is quite an extensive program and I don't believe that we need it. He said, take it up to my legislative assistant and give it to him. I did this and the next thing I knew, it was on this bill. So that is the story.

As for this accident report, he said he would like to know what happened? I am going to go through it, it won't take very long. Number one was speed, single vehicle; number two, alcohol, speed, single vehicle; number three, attempted wheelies, single vehicle; next, hit head on, two vehicles; next one, alcohol, high speed, single vehicle. Now this one says intention, I assume that means he intended to kill himself, I don't know, but this is what it says. The next one alcohol, speed, two vehicles; the next one, driver had been drinking, hit by vehicle, wrong side; next one, hit by vehicle at an angle; next one, alcohol and speed; next one, alcohol, speed; next one, alcohol, speed; next one, unsafe left turn by a car; next one, alcohol, speed; next one, speed, speed, speed, speed; that is what they have for a report on this.

I would have gotten more, but I got this yesterday, I got it in a hurry and I hardly had time to go into the other year.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jacques.

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I called my superintendent this morning to find out how this was progressing. He told me that they haven't done anything about it. He said he wished they would leave them teaching school instead of trying to mandate all types of programs for them. I said, you know this was on the book and he said, yes, I knew it was on the book but he said, we can't get anyone interested in the program. I don't mind if it is backed up two years, but maybe we should take it off the books and let it come back and be on the books in two years.

I have a son right now that has been riding motorcycles since he was four years old and I will guarantee you, there is not a man here that can beat him in how to ride a motorcycle. He rides well on the road and he does a beautiful job. He broke his collar bone when he was six years old; he had a little machine, it is true, Mr.

Speaker, he was four years old when he was riding a motorcycle, he had a little one. We have six motorcycles in the house.

I don't know why we want to mandate the school departments, we mandate the hot lunch programs, we mandate all kinds of things for them to do, and these teachers are getting sick and tired of this business of us making laws for them to implement and I don't know if we should try to do this type of thing, how to ride motorcycles.

First of all, we have no one who wants to teach it and I don't know where they would do it in my area. We happen to have the biggest high school in the state, I don't know if a lot of people know that, but we have a beautiful school and no one seems to be interested in teaching this type of motorcycling.

Yesterday, there was a lady that called up my house, she had called the Motor Vehicle Department and wanted to know what they had to do to get a license. Her son wanted a motorcycle license and he could not get it. The guy said, well, I don't know anything about motorcycles, I don't care for 16-year-olds to ride on motorcycles in the first place, this is our Department of Motor Vehicles. Well, I will tell you one thing, if a young fellow can drive at 16 years old or 15 years old, he would certainly know how at the age of 17 because he has been riding for quite a few years.

We have a lot of motorcycle riders in our area. I don't know if I want this to be set back two years or take it off the books, but when it comes time, I want you people to look it over and think about it before you do it.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I think one thing should be cleared up. First of all, it is not a mandated program, it is a program where it is not mandated to the schools, it does not have to be taught in the schools it can be taught anywhere. It just says that a 16-year-old will have to take some motorcycle driving instructions. And as I understand it, Mr. Goodwin wants to extend this until this program is set up and I think we ought to give him that opportunity.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to support Mr. Goodwin on this. This section of the traffic code came in after a discussion with a member of the other body who is on the Judiciary Committee. The committee was not aware of the fact that this was a hotly contested issue between different camps of motorcycle drivers and thought that it was simply a minor correction to clear up an inconsistency. It obviously is an issue that is of great importance to the people inside this body and I assume that it must be of importance to people outside this body as well.

It seems to me that it would be very unfortunate if we were to change the present law without affording an opportunity for a fair and full hearing on this issue where the people who are concerned about it could come up here and have their point of view made known to the people who are deciding it and have a hearing on it. As a practical matter, this bill, which is obviously a significant matter, has not had a public hearing. I don't think that we should make this change without having a public hearing, and in the Errors and Inconsistencies Bill, the program will be extended for one year so that any immediate problem that Mr. McBreairty might have with it has been taken care of.

I would urge you to support Representative Goodwin and not have his bill, in effect, repealed without even giving him an oppor-

tunity to come to a hearing and make the views of myself and his supporters known.

Mr. McBreairty was granted permission to speak a third time.

Mr. McBREAIRTY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair. If this is not a mandate program, why is it these young people cannot get a drivers license?

The SPEAKER: The gentleman from Perham, Mr. McBreairty, has posed a question through the Chair to anyone who may care to answer.

The SPEAKER: The Chair recognizes the gentleman from South Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies and Gentlemen of the House: I don't know how many more times I have to explain it and other people do. It is not mandated upon the schools. It is required of 16-year-olds to have drivers education but it is not mandated upon the schools to teach it. There is nothing in the law which says you have to teach it, there is nothing in the law that says you have to teach automobile drivers education. This is something that has developed over the course of time.

There are 16-year-olds that can't have automobile drivers education because either the courses are filled — I have had people complain to me because they can't get it because local school district courses are filled. It is not mandated on the school systems to provide this.

The SPEAKER: The Chair will order a vote. The pending question is on the adoption of House Amendment "A". Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

48 having voted in the affirmative and 22 in the negative, House Amendment "A" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Bridgewater, Mr. Finemore.

Mr. FINEMORE: Mr. Speaker, have we got a quorum?

The SPEAKER: The Chair will check, everybody in their seats kindly vote.

The Chair will announce that a quorum is present.

The SPEAKER: The Chair recognizes the gentleman from Corinth, Mr. Strout.

Mr. STROUT: Mr. Speaker, I move that we reconsider where this amendment was adopted.

The SPEAKER: The gentleman from Corinth, Mr. Strout, Moves that we reconsider our action whereby House Amendment "A" was adopted. The Chair will order a vote. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Farley of Biddeford requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Mr. Strout of Corinth to reconsider adoption of House Amendment "A". Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Berry, G. W.; Birt, Carpenter, Carter, Connors, Cote, Curtis, Dam, Drigotas, Durgin, Farley, Finemore, Gould, Hewes, Hunter, Hutchings, Jacques, Kelley, Lewin, Lewis, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBreairty, McKernan, Perkins, T.; Peterson, P.; Rollins, Shute, Sprowl, Tarr, Teague, Tozier, Walker, Webber.

NAY — Bachrach, Bennett, Berry, P. P.; Berube, Boudreau, Burns, Bustin, Call, Carey, Chonko, Churchill, Clark, Connolly, Cooney, Cox, Curran, P.; Davies, Doak, Dow, Dyer, Faucher, Fenlason, Flanagan, Fraser, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gray, Greenlaw, Henderson, Hennessey, Hobbins, Hughes, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelleher, Kennedy, LaPointe, Lavery, Leonard, Lizotte, Lovell, Mahany, Martin, A.; Martin, R.; Maxwell, Miskavage, Mitchell, Morin, Morton, Mulhern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Perkins, S.; Peterson, T.; Pierce, Post, Powell, Quinn, Raymond, Rideout, Rolde, Saunders, Silverman, Snow, Snowe, Spencer, Strout, Stubbs, Susi, Talbot, Theriault, Tierney, Torrey, Truman, Twitchell, Tyndale, Wagner, Wilfong, Winship; The Speaker.

ABSENT — Bagley, Blodgett, Bowie, Byers, Carroll, Curran, R.; DeVane, Dudley, Farnham, Hall, Higgins, Hinds, Immonen, Laffin, LeBlanc, Littlefield, McMahan, Mills, Norris, Palmer, Smith.

Yes, 39; No, 91; Absent, 21.

The SPEAKER: Thirty-nine having voted in the affirmative and ninety-one in the negative, with twenty one absent, the motion does not prevail.

Mr. Spencer of Standish offered House Amendment "B" and moved its adoption.

House Amendment "B" (H-1155) was read by the Clerk and adopted.

The Bill passed to be engrossed as amended by House Amendments "A", "B" and "C" and sent up for concurrence.

The following papers appearing on Supplement No. 1 were taken up out of order by unanimous consent:

Divided Report

Majority Report of the Committee on Judiciary on Bill "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revisions Commission" (Emergency) (S. P. 697) (L. D. 2217) reporting "Ought to Pass" in New Draft "A" (S. P. 777) (L. D. 2334)

Report was signed by the following members:

Messrs. COLLINS of Knox
CLIFFORD of Androscoggin
— of the Senate.

Mrs. MISKAVAGE of Augusta
Messrs. SPENCER of Standish
HENDERSON of Bangor
McMAHON of Kennebunk
PERKINS of South Portland
HEWES of Cape Elizabeth
HOBBINS of Saco
BENNETT of Caribou
— of the House.

Minority Report of the same Committee reporting "Ought to Pass" in New Draft "B" under New Title Bill "An Act Making Certain Revisions in the Maine Criminal Code" (Emergency) (S. P. 778) (L. D. 2333) on the same Bill.

Report was signed by the following members:

Mr. MERRILL of Cumberland
— of the Senate.
Mr. HUGHES of Auburn
— of the House.

Came from the Senate with the Majority Report accepted and New Draft "A" Passed to be Engrossed as amended by Senate Amendments "A" (S-488), "B" (S-495) and "C" (S-496).

In the House: Reports were read.
The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, I move we accept the Majority "Ought to pass" Report in New Draft "A" and would speak to my motion.

The SPEAKER: The gentleman from Stan-

dish, Mr. Spencer, moves that the House accept the Majority "Ought to pass" Report in New Draft "A" in concurrence.

The gentleman may proceed.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The matter which is now before us is the bill to revise the Maine Criminal Code as recommended by the Criminal Law Revision Commission. There are a number of significant changes in the criminal code proposed in this bill and there will be a number of amendments to this bill submitted at second reader.

The only distinction between the two reports that are now before you is the question of when a person may utilize deadly force in their dwelling. The majority report of the committee provides that deadly force, which is defined as any force which is likely to cause death or serious bodily injury, may be used against an intruder into your house, somebody who was in your house in order to commit a crime, either if you feel that they are likely to use unlawful force against you or anyone else in the dwelling, also, if they are there to commit a crime, you warn them that they are to get out of your house and they refuse to get out. That is the only distinction between the two reports.

The criminal code, as it now exists, limits the use of deadly force for the situation where you reasonably believe that they are likely to use unlawful force against you or someone else in your dwelling.

The committee report provides that if somebody is in your house and you reasonably believe that they are there to commit a crime, if they are there unlawfully with the intention of committing a crime and you warn them and they refuse to leave, then you have the right to use deadly force against them.

The situation that this was drafted to deal with is a situation that has been discussed across the state where a person enters the dwelling which is occupied, for example, by a single person. The person who is in the dwelling has a gun. The person who is in the house committing the crime says, I am in your house and I am here to commit a crime but I am not going to hurt you. You have no reason to be afraid, I am not going to hurt you but I am going to rob you and burglarize the house. Or, another situation would be where a person came into the house and said, we are not going to hurt you but we have a truck here and we are just moving out all of your stuff. In that situation, under the present formulation there is a concern that you would not be able to stop this offense from being committed. Under the code version, you would have the authority to go and get your gun, point it at the person who was there and say, get out of here or I am going to shoot you, and if the person did not leave, you would then have the right to use deadly force against them. If the person did leave, in that situation you would not have the right to use deadly force.

Another situation which often might occur and which was of concern to the people that were disturbed with the present formulation is that somebody is in your house, you come upon them rummaging through your bureau or taking your stuff, they hear you and they start to run out the door carrying your television or whatever it is that they have taken. Under the majority recommendations, you would not, and I can't emphasize this strongly enough, you would not have the right to shoot somebody whose back was turned to you who was running out with a television set because they would be terminating the criminal trespass and it would not be necessary to use deadly force to terminate the criminal trespass. I think the question that is involved here is a matter of fundamental importance and we are really talking about the circumstances under which it is possible to take a human life. The committee has somewhat broadened the provisions of the present code so that you have the right to force someone who is in your house committing a crime to get out, as long as you warn them first. I think that extension is justifiable, but I think that the committee report has still retained the basic

provision of Maine law that human life should be placed above property.

sions of the present code so that you have the right to force someone who is in your house committing a crime to get out, as long as you warn them first. I think that extension is justifiable, but I think that the committee report has still retained the basic provision of Maine law that human life should be placed above property.

The only situation where you would be permitted to use deadly force under the committee recommendations where you would not be permitted under the code is where there is a person committing a crime in your house, you point the gun at him and he refuses to leave. In that situation, under the committee recommendation, you would have the authority to use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: I hate to debate reports that are minorities as small as this minority, but as the acting House Chairman has said, this is a matter of life and death. It is not the life and death of thieves that I am especially concerned about, it is the life and death of people living in the house, of children living in the house, of people somehow entering the house on innocent purposes but mistakenly thought to be thieves, and it is those kinds of people that I am concerned about.

I think in our hysteria, to do something about a very real problem — that is, breaking and entering — we may be overlooking what are the real consequences of what we are doing. This is why I just want to take a few minutes to help make those consequences clear and then let you make your judgment.

We should know at first that we have not, when we passed this criminal code last year, changed the law of Maine. The law of Maine, since the early 1870's, has been that you may use deadly force only to defend your life or the life of others. We made no change in that; all we did in that when we adopted the code last year was to write it down in black and white in the criminal code the kind of thing the code was designed to do.

A columnist in one of our weekly newspapers picked it up, misinterpreted it, and that kind of misinterpretation spread around this state that somehow you and I had changed the rights of Maine people to defend their homes. We certainly had not.

Maine law, since 1870, has drawn the distinction between life and property. I would propose, in my minority report with a gentleman from the other body, to maintain that distinction, to leave the law just as it has been since the early 1870's.

I have an unusual ally in this effort, the Bangor Daily News, in an editorial, which I swear was not written by the usual editorial writer, defended this approach and said, don't change the code provisions on deadly force. It is a very thoughtful editorial; I am just sure it is not written by the man who writes the others that we have read. He has obviously done a lot of work on it. It has been distributed and I hope you will read it. I won't try to repeat all those arguments.

Here is my real concern. Again I am not concerned about thieves, I think they take a chance when they break into somebody's house. While I would not use deadly force on them personally, I can understand people's desire to do that, and it doesn't particularly concern me. What concerns me is this, that we are taking a stance, telling the people of Maine and encouraging this attitude that they have the right to defend anything with deadly force. That attitude leads to loaded guns lying around the house, to loaded guns lying around the house where there are probably children.

If you look at the real world and look at the statistics, the deaths in Maine are not caused by people breaking and entering and then shooting the homeowner. Most deaths in Maine are caused by accidents within the family or a member of a family either drunk or in a fit of emotion shooting another member of the family. Indeed, the majority of murders in the State of Maine are simply one member of a family killing another member of the family or a close friend. If we change this law from what we have had for 75 years, we are moving in the direction of encouraging that kind of attitude, encouraging the buying of weapons and then we do one thing further, we put our thieves on notice to do one of two things, to either desist from stealing, and that is what we hope they will do, or to arm themselves and be sure they have got a gun when they break into a house because the homeowner is armed and has some kind of license, probably to most citizens a vague license that they won't understand, to shoot them. I think we have just escalated the level of violence by this kind of move. I don't mind if you do it, I just wanted to say what I thought we were doing. That is why I have taken a few minutes to debate a matter of life and death.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will vote to accept the majority report as recommended by the gentleman from Standish, Mr. Spencer.

I would go further than does the majority report, and you may have seen that there is a House Amendment "B" that I will propose to offer at second reader that I believe is on your desks, and that relates to whether a warning need be given.

It seems to me that if a person breaks into your dwelling house, you shouldn't be obligated to first have to ask the intruder what he or she is doing. It seems to me that by asking, you give away your position and you may not live through the experience. If you want to ask him what he is doing there, that is perfectly all right, but I think to impose upon you that burden is going too far. So we in the Judiciary Committee who felt as I do, agreed to go along with the majority report at this time rather than to get involved in three reports — and there were other discussions and several compromises made — but go along with the majority report at this time and then the amendment relative to having to give a warning can be offered and debated at another time.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to ask a question if I might. What is the definition of deadly force? Is it killing somebody or wounding or just what would it be?

The SPEAKER: The gentleman from Madison, Mrs. Berry, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question, the definition of deadly force is such force that the person using such force is reasonably likely to cause death or serious bodily injury. Then there is a section which says that if you fire a gun at a person, that is deadly force. In other words, there is no distinction in the code between shooting to kill and shooting to maim or shooting to wound. The reason that it is defined that way, I think, is that the experience is in these situations, if the gun is pointed at somebody and fired at them, the likelihood is that the actor really doesn't have, in most cases, enough control to be sure that he can draw the distinction between wounding

somebody and killing them. So, the language is if it is likely to cause serious bodily injury or death.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: Am I led to believe that if somebody came in my house and I caught him and he started out the door with something under both arms, and I have a gun in the house, perhaps I might wing him on the leg just to stop him and what would happen then?

The SPEAKER: The gentleman from Madison, Mrs. Berry, poses a question through the Chair to any member of the House who cares to answer.

The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the question of Representative Berry, if he was on his way out, and I know there is a great deal of feeling about wanting to "mark" one, and that is "wing them," the code as presented by the majority report would not permit that. He is leaving the premises and is terminating the criminal trespass. I suspect most of us would say "halt and drop what you have got or I am going to wing you," but I would suggest that you not do that while he is back to. The better part of valor would be say, "please turn around" then wing him because if you just happen to kill him you have got a better chance of holding your own in court.

Of the two reports, as has been indicated to you, this gives you what many people would like to have that they don't have now without going so far as to say that you do have a right to shoot somebody in all circumstances. We do have to keep in mind that there are circumstances that could develop where the use of a gun could really jeopardize innocent people, and you get the situation of estranged husbands and wives who come knocking on the door and they are going to lug off all the stuff and, you know, a gun, if permitted to be used in those circumstances, could well kill somebody and be downright outright murder.

So this ended up, by virtue of the majority report, in suggesting that if you have reason to believe that a person is in your premises committing a crime and you have reason to believe that to warn him would not endanger your life because you don't have to warn him, if you do suspect that your life is in danger, then he fails to stop what he is doing right then, and that is get out, you have a right to shoot him and kill him, not just wing him.

The minority report says, no. As has been clearly indicated to you, if he is there and he says, look I am going to be out of here in about five minutes if I can get it all out in that period of time, and if I can't, then I may take an extra ten minutes but I am not going to harm you, so if you go over in a corner and stay out of the way, nobody will do you any harm, just leave us alone, and you set there fretting about it, wishing you could go to a phone but you didn't happen to have one. The law, under the minority report, says you could not shoot him. You could not fire a gun and shoot him.

We have taken the stronger position, which I think is the temperament of this time at least, that we should have the right to say, get out this is my place and only my place, and if you don't do it you may be dead. The argument that was posed that it will put thieves on notice to carry guns with them because the homeowner is going to have a gun, I am not going to buy, not really. I think even a thief is afraid for his life, I really do. I think the thing we are concerning ourselves with today is the fact that he is so assured that the law is going to protect him that he can get by with going to the house and going through the process, as I told you before, before

the homeowner won't dare shoot him if he has no right to.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: In Sanford a couple of years ago, there was one of our executives that came to his home and as he appeared at the door he noticed that there was a van in front of the door with Massachusetts plates and they had filled the van with most of the furniture in his house. If you accept the minority report, there is nothing he could do. All they had to do is go off with the van. I think the people should have some kind of protection.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: I have a couple of questions. Do you think a homeowner who might have a gun or some other deadly weapon would be able to distinguish between terminating unlawful conduct or determining criminal trespass? I think we are getting into some fine, tricky distinctions here. I really would question the ability of most of us to make that kind of judgment.

Secondly, on page 11, perhaps a member of the committee could answer another question. This is on L. D. 2334, the majority report, under Section 34, Subsection 2. A person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter a dwelling place. Can you tell me when this would apply?

The SPEAKER: The gentleman from Waterville, Mrs. Kany, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I apologize, someone was asking me another question and I missed the question of the Representative from Waterville.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: I will try to answer the questions of Representative Kany. Insofar as the ability of the individual to reasonably determine when a person is committing a trespass, the one thing that we have in our system is a jury that we feel is a jury of reasonable men that will be able to determine whether or not our acts were such that they constituted a reasonable decision as to whether or not a trespass was being committed. Consequently, we have to make the decision as reasonable men in a given set of circumstances, and if we are wrong, a jury will determine that. If we are right, they will likewise determine that. So I think that section will take care of itself just by virtue of our system of justice, which I am very proud of.

The second issue is, what does it mean under Section 34, Title 17, 2-d. A person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter. It goes on to say more because there are other conditions involved there, but I think it means that deadly force may be used when, just as it says, such other person has entered or is attempting to enter. I can't conceive of a situation when I wouldn't know whether a person has either entered or was about to.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: These are serious questions to me. I am sorry to take your time, but I feel the need to.

The answer to your first question was that

after the fact then that determination would be made. That is the way I understood it. The determination would always be made after the fact as to if that individual with that deadly weapon exercised reasonable judgment in using deadly force. Thank you for answering that.

The second answer didn't really satisfy me. We were talking about a person is justified in using deadly force upon another person when he reasonably believes that such other person has entered or is attempting to enter a dwelling place. I am wondering if that applies to someone other than the homeowner in this particular case? I am not sure just looking at the bill, and if so, would it mean that if my niece, who is a freshman in college and in our community, comes and enters our home when we are away for the weekend, could a neighbor shoot her?

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: Again, in answer to Mrs. Kany's question, I think if she reads the rest of the section, it says that when he reasonably believes that such other person has entered or is attempting to enter a dwelling place or surreptitiously remained within a dwelling place without a license or privilege to do so and that deadly force is necessary to prevent the infliction of bodily injury by such other person upon himself or a third person present in a dwelling place. Consequently, you don't get the right to use deadly force merely because he is entering, you get the right to use deadly force when you believe he is attempting to enter or he has entered without any right to be there and that you have reason to believe that it is necessary to use that deadly force because he is about to inflict bodily harm upon you or some third person there, and that is the only time. So, if a niece is in the process of attempting to hammer somebody over the head with a hammer and you at that point decide she shouldn't be there, I would say you have the right to use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question of the Representative from Waterville, under paragraph 3 of Section 104, which is part of Section 26 in the bill, the initial sentence says a person in possession and or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another. This section applies only to the person who is in possession or in control of a dwelling place or licensed to be there and it is the person in that house that this section deals with, not with a neighbor who lives across the street.

The SPEAKER: The Chair recognizes the gentleman from Mexico, Mr. Fraser.

Mr. FRASER: Mr. Speaker, Ladies and Gentlemen of the House: Just a short question. What if somebody came into my house and I chose to use physical force. In other words, if I was lucky enough to let him have one on the chin and he was knocked out and I could capture him, what would happen then?

The SPEAKER: The gentleman from Mexico, Mr. Fraser, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I think that the police would come and make an arrest. You are able to use nondeadly force against anyone who is committing a crime in your presence, so you could stop somebody, you could grab them, you have the power to make an arrest of anyone who is committing a crime in your presence. If he then escalates and turns on you and

threatens your life, then you would have the right to use deadly force if you needed it to protect yourself. There is no problem as far as nondeadly force is concerned.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I am not sure if this point has been clarified or not, but one has the right to use deadly force only if it is necessary, it has to be necessary in order to prevent the action against yourself for the trespass. In other words, an individual is obliged to use nondeadly force, all other alternatives, calling the cops if you can or whatever. It is only when you have absolutely no other alternative and it is necessary. Only under those conditions may you use deadly force.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I have a great deal of difficulty with this particular bill. Several times I was up to the Judiciary Committee. We exchanged ideas on it. I guess only yesterday I decided that I have got to accept the position, spoken today by Representative Spencer of Standish. We can probably stay here all day and split hairs on this thing but you have got to realize that out there in that jungle people live in fear.

Not too many years ago I went on a case of this break and entry in a house, and I will tell you what it amounts to. It was down to the Deanery at St. Luke's Cathedral in Portland. It was three o'clock A.M. the dean was asleep, his wife beside him, the infant child in the nursery next door. People tell you many times, and I don't believe in ESP, but the clergyman's wife woke up at three and just opened her eyes, and as she opened her eyes, there was this man leaning over her in the bed looking into her eyes. This is the type of thing that you are talking about. You are talking about the house bandits that go in with a flashlight and they take a stocking off and put it over the flashlight so they can get around and you not see them. When you hear the noise, you are in fear. Sometimes you will never see these people.

This good lady saw them and how she could do this, she just rolled her eyes and watched them and he went through the dean's pants that were hanging on the door and got \$15. Yes, I was fortunate and arrested the guy because I had sent him to Thomaston College a few years before and he was out, he got his education down there.

These are the people. And I think that this bill, the way Representative Spencer has explained it to you, is going to let these people know that we respect the rights of a person's home. It is still his castle. We have got to make this clear.

The good gentlelady from Madison, the problem of the guy running out and hitting him on the way out, this is no problem. We had a basic rule in law enforcement about the officer who went to investigate the old dead horse complaint. It was Schenectady Avenue. The poor guy, it took him two hours to drag the horse around the corner so he would be on Hill Street — he couldn't spell Schenectady. This is what you have to do, drag him back into the house.

This thing has been knocked around and I know it has been knocked around and really admire the people in the Judiciary on this one. I told them I didn't think I could give them much help because, boy, there are a lot of problems.

Most house breakers, when people break into your house in the middle of the night, most people don't report it. This is hard for the lay person to believe. We pick up these people and they would make us a list, and this is standard operating procedure, we would tell them, look, we are going to send you down, you know, and you would give them all the rights the court said

you had to do, put them in a soft chair, speak to them gently. You know, we would do this and they would say, gee I have got a friend in there. Captain Joyce, and I said, listen, you are in the cradle of liberty here in the Police Station. I would say to them, look, let's get it all off and confession is really good for the soul. They would list off, and I would protect their rights, they know that, they would list me off 20 houses, so we had the grand tour. We always had the grand tour when we saw the sun come up in the morning. We would take that fellow and say, look, it is kind of too bad, if you have to go to Thomaston for four years and the day you get out we are waiting at the door to arrest you again on something that you did last week. So, we take him around the city, they point out — "I went in that house on the corner, third floor. I went in this one, this one," and they tell us. So, eight o'clock in the morning the detectives show up and we have the list and they check them out. They go and some young lady said, Yes, I didn't want to report it. When the man came in here he made an indecent attack on me and I didn't want that in the record. A man came in here, and you know, he stole undergarments, things like this, they are embarrassing, he ransacked my room and he didn't have anything but he kissed me before he left. So, I didn't want to report it.

It is a real problem in that jungle out there to these people that feel that they have got a right to go into anybody's house. You know, we give them so much protection that they can walk the streets, practically cut through your back yard at night. Listen, let's keep them out of the bedroom, that is what this will do.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: I think my purpose in debating the issue has been accomplished. I think we have had a good and thoughtful debate on this subject. I would just simply add one final thing, and that is what the real world really is. Maine, last year, the year previous to this last one, the one for which I have got the statistics, had 12 murders and nine of those 12 murders were a member of a family killing another member of the family or a friend killing a friend. That is the kind of situation that we have in the real world, death caused by people who either get angry, get drunk or for some reason lose control of themselves and there is a loaded weapon handy and they shoot somebody with it. I am saying, if you move in this direction, you ought to understand that that is probably one of the consequences. Thank you for this thoughtful debate.

The SPEAKER: The pending question is on the motion of the gentleman from Standish, Mr. Spencer that the House accept the Majority "Ought to Pass" Report. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

81 having voted in the affirmative and 10 having voted in the negative, the motion did prevail.

New Draft "A" was read once. Senate Amendment "A" (S-488) was read by the Clerk and adopted in concurrence. Senate Amendment "B" (S-495) was read by the Clerk and adopted in concurrence. Senate Amendment "C" (S-496) was read by the Clerk and adopted in concurrence.

Under suspension of the rules, the New Draft was read a second time.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: There are a number of amendments which are still being printed by the Legislative Research Office and I would ask that someone table this for one day.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I would like to offer House Amendment "B", which is one that we more or less were discussing a few minutes ago relative to giving a warning. I have no objection, of course, to the whole bill being tabled at some other date, but at this moment, I would like to offer House Amendment "B" and move its adoption.

House Amendment "B" (H-1161) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I would like to call your attention to L. D. 2334 on Page 9. This deals with the deadly force that we were talking about earlier. Under the report that we accepted, first reader, there is a provision relative to one being in ones dwelling house on Page 9, Section 104, Subsection 4, it says, "A person may use deadly force under these circumstances, only if he first demands the person against whom such deadly force is to be used to terminate the unlawful conduct and the other person fails to immediately comply with the demand, unless he reasonably believes it would be dangerous to himself in order to make the demand."

In other words, the way the bill is now, before you could use deadly force. In answer to the gentlelady from Madison's question, you would have to give the other person some kind of warning unless you believe it would be dangerous to yourself to make such a demand. I submit that is going too far. I submit that Section 4 should be removed and if you do want to give a warning you are certainly free to but, if you don't want to, then you don't have to. I am thinking of a situation where a person lives alone, perhaps she is upstairs on the second floor and she can see down through the stairway to someone who is leaning over the bureau where her silver is kept or around the safe or something, if she were to tell him to leave, he might turn and attack her. I submit that Section 4 should be removed.

House Amendment "B" removes Section 4 and renumbers 5 to number 4 as a result and that is that part of it.

It also changes the charge of a telephone harassment to be the same as a general harassment to a Class E crime.

I do hope that you will adopt House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: In order that you would not have to consider the important matter of changing harassment by telephone to a Class E crime in the same bill as the matter of whether or not to warn someone before you killed them, I have had prepared another amendment that deals solely with the change regarding harassment by telephone so that we can discuss the deadly force question as an isolated issue. If this amendment is not adopted, I will offer an amendment that would reduce harassment by telephone to a Class E crime.

The question that is posed by the amendment submitted by Mr. Hewes, I believe, to be one which is profoundly serious to the number of killings which are going to occur in this state after this code is adopted.

On Sunday afternoon, I was talking to a police officer at Batch's Take-Out in Baldwin who told me of a case that he had come across in the past couple of months where a woman was in the house alone, a person was banging on the door, she was afraid, she called the State Police and said, that there is someone breaking into my

house, can you get over here? The police got there as soon as they could, the person was still outside, it turned out that he had been in a car accident, was badly injured, was in a state of shock, and that there was someone else in the car who was also injured, and that he was trying to get help, but because he was in a state of shock, he was unable to communicate clearly to the people who were in the house.

If Representative Hewes amendment is adopted, the people in the house would have been entitled to shoot that person even if they didn't feel that they or someone else in the dwelling was in danger of bodily harm or unlawful force.

Under the code, as it is now written, you have the right to use deadly force if you believe that the person who is attempting to enter or has entered your dwelling is likely to use unlawful force against anyone in the dwelling. In that case, you don't have to give a warning. If you think that they are going to hurt you or someone in the dwelling, you don't have to give a warning. The only time when we have said in the committee amendment that you have to give a warning is where the person is in your house, you don't feel that you are in danger then you have to give them a warning before you shoot them. The example might be a situation where you came into the kitchen and you found one of your neighbors children going through your wallet. You knew that the child was not armed, don't make it a child, make it a teenager, you could tell that he was not armed, but he was in your house and he was committing a crime. If you eliminate the warning requirement where there is no feeling of physical danger, I think you have created a licence to kill. I think that the result of this, if you eliminate the warning requirement will be just what Representative Hewes was talking about, that people will come out, they will see someone in the house and they will be able to start shooting. I think that the real question on this warning thing is, in fact, whether we are going to put property ahead of life. I don't think that we should. I think that if you can point the gun and say get out of here and they do, I don't think that you should be able to kill them.

I think that where you don't feel that you are in danger but you just want to get the person out of your house, I think that you should warn him and then if he leaves, that is that, you should call the police.

I would urge you not to eliminate this warning. I would move the indefinite postponement of House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I just want to clear up a couple of things that I have got on my mind. I have been sitting here listening because I didn't want to take part in the debate and I didn't want to drag it on and on.

This whole section scares me, there is just so much that can happen and, as most of you know, I sponsored gun legislation during the regular session last year and I did get in on a lot of what is happening and what you are talking about now. I think I understand what we are doing or what we are trying to do. I think we are dealing with two different areas, one the law, and the other one is life itself. Because, as I understand it, from my negative education, is if I wake up some night or in the morning and I wake up and I see somebody at the window or I see a shadow in the hall I just react, you know, I don't have time to go to the poster on the wall to find out what I can do and what I can't do according to the law. I just automatically react or that is what I think I would do, because I think the only deadly weapon I have got in my house is me, besides my wife. I don't have a gun, I don't have those things. Maybe my question is this, dealing with this amendment, is that if I do see somebody in my house early in the morning and there

is a shadow and suppose I do have a gun and I don't ask them to leave or if I do ask them to leave and then I shoot them dead, do I have to have a witness or who is to know what I asked him?

My other question is this: All of a sudden I wake up in the morning and there is someone running out of my front door, like the gentleman from Standish, Mr. Spencer said and instead of carrying the TV, he is carrying my child. What happens in that case? I understand Mr. Spencer says I can't shoot him. In other words, I can't shoot him in the back and there is no way in the world I can get around to the front, but there is a way that I am going to stop him and I am going to do everything — let me put it this way, I have got four girls with my wife and if I woke up or if I happened to turn around and there is a burglar or somebody is standing there that I don't know anything about, the fight is on. I would rather face the prosecution and that I guess is another question, what is the prosecution, what am I going to be charged with and how much because I would rather face that than face the possibility of going to a funeral of one of my children. This whole section really bothers me, there is just so many things that can happen because of life itself. I guess those are some of my questions that I have to have answered.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In regard to this amendment and some of the questions that have been raised by Representative Talbot or his concern, I would like to state that the law, under the code, as it will, if it goes into effect, at least, does not require that a warning be given if you have reason to believe that it is dangerous to do so either just because of danger to yourself or to someone else. This deals with someone in your house. So, I re-emphasize that, the circumstances that were suggested of waking up and finding somebody in your room in the middle of the night, I would think, would be reasonable enough to me, to use deadly force to remove him or stop him. I think I would have reason, personally, to believe that it would be dangerous to myself or to someone else, possibly, to ask him to leave. So, it always ends up being an ultimate decision of facts at a given time. I assure you that in any case related, as it was by Mr. Talbot or just by myself right now, that a jury of 12 people, I think, would easily find that I was justified in using deadly force without warning. This is not saying that you have to give warning in every case. It is only where it is possible to do so without there being danger by giving the warning to yourself or to some third person that you are required to give that warning. I would hope that you would support the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would like to clarify one point which is, if somebody is committing a kidnapping, which is the case that Representative Talbot raised, any citizen has the right to use deadly force upon another person when he reasonably believes it necessary to prevent another person from using unlawful deadly force against himself or a third person or when deadly force is necessary to prevent the person from committing or about to commit a kidnapping, robbery or forcible sex offense, so that those are all covered by a different section in the code.

The situation that we are discussing really is limited to the situation where there is a person who is in your house committing a burglary, he comes into the house illegally to commit a property crime and you have two choices really, you either can tell him to stop, if you think you are in danger you can use deadly force, if you don't think you are in danger you have two

choices, if you have a gun, you could say, stop where you are and arrest him or you could say, you get out of here. If you said stop where you are and he did, at that point you would have him under your control and you would be able to take care of the situation either by calling the sheriff or by having him get out, one or the other. If you said get out of here and he did, then you are no longer in danger. Those are the only situations where the two committee reports are different. The question regarding the kidnapping you have the right to use deadly force to prevent a kidnapping or a serious sex offense and you also have the right to use deadly force to effect an arrest in the case where a person has committed a crime involving the use of deadly force. Those are all in different sections of the code where the committee was unanimous.

The SPEAKER: The Chair recognizes the gentleman from Franklin, Mr. Connors.

Mr. CONNORS: Mr. Speaker, Ladies and Gentlemen of the House: I support the amendment of Representative Hewes, and over the years, we have kept considering and this seems to be all that we consider is the criminals rights. We don't seem to take into consideration the victims rights. I know that if I was in my home at night and I heard some noise downstairs and I came down and saw my television set or any of my property going out the door, I would hope that there would be a clause within the criminal code where I could plead temporary insanity, because I would probably do this. I would use whatever force was necessary whether it was knife, firearm or whatever was at my convenience and then this would probably be the way I would have to plead, because I earned that property, it is mine, and I don't intend to give it up to anybody that feels that they can come into my home and take it.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I took the privilege of going to the hearings on this particular bill, at this particular point, when they were discussing this use of deadly force. I have attempted to study what is meant by the original criminal code, the wording of it and I would urge you people in this house to realize that the Committee on Judiciary has put an infinite amount of care in choosing of the words and the setting up of the statute in Report A and it is a philosophical difference on those who prefer Report B. I think it is quite evident that Report A is favored by a majority here, but in going the distance that they have gone, in the Judiciary Committee, you had some of the finest minds in this legislature working on this problem. They have, over countless hours, discussed the wording. In my opinion, we would be making a tremendous mistake if we attempt to change that wording here in this body this afternoon. I urge you to consider very carefully if you really and truly think this wording should be changed. I think it should not.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the hypothetical question posed by the gentleman from Portland, Mr. Talbot, I think that he would want to adopt the amendment under circumstances that he gave. Otherwise, I think he would have to give a warning to someone before he would be able to use his deadly weapon or deadly force. Deadly force is not limited strictly to a use of a weapon or a gun. I would like to read for you the definition of deadly force in Section 2 of the Criminal Code, the Criminal Code that will go into effect May 1st and which was passed by the legislature and signed by the Governor last year. Deadly force means physical force which a person uses with the intent of causing or which he knows to create a substantial risk of causing death or serious

bodily injury, intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force, end of definition. So, I submit that the use of a shoe, if you were to get up at night in the dark and go down through the hall of your house with a shoe in your hand that the shoe is the nearest weapon that you had, that well would be a deadly force within the definition.

Now, with respect to the gentleman from Farmington, I agree, we are discussing a philosophy now, but I submit that the amendment which was Committee Amendment "B" which we adopted a few minutes ago, is not sacred. Section 4 can be removed without effecting the rest of the code except to renumber the one behind it which was numbered five, then becomes number four. I submit that a person should have a right to protect his property, his home is his castle, and I think the homeowner, it might be a rugged person, such as yourself, or as the gentleman from Franklin, Mr. Connors, but it might be your mother or anybody's mother or grandmother here that is living alone or an older gentleman, one of us, or an older person 70 or 80 years of age, whereas the intruder is a young person in good health and I think that this having to give a warning would just be something to ignite or cause the intruder to turn and attack the other person. I think this warning bit is wrong and should be removed and I hope you will vote against the pending motion to indefinitely postpone the amendment.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Representative Hewes has raised a number of points, I think ought to be clarified. First of all, in the Talbot example, of the person who is leaving the house with the child, there is no requirement of a warning in that case. If you look at Section 34 of the bill, before you, which is on Page 11, you will see that a person is justified in using deadly force upon another person who is under A-2, committing or about to commit a kidnapping. Now, in that section, there is no requirement that the person give a warning. If you feel that you are in danger or that someone else in your house is in danger, you don't have to give a warning. If however, there is someone in your house committing a crime and for some reason, you know that you are not in danger, for example, if the person committing the crime is somebody that you know who isn't and hasn't ever been dangerous but who might be stealing something out of your house, if you have no reason to think you are in danger, then we require that you warn the person. The reason for that to reverse what Mr. Hewes is saying is that because the person in the house might be your mother, it might be a child, it might be a neighbor. If you don't feel that you are in danger before you kill a person you ought to let them know that you are there and that you are armed and that you have a gun. Now, if you are in a situation where you think it would be dangerous to warn them, you don't have to warn them. So, it is only in the situation where the person is in your house, you don't feel that you are in danger, you have a gun, you have got to warn them. The reason for that warning, and I think it is darn important, is so that if it turns out that the person is not somebody who is there to commit a crime, you will find out about it. If it is the person who is banging on the door because they have been in a car accident and they want help, you are inside the door and you say I have a gun, stop breaking in here, you give them a chance to say that I am just trying to get help. That to me, is crucial, because if you are not in danger, you shouldn't kill somebody before you give them a chance to terminate the conduct which is creating the problem. I think that this warning is a very important thing in

this area where you don't feel that you are in danger.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair to any member of the Judiciary Committee. Does a person have to be stealing something inside your house, can they be in your garage, let's say, and you see out the window, you see them carrying things out of your garage or you see them going in the window of your garage, can you shoot them if we adopted Mr. Hewes amendment, could you shoot them half way out the window?

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman's question, this amendment, in fact this section, does not deal with the garage, it deals only with the dwelling house which would be the house in which you are living, it does not include an out building or garage. Either way, it is immaterial, we are not discussing that.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: All this talk going back and forth here this afternoon, I would like to pose a question through the Chair to any one of our learned brothers to define just what is burglary in the State of Maine? We have talked about going in and out of buildings or crime outside, if you are knocking on the door it is a crime, inside, you have got to be committing a crime, to my way of looking at police work, and I had thirty years of it, it is a crime to be in there in the night time in the first place, that is burglary. I would like to have some of our learned brothers here, well not my brothers, but they are learned in a sense, I would like to have somebody define the charge of burglary in the State of Maine.

The SPEAKER: The gentleman from Eastport, Mr. Mills, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Under the code, a person is committing a burglary if he unlawfully enters the dwelling or unlawfully remains surreptitiously within the dwelling with the intent of committing a crime within the dwelling.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I pose another question to the same gentleman. According to my training, if he is in on the property at all, if it is in the day time, it is a breaking and entering in the day time with intent. At night time, it is burglary with intent. Now, am I right in those definitions, sir?

The SPEAKER: Mr. Mills of Eastport, poses a question through the Chair to the gentleman from Standish, Mr. Spencer, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: As I understand the provisions of the code, the distinction between the day time and the night time is not retained and it is a burglary if you are unlawfully within the dwelling with the intent to commit a crime.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I would pose a third question to the gentleman. Would you say the person was unlawfully there if they weren't invited to come?

The SPEAKER: The gentleman from Eastport, Mr. Mills, poses a question through the

Chair to the gentleman from Standish, Mr. Spencer, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: A person is trespassing if they are on the property without a license to be there.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. DeVane.

Mr. DeVANE: Mr. Speaker, Ladies and Gentlemen of the House: Through the Chair, I would direct a question to any member of the Judiciary Committee. I would inquire what right the intended victim would have, to not ask the intruder to leave but to demand that the intruder remain fast, hold fast. Now, if the intruder, sir, initially responds by holding fast but then you do call the police and the intruder says "I am leaving", and proceeds to leave, does then the intended victim have the right to use deadly force because they wish the person prosecuted?

The SPEAKER: The gentleman from Ellsworth, Mr. DeVane, poses a question through the Chair to any member who cares to answer.

The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: Under the code, as I understand it, you would have the right to make an arrest by saying stand fast and pointing the gun at the person. Once, and I think I am going to have to rely on other members of the committee to correct me if I am wrong, once you had the person under your control I think that at that point if the person indicated that he was going to resist that arrest, you would have the right to use additional force in order to maintain your control. I don't think, as the code is now drafted, that if the person ran for the door, you would have the right to use deadly force against them unless they had committed a crime or were in the process of committing a crime which involved the use of deadly force or which was a serious offense such as kidnapping, rape, homicide, those offenses. I think, and I would really want to look at the code before I gave you a firm answer, I think that you would have the right to use deadly force to maintain control over that person if they had committed a serious offense. If it were simply a theft situation and they ran for the door, I don't think, at that point, you could kill them.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I will be as brief as possible. I just want to ask one more question, which comes from another angle, I think and that is, if we do adopt the warning, now if we defeat this motion and do adopt the warning where you have to give the warning before using deadly force, are we, in fact, telling a burglar by law or burglars, if that happens to be their business, that you can go and burglarize and maybe even go a step further because nothing is going to happen, until you at least get a warning?

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman's question, I submit that is the exact issue, yes, if the amendment is not adopted, then the thief knows that you have to give him a warning before he could be attacked with a deadly weapon.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: Let's see if I get this scenario straight. Let's assume that we have somebody in my house and they are in my bedroom, and they are searching around going

through my clothes and I wake up and I see them there. First of all, I am going to have to have, to use deadly force, if it is a rifle or a knife or something like that unless it is my fist, I am going to have to make a motion or a shoe as Mr. Hewes said — I am going to have to make a motion, I am going to have to get up out of bed or I am going to have to do something, that burglar is going to know that I am there. At that point, the burglar may choose to run. If he chooses to run, I am probably going to let him run as long as he is not running away with my wife, or if he chooses to fight at that point, deadly force, you can use it, as I understand the way the code is written, you will be able to use it, so I can start swinging, I can grab whatever I have there to defend myself. Let's assume that he is not in my bedroom, let's assume he is downstairs and I wake up and I hear something down there and I go to the head of the stairs and on my way, I reach into my closet and I grab a shotgun and I look down the stairs or look through the other room and I see this fellow rifling through a set of drawers. It is dark out and I have the shotgun and I have it aimed at him and I give him a warning. I say, don't move, I am going to blow your head off. I just wonder if you were able to defend yourself because, first of all, after you say that, he decides to run at you, you are going to be able to shoot him under the law. If he spins around with a gun, he really doesn't know where you are and you are going to be able to shoot him as well. I think there is a very fine line here.

I remember when I was a kid, my father used to work away on construction and he used to tell me, because I was the oldest boy in the family and he said, you have to take care of your brothers and your mother, etc., we had a shotgun in the house. He used to come home every Friday night and on this particular occasion, he called my mother and said he wouldn't be home. Well, somewhere along the line, he decided to change his mind and decided to come home and we had locked the doors. I was sleeping on the second story and my window was open and I heard the window go up, downstairs in the kitchen, I said, hmm, I looked out the window and I just saw this shadow, this arm and leg going in through the window and so being 13 or 14, I grabbed the shotgun that was in my father's room and proceeded out to meet whoever was coming. Fortunately, my father is as big as I am so he was easy to identify and it was somewhat light and I could see that it was a big figure and I figured it had to be him but I said, Dad, is that you? If I hadn't said that, I suppose I could have shot him and it certainly would not have been very good.

I think it is a very serious question we have here and I really question, if that person is not going to harm me, is my television set really worth that much to me? I don't know, I think that that is something every one of you will have to answer. If you think your television set is worth more than just giving a warning and being prepared to do whatever is necessary to defend yourself, after you have given that warning, I don't know, it is a very serious question.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: There have been several questions raised here just recently. I know that it is late and we would like to move along very quickly.

First of all, I think that Representative Hewes response to Representative Talbot's question is just the opposite from what he said, I don't believe that the code, as written, authorizes the thief to assume that he can come in and roam around, do whatever he wants to without his risking the chance of being shot and shot dead. The aspect of the warning goes to the

degree of dangerousness as the person who has the gun sees it.

The circumstances as described by Representative Wilfong point up the very serious problems that do develop. You can get the circumstance of somebody in your room in the middle of the night and it is equally clear it can be just as dangerous to provide a warning as not. You pick up the gun and say hold it, stop, you can make a citizen's arrest. And in respect to Representative DeVane's question, it is clear in the code on Page 10, Section 30B, deadly force, only when he reasonably believes such force is necessary to effect a lawful arrest or prevent the escape from such arrest of a person who in fact, the private citizen has made reasonable efforts to advise the person that he is a private citizen attempting to effect an arrest and the person is about to escape.

In other words, if you say, hold it, you are under arrest, and if you move, you have had it and he moves and you shoot him dead, then you are in, you are okay, but you should weigh the problem of what constitutes being in a dangerous position where you do not have to give the warning. If there is a chance that the person you are going to shoot may not be going to commit the crime intended or is not, in fact, the person that you thought he might be, then it would be just as well to give the warning first, and if you are, as I say, in a position where it is so dangerous or you believe that it is dangerous to give that warning and shoot, then you are protected.

The SPEAKER: The Chair recognizes the gentleman from Calais, Mr. Silverman.

Mr. SILVERMAN: Mr. Speaker, Ladies and Gentlemen of the House: Having been one of the legislators that put in this amendment before the Judiciary Committee in the hopes that a person could protect his property or a boat or home against the thief or burglar, I more or less would go along with the committee's report.

We are dealing with a most serious situation here. It is very easy to laugh, it is not a TV screen, it is not a motion picture screen, it is an attempt by the State of Maine to allow a person to protect his dwelling from intruders. It is also the most serious approach to life of the protection of life. If we take, for an example, a burglar or a thief stealing in a person's dwelling and you are standing upstairs and you are watching with a firearm and you say, well, that would be an easy shot, if you are the type that cares to kill, you could kill him dead or if you are capable of wounding, then you could, as the Representative said, wing him, but in my belief in protection of life, which is my background, I do believe that right should be protected and before someone's life is threatened there should be a warning. I think that the Judiciary Committee in coming out with a report that it came out with, I would favor that report and vote against the amendment.

There is one aspect which hasn't been totally clarified to me and in my approach to this problem, I asked that if a person shot — not to kill — and wounded a burglar, would the person who shot him be free from being sued? This to me was most important because in our system with courts and judgments today, a person can be sued, say, and it could be most expensive, even though he is innocent, even though he is the victim, be most expensive for him to be protected under the law. That I think is a little weak in the criminal code, using deadly force as I see it. I do believe that there should be a warning before someone takes another person's life if that is necessary.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: In answer to the gentleman from Calais, Mr. Silverman's ques-

tion, in respect to civil suit as a result of wounding someone, that is one of the primary reasons that this code has been enacted in this form. It tells those circumstances where an individual is justified in using the deadly force that we don't have now in the law, and under those circumstances, if one was wounded and he fell within these provisions, the person always may be sued but he has the defense which is available to him and the burglar could not recover.

The SPEAKER: The Chair recognizes the gentleman from Stowe, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, Ladies and Gentlemen of the House: I have a second thought on this thing. In the Bill of Rights that we have, and it was brought to mind because I happened to be watching a television program last night on Liberty, it was a very interesting program, and the Bill of Rights, I believe, guarantees us the right to own property and to protect property, it also guarantees the right of trial by jury. So, what is brought to mind here is that you have a burglar downstairs rummaging through your property with intent to steal and you at that point become judge and jury and can carry out the sentence. I wonder if that is just not pushing it too far. You can kill the person stealing, although I certainly don't recommend it and I wouldn't act very nicely to somebody who was in my house. I will tell you that, but I don't know if killing the person for that reason is a good thing to promote at all.

I think perhaps Mr. Hewes' amendment, although I believe it is really well intentioned, he sent me a note on a couple of things here, I think it is a gray enough area so that perhaps we should indefinitely postpone that amendment.

I certainly don't want to get into the position where we become judge, jury and executioner, and I think that is the position that we could slide into if we adopted that amendment.

The SPEAKER: The Chair recognizes the gentleman from Kennebunkport, Mr. Tyndale.

Mr. TYNDALE: Mr. Speaker, Ladies and Gentlemen of the House: I do not intend to continue this debate beyond the means of personal opinions of many lawyers in the House, which seems what this dialogue is all about, and I think we are forgetting one thing, that the law court may decide far differently than any of the opinions we have heard.

I certainly think that the one thing a person wants to do, if they are invaded by an outsider, is to be sure to get themselves a good lawyer on protection or else, as some other person said, which I think is too drastic a step, is to be sure he is dead because dead men don't tell any tales.

I don't see any reason, honestly, to be perfectly frank with you, to continue this dialogue through the rest of the evening and, as I said before, it is merely the opinions of a number of different lawyers.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I have just had a book sent to me defining burglary and under the term of burglary, it is the breaking and entering of a house without a license to do so.

You also have the charge of trespass on private property, which is a very minor thing, but this is occurring during the nighttime and you are in your home with your family or without a family and a person makes an unlawful entry upon your property, it is my belief that if you can't apprehend this person by peaceful means, you may use force in any manner you so choose.

Therefore, when I sit down, I am going to vote in favor of Representative Hewes' amendment.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Standish, Mr. Spencer, that House Amend-

ment "B" be indefinitely postponed. The Chair will order a vote. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Hewes of Cape Elizabeth requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I think we have been talking in theory about men who are 6 feet 4 protecting their houses. We are talking about people who might only be 5' 2" and weighing 100 pounds and very feeble. I don't think they are the ones that ought to have to give warnings before they can try to protect their own dwelling places.

I hope that you will vote against indefinite postponement of this bill.

The SPEAKER: The Chair recognizes the gentleman from Dexter, Mr. Peakes.

Mr. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: What we are talking about is the value of human life over a material item that might be in your house, that is exactly what we are talking about.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: One final point. If you feel that you are in danger, you don't have to give a warning. We are only talking about whether you give a warning when you don't think that you are in danger. I think that if you are talking about taking a life when you are not in danger, a warning is not an awful lot to ask. When Mr. Hewes says that we are talking about your mother, your cousin and your little old ladies, it is true, we are talking about whether you are going to shoot them without giving them a warning, by a mistake.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to draw your attention to the fact that they are talking about you and your home and what you can do and what you can and cannot do, but they are not talking anything about the guy that is the burglar and breaks in without your permission, they don't tell you anything about him. That is the reason that I will support Representative Hewes.

The SPEAKER: The pending question before the House is on the motion of Mr. Spencer of Standish to indefinitely postpone House Amendment "B". Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Bachrach, Berry, P.P.; Birt, Boudreau, Burns, Bustin, Byers, Call, Carroll, Clark, Connolly, Cooney, Cox, Curran, P.; Davies, DeVane, Doak, Dow, Drigotas, Flanagan, Garsoe, Goodwin, H.; Greenlaw, Henderson, Hobbins, Hughes, Hutchings, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kany, Kennedy, LaPointe, Laverty, LeBlanc, Lewin, Lynch, Martin, A.; McKernan, Miskavage, Mitchell, Morton, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Perkins, S.; Peterson, T.; Pierce, Powell, Raymond, Rolde, Saunders, Silverman, Smith, Snow, Spencer, Sprowl, Susi, Tarr, Tierney, Usher, Wagner, Webber, Wilfong, The Speaker.

NAYS: Albert, Ault, Bagley, Bennett, Berry, G.W.; Berube, Blodgett, Carey, Carpenter,

Carter, Chonko, Churchill, Conners, Curtis, Dam, Durgin, Farnham, Fraser, Gauthier, Goodwin, K.; Gould, Gray, Hennessey, Hewes, Hunter, Immonen, Kauffman, Kelleher, Kelley, Leonard, Lewis, Littlefield, Lizotte, Lovell, Lunt, MacEachern, Mackel, MacLeod, Mahany, Martin, R.; Mills, Morin, Norris, Perkins, T.; Peterson, P.; Post, Rideout, Shute, Strout, Stubbs, Talbot, Teague, Theriault, Torrey, Tozier, Truman, Tyndale, Walker, Winship.

ABSENT: Bowie, Cote, Curran, R.; Dudley, Dyer, Farley, Faucher, Finemore, Hall, Higgins, Hinds, Jacques, Laffin, Maxwell, McBreairty, McMahon, Palmer, Quinn, Rollins, Twitchell.

Yes, 70; No, 61, Absent, 20.

The SPEAKER: Seventy having voted in the affirmative and sixty-one in the negative, with twenty being absent, the motion does prevail.

The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Spencer had asked that this bill be tabled for one day because of amendments coming in. I move that we table for one day.

The SPEAKER: The gentleman has debated the motion. There are other amendments that are ready and we could dispose of them at this time.

Mr. Gray of Rockland offered House Amendment "D" and moved its adoption.

House Amendment "D" (H-1170) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: As I understand the purpose of this amendment, it is to provide that in the event that a person is found guilty of a second burglary, there can be no suspension of the sentence.

In the amendments to the code, one of the things that we have tried to do is to re-emphasize and stress to the Judiciary the desirability of restitution to the victims of crimes. What I would urge you to consider in examining this amendment is the possibility that the Judiciary might feel in a case of a person, albeit a second offense, justice could be more properly carried out if that person were required to go to work and pay back the victim rather than be sentenced to a term of years. I think that on a second offense, in a very large percentage of these cases, the judges will sentence to a prison term, but we have tried to re-emphasize restitution as an alternative to that where it seems to be the best way of handling the case. My own feeling is that we would do better to leave the code as it is. I would urge you to vote against the adoption of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to share with you a postcard that I received from one of my constituents who is presently vacationing in Florida. I will read an excerpt from it. It says, "What is this legislation before you now? If someone breaks into your house, do you have to make sure he gets out safely? It puts quite a lot of responsibility onto the homeowner, I should say." Of course, the last vote we assured that he would get out of the house safely and now we hear the same people arguing that even if he is convicted twice, he should not receive a sentence. This amendment would just get after those who are trying to make a career out of burglary.

I don't take issue with the theory that they should make restitution to their victim, I certainly would support this. However, if they are going to make a career out of this, then I think

that they should be removed from society, if only for a short time, and that is what this amendment would do. It would simply restore mandatory sentencing for a second conviction of burglary, which was contained in the previous statutes.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBSINS: Mr. Speaker, I move for the indefinite postponement of House Amendment "D".

The SPEAKER: The Chair recognizes the gentleman from Franklin, Mr. Conners.

Mr. CONNERS: Mr. Speaker, Ladies and Gentlemen of the House: I support this amendment and if you remember, I think two years ago, a group of people in my district started a petition and inside of two weeks they had 4,250 names on it and brought these into the Governor to require a mandatory sentence for all crimes committed by second offense. I think it is about time that we did get at the criminal and this is one way of doing it.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: My own opinion of this amendment is a rather mixed one. I would not be unhappy to see it adopted; however, I don't think it is going to do a whole lot. The reason for that is that the penalties we have enacted for burglary are quite severe, either first or second offense.

Burglary is a Class A crime if the offender is armed. It is a Class B crime in certain other instances and it is a Class C crime in the remainder. The Class A crime has a 20 year maximum sentence, a Class B crime has a 10 year maximum sentence, and a Class C crime has a five year maximum sentence, so we are talking about a crime which has a fairly high mandatory sentence. In fact, if armed, it is the highest sentence we have for any crime.

I think the likelihood is that a person is going to get a sentence on the second offense. I don't think you are going to change much; I will probably vote for it.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Curtis.

Mr. CURTIS: Mr. Speaker, Ladies and Gentlemen of the House: The point brought out by Representative Hughes, it just brings to mind my idea, because of the opinion of many of our judges that he must give a severe sentence for this crime is one reason why he may get off the second time. Let's show the criminal that if once convicted, on the second conviction he will receive the sentence.

The SPEAKER: The Chair will order a vote. The pending question before the House is on the motion of the gentleman from Saco, Mr. Hobbins, that House Amendment "D" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

18 having voted in the affirmative and 77 in the negative, the motion did not prevail.

Thereupon, House Amendment "D" was adopted.

Mr. Burns of Anson offered House Amendment "F" and moved its adoption.

House Amendment "F" (H-1174) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: My amendment reinstates a mandatory sentence for the use of any crime committed with a firearm. If the individual is armed, he must have thought to get a gun. He had to take it with him, he had to premeditate the act that he was about to commit. I therefore feel that he should know what approximate sentence he will get if he does commit that crime.

When an individual puts a gun on, he automatically grows two feet. If he is already 3 or 4 feet high from alcohol or from drugs, you have a considerable giant on your hands when he gets there to commit the crime. A weapon, a gun, is an extension of his personality. He can reach out and get you. Fear is there. The victim is placed in mortal fear because of the weapon. It makes his job easier.

I would like to run down through the amendment and then if there are any questions I will go at it. This is an addition to the current code, it is added in. The state pleads and proves, it must prove, it must be by indictment or through information, and placed in the charge that he was armed while committing a Class B, C or D crime and it must be against a person. A minimum sentence then would be imposed and may not be suspended or put on probation. If the crime is a Class A crime, he shall serve four years; a Class B crime, he shall serve two years; and a Class C crime, he shall serve one year.

The provisions of Subparagraph 4 also applies, which states that any crime which is committed with a deadly weapon is automatically moved up one step for sentencing. We did not include D and E crimes in here because we could not find any D and E crimes that you could commit with a gun.

In the event that there are unique circumstances with the charge, there are several areas whereby this can be addressed. Number one, the indictment or the information — when the information is presented to the grand jury, the grand jury can take into consideration whether or not there are other circumstances, they may not wish to include the description that the man was armed.

Also, if the presiding judge should feel that there are extenuating circumstances as to why this individual was armed and he is charged as being armed, he could so instruct the jury that they could bring in a verdict of a lesser inclusive charge. Let's say that the charge was assault and battery with a firearm or while armed. The judge could instruct the jury and they could bring in a verdict of high and aggravated assault so, therefore, the mandatory sentence would not be in effect.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I supported a bill in the last session that would ban handguns in this state. Ever since I have been in this legislature, I have never voted in here, to my knowledge, to handcuff the judges on mandatory sentences and I am not about to this afternoon. I think we have enough intelligent men and women who are sitting on the judicial benches of this state to use clear enough judgment without us writing it into the law books.

I move for the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I have stayed out this debate because there have been some folks that are a lot more knowledgeable than I am and I, like my good friend Mr. Kelleher, am opposed in most instances, practically every instance, to mandatory sentencing. I think that is the responsibility of the judges, unquestionably, except a person who is committing a crime with a firearm. If we don't do something, we don't retain what we have had along these lines, then they are going to take the firearms away from everybody, the people that are not criminals and the people that are.

I have been here many semesters with my good friend Mr. Kelleher and I agree with him that letting the Judiciary handle their business is great, but when it comes to crimes commit-

ted with firearms, there is only one place that they should go and that is to jail without any equivocation at all.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Hughes.

Mr. HUGHES: Mr. Speaker, Ladies and Gentlemen of the House: My seatmate has given me a Wallace pin today and I have been wearing it for the last hour, it must be getting to me. I, too, support the amendment of Mr. Burns from Anson and I want to say that I supported it in the committee. The reason that you are hearing it now is because I lost in the committee and again I am in the minority. But I do think, although I oppose mandatory sentences in principle, in general, this is an area that we ought to carve out with a legislative pronouncement, that we are concerned about the use of guns by thieves and that we want to take special notice of it and we are even willing to put up with a little bit of unfairness to some people caught in a situation where perhaps the judge would not impose such a sentence, but we are willing to take that chance to try to teach a lesson to the criminal elements of this state, that indeed they ought not to be armed if they are going to commit crimes, and they ought not to commit crimes.

The code does provide for maximum sentences. A crime committed with a weapon would increase the class of the crime one notch so that, indeed, the maximum sentences would be very severe for crimes committed with a firearm.

I think, too, that the message we are trying to get across, and we really are talking about the psychological game as well as law, is to get a message across that we are not going to tolerate armed criminal behavior. I think that is why I support this motion and would oppose the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker and Members of the House: I rise today to support this amendment. My reason for supporting this amendment is I feel very strongly that we have a gun problem in this state and in this country. I supported the legislation that was presented by the Representative from Portland, Mr. Talbot, during the regular session which was unsuccessful, and I suspect that in the next couple of years it is going to continue to be unsuccessful.

I really feel this is a serious problem and because I do, I am going to go along with this, to give criminals who choose to use a gun in the commission of a crime full notice that if they commit that crime and they are caught and they are convicted, there will be no lenience, it is going to be definite. It is going to be known to them from the beginning of their actions that the ultimate result is going to be imprisonment. There will be no easy judge, there will be no technicalities, that person is going to go to jail.

I hope eventually we are going to move to some kind of control of firearms, particularly handguns, but until that time comes when we have enough people who are willing to support that, I am willing to go with this, what might be called a conservative measure, to give it a fair chance, to give it a test. If it doesn't work, we always have gun control that we can return to. But in the meantime, I want to go with something that is reasonable and something to give fair warning to the criminal who chooses to use a gun, that if he is caught and convicted, he is going to suffer the penalty without exception.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I have considered this provision at great length and there was a period when I thought I would cosponsor this legislation. My mind was changed by a situation that occurred in my district.

About two months ago, we had a situation

where there was a right-of-way across a person's land from one road to another that was used as a shortcut by a lot of people in the town. The person who owned the property felt that the people were driving across his land. The people who were using the roadway felt that the right-of-way had been established and that they had the right to take that shortcut. The situation got heated and the guy that owned the land got a truck full of gravel and he dumped it in the right-of-way cutting across his land.

The people who had consistently used the right-of-way were outraged that they — it wasn't clear whether it was a right-of-way or not, but they were extremely upset that this passageway had been blocked, and a whole group of people got together with shovels and they came and started shoveling gravel out of this right-of-way. The person who owned the property came out and some say that he had a shotgun and some thought that he didn't. But as I understand it, he had a shotgun and said, you all get off my land. Well, the people decided that they would leave and the town was all stirred up about it and we finally resolved it by having the town agree that they would go to court to determine whether or not that right-of-way was in fact a right-of-way and the people had the right to cross it or whether it belonged to the guy who owns the surrounding land.

If you had a mandatory sentence for a crime committed with a gun, in that situation, this person would have been guilty of criminal threatening and because he had a gun, it would have been a class C crime, and he would be required to spend a year in jail if he was charged with the offense and convicted.

While that is a pretty minor case and it is a rare exception to the general rule, and while I share the feeling of the people in this House that anyone who commits a crime with a gun ought to get a substantial jail sentence, I think that it may be a mistake and I have thought about this both ways and I have had conflicting feelings about it. I think it is a mistake to write a law which deals with every situation in a certain way when there are going to be some situations where the law doesn't apply.

I think that the judges of this state can and should and will, under the code, get the message that crimes committed with guns are viewed very unfavorably by this society and this legislature and I think that the people will be getting sentences when it makes sense. But in the rare case where it doesn't make sense, I think that the mandatory provision can create real problems. I think I am going to vote against this amendment on that basis, because I don't think that we can write a law today that will cover every case as well as the judiciary can and should be able to handle these matters.

I would urge you to consider that in voting on this amendment.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker and Members of the House: It is not often that I oppose the gentleman from Standish, Mr. Spencer, but I am going to today on this one. I feel that we should have a mandatory sentence also for the illegal use of firearms.

In the case that he mentions, I might also point out that it might teach that gentleman who came out with the shotgun a very good lesson if he had to spend a year in jail before he brought the shotgun out. Whether he is right or wrong, that is the wrong way to handle it.

I know of a case up where I live where one brother brought a shotgun out to get his brother off the property and they were gentlemen in their late fifties or early sixties, and he wound up shooting his brother before it was all over, killing him dead, absolutely dead.

If you bring out a weapon of any sort — we were taught this in military — bring out a

weapon of any sort, you are going to use it. That is the whole idea of bringing it out. In this society, I would think that before I got so angry by people shoveling dirt on something that I felt was a right-of-way that I would bring a shotgun out, it might do that gentleman a lot of good to sit in jail for a year.

I am going to support this amendment, because the only way we can get it across to some of these people that they should not use weapons, let's assume they were hungry and they were going to steal to feed their family, if I were in that situation, I would try to break in in the middle of the night and take something and leave. I wouldn't bring a gun along and try to hold somebody up in that case with a weapon if I were that hungry.

So if somebody has got a gun, they mean business and I think we should treat it that way.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Talbot.

Mr. TALBOT: Mr. Speaker and Members of the House: I have sponsored gun legislation in this House for two sessions, my first session and my second session, and I think I have a little bit of savvy in what I am trying to say.

I have been beaten in this House, and probably rightfully so, on gun legislation, but it was also those people who beat me on gun legislation, both at the hearing and in this House, that said they couldn't support gun legislation of that type in that kind of legislation, but they would support legislation such as this amendment. I, myself, voted against mandatory sentences in the regular session because I feel as Mr. Spencer does, but I am going to support this because I know that is one of the things that people want outside of this building.

I also testified before Congressman John Cormier's committee in New York City on gun legislation. It was also their feeling, their overwhelming feeling, that if gun legislation couldn't get through the House and the Senate at the federal level, that they definitely support and the people definitely support this kind of legislation. This isn't a bill, it is an amendment, but it does the same thing. If you don't pass this amendment, and I don't always like to go against my colleague from Bangor, but if you vote for indefinite postponement on this amendment, then we will be talking out of both sides of our mouth.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker and Members of the House: I am sure we are all concerned in this general area, but I wonder if by mandatory sentence we are embarking upon a procedure by which we will open the front door to our prison for the more serious crimes, open the back door and let out many people who ought to be kept in jail for a while longer. I don't think we have the facilities to enlarge our prison population, and if you are going that route, then you certainly ought to consider funding an additional prison of some sort.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from Anson or anyone else who may care to answer with respect to the use of deadly force that we have just adopted, if a person in fact uses deadly force mistakenly, a person is outside their dwelling and they didn't realize the technicalities of the law and they in fact kill or wound a person with a firearm, would they be required to serve a sentence in jail?

The SPEAKER: The gentleman from Bangor, Mr. Henderson, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and

Gentlemen of the House: In response to the question, the answer would be yes. He would have been armed and he would have committed a crime. If so charged, it would be. However, I tried to indicate in my initial presentation, number one, there are two built in possibilities, one through the indictment process. If the facts are really told to the grand jury, there is a good chance the grand jury may come back with no bill, or, they could come back with a high and aggravated assault charge without the weapon being mentioned, so therefore he would not be subject to this. The other way is through the judge and his charge to the jury, they could come back with a lesser crime.

There is a difference between this bill and the law that we have on the books or what I am asking and what we currently have on the books. What we currently have on the books states that if you commit a crime while armed, say that you are breaking into a place, you have a gun on you as you go in, you did not use this gun, it never came into play, under current law, you could be mandatorily sentenced to two years in jail. I have eliminated that in this provision. You must use this weapon in the commission of a crime and the crime must be against a person, not just against property but against a person.

I think we have answered the situation such as Representative Spencer alluded to. To Mr. Lynch's reference to loading up the jails and Thomaston, this measure in no way states that the sentence would be served at Thomaston. The Department of Mental Health and Corrections would still have their authority as they do under the criminal code, they would make the decision as to where this individual would serve his time. It could be in Thomaston, it could be out on the work farm, it could be in a halfway house or it could be on work release. We are not making any prejudgment as to where he should serve this.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker, I am going to try for the dumbest question of the day award, and that relates to the phrase 'against a person.' Does that mean that this mandatory sentence would apply if the person carried the gun but did not shoot it, but would apply if he or she threatened to shoot it during the commission of a crime? Does the exact language of the amendment really pertain to the Statement of Fact?

The SPEAKER: The gentleman from Augusta, Mr. Bustin, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, in reply to the question, sir, it is the intention that the crime must be committed against another human being. If he waved the gun in front of him, it would be aggravated or armed assault. If he was carrying a weapon underneath his coat, the person did not know about it, then it would not come into effect.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, I don't believe anyone has asked for a roll call on this measure, and I would so ask.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Bangor, Mr. Kelleher, that House Amendment "F" be in-

definitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Call, Connolly, Cox, Dow, Hewes, Hobbins, Ingegneri, Kelleher, LaPointe, Lynch, Miskavage, Pearson, Powell, Spencer.

NAY: Albert, Ault, Bachrach, Bagley, Bennett, Berry, G.W.; Berry, P.P.; Berube, Blodgett, Boudreau, Burns, Bustin, Byers, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Conners, Cooney, Curran, P.; Curtis, Dam, Davies, DeVane, Doak, Drigotas, Durgin, Farnham, Faucher, Fenlason, Flanagan, Fraser, Garsoe, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Hennessey, Higgins, Hughes, Hunter, Hutchings, Immonen, Jackson, Jalbert, Jensen, Joyce, Kany, Kauffman, Kelley, Kennedy, Laverty, LeBlanc, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; McBreaarty, Mitchell, Morin, Morton, Mulhern, Nadeau, Najarian, Norris, Palmer, Peakes, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Raymond, Rideout, Rolde, Saunders, Shute, Silverman, Snow, Sprowl, Strout, Stubbs, Susi, Talbot, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Truman, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship, The Speaker.

ABSENT: Birt, Bowie, Cote, Curran, R.; Dudley, Dyer, Farley, Finemore, Gauthier, Hall, Hinds, Jacques, Laffin, Maxwell, McKernan, McMahon, Mills, Quinn, Rollins, Smith, Snow, Twitchell. Yes, 14; No, 115; Absent, 22.

The SPEAKER: Fourteen having voted in the affirmative and one hundred and fifteen in the negative, with twenty-two being absent, the motion does not prevail.

Thereupon, House Amendment "F" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Blue Hill, Mr. Perkins.

Mr. PERKINS: Mr. Speaker and Members of the House: Because of the verbiage that is in this bill and because I think you all have witnessed this afternoon the different interpretations that may occur in this, there was some question to the verbiage as it applies to Section 102, which applies to administering or furnishing drugs to children under 16, I have talked to the chairman of the committee and he suggested that this might be a problem and he suggested contacting the Attorney General's Office rather than submitting an amendment because the verbiage was in fact correct. I have done just this and the Attorney General's Office has furnished me with a statement of legislative intent, which I would like to read into the record at this time.

"It is the intent of this bill and the section which it corrects to make the criminal penalties more severe for trafficking in or furnishing schedule drugs to a child who is in fact under 16 years of age. It is not intended that this section prohibits parents or persons responsible for welfare of a child from administering drugs prescribed for the child by a physician or a dentist in good faith as a part of professional treatment. This section would apply, however, if the person was administering the drug for some purpose other than that intended by the prescription."

Mr. Spencer of Standish offered House Amendment "C" and moved its adoption.

House Amendment "C" (H-1162) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: House Amendment "C" reduces harassment by telephone to a Class E crime, which is the amendment that I

said I would present so that we could debate the warning question separately. There is another section in the code which is being included in the amendment which deals with harassment in general and makes that a Class E crime. Representative Hewes is correct, harassment by telephone ought to also be treated in the same manner. So I would urge you to support the amendment to make harassment by telephone a Class E crime with the same number of green lights that showed up on the last amendment.

Thereupon, House Amendment "C" was adopted.

Mr. Spencer of Standish offered House Amendment "E" and moved its adoption.

House Amendment "E" (H-1171) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of House Amendment "E" is to include a number of provisions in the revisions to the criminal code which have been voted on by the committee since the bill had to be reported out. One of the problems that we ran into in establishing the category of a civil offense, which is not criminal, is that some of the fundamental protections that have been established in the Constitution may not be applicable to civil violations. So the principal purpose of this amendment is to provide the protection against self incrimination, which is built into the fifth amendment, and the right to be free from unlawful searches and seizures is also included in the case of civil violations.

In creating a civil offense, we ran into a problem where because it was a civil offense and not a crime, there was no power to make an arrest, so we ran into the situation that if an officer had reason to believe that somebody was committing a civil offense in his presence and he went up to the person and asked him who he was so that he could fill out the ticket, the person could say that his name was Mickey Mouse and that he lived at 2335 Sunset Boulevard in Hollywood, California, and there would be nothing that the police officer could do because he would not have the power to arrest the person. We have created a mechanism which allows the police officer to require identification and if the person wilfully refused to provide identification or wilfully fails, the officer may detain the person until he is able to verify the identification.

In this amendment, we have limited this to the civil offenses, so it doesn't apply in the situation of other offenses. The amendment has the support of the committee and I would urge you to support its adoption.

Thereupon, House Amendment "E" was adopted.

Mr. Silverman of Calais offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1139) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, I would like to make a parliamentary inquiry as to the germaneness of House Amendment "A".

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. McKernan.

Mr. MCKERNAN: Mr. Speaker, I think the problem would be whether it violates Rule 28.

The SPEAKER: The Chair would rule that the House Amendment "A" violates Joint Rule 28 and Rule 21.

Thereupon, the Bill was passed to be engrossed as amended by House Amendment "D", "C", "E" and "F" and Senate Amendments "A", "B" and "C" in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Non-Concurrent Matter

Bill "An Act to Establish a Division of Travel Information" (Emergency) (H. P. 2022) (L. D. 2201) which was Passed to be Engrossed in the House on March 24, 1976.

Came from the Senate, the Bill and accompanying papers indefinitely postponed in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Bar Harbor, Mr. MacLeod.

Mr. MacLEOD: Mr. Speaker, I move we recede and concur and would speak briefly to my motion.

The SPEAKER: The gentleman from Bar Harbor, Mr. MacLeod, moves that the House recede and concur.

The gentleman may proceed.

Mr. MacLEOD: Mr. Speaker, Ladies and Gentlemen of the House: I would like first off to thank you for your support in the endeavor for the industry to try to establish a fund or funds to further advertise for tourism in the State of Maine. I feel like a man in a house seeking a doorway out and just can't seem to find that doorway. We have exhausted all the measures of taxation that we might attempt that anyone might be agreeable to and that we could pull together and work forward with. Therefore, at this time I feel that it is rather remiss in trying to pursue this any further and would again hope that the State Development Office is getting a little message down there that somebody would like a little something done for tourism in the State of Maine and that they might try from here on out to pull their troops together and see if there is any funding available or at least lend some sort of effort on behalf of the industry with summer fast approaching.

Thereupon, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Provide for More Effective Debt Management and for More Effective Administration of the State's Development Financing Capability" (H. P. 1816) (L. D. 1974) which was Passed to be Engrossed as Amended by House Amendment "E" (H-1121) in the House on March 29, 1976.

Came from the Senate, the Bill and Accompanying Papers Indefinitely Postponed in non-concurrence.

In the House: On motion of Mr. Cooney of Sabattus, the House voted to insist and ask for a Committee of Conference.

**Passed to Be Enacted
Emergency Measure**

An Act to Clarify Various Statutes Relating to Superior Court Fees and Costs (H. P. 1866) (L. D. 2037) (C. "A" H-1016)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 102 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Enactor**Tabled and Assigned**

(Item 2) An Act Concerning the Salary of Knox County Register of Probate, Deputy Treasurer, Clerk Hire and Legal Fees of the York County Treasurer (H. P. 2230) (L. D. 2318) (S. "A" S-473, H. "A" H-1138)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker and Members of the House: I am not sure if people want to discuss this, but if it can be indicated

briefly, that is fine with me, if someone can explain the effects of the amendments on this bill.

Thereupon, on motion of Mr. Rolde of York, tabled pending passage to be enacted and tomorrow assigned.

Passed to Be Enacted

An Act Relating to Mental Health and Retardation Programs in the Department of Mental Health and Corrections (S. P. 698) (L. D. 2222) (C. "A" S-483)

An Act to Establish a Potato Lien Law (S. P. 775) (L. D. 2328)

An Act Providing for Protective and Supportive Services for Mentally Retarded Persons (H. P. 2069) (L. D. 2239) (C. "A" H-1118)

An Act to Change County Budgets to an Annual Basis (H. P. 2094) (L. D. 2253)

An Act to Prohibit Payment of Dependency Allowance to Persons with a Spouse Employed Full Time (H. P. 2118) (L. D. 2267) (C. "A" H-1029)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Enactor**Tabled and Assigned**

An Act to Protect Owners and Bona Fide Purchasers of Real Property from Unrecorded Mechanics' Liens and to Protect Them from Double Payment to Contractors and Sub-contractors (H. P. 2126) (L. D. 2274) (C. "A" H-1114)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Wells, Mr. Mackel.

Mr. MACKEL: Mr. Speaker, I wonder if someone would explain the implications of this bill.

The SPEAKER: The Gentleman from Wells, Mr. Mackel, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker and Members of the House: I see Mr. Powell over there chuckling. He testified at this hearing. The State of Maine has had in force for many years a mechanics' lien, and the result of that is that even though a general contractor has been paid by a purchaser of property, if in fact a person who supplied the materials or services has not been paid by the general contractor, the material man or the person supplying the services may put a lien, file a lien on the property with the result that actually you could have a double payment by the landowner. He would already have paid the general contractor and then he would be liable to pay the person who supplied the services or the materials.

So this particular bill, which is the result of a study by the Joint Standing Committee on Judiciary, provides that the lien must have been filed prior to the acquisition of the property by a bona fide purchaser. The lien will remain in effect for 120 days, and if the material man or person furnishing services hasn't then been paid, he may file a second lien and subsequent liens, each of which is in effect for 90 more days. This bill does put a bona fide purchaser on notice that a lien in fact has been filed.

Thereupon, Mr. Mackel of Wells requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All

those requiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: This is a controversial item. We debated this for two hours a couple of years ago and we did say that if we had controversial matters now we would try and table them, so I would appreciate it if somebody would table this.

Thereupon, on motion of Mr. Palmer of Nobleboro, tabled pending passage to be enacted and tomorrow assigned.

An Act to Clarify and Strengthen the Statute Governing Current Use Taxation of Farmland (H. P. 2258) (L. D. 2330) (H. "A" H-1129)

An Act to Clarify the Labor and Industry Statutes (H. P. 2259) (L. D. 2332) (H. "A" H-1136)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

The following paper appearing on Supplement No. 3 was taken up out of order by unanimous consent:

Resolve for Revising the Amounts of County Taxes for the Year Nineteen Hundred and Seventy-six (H. P. 2053) (L. D. 2230) (C. "A" H-1124)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Mr. Dam of Skowhegan, under suspension of the rules, the House reconsidered its action whereby the Resolve was passed to be engrossed.

On further motion of the same gentleman, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" was adopted.

The same gentleman offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-1176) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: In case anyone doesn't know what is happening, what this is doing is only putting the emergency preamble onto the bill because that was left off when it was drafted and it must have an emergency preamble, so this is the emergency preamble that we are putting back on.

Thereupon, House Amendment "A" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

The following papers appearing on Supplement No. 2 were taken up out of order by unanimous consent:

The following Communication:

The Senate of Maine
Augusta, Maine

March 31, 1976.

Honorable Edwin H. Pert
Clerk of the House
107th Legislature
First Special Session
Augusta, Maine 04333

Dear Mr. Pert:

The Senate today voted to Adhere to its action whereby it Indefinitely Postponed Bill, "An Act to Prohibit Public Utilities from Including Certain Political Advertising Material along with Customer Bills" (H. P. 1809) (L. D. 1968) Respectfully,

Signed:

HARRY N. STARBRANCH

Secretary of the Senate

The Communication was read and ordered placed on file.

The following Communication:

THE SENATE OF MAINE

AUGUSTA, MAINE

March 31, 1976

Honorable Edwin H. Pert

Clerk of the House

107th Legislature

First Special Session

Augusta, Maine 04333

Dear Mr. Pert:

The Senate today voted to Adhere to its action whereby it Indefinitely Postponed Joint Order (H. P. 2248) relative to creating a Legislative Budget Committee.

The Senate also voted to Adhere to its action whereby it Indefinitely Postponed Bill, "An Act Concerning the Analysis of Unexpended Balance and Payment Maximums under the Aid for Dependent Children Program" (H. P. 1904) (L. D. 2091).

Respectfully,

Signed:

HARRY N. STARBRANCH

Secretary of the Senate

The Communication was read and ordered placed on file.

The following Communication:

STATE OF MAINE

ONE HUNDRED AND SEVENTH

LEGISLATURE

COMMITTEE ON NATURAL RESOURCES

March 31, 1976

The Honorable John L. Martin

Speaker of the House of Representatives

State House

Augusta, Maine 04333

Dear Speaker Martin:

The Committee on Natural Resources is pleased to report that it has completed all business placed before it by the Special Session of the 107th Legislature.

Total Bills Received	13
----------------------	----

Unanimous Reports	6
-------------------	---

Leave to Withdraw	1
-------------------	---

Ought to Pass	0
---------------	---

Ought Not to Pass	1
-------------------	---

Ought to Pass, Amended	4
------------------------	---

Divided Reports	7
-----------------	---

Respectfully,

Signed:

THOMAS J. PETERSON

House Chairman

The Communication was read and ordered placed on file.

On the disagreeing action of the two branches of the Legislature on Bill "An Act to Permit Local Plumbing Inspectors to Approve Repairs to Existing Septic Systems" (H. P. 2206) (L. D. 2306) the Speaker appointed the following Conferees on the part of the House:

Messrs. BLODGETT of Waldoboro

PETERSON of Windham

CHURCHILL of Orland

On the disagreeing action of the two branches of the Legislature on Bill "An Act Concerning the Geologist and Soil Scientist Certification Act" (H. P. 1993) (L. D. 2182) the Speaker appointed the following Conferees on the part of the House:

Messrs. DeVANE of Ellsworth

PEAKES of Dexter

BOWIE of Gardiner

(Off Record Remarks)

On motion of Mr. Palmer of Nobleboro,
Adjourned until nine-thirty tomorrow morning.