

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

One Hundred and Seventh Legislature

(First Special Session)

OF THE

STATE OF MAINE

1976

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Monday, March 29, 1976

Senate called to order by the President.
Prayer by The Honorable Charles P. Pray of Millinocket:

Lord, help us be successful today in our actions, and let those actions be beneficial to the people of this great state. Amen.

Reading of the Journal of Friday, March 26, 1976.

Papers from the House
Non-concurrent Matter

Bill, "An Act Relating to the Effective Date of Each Individual Establishing a Benefit Year under the Unemployment Law." (H. P. 2145) (L. D. 2285)

In the House March 25, 1976, the Minority report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-1007).

In the Senate March 25, 1976, the Majority Ought Not to Pass report Read and Accepted, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

Mr. Roberts of York moved that the Senate Adhere, and Mr. Conley of Cumberland subsequently moved that the Senate Insist and Join in a Committee of Conference.

On motion by Mr. Pray of Penobscot, a division was had. Seven having voted in the affirmative, and 19 having voted in the negative, the motion did not prevail.

Thereupon, the Senate voted to Adhere.

Non-Concurrent Matter

Bill, "An Act to Amend the Employment Security Law." (S. P. 691) (L. D. 2210)

In the Senate March 23, 1976, Passed to be Engrossed as Amended by Committee Amendment "A" (S-453).

Comes from the House, Passed to be Engrossed as Amended by Committee Amendment "A" and House Amendment "B" (H-1117), in non-concurrence.

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

Mr. SPEERS: Mr. President, I would like to ask a question through the Chair to any Senator who may be able to answer this. I note that House Amendment "B", under Filing No. H-1117, has to do with members of the legislature, and on a quick reading of this amendment, without being able to correlate it with the law, I am wondering whether or not this allows members of the legislature to collect unemployment during the time that the legislature is not in session.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from York, Senator Roberts.

Thereupon, on motion by Mr. Roberts of York, tabled until later in today's session, pending Consideration.

Senate Papers

Mr. Collins of Knox presented, Bill, "An Act Delaying the Effective Date of the Maine Criminal Code in Order to Allow Sufficient Time to Make Certain Necessary Revisions." (S. P. 776)

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: The bill containing the revisions of the criminal code will be on the Senate calendar this afternoon. The present effective date of the criminal code is April 1st, however, because we anticipate that it will take a few days to move the revision bill through the legislative process, and because we think it is necessary

that there be a little time elapse to get these revisions out to the courts, the prosecutors, and the enforcement officials, we are submitting this bill to delay the effective date until May 1st. We do not feel that this bill needs a public hearing and, therefore, I would move that this bill be passed to be engrossed without reference to committee and sent forthwith to the House.

The PRESIDENT: Is it now the pleasure of the Senate that the rules be suspended in order that this bill, without reference to committee, be given its first reading at this time?

Thereupon, under suspension of the rules, the Bill was given its First and Second Readings and Passed to be Engrossed.

Under further suspension of the rules, sent down forthwith for concurrence.

Committee Reports
House

Ought to Pass — As Amended

The Committee on Education on, Bill, "An Act Relating to Exceptional Children." (H. P. 1797) (L. D. 1956)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1083).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A", as Amended by House Amendment "A" Thereto (H-1104).

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read. House Amendment "A" to Committee Amendment "A" was Read and Adopted in concurrence.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Gahagan.

Mr. GAHAGAN: Mr. President, I would like to pose a question through the Chair. Is it the intent of Committee Amendment "A" to prevent a parent of an exceptional child from going outside of the State of Maine to seek educational opportunities for an exceptional child, or is it the intent to bring this completely in the control of the Commissioner of Education? I am trying to establish whether or not a parent would have the discretion to go outside of the State of Maine and have the state assist in any exceptional programs of the child.

The PRESIDENT: The Senator from Aroostook, Senator Gahagan, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, the wording of this bill as it pertains particularly to the Baxter School is confusing, but neither this bill nor the amendment makes a substantive change in the procedures. When it comes to tuitioning a child out of state for a unique program not available in the state or to a program which serves the needs of a child better, under existing law, as under this proposed change, the Commissioner of Education must approve every contract of such a nature.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Committee Amendment "A" as amended by House Amendment "A"? It is a vote.

Thereupon, under suspension of the rules, the Bill, as Amended, was Read a Second Time.

Mr. Katz of Kennebec then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-482, was Read.

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

Mr. KATZ: Mr. President, this is the first legislative action to make any changes at all in what was originally L.D. 965, and because it is major legislation, I am sure that many of you will be getting queries on it.

Along with this bill is the requirement that the department promulgate regulations, and in

this particular case the promulgation of the regulations is going to be just as important as the bill itself. Senate Amendment "A" will require that the department, having formulated regulations, must present them to the next legislature prior to January 15th for our approval.

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

Mr. SPEERS: Mr. President, this is the first that I have seen this particular amendment, and I have to agree with the intent of the amendment very strongly. I would take issue with the comments that were made by the good Senator from Kennebec, Senator Katz, in that he explained that this would require the department to submit rules and regulations to the legislature for approval. I think, if you will read the amendment, you will find no such language whatever in that amendment. And for that reason, I am afraid that I find the amendment objectionable as it has been drawn.

We faced this issue a little earlier in this session when we were faced with an order requesting or ordering the Committee on State Government to report out a bill which would require that all rules and regulations be approved or reviewed by the legislature before they go into effect, and again I cannot state strongly enough that I fully agreed with that intent. But we did have a rather lengthy discussion at that time over the problems of doing this piecemeal or doing it too quickly, and we do have an order on the table that will direct the State Government Committee to go into this matter during the interim and come out with a bill which hopefully will cover all departments and cover the procedures which should be followed very carefully before rules and regulations can go into effect to make sure that they are reviewed by the appropriate committees in the legislature before being taken into effect.

Now, as to this particular amendment, there are a couple of very real and serious problems, I feel. No. 1, the amendment states that regulations and guidelines shall be presented to the legislature for review. Now, what is meant by review? The good Senator from Kennebec mentioned that the legislature would have to approve these rules and regulations before they go into effect, but that is not really what the amendment says. The amendment simply states "for review". And as I suggested when we were discussing this whole question of legislative review of rules and regulations, there are some very serious constitutional questions involved that will take some very careful drafting, I feel, to avoid. The word "review" is extremely vague in this case, and we really have no guideline from this amendment as to whether or not the legislature must approve or disapprove, or what happens if the legislature disapproves of the rules and regulations that are suggested. So that is a very vague term, and I feel that by adopting this at this time it would create more problems than it would alleviate.

The second question, of course, is the wording in the amendment "by the appropriate committee". Now, what is the appropriate committee? and here again we have a very basic policy question involved: in submitting to the legislature suggested rules and regulations, should they be submitted to the various committees in the area of the various departments; for example, education to the Education Committee, or transportation to the Transportation Committee, judicial matters to the Judiciary Committee, etc., or should there be one separate committee set up by the legislature, perhaps Performance Audit, perhaps something else, that would be charged with looking at all of these rules and regulations. I think these are very basic policy questions that deserve to have some very careful consideration given to them.

So very reluctantly, Mr. President, and only

because it is at this time and at this moment, I feel that I must move the indefinite postponement of this amendment.

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

Mr. KATZ: Mr. President, I would like the majority leader to put himself in the position of a legislative committee which was hearing an extremely important piece of legislation controlling the lives of thousands of people in an emotional atmosphere. And we realize that the regulations which will be promulgated are just as important as the legislation, and we know that there are some problems in the whole question of review and approval of promulgated regulations, but we are faced with the fact of life that something has to be done now. But our intent was to tell the Department of Education that whatever rules they promulgated would be reviewed, and we wanted this deterrent or this encouragement to them to be right in front of them so they would know that there would be a legislative review.

Now, whether or not that is in its optimum form, and whether or not an interim study committee can do something better, I don't know, but these regulations are in the process of being promulgated now, they are going to be affecting people in the interim, and I would recommend to the majority leader that it is absolutely essential that we right here now say that these particular rules and these particular regulations are going to get legislative attention.

Now, I didn't put in "the Committee on Education". I just put in "the appropriate committee", because I don't know what committee. There are many people around here perhaps who feel that the Committee on Education should be abolished and some other vehicle established, but this was the best we could do, and I would ask the majority leader either to withdraw his motion or to table so that this important matter can be pursued.

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

Thereupon, on motion by Mr. Speers of Kennebec, tabled until later in today's session, pending the motion by that same Senator to Indefinitely Postpone Senate Amendment "A".

The Committee on Local and County Government on, Bill, "An Act Relating to Town Ways." (H. P. 1920) (L. D. 2108) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1028).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A", as Amended by House Amendments "A" (H-1070) and "D" (H-1122) Thereto.

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read. House Amendment "A" to Committee Amendment "A" was Read and Adopted in concurrence. House Amendment "D" to Committee Amendment "A" was Read and Adopted in concurrence. Committee Amendment "A", as Amended by House Amendments "A" and "D" Thereto, was Adopted in concurrence.

Thereupon, under suspension of the rules, the Bill, as Amended was Read a Second Time.

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

Mr. MERRILL: Mr. President, I haven't kept up with all the amendments on this bill. Could I ask somebody on the committee to explain this in its present form?

The PRESIDENT: The Senator from Cumberland, Senator Merrill, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Thereupon, on motion by Mr. Merrill of Cumberland, tabled until later in today's session, pending Passage to be Engrossed.

Ought to Pass in New Draft

The Committee on Legal Affairs on, Bill, "An Act to Permit Executive Sessions in Certain Labor Negotiations." (H. P. 1891) (L. D. 2071)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Revise and Clarify the Freedom of Access Law" (H. P. 2226) (L. D. 2316).

Comes from the House, the Bill in New Draft Passed to be Engrossed as Amended by House Amendments "A" (H-1034), "B" (H-1044), and "E" (H-1110).

Which report was Read and Accepted in concurrence, and the Bill in New Draft Read Once. House Amendment "A" was Read.

Mr. Corson of Somerset then moved that House Amendment "A" be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor. Mr. CORSON: Mr. President and Members of the Senate: House Amendment "A" would amend the bill in section 404, which is the section of the bill which authorizes recorded and live broadcasts of proceedings of public policy making bodies. House Amendment "A" would add a section which would exempt the House of Representatives and the Senate from the provisions of this law.

We naturally have been in the practice of allowing press coverage, live broadcasting, and recording of proceedings as the press has desired. We have the authority very clearly to establish all the rules and regulations we need to control this coverage, and I feel that exempting the legislature from this law is unnecessary and, for that reason, I move that this amendment be indefinitely postponed.

The PRESIDENT: Is it now the pleasure of the Senate to indefinitely postpone House Amendment "A"?

The motion prevailed.

House Amendment "B" was Read.

Mr. Corson of Somerset moved that House Amendment "B" be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. CORSON: Mr. President and Members of the Senate: House Amendment "B" would amend section D of subsection 6 of section 405, which deals with labor negotiations and whether or not they should be held in a closed session. The Committee on Legal Affairs debated this at considerable length, and we finally concluded that as a rule negotiations should be conducted openly unless both parties to the negotiations feel that they should be closed.

House Amendment "B" would simply reverse the situation such that all negotiations will be closed unless both parties agree to have them open. The committee felt that they should be open unless both parties wanted them closed. For that reason, I move the indefinite postponement of House Amendment "B", and hope I haven't completely confused the issue.

The PRESIDENT: The Senator from Somerset, Senator Corson, now moves that the Senate indefinitely postpone House Amendment "B". Is this the pleasure of the Senate?

The motion prevailed.

House Amendment "E" was Read and Adopted in concurrence.

Thereupon, under suspension of the rules, the Bill, as Amended, was Read a Second Time and Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Business Legislation on, Bill, "An Act to Require a Majority of Consumer Representation on Governing Boards of Nonprofit Hospital and Medical Service Organizations." (H. P. 1865) (L. D. 2036)

Reported that the same Ought to Pass.

Signed:

Senators:

THOMAS of Kennebec
JOHNSTON of Aroostook

Representatives:

RIDEOUT of Mapleton
BYERS of Newcastle
DEVANE of Ellsworth
BOWIE of Gardiner
PIERCE of Waterville
TIERNEY of Durham

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1069).

Signed:

Senator:

REEVES of Kennebec

Representatives:

CLARK of Newport
BOUDREAU of Portland
PEAKES of Dexter
HIGGINS of Scarborough

Comes from the House, the Minority report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A".

Which reports were Read.

On motion by Mr. Thomas of Kennebec, the Minority Ought to Pass as Amended Report of the Committee was Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence.

Thereupon, under suspension of the rules, the Bill, as Amended, was Read a Second Time and Passed to be Engrossed in concurrence.

Senate

Ought to Pass — As Amended

Mr. Katz for the Committee on Education on, Bill, "An Act to Clarify Certain Provisions in the Education Laws." (S. P. 651) (L. D. 2056)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-480).

Which report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted.

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

Mr. KATZ: Mr. President, this is education errors and inconsistencies and it is a rather long and complicated bill. By tomorrow morning I will have an explanation of every section on my desk, and I might request of the Chair if it could be assigned for a second reading the next legislative day.

Thereupon, the Bill, as Amended, was Tomorrow Assigned for Second Reading.

Reconsidered Matter

On motion by Mr. Conley of Cumberland, the Senate voted to reconsider its former action whereby it Passed to be Engrossed Bill, "An Act to Revise and Clarify the Freedom of Access Law" (H. P. 2226) (L. D. 2316).

The same Senator then moved that the Senate reconsider its former action whereby House Amendment "B" was Indefinitely Postponed.

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

Mr. SPEERS: Mr. President, I wonder if the good Senator would explain the problem with the indefinite postponement of House Amendment "B"?

The PRESIDENT: The Senator from Cumberland, Senator Speers, has posed a question to the Senator from Cumberland, Senator Conley, who may answer if he so desires.

The Chair recognizes that Senator.

Mr. CONLEY: Mr. President, I feel that if House Amendment "B" is indefinitely postponed it is going to make it extremely difficult for municipal bodies to negotiate labor contracts. I think that anyone who has been involved in negotiations knows that it is give and take on both sides, and if you get into a situation whereby you are negotiating not with just one public union within a community, but when you have seventeen or thirteen different unions within a community, it obviously makes it even more difficult to bargain. The fact is that I

think most communities try to treat their employees fair, but I think if we were to indefinitely postpone House Amendment "B" it is going to take away an area of confidence that public officials must have in able to negotiate fairly. That is why I believe it is important that this amendment be placed on the bill.

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

Mr. ROBERTS: Mr. President, I agree with the good Senator from Cumberland, Senator Conley. We discussed it at some time in the Labor Committee because we had a bill which covered this very subject with respect to labor disputes only in the public sector. There was also this bill before the Legal Affairs Committee which covered negotiating and meetings in general, as well as those in the labor field. We felt that in the labor field these negotiations should remain closed and secret unless the parties agreed to open them themselves, and this is what this amendment would do. If we don't have this, then it is the other way around and they are open unless they agree to be closed, and usually at that stage of a labor negotiation they won't even agree on what day of the week it is, so certainly they are not going to agree to have them open. So I support Senator Conley's motion that we adopt House Amendment "B".

The PRESIDENT: Is it now the pleasure of the Senate to reconsider its action whereby it indefinitely postponed House Amendment "B"?

The motion prevailed.

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

Mr. KATZ: Mr. President, can I clarify my thinking? By our previous action, I understood in killing this amendment that we said it would take one party to go into an executive session. Would somebody clarify that for me please.

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the Senator from Somerset, Senator Corson.

Mr. CORSON: Mr. President and Members of the Senate: I would answer the question. As the bill is drafted, it would require the consent of both parties for the negotiations to be conducted in a closed session. House Amendment "B" would require the consent of both parties for the negotiations to be conducted in an open session. If both parties did not consent, under House Amendment "B", then the sessions would by law automatically be closed to the public. The reverse is true as it is drafted in the bill, that unless both parties agreed that the sessions be closed, they would by law be open. I hope that clarifies the situation.

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

Mr. CONLEY: Mr. President, if I can just read the statement of fact on House Amendment "B", which I think clarifies it, it says that "This amendment provides that negotiations between the representatives of a public employer and public employee may be open to the public provided both parties agree to conduct negotiations in open sessions." In other words, both parties must be agreeable to that. It certainly gives them leverage to do that. If one party says no, we are not ready to go public with it, and they are still in the process of negotiations, then they have the right to remain within the confines of private negotiations.

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

The Chair recognizes the Senator from Somerset, Senator Corson.

On motion by Mr. Corson of Somerset, a division was had, 18 having voted in the affirmative, and 11 having voted in the negative. House Amendment "B" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Ought to Pass in New Draft

Mr. Collins for the Committee on Judiciary on, Bill, "An Act Repealing the Expungement Law and Providing for the Control of Access of and Disclosure of Criminal History Record Information." (S. P. 730) (L. D. 2273)

Reported that the same Ought to Pass in New Draft under New Title: "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).

Mr. Hichens for the Committee on Agriculture on, Bill, "An Act to Establish an Agriculture Lien Law." (S. P. 726) (L. D. 2261)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Establish a Potato Lien Law" (S. P. 775) (L. D. 2328).

Which reports were Read and Accepted and the Bills in New Draft Read Once.

Thereupon, under suspension of the rules, the Bills in New Draft were Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Second Readers

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

House

Bill, "An Act to Establish a Division of Travel Information." (H. P. 2022) (L. D. 2201)

Which was Read a Second Time.

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

Mr. DANTON: Mr. President and Members of the Senate: I think we all agreed that the state needs to have a vacation travel office to promote tourism for Maine. The methods that have been put forth up to now are an increase in the sales tax or a room tax.

Over the weekend I have been working on this and I think I have an amendment that I can offer to this bill that will take care of the problem without a need to raise any taxes whatsoever, and I hope that someone would table this for me until tomorrow.

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

Thereupon, on motion by Mr. Marcotte of York, tabled and Tomorrow Assigned, pending Passage to be Engrossed.

House — As Amended

In Non-concurrence

Bill, "An Act to Improve Solid Waste Management." (H. P. 2090) (L. D. 2249)

Which was a Read a Second Time.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, an amendment to this bill has been prepared and is now being printed but is not yet ready for distribution, and I therefore hope that someone might table it until later in today's session.

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

Thereupon, on motion by Mr. Speers of Kennebec, tabled until later in today's session, pending Passage to be Engrossed.

Orders of the Day

The President laid before the Senate the first tabled and Specially Assigned matter:

Bill, "An Act to Change County Budgets to an Annual Basis." (H. P. 2094) (L. D. 2253)

Tabled — March 25, 1976 by Senator Jackson of Cumberland

Pending — Passage to be Engrossed

(In the House — Passed to be Engrossed)

On motion by Mr. Speers of Kennebec, retabled and Tomorrow Assigned, pending Passage to be Engrossed.

The President laid before the Senate the second tabled and Specially Assigned matter:

Resolution, Proposing an Amendment to the Constitution to Assure Revenues for Bond Service and Prohibit State Bonding of Current Expenditures. (S. P. 689) (L. D. 2206)

Tabled — March 25, 1976 by Senator Speers of Kennebec

Pending — Motion of Senator Corson of Somerset to Reconsider Final Passage

(In the House — Finally Passed)

On motion by Mr. Speers of Kennebec, tabled pending the motion by Mr. Corson of Somerset to Reconsider Final Passage.

The President laid before the Senate the third tabled and Specially Assigned matter:

Bill, "An Act Relating to Costs in Contested Cases and Depositions in Probate Court," (S. P. 709) (L. D. 2236)

Tabled — March 26, 1976 by Senator Speers of Kennebec.

Pending — Consideration.

(Comes from the House — Bill and Accompanying Papers Indefinitely Postponed)

(In the Senate — Passed to be Engrossed as Amended by Committee Amendment "A" (S-454).

On motion by Mr. Clifford of Androscoggin, the Senate voted to Insist and Request a Committee of Conference.

The President laid before the Senate the fourth tabled and Specially Assigned matter:

House Reports — from the Committee on Business Legislation — Bill, "An Act Concerning the Geologist and Soil Scientist Certification Act." (H. P. 1993) (L. D. 2182) Ought to Pass in New Draft Under New Title of "An Act Relating to the Geologists and Soil Scientists Certification Act." (H. P. 2240) (L. D. 2322)

Tabled — March 26, 1976 by Senator Thomas of Kennebec.

Pending — Motion of Senator Cyr of Aroostook to Indefinitely Postpone bill and papers.

(In the House — Bill in New Draft Passed to be Engrossed as Amended by House Amendment "A" (H-1100).

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Cyr.

Mr. CYR: Mr. President and Members of the Senate: I did move the indefinite postponement on this bill because I thought that we were restricting this. The original bill restricted the site investigation only to soil geologists and soil scientists, and my only objection to it is that I thought they were over-qualified for the job. Correspondingly, the cost was becoming prohibitive. In my own county, for instance, there is only one of these people that would meet the requirements, and he charges \$75 to look over the site, 60 cents a mile for his traveling expenses, and then \$16 an hour to sketch out the septic tank field.

Now, I have discussed this with Eugene Moreau from the plumbing control section, and the thing that I couldn't understand was the logic of trying to restrict site investigations to only these people but at the same time having the control and the enforcement under the plumbing section of Health and Welfare. It just didn't make sense to me at all.

Now, last year 188 people took the exam to become licensed for this site investigation, and 86 passed. Out of these 86, 35 were others, mostly master plumbers, 35 were professional engineers, and 26 were soil scientists and geologists, which this bill is talking about. Now, I asked Mr. Moreau what happened to the other 102 that didn't pass, were there any soil scientists and soil geologists in that group, and he said yes, there were quite a few. Well, come to find out, probably these people know the texture of the soils but they don't know the plumbing

code. Accordingly, they do not meet the requirements to be a site investigator.

Now, it is all right to have these qualifications for soil tests, for solid waste programs, for instance, or for large buildings where you are looking for the bearing capacity of the soil, but these site investigators only deal with septic tank systems and, therefore, I felt it was over-qualification on their part.

Now, what disturbed me very much was the requirements in this bill here, the second bill that we have, but come to find out, these requirements have been piggy-backed onto this bill by the Board of Certification of Geologists and Soil Scientists, and has nothing to do with the site investigation. So this is what really alarmed me, and after I was told that in this new bill we still have others. I mentioned in last Friday's debate that last year I introduced a bill to enlarge this field to agronomists, soil conservationists, master plumbers that have passed the exams, and so forth and so on, and I withdrew my bill upon the information I received at the hearing that in the original bill there is a provision for others. It is a very poor terminology to use because "others", you think it may mean anybody, but it doesn't. You have to take some courses. They have four courses available, and they have to pass an exam before they are licensed for site investigation. And in many cases they might be old master plumbers that know what they are talking about. They know the percolation, what soil will percolate and the soil that won't percolate. As a result of that, many of them have passed these exams.

So we have right now, for instance, 150 site investigators over the State of Maine, and this new bill does include others. So I am satisfied with that and, with this explanation, I now ask leave to withdraw my motion for indefinite postponement.

The PRESIDENT: The Senator from Aroostook, Senator Cyr, now requests leave of the Senate to withdraw his motion to indefinitely postpone this legislation. Is it the pleasure of the Senate to grant this leave?

It is a vote.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: The good Senator from Aroostook, Senator Cyr, has perhaps cleared his own objections to the bill. I have some that he has not, and I think that my objections would find a favorable echo with Senator Cyr because, in my opinion, the bill as proposed unduly restricts people entering into the professions of geologist and soil scientist, and in addition have impractical or perhaps illegal methods of determining rules and regulations.

On page 3 of the new bill, L. D. 2322, it is proposed that the Board of Certification for Geologists and Soil Scientists which is created, and its office shall be within the Department of Conservation, shall cause to be prepared and adopt a code of professional conduct, which shall be made known in writing to each applicant and registrant. And listen to this: Each applicant shall subscribe to this code of ethics by signature. Now, this I am sure arouses in some of us the question of how are these rules and regulations being determined, has adequate public notice been given, and has a public hearing been held and provision made for input as a result of such a hearing. And the answer to all those questions in the bill is no.

It says that the publication of this code of ethics — and you will note that the publication is merely the mechanism of giving to each applicant a copy of these rules, not publishing it in a paper — the bill continues: This publication shall constitute due notice to all registrants. And then it goes on, to compound the power of the board — and I think it is a chance to compound its own illegal acts — that the board may amend this code of ethics from time to time,

and all it has to do is so notify each registrant that it has so made the change. Now, this is a tremendous amount of power to be in a board. And then, as I pointed out the other day about that immunity jewel that went through us, they have the clincher here that this notification shall be acknowledged by the registrants by signature to the revised code. I think this is totally an impractical method and I don't like the mechanical procedure provided.

On the next page, under the restrictions — and that is the word — for examinations, as I read the provisions for a geologist, only a college graduate can even hope to apply for examination and certification, and the same criticism applies to soil scientists. Now, these are certainly acts which I think Senator Cyr would agree would restrict people getting into this field. I am not talking now about plumbers, I am talking about people who are going to be registered by this Board of Registration for Geologists and Soil Scientists. I see nothing in here which grandfather anybody who at present is a registered geologist or soil scientist.

I think these are real defects to the bill. We are in a posture of passing it to be engrossed, and I have no objections to having an opportunity for amendment, but I certainly am not going to commit myself to doing this in the short time available to us. I think this is a basic problem with the bill which should have been corrected before it reached this stage. As a matter of fact, the more I listen to myself talk, the more I think I will make the motion that the bill be indefinitely postponed.

The PRESIDENT: The Chair would advise the good Senator from Cumberland, Senator Berry, that the present posture of the bill is acceptance of the ought to pass in new draft report of the committee.

The Senator from Cumberland, Senator Berry, now moves that this bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the Senator from Aroostook, Senator Cyr.

Mr. CYR: Mr. President and Members of the Senate: I certainly am not going to shed blood on this one here with my good friend, Senator Berry, because I had the same objections. However, at the time of my objections, I thought that they needed to have all of these qualifications to become a site investigator, but I found out that all of this that he is talking about, first of all, the State Board of Certification for Geologists and Soil Scientists, apparently they don't have that, so it is the association or the professional organization of soil geologists and soil scientists that wants this bill and these requirements and this exam and all of that. They piggy-backed this information onto this bill which has nothing to do with the site investigation per se. You don't have to have these requirements to become a site investigator. And as far as site investigation, as far as the geologists and scientists are concerned, this is just a sideline, that's all it is.

And as I mentioned a while ago, I couldn't understand the logic of why you required soil scientists and geologists and site investigators to be so qualified, and then after that to have the plumbing code inspector here in charge of the enforcement of this thing. So whatever you want to do is all right with me. We will just live under what we have now.

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

Mr. THOMAS: Mr. President and Members of the Senate: As I said last week, I am no expert in this particular field, but Senator Berry of Cumberland did mention the grandfathering factor, and I understand that there will be an amendment on this bill, if we pass it in the Senate, that will grandfather it. It is being put on by someone in the other body.

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

Mr. BERRY: Mr. President, responding to Senator Cyr's comment, we have boards of registration of soil scientists and geologists now. Whether they are one or separate, I don't know, but such people are licensed in this state.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Berry, that this bill and all its accompanying papers be indefinitely postponed.

The Chair will order a division. Will all those Senators in favor of indefinite postponement please rise in their places until counted. Those opposed will rise in their places until counted.

A division was had, 19 having voted in the affirmative, and five having voted in the negative, the Bill was Indefinitely Postponed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the fifth tabled and Specially Assigned matter:

House Reports — from the Committee on Public Utilities — Bill, "An Act to Prohibit Public Utilities from Including Certain Political Advertising Material along with Customer Bills." (H. P. 1809) (L. D. 1968) Report A — Ought to Pass in New Draft Under Same Title (H. P. 2249) (L. D. 2323); Report B — Ought Not to Pass; Report C — Ought to Pass as Amended by Committee Amendment "A" (H-1089)

Tabled — March 26, 1976 by Senator Cummings of Penobscot.

Pending — Acceptance of any Report.

(In the House — Report "A" accepted and the Bill, in New Draft, Passed to be Engrossed.

Mr. Trotzky of Penobscot moved that the Bill be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. TROTZKY: Mr. President and Members of the Senate: What this bill does is that it is an attempt by the public power advocates in the state to deprive the public utilities in the state of the right to defend themselves and to inform the customers of their side of the story.

Now, I think that the public can make an adequate decision at a referendum, but I feel that both sides of an argument should be put forth.

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

Mr. KATZ: Mr. President and Members of the Senate: I think the Senator from Penobscot, Senator Trotzky, would agree that there are only two really objectionable sentences or phrases within this bill, and both are found in section 106 of paragraph 1. I wonder before the Senator attempted to kill the entire bill if we might address ourselves to the positive aspects of the bill and see whether or not we can amend this to the liking of himself and others who feel like he does.

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

Mrs. CUMMINGS: Mr. President and Members of the Senate: I think if you will read the statement of fact that you will see it really covers pretty well what this bill was designed to do. I will have an amendment which will remove that the cost of any expenditure to influence a referendum issue from expenses may be charged to the ratepayers, which to me makes it a little more palatable. Actually the rest of this I think is a good bill. It spells out clearly which items can be inserted into the bills that public utilities hand out.

I think this was originally designed for electrical utility operations, but actually we have had a great deal of interest in this from truckers and railroads and water companies who feel that they need this method of communicating with their customers who feel that they need this method of communicating with their customers in order to give their point of view without the added expense of new envelopes and addressing these things.

Although there is some objection that they have a captive audience, I still think that this bill has merit. And there are two amendments that I know of in the offing, one of which would take away this referendum insertion prohibition, and I would like to see this at least move along to its second reading.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I have to have some very grave doubts about any legislation that denies the use of the United States mails to any business to express its opinions. It seems to me we get into very dangerous constitutional territory when we do this. If we can do this for public utilities simply because they are regulated, simply because they provide a necessary service, what is going to be the next step? Oil Dealers? It is pretty important for everybody to have fuel. Milk producers? Lawyers? Doctors? I just feel that it is a trend that ought not to ever start.

Now, the question of who pays the expense of distributing opinions about referenda or other political topics is a separate question. It is my understanding that the Public Utilities Commission has been ruling that that has to go against stockholders, not against ratepayers. Perhaps I am mistaken as I don't follow those things closely. But to do to the extent that this bill goes seems to me extremely dangerous.

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

Mrs. CUMMINGS: Mr. President, this bill, I feel, is not actually to restrict these companies from using the mails but rather, as Senator Collins pointed out, just who is going to pay the bill. It became rather apparent to the Public Utilities Committee that these things, most of these that are outlined here, should be paid for not by the ratepayers but rather by the stockholders, who would in many instances stand to benefit by it. So to me this is not an important restriction of the use of the mails so much as it is just the allocating of where the expenses are going to be paid.

I went to a hearing by the Public Utilities Commission at which the former president of the CMP was asked a question regarding the public power referendum two years ago, and he was asked such things as "Were you able to decide how much heat was used in the office by the secretaries who were inserting your opinion on the referendum into the bills?" Well, I think that is going a little far, but I do think that there are methods of deciding which of these costs should be borne by the ratepayer and which should be borne by the stockholder, and I think this clarifies those regulations.

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

Mr. CONLEY: Mr. President and Members of the Senate: I would urge the Senate to vote against the motion of the Senator from Penobscot, Senator Trotzky, that this bill be indefinitely postponed. Personally, I disagree with the Senator from Kennebec, Senator Katz, and I violently disagree with the good Senator from Knox Senator Collins, because I don't quite look upon lawyers and plumbers and a few other industries that he mentioned as public utilities.

I think today utility companies are under great suspect by the public. I think they are even under suspect by governing municipal bodies, particularly when they see their increased costs coming down the pike as to how much street lights cost in each community around the state, and the same with the water districts and a few other utilities.

But I think this bill makes it pretty clear as to what they can do as far as inserts are concerned. It basically just tells them to keep their nose out of anything political. I think that is what it comes down to. As far as the promotion of electricity or the promotion of telephone use

in inserts, that is perfectly legal and there is no problem there. But when they get themselves involved in spreading their views on a referendum, it is certainly my strong feeling that I, as one ratepayer in the State of Maine, I certainly don't want to see my hard-earned dollars going to the utilities to help promote their further growing capacities, or whatever it may be. And I would request when the vote is taken on this motion that it be taken by the "Yeas" and "Nays".

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

Mr. TROTZKY: Mr. President and Members of the Senate: Let's assume that this legislature put out a bill to the people for referendum putting a moratorium on nuclear power. Now, there is an organization in the State of Maine called Safe Power for Maine which is violently opposed to nuclear power, which has strong backing behind it and could go on a campaign to demonstrate to the people that nuclear power is dangerous and unsafe.

Now, my question is who is going to oppose it? Well, naturally it is going to be the public utilities which are running the nuclear power plant in Maine. And under this bill, it specifically states that no public utility shall include with any bill for services or commodities furnished to any customer any advertising literature designed or intended to promote the passage or defeat of a measure. Well, that information that is put out by the public utility can also be educational, in the same way Safe Power for Maine's materials could be educational. But again, it is up to the public in getting both sides of the story to make the decision, and this bill would stifle one side of the story.

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

Mr. CONLEY: Mr. President, it was my understanding that the good Senator from Penobscot, Senator Cummings, made it very clear that if these utilities want to make their views known, then they do it through their stockholders.

Now, I am certainly aware of the public power issue a few years ago, and I know in one meeting that I had with one of the trustees of Central Maine Power that they had taken a poll throughout the state as to exactly what the feeling was on public power, and they found out that people were in favor of public power by a vote of seven-to-one, and they were quite hamstrung as to how they were going to combat that.

I can assure you that my light bill that month with the little insert didn't convince me that public power was bad or that the private utility was good. I think they poured into television throughout the state. And if they want to continue to do that, they can do it, but I think it should be done through the stockholders and not through the ratepayers of the utility.

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

Mr. KATZ: Mr. President, I am a little confused by the usually flawless logic of the Senator from Cumberland. I don't understand how the public's interest is affected.

When St. Johnsbury Trucking delivers a carton of china to my business, and double bottoms are a political item of the day — and incidentally, I have voted against double bottoms every time it has come up — but along with the bill for the services in delivering the china to my business they put an insert in that says, "You will notice that the costs reflect a 5 percent increase which we reluctantly have made application for. We really believe that we can deliver merchandise more cheaply to you were the laws of the State of Maine changed to permit double bottoms, and we pass this along to you as a buyer of our services as an alternative for you to consider to constantly increasing rates." Now, where is the immorality in that? We tend to talk only about public power, but this is the real guts

of the question I would like to throw at you and the other proponents.

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

Mr. MERRILL: Mr. President, I am surprised at the inability of the usually very perceptive and intelligent Senator from Kennebec, Senator Katz, to perceive the difference between the St. Johnsbury Trucking Company and utilities that are regulated by the Public Utilities Commission. As the Senator well knows, and as the members of the Senate well know, in setting the rates the Public Utilities Commission has to set the rates in such a way as to guarantee a profit or to make it possible to make a profit for the public utilities. If they don't do so, their decisions are susceptible to court review and overruling.

What we are talking about here is simply a matter of who is going to pay. There is no question, if Senator Katz is upset by the fact that St. Johnsbury Trucking adds onto their prices a little bit by putting that notice in, he has a choice. That is not the case in public utilities. That is why we regulate them. And because we regulate them, we have to guarantee a profit. This is purely and simply a question of who has to pay.

Now, right now Senator Katz and I, and every other member of this state have to pay the public utilities to hire their lawyers and to put together their experts to go before the Public Utilities Commission and ask for higher rates. Well, we had a bill that went through this legislature, that was vetoed by the governor, that would let Senator Katz and I pay the other side also, so that we could at least pay for the side that is arguing for lower rates as well as the side arguing for higher rates.

Now, this is just an extension of that question. Right now the public utilities are allowed not only to use our money to hire lawyers to argue for higher rates, they are allowed to use our money to put advertising in our bills to convince us that we like higher rates. And that is what the thing is all about. It is not a civil liberties question, it is not a question of what they can say. It is a question of who is going to pay for it.

Frankly, I think it is just a matter of simple justice to allow us not to have to pay for a notice to us telling us that we like it the way it is.

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

Mr. KATZ: Mr. President, I am reading the bill carefully. It is a simple bill that even I can understand. And this bill addresses itself not to the question of who shall pay, because I agree with the Senator from Cumberland, Senator Merrill, but whether or not they can take this action at all. And it was my impression, although I may be in error, that as trucks are regulated by the PUC and they are common carriers, I would suspect that I am unclear in my mind whether it is only the power company or the telephone company we call upon. If you pursue the argument as to who shall pay, we are in agreement, but it is not relative to the particular piece of legislation in front of us.

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

Mrs. CUMMINGS: Mr. President and Members of the Senate: In that first paragraph, to answer the Senator from Kennebec, Senator Katz, it says, "No public utility shall include with any bill", and I think that is the crux of the situation, in that the cost of sending out bills is a part of the consideration in rate structures. This does not mean that they could not send things out exclusive of the bills in a different envelope. So, while there is no question here of who pays for what, the fact of what is going to be included with the bill is the essence.

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

Mr. SPEERS: Mr. President, I have some very real concerns about this bill. I think it goes

to a very basic issue of whether or not there can be a degree of information given to the public.

Now, I approach these matters perhaps in a different manner than perhaps some others in this body in that I really feel very deeply that the more information that can be given to the general public the far better the decision will be that will be made by the general public, and that, far from trying to prohibit information to go out to the general public, this body ought to be very much concerned with opening the avenues of communication to finding ways to insure that more information be given to the public on items on which they must render a decision, exercise a judgment, and I do feel that this particular bill would prohibit that kind of information being given. I view this as more of a promotion of ignorance rather than a promotion of enlightenment.

Now, as to the idea that if a utility, or any other company for that matter, wishes to send out additional information that they would be prohibited from disseminating should it be included with customers' bills, let's just stop for a moment and give some thought to that. What is happening in that case? Very simply, what is happening is that twice the volume of mail is going to be sent out than would otherwise be the case. They are prohibited from including in a particular mailing which is going out, certainly to every customer, that they have information which they wish to have disseminated. And if they do wish then to get this information across, they turn right around and send out another complete mailing at twice the amount of money that they have to spend for the first mailing. Well, ultimately, Mr. President, where is that going to end up? It is very simple; it is going to end up in the operating costs of this organization or that organization and it is going to be paid by the ratepayers, whether or not we agree that it should be.

I feel very strongly that this bill is an impediment to an intelligent information gathering by the public of the State of Maine.

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

Mr. MERRILL: Mr. President, I would like to inquire — and this is a legitimate inquiry — in reading over the bill, it includes advertising for political candidates, and now that the United States Supreme Court has said that the states and the federal government are unable to regulate what a person does on his own to expend for a candidate, is it possible, if we don't pass this law, that CMP could run Senator Speers' advertisements in every bill that goes out week after week, or even more scary, that they could put something about me in a positive frame in there when they have their next increase in rates?

The PRESIDENT: The Senator from Cumberland, Senator Merrill, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Kennebec, Senator Reeves.

Mr. REEVES: Mr. President and Members of the Senate: I also was interested in the logic of the good majority leader, Senator Speers, who wants a lot of information to go out. And yet in the past when both sides have asked to send out information in these mailings, the Central Maine Power Company wouldn't allow that. So perhaps if he amended the bill to allow both sides to send out information, I think that would achieve his purpose of more information. But I think as it is now, this provides the public utilities with several unfair advantages.

It doesn't deny them the access to media that both sides on any question might have, or deny them the use of the mail, as the Senator from Knox, Senator Collins, had wondered about. But, certainly having this mailing list of all of the

customers is an advantage. Having this up to date mailing list is an advantage over the other side, whether it be Safe Power or any other citizens' group advocating changes in the public utilities, and it certainly is an advantage to make customers when they get their bill think that this referendum is going to increase or decrease their bill. And of course these same customers may not ever hear, regardless of what the other side does, what the arguments are on the opposing side.

I think, as one further point, if we don't pass this bill, I think it would further encourage the Central Maine Power Company, the New England Telephone Company, and others to continually use envelopes instead of going to post cards, as has been done in other places and done by other utility companies. So I hope we can defeat this motion and pass this bill.

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

Mr. ROBERTS: Mr. President and Members of the Senate: Like a lot of these short, clear, and concise bills, when you read them the second time, they are a little too short and a little too concise because they are too broad and they are not limited by additional language.

I was just looking under section 2, which supposedly is all right because supposedly section 1 is the one that has the problem, and section 2 says "Political Contributions". That sounds fine, but then it goes on and says that no contribution will be made to any fund raising organization. Now, that would include the chamber of commerce, that would include all of your community chests and things of that sort, because even though it says "Political" under 2, it doesn't describe it as political when you read it; it is too brief and too broad.

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

Mr. SPEERS: Mr. President and Members of the Senate: Very briefly, I really cannot speak for the good Senator from Cumberland, Senator Merrill, as to whether or not he invites Central Maine Power to participate in his campaign, but I can certainly speak for myself and can assure the Senator and this body that I will be conducting my own campaign, and look forward to it with great relish.

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

Mr. CORSON: Mr. President and Members of the Senate: When I was a, believe it or not, younger man, I used to read very extensively the writings of Thomas Jefferson. In fact, I agreed so strongly with the sentiments he expressed that I made the philosophical decision to join the Republican Party, because I felt that party best stood for what Jefferson advocated.

Jefferson believed very, very strongly that for a democracy to survive it must have an interchange of information and promulgation of ideas, regardless of the merit of those ideas. I think throughout our history we have seen many examples of governments attempting to regulate to some degree whose ideas and which ideas should be promulgated or allowed to be disseminated to the public and under what circumstances. Everyone is familiar, of course, with the famous Scopes Monkey Trial, which came about because the legislature of Tennessee decreed that no longer should evolution be taught in public schools.

That is sort of bordering on the area, I believe, of censorship, and this is not a new issue by any means. In ancient Rome during the time of the emperors they enacted a law which banned obscenity. A year later they passed another law which decreed that criticism of the emperor was obscene.

The entire concept of attempting to regulate who is going to say what and when and how they are going to say it bothers me a great deal. We have seen examples too that people who feel very strongly that anyone who would advocate

communism or even discuss it should be perhaps strung from a lamp post, and we have seen little flurries now and then about people at the university teaching courses on Marxism or using the Communist Manifesto in a class. I don't agree with the theories advocated by the proponents of Marxism, but I feel very strongly that these theories should be taught, if for no other reason, looking at it from a purely perhaps gut patriotic reaction, that one should know thine enemy.

For a democracy to exist, people have to be able to make intelligent rational decisions. And if the public is not smart enough to make these decisions, that they are so easily influenced that we have to control the information to which they are going to be exposed, then it is futile and it is a farce for us to be here going through the motions of being a free and democratic institution. I would concur heartily that this bill should be indefinitely postponed.

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

Mr. MERRILL: Mr. President, I am afraid this last speaker misunderstood the thrust of this debate. It may be summed up as follows: I do not mind, and as a matter of fact I encourage, the dissemination of this information, including political information, say, for example, re-election material for Senator Speers.

What I reject is the idea that the state enforces a monopoly, guarantees a profit, and therefore guarantees that I have to pay for the dissemination of Mr. Speers' literature. That is what CMP wants to do. What we are talking about here is pure and —

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

Mr. SPEERS: Mr. President, I rise to a point of personal privilege. I would ask the Senator to refrain from referring to any political activities of mine and the relationship of CMP or any other organization with regard to that. It does not exist, it will not exist, and I object to his continuing reference to it.

The PRESIDENT: The Chair would ask the Senator from Cumberland, Senator Merrill, to keep his remarks more to the issue.

Mr. MERRILL: I am sorry that the hypothetical upset the Senator and I apologize to him. But the case is here and it is possible. The language I think is clearly trying to prevent it, and it is clearly the subject matter of who is going to pay. And that is what is before us and that is what is troubling so many of us. It is not the fact, as a matter of fact, that I disagree with much of what Central Maine Power puts in there; I agree with a great deal of what Redi-Kilowatt has to say. But it is simply a matter of who has to pay for this, and it includes political information.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, I move the previous question.

The PRESIDENT: The Senator from Washington, Senator Wyman, has moved the previous question. In order for the Chair to order the previous question, it must be the expressed desire of the majority of those present and voting. Will all those Senators in favor of entertaining the previous question please stand in their places until counted. Those opposed will rise in their places until counted.

A division was had. 19 having voted in the affirmative, and seven having voted in the negative, the previous question was ordered.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Trotzky, that this bill and all its accompanying papers be indefinitely postponed. A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those

Senators in favor of ordering a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is the motion by the Senator from Penobscot, Senator Trotzky, that this bill, L. D. 1968, and all its accompanying papers be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement; a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, R.; Carbonneau, Collins, Corson, Curtis, Graffam, Greeley, Hichens, Huber, Jackson, McNally, Roberts, Speers, Thomas, Trotzky, Wyman.

NAYS: Senators Berry, E.; Cianchette, Clifford, Conley, Cummings, Gahagan, Graham, Katz, Marcotte, Merrill, O'Leary, Pray, Reeves.

ABSENT: Senators Cyr, Danton, Johnston.

A roll call was had. 16 Senators having voted in the affirmative, and 13 Senators having voted in the negative, with three Senators being absent, the Bill was Indefinitely Postponed in non-concurrence.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, having voted on the prevailing side, I move reconsideration, and hope the motion fails.

The PRESIDENT: The Senator from Washington, Senator Wyman, now moves that the Senate reconsider its action whereby it indefinitely postponed this bill. All those in favor of reconsideration will please say "Yes"; all those opposed will say "No".

A viva voce vote being taken, the motion did not prevail.

Sent down for concurrence.

The President laid before the Senate the sixth tabled and Specially Assigned matter:

Bill, "An Act to Assure Resources for the Resolution of Disputes." (S. P. 666) (L. D. 2296)

Tabled — March 26, 1976 by Senator Huber of Cumberland.

Pending — Enactment.

(In the House — Indefinitely Postponed)

(In the Senate — Enacted — subsequently Enactment Reconsidered)

On motion by Mr. Huber of Cumberland, placed on the Special Appropriations Table.

The President laid before the Senate the seventh tabled and Specially Assigned matter:

Resolution, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money and to Permit the Legislature to Override All or Part of Such a Veto by a Two-Thirds Vote of Each House. (H. P. 1981) (L. D. 2170)

Tabled — March 26, 1976 by Senator Conley of Cumberland.

Pending — Final Passage.

(In the House — Failed of Final Passage)

On motion by Mr. Speers of Kennebec, tabled and Specially Assigned for March 31, 1976, pending Final Passage.

On motion by Mr. Speers of Kennebec, the Senate voted to take from the table the following matter tabled earlier in today's session by that same Senator:

Bill, "An Act to Improve Solid Waste Management." (H. P. 2090) (L. D. 2249)

Pending — Passage to be Engrossed.

Mr. Collins of Knox then presented Senate Amendment "A" and moved its Adoption. Senate Amendment "A", Filing No. S-484, was Read.

Thereupon, on motion by Mr. Speers of Kennebec, tabled until later in today's session, pending Adoption of Senate Amendment "A".

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

Mr. HICHENS: Mr. President and Members of the Senate: If I have been reminded once; I have been reminded 100 times that "you cannot legislate morality", and I wholeheartedly agree. But we can have concerned moral minded people making our laws and others looking out for what is good in a common sense sort of way.

Such a man, I am inclined to believe is Mr. Charles Sanford, General Manager of WGAN Portland, who relied on his managerial judgment in refusing to accept the gory Charles Manson family and its role in the Tate-Labianca murders program for showing on his television station. Exercising his right to run shows, whether locally originated or from the national networks, Mr. Sanford stated, "that violence and explicitness very definitely entered into our decision not to carry the show."

Meanwhile Mr. George Gonyer, Director of Operations for WABI-TV Bangor, stating that because the show is a dramatization of a real event it is a strong reason for showing it, and because these people are real, are nasty, and did nasty things, audiences should have opportunity to view these happenings in their own living rooms.

I submit to you, my fellow Senators, and to Mr. Gonyer, that there are a lot of real things happening around us but that does not mean that they should be presented for entertainment, especially on television, where children especially have opportunity to view them. If the films are that necessary to show, let them be shown in the theaters with the proper ratings applied where those who want to see them may do so. Mr. Gonyer has suggested that the dials may be tuned to other programs, but he as well as you and I know that curiosity alone will keep many minors especially tuned in to see the show.

A few years ago the Public Broadcasting System scheduled some questionable programs which, compared to Helter Skelter, the show in question, were like Snow White and the Seven Dwarfs. Concerned viewers contacted legislators and the Trustees of the University of Maine, Orono, and the shows were immediately cancelled because of fear of losing taxpayers' monies to finance the system. Such pressures cannot be used on these commercial broadcasting stations but public opinion can be used, and I hope that people will use pressure at this time on this Bangor station.

Meanwhile, Mr. Sanford, who, through means of the polls taken by WGAN listeners on many subjects, has sensed the feelings of his viewers. He is to be commended for the decision he has made, and I hope will continue to make, for better viewing for his audiences in mid and southern Maine.

Mr. Curtis of Penobscot was granted unanimous consent to address the Senate:

Mr. CURTIS: Mr. President and Members of the Senate: I do not have a prepared statement but I would like to respond very briefly to the previous statement just made. I know Mr. George Gonyer, he is a constituent of mine and a friend, and he has the same high standards personally that have been attributed to other concerned citizens, including, I am sure, Mr. Sanford. I have not seen the show that is involved and I am not sure any other member of this Senate have, but it seems to me that what we are concerned about here is the danger of censorship in any form, whether or not it is pressure as applied by concerned citizens for one point of view or for another point of view. But just so that we set the record straight, Mr. President, I would like to point out that WABI and its management and its personnel, including Mr. Gonyer, are very fine people and I

am sure that they would use their discretion very carefully.

Mr. Katz of Kennebec was granted unanimous consent to address the Senate.

Mr. KATZ: Mr. President, I guess the discussion here this morning indicates that many of the basic decisions of society are made outside of these chambers and, good heavens, that is the way it should be. I would like to read you just a paragraph of a letter, that I read here as I was sitting, which came in my mail this morning. It is from a constituent, and she writes:

"Recently when in a local market I noticed that the Playboy magazines were unwrapped and on the lower racks near the floor with the children's comic books. It is too bad that food stores carry this type of publication anyway with so many children frequenting them. Only months ago Playboy and other magazines were wrapped and individually placed at the rear on the upper racks, which made it more difficult for children to see. When this was the case, I could shop while my children browsed for a comic book, but no more."

The question of morality continues to be a very, very perplexing one.

On motion by Mr. Speers of Kennebec, the Senate voted to take from the table the following matter tabled earlier in today's session by Mr. Roberts of York:

Bill, "An Act to Amend the Employment Security Law." (S. P. 691) (L. D. 2210)

Pending — Consideration.

On further motion by Mr. Speers of Kennebec, the Senate voted to Recede and Concur.

Reconsidered Matter

The following bill was held on March 26, 1976 at the request of Senator Trotzky of Penobscot, pending Consideration:

Bill, An Act Relating to Teacher Employment. (S. P. 640) (L. D. 2029)

(In the Senate — Enacted in concurrence)

Mr. Trotzky of Penobscot then moved that the Senate reconsider its former action whereby the Bill was Passed to be Enacted.

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

Mr. SPEERS: Mr. President, there was considerable debate with regard to this particular item. I think that the issue is well before the Senate, has been placed well before the Senate before and decided at that time, and I would oppose the motion to reconsider, and ask for a division.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President, may I debate this motion?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. TROTZKY: Mr. President and Members of the Senate: My school board and my superintendents are opposed to this bill. Right now, if a teacher is incompetent, the principal can recommend to the superintendent that the teacher be dismissed, a public hearing can be held in front of the school board, and the school board can dismiss the teacher. If the teacher feels that he or she has been dismissed without just cause, that teacher can appeal to the courts. This is my understanding of the present situation. But it leaves the dismissal of a teacher basically under local control.

With the passage of this bill, what will take place is that teacher associations will negotiate for a third party dismissal, and it is my understanding from my superintendents and school board that they will be granted this right of third party arbitration. I feel this is wrong. I feel that right now the teachers have plenty of

protection, and I believe it is going to take the dismissal of teachers out of the hands of local control.

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

Mr. KATZ: Mr. President, I call the Senate's attention to the fact that since the recent court case the only appeal a teacher has from a capricious and personality prone dismissal is to the school board. And if the teacher doesn't like the ultimate decision of the appeal authority, which is the school board, which actually directly or indirectly was involved in the first instance, he can go to court, and then he is in court for a couple of years, or at least that is our experience.

I think it is incorrect to conclude that with the passage of this bill the things the Senator from Penobscot, Senator Trotzky, said will occur will necessarily occur. With the passage of this bill, it will be up to local control at the local level exactly what they negotiate. Now, if they want to negotiate third party review with an out-of-state arbitrator, this is possible that local people may choose to do this. But it is also possible that they will seek other alternatives that are not like that, and it is also possible that they will just refuse to grant this in a contract. But it is a negotiable item and, if you believe in local control, and I do, this says that local people can negotiate that which they wish.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Trotzky, that the Senate reconsider its action whereby L.D. 2029 was passed to be enacted.

A division has been requested. Will all those Senators in favor of reconsideration please rise in their places until counted. Will those opposed to reconsideration rise in their places until counted.

A division was had, 11 having voted in the affirmative, and 19 having voted in the negative, the motion did not prevail.

The PRESIDENT: The Chair would like to direct the Senate's attention to Rule No. 4, and I will read: "The President, when he speaks to any member of the Senate, and the members, when referring to each other in debate, shall use in their addresses the title of Senator, and by way of distinction name the county in which he resides."

I would like to point out how important it is for us to maintain our respect for one another in order to maintain the high level of decorum which has always been the hallmark of this Senate. I think sometimes in the heat of debate it is easy to forget some of these things, and I would urge the members of this body to use the degree of deference to one another that you each deserve of one another.

There being no objection, all matters previously acted upon in today's session requiring concurrence were sent down forthwith for concurrence.

On motion by Mrs. Cummings of Penobscot, Recessed until 3 o'clock this afternoon.

After Recess

Called to order by the President.

Papers from the House

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

Non-concurrent Matter

Bill, "An Act to Regulate Drinking Water." (S. P. 687) (L. D. 2198)

In the Senate March 15, 1976, Passed to be Engrossed as Amended by Committee Amendment "A" (S-431).

Comes from the House. Bill and accompanying papers Indefinitely Postponed, in non-concurrence.

Mrs. Cummings of Penobscot moved that the

Senate Insist and Ask for a Committee of Conference.

Mr. Berry of Cumberland then moved that the Senate Recede and Concur.

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

Mrs. CUMMINGS: Mr. President and Members of the Senate: This bill is extremely complicated. The Public Utilities Committee met with Mr. Hoxie from the Health and Welfare Department several times, and the bill was designed originally in order to go along with the federal regulations which are going to be imposed on all states supposedly next year. At first they said the regulations were going to be imposed in July of this year, then they said December, and now their prediction is that perhaps these regulations will not be forced upon us before June of 1977. So the heat is off, so to speak, as far as getting these regulations onto Maine statutes.

The main reason why the committee wanted to get this bill passed and get some of these regulations onto the books was so that when the federal regulations are superimposed on the State of Maine we will have some reasons for agreeing or disagreeing with them before they become actual laws. At this point they are still being discussed in Washington. They still would be adaptable if there were educated input as to why some of these regulations should be changed. And this was in order to give the departments in the State of Maine the opportunity to work with the regulations and then, if they are impossible to work, then they can get in touch with the federal government and protest, and we figured that then we would be having a positive input to Washington on some of these regulations which sometimes are put on us and they are absolutely impossible. So that is the story.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Cyr.

Mr. CYR: Mr. President and Members of the Senate: To give you a little background of this legislation, if you recall last spring we had a clean water bill that came before our committee, and at the time of the hearing, just before the hearing, we were passed 18 amendments. The committee objected very violently, very strongly, to that kind of tactic, plus the fact that the bill that was presented to us in four areas was quite a bit more stringent than what the federal standards called for. As a result of that, we sent it to 17-A, and subsequently the Senate passed a study order.

Now, we studied this all this summer and I think that the department got the message. The bill that we passed has four features which I hope would become a trend in this type of legislation.

Number one, the standards that we accepted in this bill are no more stringent than the federal standards. They are no less but they are also no more than the federal standards.

Second, if the department wants to come out with a more stringent standard, rule or regulation, then they have to call a public hearing, at which time they have to prove that the more stringent standards are needed for the health and welfare of the people of the state. The burden of the proof is on them, not vice versa.

The third one is that this bill allows the department to promulgate rules and regulations. You have heard me expound on this before, and this is a concession to me. I think the people of the State of Maine are sick and tired of living under rules that have been promulgated by the bureaucrats but never legislated by legislators, so in this bill they can promulgate rules and regulations but they have to come back to the next legislature for approval.

The fourth one is that in this bill the bill will not take effect until the federal legislation takes effect. The federal legislation was supposed to

go into effect the 31st of December of '76. It has been extended to June of '77. The bill says specifically that this will not become law until the federal legislation goes into effect, so if it only goes into effect in '78, this bill will not go into effect before '78. In the meantime, we are living under the standards and regulations that we have lived under that have been promulgated by the department.

I think there is enough safeties in this bill. What we are passing doesn't become law until the rules have been promulgated and have come back for approval by the next legislature. So the play that you see before you right now and the play in the House is not necessary, it is not needed, it is political in nature, and I don't think we will accomplish anything. Because what they want, they want this legislature to send a message to Washington and say we are against this clean water act. Well, how can we impose our will on the rest of the 49 states? I don't think that it is necessary, I don't think it is needed, and I think we should pass this bill as is. There is plenty of safety and plenty of protection in it, and it is a good bill. I hope you vote for the motion to adhere.

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

Mr. BERRY: Mr. President and Members of the Senate: I am in total sympathy with the problems that are faced by the Public Utilities Committee as have been enumerated by Senator Cyr from Aroostook County, and I am no part of any ploy of any other part of our bicameral legislature. I just think the bill basically has some real problems on it. It might be that, as I have been sitting here listening to the Senator from Aroostook, Senator Cyr, that maybe some last attempt should be made to save it, but if it is, it has to have something done to it.

I would suggest that we are having placed before us some rather extreme measures required of the state to conform with federal requirements. And having been through the vicissitudes of our Marine Resources Committee being faced with the same thing in commercial seafood federal regulations, that is the background of my sympathy with the Public Utilities Committee's dilemma. But I think this bill should be cleaned up. If there is time left in this session to do it, then I think we should do it. If there isn't, I think it has just got to be put off until January and then passed as emergency legislation.

The Senator from Kennebec, Senator Speers, this morning mentioned a problem in connection with another bill which I think is a very broad problem and has been brought out in this bill here. It is a problem that we have to face. There is something wrong about requiring any rules and regulations that are promulgated by departments or state agencies having to have the approval of the legislature. This is a philosophical problem, and right here we are faced with it in concrete terms. If we are going to require that the legislature approve everything that every state department does, we are going to get into a hopeless morass of red tape and delay. It would be the height of inefficiency for the legislature to try to administer the operations of the state, which is what is contemplated when we are saying that rules and regulations, before they can become in effect, must have the approval of the legislature. I think that is one thing that should be taken out of this bill here. If we are going to approve the broad principles, fine, and leave to the departments the drawing up of specific requirements. And this certainly leaves to the citizenry the relief that they should have, the chief administrative judge and then the courts.

Another specific complaint I have with the particular bill is this: it provides in here, quite properly, for two exceptions to compliance with department regulations. One is entitled

Variances" and the other is entitled "Exemptions". It spells out how these two exceptions must be complied with, after all sorts of hearings and public notices and so forth, and then when the water system has done everything it needs to do to get a variance and exemption, and has it physically in hand, it must do this: because it is subject to a variance and because it is subject to an exemption, it shall, as soon as it has been granted the exemption and the variance, notify the local health officer, the Health and Welfare Department, and the Administrator of the U.S. Environmental Protection Agency, and the communications media serving the area served by the system, of the fact, the nature, extent, and possible health effects of that fact. And as long as the non-compliance and so forth continues, then every 90 days it must put a notice in the paper.

Here is a situation where an exemption and a variance has been granted, and yet immediately the system has to turn around and act as if it hadn't been granted a variance. The variance is granted by the department to begin with, and obviously the variance and the exemption must be in proper legal order and necessary or the department wouldn't get it.

We get into rather specific regulations on the licensing of water plant operators, and here again we have through the past sessions been faced with legislation of this type, and there has been the continuing tendency to make it more and more restrictive, more and more difficult for small systems to qualify.

I do not see in here the necessary grandfathering that is desirable for people already registered to operate treatment plants to so continue. I think this will work a hardship on the smaller systems.

I would be very mindful of the concern of the viewpoint represented by Senator Cyr of Aroostook, and, as I say, hoping that we could work out something. I will, with the permission of the chair and body, withdraw my motion and support the motion of the Chairman of the Public Utilities Committee, the Senator from Penobscot, Senator Cummings. But I would hope that we are going to end up with something that is going to be of the type we can live with. If not, I think the Senate should eventually kill this legislation and let the 108th start up on January 1st, and it will not be too late to do it at that time.

The PRESIDENT: The Senator from Cumberland, Senator Berry, now requests leave of the Senate to withdraw his motion that the Senate recede and concur with the House. Is it the pleasure of the Senate to grant this leave?

The Chair recognizes the Senator from Aroostook, Senator Cyr.

Mr. CYR: Mr. President, if I understand this motion correctly, and I would like to have this straightened out, the Senate passed this, as I understand it, and the House defeated it, indefinitely postponed it. So we are in non-concurrence with the House. If we adhere, that means we are adhering to our former action and, therefore, we want the bill to pass. Am I correct?

The PRESIDENT: The motion to adhere is not before the body.

Mr. CYR: But if it were?

The PRESIDENT: If it were, then that means we would be adhering to our former action. There are two other motions before the body at this time, Senator Cyr, that must be disposed of before the motion to adhere would take priority.

Mr. CYR: What I want to clarify, Mr. President, is that the adhere motion was to pass the bill, as we passed it before when it came before us.

The PRESIDENT: The Chair would answer in the affirmative.

Mr. CYR: Mr. President, I don't know which one would be the best motion of the good Senator

from Penobscot, Senator Cummings, or not. However, I would like to explain to —

The PRESIDENT: The Chair would advise the Senator, if he might defer his debate, the pending question before the Senate is whether or not the Senate will grant leave to the Senator from Cumberland, Senator Berry, to withdraw his motion that the Senate recede and concur. Is it the pleasure of the Senate to grant this leave?

It is a vote.

The Chair recognizes the Senator from Aroostook, Senator Cyr.

Mr. CYR: Mr. President and Members of the Senate: I would like to remind the members of the Senate that this bill is only for the State of Maine to accept the primacy, to be the prime sponsor of this legislation. Now, there are two ways to go. We can refuse this primacy. If we refuse this primacy, it means that when the Clean Water Act of 1974 becomes effective, which date is June '77, right now, when it becomes effective, then we will be under the jurisdiction of the EPA Office in Boston. We will have the same bill, the same thing, except that the federal office of EPA in Boston will run the show. This bill accepts the primacy, the state primacy, which means that we in the State of Maine accept the responsibility of running the show. So this is what you have to choose right now, the primacy.

As I said a while ago we have built-in clauses in this bill, this legislation, for our own protection here in the State of Maine whereby we are not going to be asking our people to impose on themselves extra expenses to meet standards that are much more stringent than the federal. Right now the State of Maine has the best water in the country, so we are already, without any effort whatsoever, we are meeting those federal standards. And what we are trying to say is that, okay, we will meet the federal standards but we are not going to impose any extra cost on our own people here in the State of Maine in doing that.

Now, the Department worked very closely with EPA, the EPA lawyers, to try to come out with this version right here, which has been studied quite extensively by the Public Utilities Committee in their hearings this summer, and it is modeled on the federal Clean Water Act.

The variances that the good Senator from Cumberland, Senator Berry, talks about are particularly in regards to the turbidity test. The turbidity test is the only one that will give us some trouble here in the State of Maine, and it could be a very expensive one. As a result of that, for the sake of the small communities, we have built into it seven years, that they can be granted a variance of up to seven years for them to work into this turbidity test, and this is what they are talking about. But regardless of that, this legislation has to come back to the legislature next year for approval of the rules and regulations that have been promulgated by the department. So I hope that — don't know which way to go right now — actually I would like to adhere but —

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

Mr. BERRY: Mr. President, is the motion before the body the motion of the Senator from Penobscot, Senator Cummings, that the Senate insist and request a committee of conference?

The PRESIDENT: The Chair would answer in the affirmative. The pending motion before the Senate is the motion by the Senator from Penobscot, Senator Cummings, that the Senate insist and join in a committee of conference with the House. Is this the pleasure of the Senate?

The motion prevailed.

Communications
State of Maine

One Hundred And Seventh Legislature
Committee On Natural Resources

March 18, 1976

Legislative Council
107th Legislature
State House
Augusta, Maine 04330
Gentlemen:

In accordance with H. P. 1669 directing the Natural Resources Committee to study the solid waste problem in particular as it relates to the scarcity of energy, recycling and reuse of consumer and industrial goods, decreasing the amount of litter and to study the economic, social and environmental feasibility of instituting a state-wide, comprehensive system of recycling consumer and industrial goods and materials; the committee hereby submits its report.

Respectfully,
HOWARD M. TROTZKY
Senate Chairman
THOMAS J. PETERSON,
House Chairman
(H. P. 2260)

Comes from the House, Read and with accompanying papers Ordered Placed on File.

Which was Read and with accompanying Papers Ordered Placed on File.

Edwin H. Pert
Clerk
Maine
House of Representatives
Augusta, Maine 04333

March 29, 1976

Honorable Harry N. Starbranch
Secretary of the Senate
107th Legislature
Augusta, Maine

Dear Mr. Secretary:

The House voted today to Adhere to its former action whereby it accepted the Majority "Ought Not to Pass" Report of the Committee on Election Laws on Bill "An Act Relating to the Registration of Voters" (Emergency) (H. P. 2039) (L. D. 2212).

Respectfully,
EDWIN H. PERT
Clerk of the House

Which was Read and Ordered Placed on File.

Edwin H. Pert
Clerk
Maine
House of Representatives
Augusta, Maine 04333

March 29, 1976

Honorable Harry N. Starbranch
Secretary of the Senate
107th Legislature
Augusta, Maine

Dear Mr. Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act to Establish the Dates of Legislative Sessions and to Clarify Laws Relating to Expenses of Legislators" (S. P. 663) (L. D. 2087):

Rep. CAREY of Waterville
Rep. GREENLAW of Stonington
Rep. FINEMORE of Bridgwater

Respectfully,
EDWIN H. PERT
Clerk of the House

Which was Read and Ordered Placed on File.

Edwin H. Pert
Clerk
Maine
House of Representatives
Augusta, Maine 04333

March 29, 1976

Honorable Harry N. Starbranch
Secretary of the Senate
107th Legislature
Augusta, Maine

Dear Mr. Secretary:

The Speaker appointed the following con-

feres to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act Enabling Municipalities to Conduct Soil Tests to Determine Feasibility of Solid Waste Disposal Sites" (H. P. 1948) (L. D. 2134):

Rep. BACHRACH of Brunswick
Rep. MARTIN of Brunswick
Rep. AULT of Wayne

Respectfully,
EDWIN H. PERT,
Clerk of the House

Which was Read and Ordered Placed on File.

Committee Reports
House
Divided Report

Nine members of the Committee on Health and Institutional Services on, Bill, "An Act to Provide for the Licensing of Denturists." (H. P. 1991) (L. D. 2178)

Report in Report "A" that the same Ought Not to Pass.

Signed:

Senators:

HICHENS of York
BERRY of Androscoggin
GREELEY of Waldo

Representatives:

CURRAN of So. Portland
LOVELL of Sanford
HENNESSEY of Bath
LAVERTY of Millinocket
SPROWL of Hope

Two members of the same Committee on the same subject matter report in Report "B" that the same Ought to Pass in New Draft under Same Title (H. P. 2254) (L. D. 2324).

Signed:

Representatives:

GOODWIN of So. Berwick
LaPOINTE of Portland

Two members of the same Committee on the same subject report in Report "C" that the same Ought to Pass in New Draft under Same Title (H. P. 2255) (L. D. 2325).

Signed:

Representatives:

POST of Owls Head
MORIN of Old Orchard Beach

Comes from the House, Bill and accompanying papers Indefinitely Postponed.

Which reports were Read.

On motion by Mr. Conley of Cumberland, the Majority Ought Not to Pass Report of the Committee was Accepted.

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

Mr. HICHENS: Mr. President, I move that we reconsider our action whereby this majority report was accepted, and hope that you vote against my motion.

The PRESIDENT: The Senator from York, Senator Hichens, now moves that the Senate reconsider its action whereby it accepted the majority ought not to pass report of the committee. Will all those Senators in favor of reconsideration please say "Yes"; those opposed will please say "No".

A viva voce vote being taken, the motion did not prevail.

Senate
Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act Relating to Mental Health and Retardation Programs in the Department of Mental Health and Corrections." (S. P. 698) (L. D. 2222)

Reports that the same Ought to Pass as Amended by Committee Amendment "A" (S-483).

Signed:

Senators:

COLLINS of Knox
CLIFFORD of Androscoggin

Representatives:

PERKINS of So. Portland
SPENCER of Standish
HEWES of Cape Elizabeth
MISKAVAGE of Augusta
HENDERSON of Bangor
McMAHON of Bangor
BENNETT of Caribou
HUGHES of Auburn
HOBBS of Saco

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

Signed:

Senator:

MERRILL of Cumberland

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

Thereupon, under suspension of the rules, the Bill, as Amended, was Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Enactors

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

AN ACT to Amend the Procedures of the Maine Labor Relations Board. (H. P. 1961) (L. D. 2148)

AN ACT Relating to Location of State Liquor Stores. (H. P. 1805) (L. D. 1964)

(On motion by Mr. Huber of Cumberland, placed on the Special Appropriations Table.)

AN ACT Appropriating Funds for the Purchase of Town Histories. (H. P. 1949) (L. D. 2135)

(On motion by Mr. Huber of Cumberland, placed on the Special Appropriations Table.)

AN ACT to Provide for Primary Prevention of Alcohol and Drug Abuse. (H. P. 1800) (L. D. 1959)

(On motion by Mr. Huber of Cumberland, placed on the Special Appropriations Table.)

AN ACT Relating to Residency for the Purposes of Municipal Relief of the Poor. (S. P. 738) (L. D. 2288)

AN ACT to Allocate Part of Lobster and Crab Fishing License Fees to the Lobster Fund and Boat Fund. (H. P. 2079) (L. D. 2242)

AN ACT Relating to Voting Places in Certain Unorganized Townships. (H. P. 1982) (L. D. 2151)

(On motion by Mr. Huber of Cumberland, placed on the Special Appropriations Table.)

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

An Act Relating to Charitable Solicitations. (H. P. 1983) (L. D. 2165)

On motion by Mr. Cianchette of Somerset, the Senate voted to reconsider its action whereby the Bill was Passed to be Engrossed.

The same Senator then presented Senate Amendment "C" and moved its Adoption. Senate Amendment "C", Filing No. S-487, was Read.

The PRESIDENT: The Senator has the floor. Mr. CIANCHETTE: Mr. President and Members of the Senate: It came to my attention that I think this amendment should be admitted to this bill. I am very much involved with the Boy Scouts and the Scouting program in the state, and I really don't think that it is necessary that these people be put through the process in their daily routine business as outlined in this law. This would simply exempt them from the day to day activities, and would not exempt them in case they have major fund-raising effort. So I would hope that you accept the amendment.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "C"? It is a vote.

The PRESIDENT: Is it now the pleasure of the Senate that this bill as amended be passed to be engrossed and sent down for concurrence?

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: I mentioned previously that I was bothered by this bill. As the bill now stands, it has been shot full of exceptions and I think we ought to seriously consider whether it should be passed at all.

As I understand, the original purpose of the bill was to get a better examination of possible abuses in charitable solicitations, but in going back to my home area on two weekends I have had opportunity to inquire of many people who take part in charitable activities and who give to about everything that comes along, and I have not found any significant evidence of abuse. We all know that there are some things that come through the mail from time to time that are of questionable value. Sometimes there is even an element of fraud. We are protected as to those items by federal law which permits challenging those organizations through the Post Office laws.

As to more localized situations, the bill as amended applies to those organizations that raise more than \$15,000 a year for their purposes, and when you begin to think of who is left that is covered, you don't get a very long list. Some community chests, united charitable efforts of that nature, are covered, some are not. I think that YMCA's and that type of effort, perhaps to build a new building or improve a building, something of this nature, would be covered. There are probably a few others that I have not tried to catalog, but these few that remain to be covered by this registration procedure have to employ a certified public accountant to file a statement which includes year to year comparisons, includes fourteen or fifteen different categories of expenditure, and of course if there are any contracts given to professional fund raising counsel or solicitors, those must be reported and the solicitors or the fund raising counsel must also file reports and obtain licenses.

I looked at the material from the committee that had to do with cost. This will be lodged with the Secretary of State, the responsibility, and it is clear that there will be additional clerical time required, additional file cabinets, desks, typewriters, and so on. Exactly how much is not clear. Whether the fees that are generated will pay for it isn't clear. And I just wonder if the abuse is really large enough and significant enough to take this very narrow segment and require this sort of treatment.

I also wonder if there is a question here about this applying to political parties. I raised this with our good minority leader and he said that his party was not charitable. I read the definition of the word "charitable" and I found it said that charitable means patriotic, and I expect that our parties are that. It says educational, and I think our parties are that. It says philanthropic, and I am not sure whether our parties are that or not; it depends on the context, I guess. But there are questions in my mind about the extension of the scope of these definitions. So I submit to the Senate that the value of this is very limited. It just creates another licensing, paper work problem for good people who are trying to do something for their communities and the causes that they believe in. I would request a division.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Kennebec, Senator Thomas.

Mr. THOMAS: Mr. President, I ask to be ex-

cused from voting on this particular issue because of an apparent conflict of interest.

The PRESIDENT: The Senator from Kennebec, Senator Thomas, requests leave of the Senate to refrain from voting on L. D. 2165 because of the possibility of an appearance of conflict of interest. Is it the pleasure of the Senate to grant this leave?

It is a vote.

A division has been requested. Will all those Senators in favor of the passage of this bill as amended be engrossed and sent down for concurrence please rise in their places until counted. Those opposed will please rise in their places until counted.

A division was had. 10 having voted in the affirmative, and 19 having voted in the negative, the Bill failed of Passage to be Engrossed in non-concurrence.

Sent down for concurrence.

An Act to Revise Requirements for Permanent Markers under the Land Subdivision Law. (S. P. 717) (L. D. 2268)

Mr. Berry of Cumberland then moved the pending question.

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

Emergency

An Act Relating to Borrowing Capacity of Community School District No. 915 Consisting of the Towns of Litchfield, Sabattus and Wales. (H. P. 2256) (L. D. 2329)

This being an emergency measure and having received the affirmative votes of 27 members of the Senate was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the governor for his approval.

Committee Reports

Senate

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Revise the Maine Criminal Code as Recommended by the Criminal Law Revision Commission." (S. P. 697) (L. D. 2217)

Reports that the same Ought to Pass in New Draft under Same Title (S. P. 777) (L. D. 2334)

Signed:

Senators:

COLLINS of Knox

CLIFFORD of Androscoggin

Representatives:

HENDERSON of Bangor

McMAHON of Kennebec

PERKINS of So. Portland

HEWES of Cape Elizabeth

HOBBS of Saco

BENNETT of Caribou

MISKAVAGE of Augusta

SPENCER of Standish

The Minority of the same Committee on the same subject matter reports that the same Ought to Pass in New Draft under New Title: "An Act Making Certain Revisions in the Maine Criminal Code (S. P. 778) (L. D. 2333).

Signed:

Senator:

MERRILL of Cumberland

Representative:

HUGHES of Auburn

Which reports were Read.

The PRESIDENT: Is it now the pleasure of the Senate to accept the majority ought to pass in new draft report of the committee?

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, if I understand the motion before the body, it is that we accept the majority ought to pass in new draft report of the

committee. Is that presently the motion before the body?

The PRESIDENT: That is the motion that the Chair posed to the Senate. There has been no affirmative motion to that extent.

Mr. MERRILL: Mr. President, I have no problem in speaking to this in that posture. I simply would like to point out the difference in the two drafts that are before us so that the Senate may make a conscious decision, and I will be brief.

It can be noted from looking at Supplemental Journal No. 2 that Senator Collins of Knox and Senator Clifford of Androscoggin are both on the other side, and whenever I go up against these two gentlemen on a judiciary matter I feel a little bit like David going up against Goliath without a slingshot. But I would like to just point out to the Senate, so that we can have a conscious decision on this issue, what is before us.

The only difference in the two drafts comes to when it is proper for a person to use deadly force against another person. Presently the code that we passed last session tries to draw a pretty clear line, based on the previous law, the common law, that basically says that you can use deadly force to defend yourself or another person against deadly force but you cannot use deadly force to defend your property.

Also the code, I think, probably stretched the common law just a little bit. It certainly gave it the best interpretation from the standpoint of those who would like to use force, deadly force, by making it clear that when it came to using deadly force in a dwelling house that it wasn't necessary even for the party using the deadly force to believe that the other party was going to use deadly force against him, but to simply believe that it was likely that the party in the dwelling house illegally was going to use any force against him. So the situation currently in the code is that you can use deadly force to defend yourself against deadly force, except that in your dwelling house you are allowed to use deadly force to defend yourself if there is any likelihood that the person in the dwelling house wrongly — and that is interpreted to mean he is in there to commit burglary or has trespassed to commit some crime. If he is in there for that purpose, or you believe that he is in there for that purpose, then you can use deadly force if you think it is likely that he is going to use any force.

When we put this into the law, even though I think that everyone would admit that studied the matter that this is certainly a liberal interpretation of the present law with regard to the right of an individual to use force in defending his dwelling house, a lot of citizens became outraged, outraged because they believe that if somebody was trespassing on their property they should have the right to use deadly force just to bring an end to that trespass.

I am not going to suggest to this Senate that this hasn't been a matter that has been well worked over in committee. It has. And the draft that the majority of the Judiciary Committee supports is as responsible a draft as could be written. If the Senate believes that it is ever proper for a person to use deadly force for a purpose other than protecting human life or protecting himself against the use of force in his dwelling house what I am suggesting to the Senate is that the line is pretty clearly drawn by the two positions here.

I frankly come to my position not from a concern for the person in a house committing burglary — I have no great concern for that person, and if somebody were to use deadly force against them I have to admit that I shed no great tears — my concern is with the general

growing problem of homicides in America, which are growing from this very sort of situation. Every homicide isn't committed between two strangers or between some member of organized crime shooting somebody walking down the street; it takes place in somebody's dwelling house as often as not, and often it involves one member of a family shooting another member of the family, and this sort of thing. Although I, or maybe partly because I couldn't support gun legislation in the last session, I have to examine my own position in regards to this sort of question in light of the fact that society is arming itself. And recognizing that this difference of opinion between myself and the majority of the members of the Judiciary Committee has to do with what could be a successful defense against a charge of unlawful homicide brought by the state, I sincerely believe that the effect of this, if it has any effect on primary conduct, will be to encourage members of the citizenry to take up arms against each other. The result of this, I think, won't be that a lot of burglars will get shot but that a lot of people who aren't burglars will get shot.

Last week we stayed fairly late into the night discussing this for its last round, and I would like to compliment the Senator from Knox, Senator Collins, in giving this more than a fair hearing in the committee. It was fairly late in the evening when I left, and I went to the Holiday Inn and there were no rooms, so I went over to John Martin's house and entered his house at about 2 o'clock at night without waking anybody up, and I couldn't help but reflect on how happy I was that the Speaker of the House doesn't normally keep loaded firearms in his house. It is going to lead to this sort of accidental killing, and I am afraid also that by making bigger what can be a successful defense to a crime of unlawful homicide it is also, although that certainly is not our desire, going to allow some people to take advantage of this defense who actually have set out to commit first degree murder.

The bill, as it is drafted, would allow somebody to use deadly force to defend their dwelling house without the belief that force is going to be used against them, without that belief, and without a warning, without giving a warning to the person in the dwelling house, if they believe that by giving a warning they could put themselves in danger, so obviously if it was late at night and you thought the person might have a gun, to give a warning at that time could reasonably make you think that it would put you in danger. What I am afraid of is a situation where we find ourselves bringing charges, for example, against a spouse who shoots a spouse in the dead of night, and then makes the defense that they were acting under the rights granted by this section. Without a requirement for a warning, I am afraid it would be very difficult if the only witness, the only living witness, were the spouse who has used the deadly force, it would be very difficult under those circumstances to bring a successful action.

It is for those reasons that I have signed a revision to the code that has that one difference. And because it is such an important issue, I would ask the Senate to indulge me and to let this vote be taken by the "Yeas" and "Nays" so that we may state our positions clearly.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: The Senator from Cumberland, Senator Merrill, has very ably described the issue before us. It has not been an easy issue for the Judiciary Committee.

In exploring the history of justification defenses, we found that only the State of Texas

goes all out in permitting the use of deadly force to protect property. In the State of Maine for 97 years the prevailing principle has been that human life is more important than property. I think that is still our posture as a general philosophical proposition. But I submit that the draft favored by the majority of the committee is a moderate middle ground that permits the householder to have greater protection in defending his own dwelling place.

I ask you, if you care to study the provisions in question, to note that we have confined this use of deadly force to the dwelling place. This doesn't mean that you can just go shooting anybody that is robbing a store, factory, or some other place that is not the dwelling place. It comes to that old English axiom that a man's dwelling place is his castle.

The good Senator is quite correct that many of the most difficult homicide questions come between and among those who are well acquainted, sometimes closely related by blood or marriage, but in weighing this decision today I would ask you to place particular emphasis on two or three words that are very carefully drafted into these sections. The sections in question that are the difference between the two versions submitted to you in this bill are sections 104 through 108 of the criminal code. Those are not the numbers in these drafts because they come up in sections that you need to look at the criminal code number to find the exact portion. The two sections that we are concerned with really here, 104 and 108, allow the occupant of the dwelling place to use deadly force under two circumstances.

Number one is when it reasonably appears necessary to prevent an intruder from inflicting bodily injury upon a person in the dwelling place or upon a person attempting to prevent the intrusion. This part I think is easy because when bodily safety of the person in the dwelling is involved we have to meet this threat with deadly force, if necessary.

The second condition is when it reasonably appears necessary to prevent or terminate the criminal trespass by an intruder who it reasonably appears is committing or is likely to commit some other crime within the dwelling place.

The question has been raised of why do we have to set out these rights in two separate sections. Section 108 is commonly called a crime prevention statute, and this has important substantive implications. In contrast with section 104, section 108 does not limit the right to use deadly force to persons licensed or privileged to be in the dwelling place, thus, a police officer or a passerby who observed a burglary of a dwelling place could use deadly force to prevent the infliction of bodily injury upon an occupant of the dwelling place. This would be true even if the officer or passerby were not physically within the confines of the dwelling place.

Both sections 104 and 108 contain a number of prerequisites which must be met before the defense of justification is available. I am only going to dwell on two of them because I think that they ought to be the determinative prerequisites, and I know that there are limits to what we can grasp in this sort of a dissertation.

The first limitation is that there must be reasonable belief. This means that the jury must find that the defendant honestly believed that the circumstances which gave rise to the right to use deadly force actually existed. If they believe the defense to be contrived, the defendant can be found guilty of an intentional crime, such as criminal homicide in the second degree.

The other word of importance is "necessary", and this is perhaps the most important word in these statutes. We have no intention of granting people a license to execute other people when it is not necessary. Generally speak-

ing, this means that deadly force must be the only viable remedy under the circumstances.

I think that this is all I would like to say. I am hopeful that our other member of the Judiciary Committee, Senator Clifford, may give us his views, and I believe that he has an amendment coming along, if this report is adopted, which will further sharpen the language that we have used here.

I have had letters running into the several hundreds by this time from people all over the state who have read in newspaper letters to the editor all over the state commentary on the criminal code, a commentary which suggests that in passing this code last year we weakened the right of the homeowner. That was not the case, however. Last year we were simply codifying the existing common law of the State of Maine as it has developed in the last 97 years.

But it is clear that in a rural state, partially rural at least, like Maine, that there are many people who are quite a long ways away from a police officer who can really help them. And we know that there is an increasing amount of burglary. So we felt that we were justified in strengthening in the dwelling place the use of deadly force reasonably necessary to alleviate the problems that the householder would face in these circumstances.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: As has been stated, the difference between the majority and the minority report of the Committee on Judiciary goes to the differences between when one can use deadly force in the dwelling under certain circumstances to protect the home.

And as has been stated, the criminal code, when it was enacted, not much attention I think, frankly, was paid to this section, and the law was simply codified. And once that law became published and was studied by people from throughout the state, many people were surprised at what the law was. Therefore, the Judiciary Committee, in hearing the revisions to the criminal code, heard extensive testimony as to what the law should be. And I think it is fair to say that we heard a great many requests to greatly strengthen the rights of the homeowner; indeed, we heard many requests to greatly strengthen the rights of the property owners in general, especially as it relates to the use of deadly force.

I think it is fair to say that we did not greatly strengthen the rights of the homeowner, and we did not at all strengthen the rights of the property owner. We did slightly change the law. And I think it was certainly in the prerogative of the Judiciary Committee, and is the prerogative of this legislature, to look at the policy of the law, as opposed to the technical language, and to make that change if the legislature feels it is in the public interest to make it. So that the majority committee report does in fact slightly change the existing Maine law, and it gives the homeowner some more rights in the protection of the sanctity of the home. It does not go anywhere near to the extent in giving rights to the homeowner that were recommended by some of the people who testified before our committee.

I think if you will look at L. D. 2334, which is the new draft bill being recommended by the majority of the Judiciary Committee, on page 9, I think some of the phrases were quoted by the Senator from Knox, Senator Collins, and that is what we are talking about. And I think it is fair to summarize that what we are recommending the legislature adopt as policy for the State of Maine in the use of deadly force in protection of the dwelling — and it is only the dwelling, and not other property — is that deadly force can be used, first of all, only when it is necessary to prevent certain things from hap-

pening, as the Senator from Knox, Senator Collins, has pointed out. It is not an unlimited right to use deadly force. There is no license to use deadly force. And I think that the circumstances under which deadly force may be used are pretty tightly drawn.

So that deadly force, under the revised version, or the one that the majority is recommending, would be able to be used by the homeowner to protect life when life is in jeopardy — and that right exists of course today — and also in situations where there is a criminal trespass occurring within the dwelling; and further, the criminal trespasser is not only committing a criminal trespass but is engaging in some other criminal activity, normally, of course, the burglary. There are further restrictions that in normal circumstances the homeowner, before he is allowed to use deadly force, must give a warning to the person who is committing the criminal trespass and the other criminal activity, unless he reasonably believes that to give that warning would be to jeopardize his own life. Only then, and only if the criminal trespasser who is committing the other criminal activity fails to desist from the criminal trespass, only then is the use of deadly force authorized. For example, if the person ceases the trespass and begins to retreat, the use of deadly force is not authorized. If the person ceases the trespass and begins to retreat with property in his possession that he has stolen, the use of deadly force is not authorized. If that person begins to retreat from the criminal trespass, even though he is continuing the commission of the crime, which would normally be the burglary, under this amendment the use of deadly force would not be authorized. It is only when the criminal trespasser persists in the criminal trespass and in the commission of the other criminal activity.

So I do think it is narrowly drawn, I think it is carefully drawn, and I think it is a change in policy which reflects, in my opinion, what the law in Maine should be. I think perhaps that circumstances in Maine are different today than they were in 1870, and I think that perhaps the rights of property owners have been eroded. I think that this is one small step, reasonable step, towards making the home the castle, toward the sanctity of the home, if you will. I think it is reasonable and I think that this Senate should go along with the majority of the Committee on Judiciary and adopt Report "A", L. D. 2334. Thank you, Mr. President.

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

Mr. MERRILL: Mr. President and Members of the Senate: I think that the issue is probably pretty clearly before us. I just want to make clear that a warning isn't always necessary. This is one of the places where the committee and I parted company, that a warning isn't necessary if a person reasonably believes that it will put him in danger to give a warning. And I submit that that probably would be the case any time when it was dark enough so you couldn't see whether or not the person was armed. Certainly if there was a possibility that you had an intruder committing a burglary, which is breaking and entering with the intent to commit any crime, and if you thought that he was armed, or reasonably could believe that he was armed, it could put you in danger to warn him.

I really see this question as one between whether or not we want to treat a perceived problem at the expense of making a real problem worse. The perceived problem is that burglary is increasing, that crimes against people's dwelling houses are increasing, because people don't have the legal right to use their arms — usually we are talking about a gun here — against the people that are breaking in. That is the perceived problem. Those of us who

are familiar with the inability usually to use this as a solution to the problem I think would recognize that if the problem isn't one that is only perceived, the solution is one that is only perceived. It necessitates obviously having a loaded handgun ready or a handgun with its ammunition nearby which, if you have children, is a very dangerous condition to have present. This is the perceived problem.

The real problem that we put in danger by passing this bill is the real homicide situation in this state today, which is either an accidental killing or a killing that is provoked by the heat of anger. And if we encourage people to have weapons ready and available for use to prevent people from burglarizing their homes, then we have to recognize that part of the consequences of that encouragement is that those weapons will be ready and available for use by a husband against a wife or a child against his father, under those sorts of circumstances. If we are going to encourage this activity, we have got to realize its natural consequences. And I suggest, if you have read the crime statistics, if you are concerned with the homicide rate in this country, that you know the real problem is the latter, and not the one that this seeks to overcome.

There is a lot of talk about homes being castles, and even when phrased in very precise and careful legal tones and intonations, it sort of raises a red flag over this issue, and I wonder how many people think of their home as a castle after somebody grabs a loaded handgun that has been kept around to get the burglar and in a moment of passion shoots their spouse or shoots their parent. The home probably doesn't look much like a castle after that has happened. And that is the reality that we are talking about in the United States today as self help becomes more and more desirable and more and more of our citizens arm themselves to prevent this burglary that may happen in the future.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is the acceptance of the majority ought to pass in new draft report of the committee. A "Yes" vote will be in favor of acceptance of the majority ought to pass report; a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, E.; Berry, R.; Carbonneau, Cianchette, Clifford, Collins, Corson, Cummings, Curtis, Cyr, Danton, Gahagan, Greeley, Hichens, Huber, Jackson, Johnston, Katz, Marcotte, McNally, Pray, Roberts, Speers, Thomas, Wyman.

NAYS: Senators Conley, Graffam, Graham, Merrill, Reeves, Trotzky.

ABSENT: Senator O'Leary.

A roll call was had. 25 Senators having voted in the affirmative, and six Senators having voted in the negative, with one Senator being absent, the Majority Ought to Pass in New Draft Report of the Committee was Accepted and the Bill in New Draft Read Once.

The PRESIDENT: Is it now the pleasure of the Senate that the rules be suspended in order for this bill to be given its second reading by title only at this time?

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would request that we not have second reading at this time. There are a couple of amendments being prepared, one to correct typographical errors, and one that I have already mentioned which I feel should be put on before this goes further.

The PRESIDENT: What time does the Senate assign for the second reading of this bill?

Thereupon, the Bill in New Draft was Tomorrow Assigned for Second Reading.

The President laid before the Senate the following tabled and Specially Assigned matter:

Bill, "An Act Relating to Exceptional Children." (H. P. 1797) (L. D. 1956) (Emergency)

Tabled — March 29, 1976 by Senator Speers of Kennebec

Pending — Motion of Senator Speers of Kennebec to indefinitely postpone Senate Amendment "A" (S-482)

(In the House — Passed to be Engrossed as Amended by Committee Amendment "A" (H-1083), as Amended by House Amendment "A" (H-1104) Thereto)

(In the Senate — Committee Amendment "A" Adopted as Amended by House Amendment "A" thereto)

Mr. Speers of Kennebec was granted leave to withdraw his motion to Indefinitely Postpone Senate Amendment "A".

Mr. Katz of Kennebec was then granted leave to withdraw Senate Amendment "A" from consideration.

Whereupon, on motion by Mr. Speers of Kennebec, the Senate voted to reconsider its former action whereby Committee Amendment "A" was Adopted.

Thereupon, on further motion by the same Senator, tabled and Tomorrow Assigned, pending Adoption of Committee Amendment "A".

The President laid before the Senate the following tabled and Specially Assigned matter:

Bill, "An Act Relating to Town Ways." (H. P. 1920) (L. D. 2108)

Tabled — March 29, 1976 by Senator Merrill of Cumberland

Pending — Passage to be Engrossed

(In the House — Passed to be Engrossed as Amended by Committee Amendment "A" (H-1028), as Amended by House Amendments "A" (H-1070) and "D" (H-1122) Thereto.

(In the Senate — Committee Amendment "A" adopted as Amended by House Amendment "A" and "D" Thereto)

Mr. Merrill of Cumberland then requested a roll call.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call on the passage to be engrossed of Legislative Document 2108 please rise in their places until counted.

One-fifth having arisen, a roll call is ordered. The Chair recognizes the Senator from Cumberland, Senator Graham.

Mr. GRAHAM: Mr. President, I wonder if some member of the Senate would care to explain this bill a little more.

The PRESIDENT: The Senator from Cumberland, Senator Graham, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President and Members of the Senate: This bill is the result of a piece of legislation that was put in, and evidently there have been some municipalities throughout the state that have had the problem with roads that were presumed to be abandoned, or were abandoned, with people moving into these abandoned places and then petition the town to improve the road that continued to their place of residence. Evidently this cost many municipalities throughout the state great sums

of money to put these roads in proper condition so that they could be maintained.

The committee amendment took out the section of the bill which provided for taking by eminent domain for recreational purposes. I do notice that a House amendment that was put onto the bill does provide for this being reinstated by taking it back. Supposedly, in the original bill it was supposed to have been passed on to the abutting landowners and they would gain title to the property. The House Amendment which was put on, H-1070, does provide for the town to take this back by eminent domain without any retribution to the landowners that do acquire the property.

The bill did come out of committee with a unanimous report. I was hesitant on signing the bill out because I had reservations as to the workings of it. The old bill provided that the appeals procedure would go to the county commissioners, if somebody was aggrieved. Under this bill, they go directly to the superior court.

I do think at the time, whereas developers are buying many parcels of land which are on discontinued ways, or are presumed discontinued, that it is kind of a burden to a small community to have to repair these roads and put them into a situation where they would be passable or maybe even better than that. I do think that the Senate would be stepping in the right direction to assist some of these small municipalities in the passage of this bill.

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

Mr. MERRILL: Mr. President, I am obviously no expert on this bill. I asked for an explanation this morning, and later on I had a chance to talk to someone from the Maine Municipal Association who has an interest in this bill, and I have some understanding of it, but I would be anxious to be corrected in my misunderstandings.

I think the heart of this bill has to do with the right to have what is now a public road no longer be a public road. Now, if it is not a county road, if it is a town road, as I understand it, that can be done now by the town. What this bill does though is provide that if thirty years have passed, and the town hasn't put any money into keeping the road up, that there is an automatic presumption that the road is thereby terminated, that it was in fact ended, even though there may be nothing in the town records to ever show that the town voted to have that road come to an end.

Now, the merit, as I can understand it, on the one hand there is the possibility of the town finding out about these roads that it has neglected, somebody finally wants the town to keep it up, as they are supposed to do, and that is costing the town a lot of money. That is the weighing concern on the one hand. My concern, on the other hand, is how about the owner of the land who bought a piece of property that was on a public road, who never had the town take a legal action through their elected officials to bring an end to that road, or through the town meeting process to bring an end to that road, and suddenly finds that through no fault of his own he no longer lives on a public road.

Now, if I understand correctly again, the result of that decision, the result of that legislative fiat, is that there is a public easement over the land between that owner and a public road. But this public easement is the property not only of the abutting landowners but is free for the use of anybody who may care to pass over it. So the situation that the person could be in would be that he would find himself maintaining a road that would be used that he couldn't prevent use of by the public.

Now, I think that in passing this law, which may in fact do the most good for the most people, the town citizens who would have to pay to have these roads fixed up, we have to recognize

that the price we pay by doing it by a legislative fiat of this kind is that there are going to be some legitimately aggrieved parties. There are going to be in some places some people who have owned this land legitimately who have, maybe, through an understanding with their town government or one person that serves in it not insisted on the road being fixed up because they didn't intend to use that house, maybe they were going to save it for their child, and then the situation comes along all of a sudden where by legislative fiat we say that the person no longer lives on a public road. And I think if that happens, there is going to be a great public hue and cry about why the 107th took away the public road past this old person's house. That is the negative that we have to weigh against the public good, that the Maine Municipal Association and the other sponsors of this bill would have us do.

I just have trouble with doing it this way. I think that the proper approach is for the towns to find out what roads they do in fact have and, if there are more than they want, to bring their necessary action to bring an end to these public roads. Now, I am told that some towns don't know what roads they have and what roads they don't have, and I am sympathetic with their burden, but I am also sympathetic with the situation we are going to find some landowners in when they don't live on a public road any more as a result of this action we took.

There are some middle ground remedies that I understand were discussed in the committee; for example, giving landowners a year to come forward and defeat this presumption. But that action wasn't taken by the committee. I just think that the effect of this is going to be very, very harsh on a few individuals.

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

Mr. CARBONNEAU: Mr. President and Members of the Senate: This bill was heard in the Local and County Government Committee, and it came as a result of many small towns having all kinds of town roads but no records. Whether these town roads are abandoned or not, I think from here on in they are going to have to make a record of it. And if the road is to be discontinued by a town, there will be a public hearing to that effect so those people who own property on a town road will have a chance to speak.

Another thing this bill does is give the towns the authority to abandon a road or the presumption of abandoning a road that the town has not put any brand into for the last twenty or thirty years. I am not sure what the last figure was, but I think it was twenty-five or thirty years.

What is happening is that some of the real estate people, the brokers, the sellers, go out of state, they sell land on these supposedly town roads that have not been abandoned, get a pretty good price for it, and at the other end of that town road there may be, of course, another county line, and this guy comes in and picks up the land or some barn somewhere, and he wants the town to make a road for him. So this is costing these people an awful lot of money. Now, I have heard of some towns where they have perhaps \$70,000 to maintain the roads of the town, and to pick up a road like that would probably cost them \$125,000. Of course, that is quite a tax burden to the citizens of that community, and that is why this bill was brought in.

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

Mr. MERRILL: Mr. President and Members of the Senate: I think it just should be clear that the towns have the ability to discontinue these roads. What they are asking us to do is to, in essence, discontinue a whole parcel of those — heaven knows which ones they are, because part of the reason for us doing it is that

supposedly the towns don't know which ones they are — sort of by legislative fiat. I just don't think it is the proper approach to take in bringing about this result, and it seems to me there are going to be some examples of some people for whom we can have sympathy and I recognize it is hard for us to have a lot of sympathy for land developers who are attempting to take advantage of the towns — but, you know, the problem we have as the legislature is that we can't pick out those that we don't like from those that we do when we pass this sort of broad sweeping legislation, and I think we have to keep that in mind when we vote for these things.

The PRESIDENT: A roll call has been ordered. The pending question before the Senate is the passage to be engrossed of L. D. 2108, "An Act Relating to Town Ways." A "Yes" vote will be in favor of the passage of this bill as amended to be engrossed; a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, E.; Berry, R.; Carbonneau, Cianchette, Clifford, Collins, Corson, Cummings, Curtis, Cyr, Gahagan, Graffam, Greeley, Huber, Jackson, Johnston, Katz, Pray, Reeves, Speers, Thomas, Wyman.

NAYS: Senators Conley, Danton, Graham, Marcotte, McNally, Merrill, Roberts, Trozky.

ABSENT: Senators Hichens, O'Leary.

A roll call was had, 22 Senators having voted in the affirmative, and eight Senators having voted in the negative, with two Senators being absent, the Bill, as Amended, was Passed to be Engrossed in concurrence.

The President laid before the Senate the following tabled and Specially Assigned matter:

Bill, "An Act to Improve Solid Waste Management." (H. P. 2090) (L. D. 2249)

Tabled — March 29, 1976 by Senator Speers of Kennebec

Pending — Adoption of Senate Amendment "A" (S-484)

(In the House — Bill in New Draft (H. P. 2225) (L. D. 2315) Passed to be Engrossed as Amended by House Amendment "A" (H-1090)

(In the Senate — Committee Amendment "A" (H-1015) Indefinitely Postponed)

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, Senate Amendment "A" contains a troublesome provision and an error, and I have redrafted my amendment. I would therefore ask leave at this time to withdraw Senate Amendment "A" from consideration.

The PRESIDENT: The Senator from Knox, Senator Collins, now asks leave of the Senate to withdraw Senate Amendment "A". Is it the pleasure of the Senate to grant this leave?

It is a vote.

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

Senate Amendment "B", Filing No. S-486, was Read.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: I would like to just describe to you a bit of what this amendment will do to this solid waste management bill.

The first change is to allow the Department of Transportation to erect signs as their budget permits, instead of requiring them to put up signs every hundred miles. Obviously, the reason for this is that there would be a \$5,000 fiscal note needed if we made it mandatory, but by making it permissive, they will have to see whether it fits into their budgets.

The next change, in section 16 of the bill, which is the bottle part of the bill, it changes some definitions. The definition of beverage is

changed by deleting any reference to wine, liquor or alcohol. The reason this change is made is because we are not putting any financial requirement on those items. We have also deleted the definition of commissioner, department, operator of vending machine, premises, refillable, refundable containers, and so on, because we do not use those terms in the bill as amended.

Section 1864 of the bill is deleted because we are not going to have a disposal charge, but rather what we are requiring, as of January 1, 1978, is that beverage containers be returnable.

We have deleted section 1868 because we do not feel we should mandate the type of container which a business can use. I think this matter has to be controlled by the free enterprise system.

Sections 1871 and 2 have been deleted because it deals with the distribution of money collected from the tax and we have deleted the tax from the bill. The amendment also adds in place thereof a new section which provides for penalties for violating the provisions of the chapter on returnable containers.

We have also deleted section 17 that would set up a program in the DEP for solid waste. Again, there will be no money for this program, so there is no need to have that section of the bill.

The referendum clause has also been amended to have only the returnable beverage container section of the bill sent out to the people. That is section 16 of the act. We have changed the wording of the question to read: "Shall section 16 of 'An Act to Improve Solid Waste Management', which section bans non-returnable beverage containers, as passed by the Special Session of the 107th Legislature, become law?"

Since the printing of Senate Amendment "B", I have discovered one more typographical omission and I would expect, if Senate Amendment "B" is adopted, to offer Senate Amendment "C" following that to provide for some section references corrections and to refer to the word "unbroken" with respect to containers, and I think that any of you who are merchants or are close to merchants will be glad to know that the containers returned have to be reasonably clean.

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

Mr. CLIFFORD: Mr. President, with respect to the pending amendment, I would make a parliamentary inquiry as to whether or not this amendment would be in violation of Joint Rule 28. I am not an expert in this area by any means, but it seems to me we are talking about a returnable bottle bill which, as I understand it, was rejected at the regular session, Thank you, Mr. President.

The PRESIDENT: The Chair would advise the Senator from Androscoggin, Senator Clifford, that in the opinion of the Chair and its advisers this amendment is not in contravention to Joint Rule 28.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, if this is the proper time, I would offer Senate Amendment "A" to Senate Amendment "B", under Filing No. S-490, and move its adoption.

The PRESIDENT: The Senator from Androscoggin, Senator Clifford, now offers Senate Amendment "A" to Senate Amendment "B" and moves its adoption. The Secretary will read Senate Amendment "A".

Senate Amendment "A", Filing No. S-490, to Senate Amendment "B" was Read.

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

Mr. CLIFFORD: Mr. President, this is a very short amendment and it changes the wording of the referendum to include the fact that a 5 cent deposit on all returnable beverage containers

will be part of the law. It seems to me that we had some discussion this morning about the public's right to know. It seems to me if they are going to vote that the best place to put as much information as possible about the effect of the bill would be in the question that appears on the ballot so that the people will know a little more about the bill. Thank you, Mr. President. I hope you adopt Senate Amendment "A" to Senate Amendment "B".

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would ask the Senate to reject the amendment proposed by the good Senator from Androscoggin, Senator Clifford. The wording which now is set forth in Senate Amendment "B" clearly says that the purpose is to ban the non-returnable beverage container. It seems to me that this effort to talk about the 5 cent deposit and so on, with the word "minimum" before it, is an attempt to weaken the bill, weaken the referendum, and to give the voters the impression that things are going to cost more, and I would ask the Senate to reject the proposed amendment.

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

Mr. KATZ: Mr. President, I would like the Senator from Knox, Senator Collins, to expand a little bit. I didn't quite follow his reasoning because this legislature has always found it in the last two sessions helpful rather than confusing to have a fiscal note on our legislation.

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I recognized the twinkle in the good Senator's eye when he asked that question, and obviously fiscal notes relate to what it costs the state and not what it costs the customer in the field, and therefore the 5 cent limitation would not be required.

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

Mr. TROTZKY: Mr. President and Members of the Senate: This amendment is an attempt to kill the bill by rewording the question.

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

Mr. CIANCHETTE: Mr. President, I would like to ask a question. I am sorry I am not quite up on this, and I am confused now. Would someone please explain to me does the bill, as amended at this point, call for a 5 cent deposit on returnable beverage bottles? Would you please answer that? Is that in the law, or is this something new added to the law?

The PRESIDENT: The Senator from Somerset, Senator Cianchette, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, Senate Amendment "B" which I have proposed would require these deposits, yes. That is a change from the original bill.

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

Mr. JACKSON: Mr. President and Members of the Senate: I rise to support the good Senator from Androscoggin, Senator Clifford, with his amendment. I think it is only too fair to put this 5 cent deposit in the referendum so the people will know exactly what they are voting for. We can read the referendum clause which is in Senate Amendment "B", it says "Shall section 16 of 'AN ACT to Improve Solid Waste Management,' which section requires returnable beverage containers, as passed by the First Special Session of the 107th Legislature, become law?" How many people out there

realize what that does? How many people realize what the bill means?

I think Senator Clifford's amendment is explicit and I think it is right to the point, and the people will have the right to decide as to whether they want to pay 5 cents extra for returnable containers or whether they don't. So I think it is only fair that we put this out to them where they can see the question and where they can answer the question in its proper perspective.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President, if this amendment offered by Senator Clifford is a returnable deposit, the way it reads right now I think misrepresents the bill.

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

Mr. CARBONNEAU: Mr. President, I have kept quiet on this thing for some time and I just can't sit in my chair any more. It is getting kind of warm.

I would suggest to the good Senator from Penobscot, Senator Trotzky, that by the amendment as it reads, Senate Amendment "B", that you are actually camouflaging this whole thing and you are afraid the people are going to know about it. And I would like to second Senator Clifford here with his 5 cent deposit because then people will know. We are always talking about the right to know, that people should know. Let them know what you are talking about, let them know what you are trying to do. Don't camouflage it, and don't be scared of it either.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would request a division.

The PRESIDENT: A division has been requested. The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, in responding to Senator Carbonneau from Androscoggin, I am sure that by the time this plebiscite takes place everybody in the State of Maine is going to be so well informed on all the features of the thing that they will know more about the bill than we do now when we vote on it.

The PRESIDENT: The pending question before the Senate is the adoption of Senate Amendment "A" to Senate Amendment "B". A division has been requested. Will all those Senators in favor of adopting Senate Amendment "A" to Senate Amendment "B" please rise in their places until counted. All those opposed will please rise in their places until counted.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President, I request a roll call.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is the adoption of Senate Amendment "A" to Senate Amendment "B": A "Yes" vote will be in favor of adopting Senate Amendment "A" to Senate Amendment "B": a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, E., Carbonneau, Cianchette, Clifford, Conley, Cyr, Danton, Graffam, Jackson, Johnston, Katz, Marcotte, Merrill, Pray, Wyman.

NAYS: Senators Berry, R.: Collins, Corson,

Cummings, Curtis, Gahagan, Granam, Greeley, Hichens, Huber, McNally, Reeves, Roberts, Speers, Thomas, Trotzky.

ABSENT: Senator O'Leary.

A roll call was had. 15 Senators having voted in the affirmative, and 16 Senators having voted in the negative, with one Senator being absent, the motion did not prevail.

Whereupon, Senate Amendment "B" was Adopted in non-concurrence.

Mr. Collins of Knox then presented Senate Amendment "C" and moved its Adoption.

Senate Amendment "C", Filing No. S-489, was Read and Adopted in non-concurrence.

The PRESIDENT: Is it now the pleasure of the Senate that this bill as amended be passed to be engrossed and sent down for concurrence?

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: A year ago this Senate was faced with this question of solid waste management, commonly known as the bottle bill, under really considerably more difficult circumstances than it is facing at the present time, but the issue still is one of very great importance to the state and to the people in the State of Maine.

At the time a year ago there were many of us who did feel very sincerely that there had to be a better way to approach the particular problem with which we were being faced. And indeed my own feelings with regard to this matter are that this particular item is simply an interim proposal because, as was stated by the good Senator from Oxford, Senator O'Leary, stated very well on the floor of this body several days ago, in which I concurred wholeheartedly, that the real question that is facing the people of the State of Maine, and facing them today, but which will be facing them in ever more pressing circumstances in the very near future, that real question is the question of recycling of all solid waste, not just beverage containers, and the question of what kind of a policy this state will adopt with regard to this solid waste disposal.

It is quite obvious, I believe, that we are going to have to move away from the policy which we have now in the State of Maine of simply digging holes and burying solid waste, waste that can be recycled. And by recycling we could gain funds from recycling, as well as saving funds by allowing the municipalities not to have to search out areas which are entirely unsuitable for simply burying solid waste. In my own district I have seen a number of problems arise this year with regard to finding suitable areas for dumping the solid waste, and this is going to increase, and increase tremendously, in the next few years statewide.

So I think this measure is just an interim proposal, because we are going to have to find and adopt a broader policy to implement a recycling policy throughout the entire State of Maine. I made such a proposal last fall, and I still feel that that matter has not yet been given its fair hearing and a fair airing, and that in the future a policy of recycling will have to be given its fair airing. In that proposal the State of Maine would have been able to receive a minimum of 2 million dollars per year from unreclaimed deposits, unrecycleable beverage containers, and it would have presented an incentive for municipalities to go into a total recycling policy. So, as I mentioned, I think that it will have its airing in the future, but in the meantime I do believe that the people of the State of Maine have evidenced a tremendous interest in approaching this problem in this manner, in the manner of the bill that we now have before us. It is probably a good interim proposal and I do feel that the people of the state ought to have an opportunity to express their opinions with regard to it. I therefore intend to support

the motion to engross this bill in its present form, and I do ask for a roll call.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: It seems to me from the statement of the majority floor leader that he has admitted in the statement — he has used the words "this issue, this bill before us one year ago" — I think it is pretty clear that we do have in fact the same issue before us now as we had before us a year ago and which the legislature rejected. And certainly one would call to question whether Rule 28 is any longer of any effect.

This bill is symbolic. Its real accomplishments are little. It is symbolic for the people involved in environmental movements and it is very symbolic for people in political life who want to get on the record. Unfortunately, however, it does great damage to many people and many industries. In my opinion, in these times of economic hardship, we should not be looking at ways to do great harm to industries in Maine, unless doing great harm is necessary and is going to accomplish something that outweighs the harm which we are going to do to those industries. I think it is pretty clear here that that is not true, that the benefits of this are symbolic only, but the damages are real.

I also think it is unfortunate that the legislature will not vote on this issue one way or the other. I have always believed that when you are elected to the legislature you are elected to represent your districts, and to vote yes or to vote no, one way or the other, on the issues that come before the legislature. I think that we ought to vote yes or no on this issue here in these halls since we have the opportunity to become informed of what the bill does and doesn't do. And I think it is unfortunate that we cause this to be sent out to referendum. I think it is an abdication of our responsibility, and I think it is an unnecessary expense to be borne by the taxpayers of the State of Maine. Thank you, Mr. President.

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

Mr. BERRY: Mr. President and Members of the Senate: The Senator from Androscoggin, Senator Clifford, made perhaps what might have been a slip of the tongue. If at any time any member of this body is dissatisfied with a ruling of the Chair, according to the procedure of the body here under the Roberts Rules, he has every right to appeal the ruling of the Chair, and I think that is the course to take, and not be critical of the Chair.

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

Mr. KATZ: Mr. President, when this issue came up before us before, the question of the referendum came up at that time, and I want to be consistent in my approach to the referendum.

This is a unique issue. I think the Senator from Androscoggin was absolutely right when Senator Clifford said, by implication, that this was tokenism. I think this is a gesture. The fact is, to put it as harshly as I can, that we have over the years degenerated into a nation of snobs, and I can't think of any other way to put it. We share this distinction with some other nations, but not all of them, and I suspect not most of them.

The people of my constituency have very clearly indicated by an absolutely extraordinary outpouring of sentiment to me that this is not just an ordinary issue. On most occasions they seem to be perfectly content to send me up here, having elected me to do what I consider is right, and then give a report card in two years, but this is not that kind of an issue, and I think the people clearly want in. So with a very clear conscience, I think any member of this body can vote for a referendum on this unique issue.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Gahagan.

Mr. GAHAGAN: Mr. President and Members of the Senate: Before the vote on this issue in the last session of the legislature I held several constituent meetings at which both sides of this issue were very well represented. Both proponents and opponents attended the meetings that I had and were lined up on both sides of the wall, and it was a very emotional scene, and I felt that because of that we should take a closer look at this issue and I voted against the bill.

As a response, what I felt was a responsible response from a member of the legislature. I set up what were termed as citizens advisory committees on solid waste management and resource recovery. At the first meeting there was one opponent to the bottle bill who attended, just one. At the second meeting there were none. And throughout the summer the proponents to the bottle bill faithfully attended the meetings and faithfully pursued all courses and all alternatives to this situation concerning solid waste management, resource recovery, and the bottle bill. So I say there were no opponents who expressed any interest at all throughout the summer.

As to the matter of the Senator from Androscoggin, Senator Clifford, saying there would be harm done, if this is the case, I must consider that the harm was not sufficient to cause these people to come out and participate in what I felt was a very open and honest discussion of this issue. I believe that support of this bill today accurately represents the views of my constituency, and I have no hesitation in supporting it. I think we have a better bill before us this time than we did last year and I can in good conscience support it today.

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

Mr. CONLEY: Mr. President and Members of the Senate: Frequently I drive up Western Avenue and I pass by dear old St. Mary's over there, and I notice outside it says confessions being heard on Saturday afternoon between the hours of 5 and 7. It appears to me that there are several confessions being made here today, and I want them to know that all their sins are forgiven.

However, the likeness of this bill and the one that we debated a year ago, there is very little change in it. I mean, it is very poorly drafted. I don't believe there is any way in the world, even if it is approved by the voters in referendum, that we are going to notice any great change. Slobs are slobs, and they will continue to be slobs until enforcement is put to work.

I am going to vote for engrossment of the bill and let it go to the voters, but I think there is going to be a real clean-up job taking place, not on the highways, but in the next legislative session to clean up this bill.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call on the passage of this bill to be engrossed please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: To me, the bill we killed the other day, the solid waste bill, 2250 I think it was, was a much better bill than this bill we have here. I don't think it had any referendum on it and I don't think it put the decision off for two years. I think it was an excellent bill. However, the legislature in its wisdom did not pass that bill, and so I will vote for this bill today which I think won't do nearly as much for solid waste as the bill we had previously.

The PRESIDENT: The pending question

before the Senate is the passage to be engrossed of L. D. 2249. A "Yes" vote will be in favor of passage to be engrossed; a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators E. Berry; R. Berry; Collins, Conley, Corson, Cummings, Curtis, Cyr, Gahagan, Graham, Greeley, Hichens, Huber, Jackson, Katz, McNally, Merrill, Pray, Reeves, Roberts, Speers, Thomas, Trotzky, Wyman.

NAYS: Senators Carbonneau, Cianchette, Clifford, Danton, Graffam, Johnson, Marcotte.

ABSENT: Senator O'Leary.

A roll call was had. 24 Senators having voted in the affirmative, and seven Senators having voted in the negative, with one Senator being absent, the Bill was Passed to be Engrossed, as Amended, in non-concurrence.

Sent down for concurrence.

Reconsidered Matter

Mr. Collins of Knox moved that the Senate reconsider its former action whereby "An Act Relating to Charitable Solicitations" (H. P. 1983) (L. D. 2165) failed of Passage to be Engrossed.

A viva voce vote being taken, the motion did not prevail.

On motion by Mrs. Cummings of Penobscot, Adjourned until 10 O'Clock tomorrow morning.