

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

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June 14, 1978

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APPENDIX

HOUSE

Tuesday, January 31, 1978
The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Thomas Dow of the Canaan Calvary Church.

Reverend Dow: Our Father, we are thankful this morning for all that you have done for us. We love you because of your love and concern for mankind. We love our country. We thank you for the freedom that we enjoy. Father, I thank you for each one of us here this morning, each one that represents this state in which we live. O God, I pray that you might give them real wisdom as they lead our state and our country. Father, I pray that you might help them. Your word tells us that if any man lacks wisdom, let him ask your God, so this morning we are asking you, your God, that you help each one of these men and women that they might look to you for the wisdom that they need to make the decision that has to be made. Father, we just commit the activities of this day for each one of these that have gathered here to Thee, ask you blessing upon each one of them. In Jesus name we ask it. Amen.

The journal of yesterday was read and approved.

Papers from the House

Bill, "An Act to Extend until July 1, 1979, the Date for the Newport Water District to Purchase the Property of the Maine Water Company" (Emergency) (S. P. 686) (L. D. 2114)

Came from the Senate referred to the Committee on Public Utilities and ordered printed.

In the house, referred to the Committee on Public Utilities in concurrence.

Reports of Committees

Leave to Withdraw

Report of the Committee on Business Legislation reporting "Leave to Withdraw" on Bill "An Act Relating to the Organization and Operation of Mutual Financial Institution Holding Companies" (S. P. 633) (L. D. 1992)

Came from the Senate with the Report read and accepted.

In the House, the Report was read and accepted in concurrence.

Messages and Documents

The following Communication: (S. P. 687)

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE

January 27, 1978

Honorable Joseph Sewall
President of the Senate
Honorable John L. Martin
Speaker of the House
Dear Joe & John:

This is to officially inform you that I have today nominated Paul E. Burbank of Cundy's Harbor and James H. Tweedie of Blaine to serve on the Maine Board of Environmental Protection.

Pursuant to Maine Revised Statutes Annotated Title 38, Section 361, these nominations will require confirmation by the Joint Standing Committee on Natural Resources and the Senate. Thank you for your cooperation.

Very Truly yours,

Signed:
JAMES B. LONGLEY

Came from the Senate read and referred to the Committee on Natural Resources.

In the House, the Communication was read and referred to the Committee on Natural Resources in concurrence.

Petitions, Bills and Resolves

Requiring Reference

The following Bill was received and, upon recommendation of the Committee on Reference of Bills, was referred to the following

Committee:

Public Utilities

Bill "An Act to Expand the Purposes for which Brownville Junction Water District may Issue Bonds" (Emergency) (H. P. 2065) (L. D. 2121) (Presented by Mr. Masterman of Milo) (Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25) (Ordered Printed)

Sent up for concurrence.

Study Reports

Pursuant to Legislative Council

Mr. Connolly from the Committee on Energy to which was referred the study relative to the State of Maine Energy Policy Statement have had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill "An Act to Revise the Authority of the Oil Burner Men's Licensing Board to Inspect and Approve Most Fuel Burning Equipment" (H. P. 2056) (L. D. 2120) be referred to this Committee for public hearing and printed pursuant to Joint Rule 17.

Report was read and accepted, the Bill referred to the Committee on Energy, ordered printed and sent up for concurrence.

Mr. Carroll from the Committee on Transportation to which was referred the study relative to conducting a thorough study of Maine's aeronautics laws and determine upon a modernization and revision of those laws have had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill "An Act to Revise Maine's Aeronautics Laws" (H. P. 2055) (L. D. 2119) be referred to this Committee for public hearing, and printed pursuant to Joint Rule 17.

Report was read and accepted, the Bill referred to the Committee on Transportation, ordered printed and sent up for concurrence.

Mr. Curran from the Committee on State Government to which was referred the study relative to the status of all intermittent employees employed by the State of Maine has had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill "An Act to Clarify the Status of Intermittent State Employees" (H. P. 2064) (L. D. 2122) be referred to this Committee for public hearing and printed pursuant to Joint Rule 17.

Report was read and accepted, the Bill referred to the Committee on State Government, ordered printed and sent up for concurrence.

Orders

On motion of Mr. Nadeau of Sanford, it was ORDERED, that Lena Durgin of Kittery be excused for the week of January 30th, 1978 due to personal reasons.

House Reports of Committees

Divided Report

Majority Report of the Committee on Judiciary on Bill "An Act Concerning Limitations of Actions and Notice of Claim before Suit under the Elevator and Tramway Statutes Pertaining to Ski Areas" (H. P. 1870) (L. D. 1927) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Concerning Limitations of Actions and Assumptions of Risk under the Elevator and Tramway Statutes Pertaining to Ski Areas" (H. P. 2060) (L. D. 2118)

Report was signed by the following members:

Mr. Collins of Knox, Mr. Curtis of Penobscot — of the Senate.

Mr. Devoe of Orono, Mrs. Sewall of Newcastle, Mr. Bennett of Caribou, Mr. Joyce of Portland, Mr. Norris of Brewer, Mr. Spencer of Standish, Mr. Tarbell of Bangor, Mr. Hobbins of Saco, Mr. Henderson of Bangor, Mr. Hughes of Auburn — of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following member:
Mr. Mangan of Androscoggin — of the Senate.

Reports were read.

On motion of Mr. Hughes of Auburn, the Majority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading tomorrow.

Divided Report

Majority of the Committee on Legal Affairs reporting "Ought Not to Pass" on Resolve to Terminate any Liability of the Town of Oakland to Clear Debris from the Fish Screen at Messalonskee Lake" (H. P. 1874) (L. D. 1911)

Report was signed by the following members:

Mr. Hewes of Cumberland, Mrs. Cummings of Penobscot — of the Senate.

Mr. Violette of Van Buren, Mr. Carrier of Westbrook, Mr. Shute of Stockton Springs, Mr. Cote of Lewiston, Mr. Dudley of Enfield, Mr. Moody of Richmond — of the House

Minority Report of the same Committee reporting "Ought to Pass" on same Resolve.

Report was signed by the following members:

Mr. Carpenter of Aroostook — of the Senate.

Mr. Burns of Anson, Mr. Gould of Old Town, Mrs. Durgin of Kittery, Mr. Biron of Lewiston — of the House.

Reports were read.

On motion of Mr. Burns of Anson, the Minority "Ought to Pass" Report was accepted, the Resolve read once and assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-988) on Resolve to Appeal the Decision of State Claims Board Regarding Property Damage Claims from Collapse of Building at Northern Maine Vocational-Technical Institute (H. P. 1876) (L. D. 1912)

Report was signed by the following members:

Mr. Carpenter of Aroostook, Mr. Hewes of Cumberland, Mrs. Cummings of Penobscot — of the Senate.

Mr. Moody of Richmond, Mrs. Durgin of Kittery, Mr. Gould of Old Town, Mr. Burns of Anson, Mr. Cote of Lewiston, Mr. Violette of Van Buren, Mr. Shute of Stockton Springs, Mr. Dudley of Enfield, Mr. Biron of Lewiston — of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Resolve.

Report was signed by the following member:
Mr. Carrier of Westbrook — of the House.

Reports were read.

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

Mr. Cote: Mr. Speaker, I move we accept the Majority "Ought to pass" Report.

The SPEAKER: The gentleman from Lewiston, Mr. Cote, moves that the House accept the Majority "Ought to Pass" Report.

The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. Carrier: Mr. Speaker, Ladies and Gentlemen of the House: I will try to be brief this morning on this very long and complicated subject.

This particular L. D. 1912 along with the amendment is one that actually tries to put the liability on the state in a case where I believe otherwise. You have probably read the bill and as you know, these students are on their own and with the approval of the members of the school but yet with the understanding that they assume the risk of anything that might happen to their cars while they are in the process of being repaired by other students or they repair them themselves. They did choose to leave their cars there for repairs.

The situation is that while their cars were in

the garage the roof did cave in, broke, or something, because of the removal of a partition. But the fact still remains that these people now claim that the liability is or was on the state, and this is a situation which I think is quite different and goes deep, and I think the legal minds in this body might understand it a little better than others. Actually, I say what you are involved with is a gratuitous bailment, as you would read it in Black's Dictionary, which is the legal reference. It says it is the delivery of goods of personal property by one person to another in trust for the execution of a special object and on a contract expressed or implied to carry out the trust and to redeliver the goods to the bailor or to dispose of same in conformity with the purpose of the trust. Well, I don't believe that the trust has ever been broken. I do believe that this is a gratuitous bailment. It is gratuitous in the fact that the bailee, that is the student that put his car in there, is generally liable for their own property unless — and the only condition when the state or any other bailor would be liable would be in the case of gross negligence on their part.

We were asked by the ones who applied to bypass. This has been heard before by the claims board of the state and they also claim that under the doctrine of the gratuitous bailment the state was not liable and thereby no recovery.

The Legal Affairs Committee was asked to pass judgment and act as jury to declare that the state board apparently is in error, and I don't think they are. I don't believe there was any proof other than hearsay evidence within the committee that there was gross negligence on the part of anyone because the wall was torn down.

We do have many letters saying that the structural part of the building was not affected. There have also been many things said, and one of them was that the wall that was torn down was not a carrying partition, and if it was, it still doesn't matter. You come to the point where you have to decide on the liability part of this in order to grant any amount of recovery. I submit to you that at no time within the confines of our committee was it proven that there was gross negligence on the part of the state, who owns the building.

I think there are many other things that do come in. I think the assumption of risk on the part of the student is extremely important. I also think there was no contract in effect, because all there was was a promise from one but not a promise from the other.

I also claim that you will be setting an awful precedent if you go against the findings of the board. There are other things too. The bill was presented and it is erroneous in form. That is in the fact that there is a limitation of \$2,000 that they are supposed to put a claim in for, and the bill calls for \$2,365, and they came up and said all they wanted was \$2,000. I have never seen an amendment offered to reduce it to \$2,000.

The testimony filed with the claims board showed that the primary blame for the cave-in on weather conditions. The testimony also showed that no charge was made for the storage of these vehicles which, in fact, proves that it is a gratuitous bailment and that the students were pleased to use the premises, but with the understanding that they had been so informed and they did say they had been informed about the assumption of risk, which they agreed to when they put their car in there. The board believed this was a gratuitous type of bailment and one for the sole benefit of the bailee. One thing to remember is that they brought these juck cars in there and now they have got a bill in for three, four, five or six times more than what they were worth when they went in. Nobody has determined the amount of damage.

Again, it revolves around the fact that you have to have certain elements to consider bailment, and one is that the bailor only has to use slight diligence in keeping the place in order

and returning the goods as they were. It is a fact that it has to be shown that there was gross negligence in order to recover, and in my opinion, gross negligence was never shown in committee from the report of the claims board.

Therefore, ladies and gentlemen, although I am the only member who signed this "ought not pass" — and I feel sorry for these fellows, but either they are entitled to it or they are not, and the issues is, where does the liability lie? The claim board claims it lies with the student, the committee claims it lies with the state, and that is a precedent which you are setting when you decide on this bill. The students failed to show gross negligence on the part of the state and they, themselves, have assumed the risk and thereby we should not pass this bill and grant this. I would ask you to vote against the motion and vote for the "ought not to pass" report.

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

Mr. Gould: Mr. Speaker and Members of the House: It would seem by the looks of the report that we all ganged up on Representative Carrier when we voted this "ought to pass." However, when those cars went in that building, they were full-size cars; and when the roof collapsed, they were compact cars.

The SPEAKER: The Chair recognizes the gentleman from Milo, Mr. Masterman.

Mr. MASTERMAN: Mr. Speaker, Men and Women of the House: One question I would like to ask. Maybe Mr. Carrier said it and I missed it, but was there a sign on the building stating that vehicles are left at your own risk?

The SPEAKER: The Gentleman from Milo, Mr. Masterman, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Perham, Mr. McBreaity.

Mr. McBREAIRTY: Mr. Speaker and Members of the House: Ordinarily people who put their cars in this building do take their own risk, and when they put their cars in there, they were perfectly willing to take their own risk. But we have presented letter after letter to this committee stating that the reason for the collapse of this building was because a partition was removed without any authorization from the Bureau of Public Improvements or anyone else, and in the process of taking down this partition, they took out the support of the building and it collapsed. One of these cars was asked to be moved so that they could take out the support that held the building up and then it collapsed on his car.

I have letters here, one from an architect who was asked in to determine why the building collapsed. I won't read it. The report of 12 to 1 was prompted by these letters, but the architect says the reason for the collapse was because they took the partition out. BPI says, "We did not authorize this. It is possible we might have if we had been asked to. We don't want to put any blame on the director of the school, but definitely removing the partition was the cause of collapse.

If we put a vehicle or ourselves in a building belonging to the state and while we are in there they take out the support from the roof without any authorization or any technical assistance or engineering skill involved, I say they are responsible.

I say the State of Maine is very lucky because this happened at night and all we lost was some damage to five cars belonging to young people. This is probably the only property they own. This damaged five cars. If this had been done several hours later, we might be paying for five people or twenty people, so I think we are getting off pretty reasonable.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker and Members of the House: In order to answer more clearly the question asked by Mr. Masterman, the thing is that we were never told, at least I don't

recall and my notes don't indicate that we were told whether there was a sign there or not, but that is immaterial, really. The fact is, we were told, and I asked this question specifically, whether they knew of the assumption of risk and whether they had agreed to the assumption of risk. One of the fellows who owned a car said they did. When they are at school they are told about it; they have to agree to it before they put their cars in there. This is the best I can tell you on that. Also, the testimony disclosed there was no gross negligence. I think that is what we revolve on, and the fact is that there was no evidence that the institute knew of any weakness in the building or that they should have known. Also, when the building was built, the state hired a certified architect to design the building and a reputable contractor to erect the structure, so this is, in my best judgment, regardless of the parties, I think this is strictly a bailment, gratuitous bailment, which makes the difference, there are many types of bailments, and I don't think they should be allowed to recover.

The SPEAKER: The pending question is on the motion of the gentleman from Lewiston, Mr. Cote, that the majority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

78 having voted in the affirmative and 21 having voted in the negative, the motion did prevail.

Thereupon, the Resolve was read once. Committee Amendment "A" (H-988) was read by the Clerk and adopted and the Resolve assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Veterans and Retirement reporting "Ought to Pass" as amended by Committee Amendment "A" (H-984) on Bill "An Act Pertaining to Ordinary Death Benefits Under the Maine State Retirement System" (H. P. 1885) (L. D. 1939)

Report was signed by the following members:

Mr. Collins of Knox, Mr. Lovell of York, Mr. O'Leary of Oxford — of the Senate.

Mr. Austin of Bingham, Mr. Laffin of Westbrook, Ms. Clark of Freeport, Mr. Theriault of Rumford, Mr. Nelson of Roque Bluffs, Mr. Hickey of Augusta, Mr. Bunker of Gouldsboro, Mr. MacEachern of Lincoln, Mr. Flourde of Fort Kent — of the House.

Minority Report of the same committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following member:

Mr. Lougee of Island Falls — of the House.

Reports were read.

On motion of Mr. Theriault of Rumford, the Majority "Ought to Pass" Report was accepted and the Bill read once. Committee Amendment "A" (H-984) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

Divided Report

Later today assigned

Majority Report of the Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "C" (H-989) on Bill "An Act to Clarify and Limit the Authority of Municipalities to Establish Shellfish Conservation Programs and to License and Regulate the Taking of Shellfish" (H. P. 715) (L. D. 851)

Report was signed by the following members:

Mr. Levine of Kennebec, Mr. Hewes of Cumberland, Mr. Chapman of Sagadahoc — of the Senate.

Mr. Jackson of Yarmouth, Mr. Blodgett of Waldoboro, Mrs. Post of Owls Head, Mr. Greenlaw of Stonington, Mr. Fowlie of Rockland — of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Mr. Connors of Franklin, Mr. Nelson of Roque Bluffs, Mr. Bunker of Gouldsboro — of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Owls Head, Mrs. Post.

Mrs. POST: Mr. Speaker, I move we accept the Majority "Ought to Pass" Report.

Whereupon, on motion of Mr. Tierney of Lisbon Falls, tabled pending the motion of Mrs. Post of Owls Head to accept the Majority Report and later today assigned.

Consent Calendar

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H. P. 1869) (L. D. 1926) Bill "An Act to Delay Implementation of the Court Intake Worker Function until July 1, 1978" (Emergency) — Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-991)

(H. P. 1962) (L. D. 2045) Bill "An Act Concerning Membership on the Food and Farmland Study Commission" (Emergency) — Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-992)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 1, under listing of the Second Day.

Consent Calendar

Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H. P. 1925) (L. D. 1986) Bill "An Act to Clarify the Law Concerning the Posting of Bonds by Electric Companies with the Department of Environmental Protection for Certain Licenses or Permits" (C. "A" H-986)

(S. P. 617) (L. D. 1905) Bill "An Act to Enable the Purchase and Administering of Barbituates for the Euthanasia of Pets and Animals" (C. "A" S-445)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was passed to be engrossed in concurrence, and the House Paper was passed to be engrossed and sent up for concurrence.

(S. P. 620) (L. D. 1908) Bill "An Act to Clarify the Definition of Residence for Purposes of the Inland Fisheries and Wildlife Laws" (Emergency)

On the objection of Mr. Morton of Farmington, was removed from the Consent Calendar.

Thereupon, the Report was read and accepted, the Bill read once and assigned for second reading tomorrow.

Second Reader

Later Today Assigned

Bill "An Act to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies" (H. P. 2051) (L. D. 2111)

Was reported by the Committee on Bills in the Second Reading and read the second time.

(On motion of Mr. Burns of Anson, tabled pending passage to be engrossed and later today assigned.)

Passed to Be Engrossed

Bill "An Act Relating to Incinerator Particulate Emission Standard for Wood Waste Teepee Burners" (H. P. 2053) (L. D. 2112)

Bill "An Act to Permit Self-Contained Breath Testing Equipment" (H. P. 2054) (L. D. 2113)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent to the Senate.

Second Reader

Later Today Assigned

Bill "An Act to Allow the Town of Otisfield to Meet its Obligations to Cumberland County for Existing Bonded Indebtedness Through a Lump Sum Payment" (Emergency) (H. P. 1930) (L. D. 2003)

Was reported by the Committee on Bills in the Second Reading and read the second time.

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

Mrs. TARR: Mr. Speaker, I have an amendment coming in that isn't ready and I would like to have this tabled until later today.

Whereupon, on motion of Mr. Perkins of Blue Hill, tabled pending passage to be engrossed and later today assigned.

Amended Bills

Tabled and Assigned

Bill, "An Act to Permit Persons Other than Arborists to Take Down Trees by Topping or Sections." (Emergency) (H. P. 1858) (L. D. 1925) (C. "A" H-981)

Was reported by the Committee on Bills in the Second Reading and read the second time.

(On motion of Mr. Tierney of Lisbon Falls, tabled pending passage to be engrossed as amended and tomorrow assigned.)

Bill, "An Act Concerning Substitution of Generic Drugs by Pharmacists" (H. P. 1914) (L. D. 1975) (C. "A" H-987)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed as amended and sent up for concurrence. (Later Reconsidered)

Passed to Be Enacted

Emergency Measure

Bill, "An Act Relating to the Taxation of Certain Property Owned and Operated by Telephone or Telegraph Companies" (H. P. 1878) (L. D. 1932) (S. "B" S-437 to C. "A" H-955)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

Bill, "An Act to Correct Certain Oversights in the Nonprofit Corporation Act" (S. P. 625) (L. D. 1942) (C. "A" S-440)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all members elected to the House being necessary, a total was taken. 111 voted in favor of same and 5 against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

Bill, "An Act to Provide Flexibility in the Organizational Structure of the Department of Environmental Protection" (H. P. 1949) (L. D. 2028) (C. "A" H-976)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Finally Passed

RESOLVE, to Transfer a Land Parcel from the Bangor Mental Health Institute to the Region 4 Vocational District (S. P. 631) (L. D. 1990) (S. "A" S-442 to C. "A" S-441)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, finally passed, signed by the Speaker and sent to the Senate.

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

HOUSE DIVIDED REPORT — Majority (11) "Ought to Pass" — Minority (2) "Ought Not to Pass" — Committee on Transportation on Bill, "An Act to Repeal Mandatory Eye Tests for the Renewal of Driver's Licenses for all Persons over 40" (Emergency) (H. P. 1884) (L. D. 1938)

Tabled — January 27, 1978 by Mr. Tierney of Lisbon Falls.

Pending — Acceptance of Either Report.

The SPEAKER: The Chair recognizes the gentleman from Limerick, Mr. Carroll.

Mr. CARROLL: Mr. Speaker, I move we accept the Majority Report.

The SPEAKER: The gentleman from Limerick, Mr. Carroll, moves that the House accept the Majority "Ought to Pass" Report.

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

Mrs. BOUDREAU: Mr. Speaker, Men and Women of the House: As cosponsor of the legislation this L.D. repeals, I cannot just sit in my seat and be quiet, and I really don't think many of you expected me to.

I have run into the halls and lobbied any of you, but I feel some things have to be said. In my 12 years as a legislator, I have never seen so many red herrings, incomplete information and misinformation circulated on any legislation. Thirty-five states have laws requiring vision testing for renewal of licenses. Some of them are for every renewal; ours is only every 12 years. I thought it was a reasonable and desirable bill when I presented it and I still do. It will save lives and prevent blindness. Studies have been conducted to prove this. One was done by the University of California in 1974, and the American Association of Motor Vehicle Administrators have published a book entitled "Vision—Its Role in Driver Licensing." Both of these reports indicate that vision testing is profitable.

Our State Department, who should be implementing the vision requirements of the law, have done anything and everything they could to upset the smooth phase-in of the program. Number one, they have not followed the intent of the law. I will read the section of the law that I am talking about. "Any person who has reached his 40th birthday shall, at the time of the first renewal after that birthday and at the time of each third renewal thereafter to age 65, be required to pass the vision portion of a driver's examination before his motor vehicle operator's license shall be renewed." Age 40 is the key word. We have four-year driver licenses, so the only ages that should be involved are ages 40, 41, 42, 43, 52, 53, 54 and 55, not every driver out there. The law is very clear; it is age 40 and the first renewal after age 40. With four-year driver licenses, someone 44 or 45 coming in for renewal, it would not be his first renewal after age 40, it would be his second renewal.

If you do not want to implement a law, it is very easy to misinterpret it. The intent was very clear. As the original draft specified 40, 41, 42 and 43, no way was it ever intended to be a massive testing program all at once. It was a phase-in program and eventually everybody would be covered.

Letters were sent to every motorist, not only listing the laws involving them but including personal opinions. I have no objections to citizens being informed of the laws that affect them, but I strongly object to personal opinions from any department head being included in that letter. I hope that this will be a subject that the Legislative Council will do something about.

I understand that a second letter is sent with your renewal application. Again, I think this is quite unnecessary and inappropriate.

Fear that rural areas would have difficulty is not realistic. With a little imagination, this law could be made to work smoothly and effectively. We have service clubs out there who

Orders of the Day

have always rallied to a cause. I am sure they would be willing to donate time and people. There is no reason why the Motor Vehicle Division could not send some of their own people out in rural areas on certain days, as they have been furnished additional machines with highway safety money.

The cost to the state is another red herring. Highway safety money has been provided and it will be in the future.

I do not know how many of you read the article in the Parade section of the Sunday paper a few weeks ago where they outlined that the federal government at the national level is working on a mandatory program, so mandatory vision tests is coming, and we could have been well along and prepared and not have a massive test all at once.

As I said before, I have not lobbied anyone and I know that I am not changing any votes, but I do feel that these things had to be said. There is much more I could say but I will save that for another time.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Ladies and Gentlemen of the House: Not because I am past 40 that I rise this morning and not because this is not a good piece of legislation, I think probably it is a pretty good piece of legislation, but it is like this, where I come from they do not want it. That is what I am here for, to take care of these kind of things. I think it discriminates somewhat to a degree, because I have seen some people who are only 20 years old that have a lot thicker glasses than mine. So, in view of the discrimination and the fact that my people do not want it, I hope that this House does do away with passing the majority report.

The SPEAKER: The Chair recognizes the gentleman from Belfast, Mr. Drinkwater.

Mr. DRINKWATER: Mr. Speaker, Members of the House: I have spent the last 30 years of my life in safety work and this included not only being a policeman but a game warden and many other things and it also includes serving a term as President of the Maine Safety Council. As such and the involvement that I have had, I feel very strongly that this law that was passed in the first session of the 108th has had very little done to inform the public about it and how it works.

As a result of a survey I put out, I had many returns but I had three in particular returned that was about the vision testing. I called those people. I was able to get two on the phone and talked with them and explained to them the options that could be made available and the two that I did get, after listening they did change their opinions and their minds on the subject.

As was brought out by other speakers, this starts at age 40 and it is every 12 years. I found that both of these people did not know that. They had no way of knowing for some reason or another. They had not read it in the paper or been notified that this was every 12 years. I think that very few people know that all it requires is a simple eye test. It does not require any expensive equipment.

The arrangements and authority could be delegated to the industries. In most industries they have pre-employment physicals that covers the Occupational Safety and Health Act and they also have yearly eye tests; therefore, this could be taken care of at their work place.

I can see no reason also why the school nurses could not be authorized to give eye tests. They have a simple eye chart and they could do it for the people who work in the school systems that would require this.

I understand that the Lion's Clubs have bought equipment and are available. I know that the highway safety people, which I am a member of, has furnished funds the licensing examiners could do something and, of course, the doctors.

I was sitting in my eye doctors office just a few nights ago to have my new glasses adjusted

because I had a sore nose and while I was there, two people came in and I noticed the eye doctor readily signed a document and when they asked what they owed him, he said, you owe me nothing, you are one of my patients and I have your records here and I am very glad to do it for you.

As far as stepping on rights, I think that no matter what we do, we are going to infringe on people's rights. I remember in the first term of the 108th that there was a bill in here on smoking in public meetings. This does not bother me one way or the other — I do not smoke myself but it does not bother me. No matter which way that bill went, it was going to infringe on someone's rights, so I do not really know how you are going to get away from infringing perhaps on people's rights.

I do feel that if this bill could only have been better publicized or the law could have been better publicized and the people understood it better, we would have had a lot less people against it.

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

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: It seems to me that we are having a lot of furor over not much. This thing required only a test every 12 years; a very simple test. I have to take it at my age anyway and I think mine took me 30 seconds this year, no cost to anybody.

In the rural areas, this might have to take some equipment out and so forth. I understand from what has been said today and I understood before that the same thing was true, that the highway safety group and others will furnish the equipment, which can be taken out. It seems to me that it is pretty important.

I remember years ago, I did not wear glasses and I did not know I needed them. I went to Florida one year to a convention and on the way down, I followed Route 1 and everytime I went around the corner so I could see the sign ahead, it was Route 11 and wondered if I was lost. As I got closer, the ones moved closer together and finally it became one. When I got home, I went to my eye doctor and he told me that I needed glasses. That might have been picked up earlier. He told me that if it had not been picked up when it did, I would have had a serious eye problem. So, if we could pick up just a few cases each year — someone who really needs some, this would be worthwhile.

I further agree with the first speaker on this thing. Sending out propaganda with needed material is not exactly kosher. I never knew that the Commissioner of Education gave us too much of his views when he used to sent out material to us on various things. It seems to me that this was not the way it should have been handled. I think this bill should be kept and I hope you vote against the motion.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MACEachern: Mr. Speaker, Ladies and Gentlemen of the House: This is the only bill that I introduced into this session. I did not intend to introduce any bills until I had so much static from my people at home. I had more comments on this piece of legislation that we passed the last session than I did on the Uniform Property Tax, that is how strongly my people feel. They feel that it is another example of "big brotherism" coming down from Augusta.

My people live 50 miles from a registration office and it is quite inconvenient for the working man to have to take a day off from his work and drive to Bangor to get his eyes tested. They really feel strongly and I feel so strongly about it that it is the only piece of legislation that I introduced into this session, and I hope you will repeal the law.

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

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I just wanted to say that

when my wife was due to have her examination, the last time she renewed her license, she drove to Lincoln to have her eyes checked and get the thing signed.

The SPEAKER: The Chair recognizes the gentleman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker and Members of the House: I feel that I must tell you how disappointed I am to have this bill before this morning. I supported Mrs. Boudreau's bill last session and I support the law as it stands now.

You know, it is mandatory that we have a certain amount of tread on our tires in order for our cars to pass inspection and it is mandatory that we stop at stop signs and it is mandatory that we have at least 20-40 vision before we can be issued our first driver's license, so it only stands to reason that after the age of 40, when most peoples eyes begin to change, you will notice the bifocals that begin to appear after that age, that motorists be required to have their eyes re-examined before being able to be reissued another driver's license.

During the past few weeks, I have heard some public service announcements by the Maine Highway Safety Committee on my car radio on my way to Augusta urging motorists to be careful when approaching railroad crossings because there are frequent accidents between motor vehicles and trains. A spokesman for the committee stated, during the last announcement that I heard, that one of the reasons that it is felt that people are having accidents with trains is because some people do not see the trains. If some people cannot see trains, just think of what else they cannot see.

I ask you, please do not repeal this law as it is. Give it a chance. Please, do not support the Majority "Ought Not to Pass" Report.

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

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I just want to comment that I have been wearing glasses since I was 40 years old. I went for my eye examination because I am over that age and she made me take my glasses off and I passed the test without my glasses on, but I can't see driving without my glasses. I am still not restricted to glasses and I cannot see without my glasses, and that goes to prove that they do not even know what they are doing.

Besides that, the lady was rude and I complained, and it was not the first time I had a complaint about that lady and I will tell you where it was, it was in Bath, Maine and I complained to Mr. Linwood Ross and he said,

"Toni, that is not the first time I have had a complaint about it." So, I am telling you, they do not want to do their duty. They despise it and it is only a little machine they have in front of them and it takes two or three seconds for them to do it to you and I do not think they are very courteous about it and I do not think they want the thing implemented because it will be too much work for them. They would rather sit behind and give you heck every time you go there.

The SPEAKER: The Chair recognizes the gentleman from Lincolnville, Mrs. Hutchings.

Mrs. HUTCHINGS: Mr. Speaker and Members of the House: It is kind of hard to follow Mrs. Martin — But I would like to say as one of the two who signed the "Ought Not to Pass" Report that I supported the original bill last year and I still do. There has not been ample time to give this bill a chance to work. The bill had a very good hearing, both last year and this year and the evidence this year presented was overwhelmingly in favor of retention. To require an eye test at 15 or 16, when first applying for a license to drive and then not again until age 40 and then not again until 12 years later does not seem unreasonable. Many states require testing at every license renewal.

You have heard people here tell of experi-

ences of having an eye exam at middle age and discovering to their surprise and a blow to their vanity, I might add, that they need help in order to see properly. This happened to me when about age 40 when I went for a checkup because I had difficulty reading the fine print and discovered I needed bifocals. As a matter of fact, the doctor said to me, "Marge, you are going to see things out there you never saw before."

You have been told that this is another "big brother" bill dictating from Augusta. Well, I do not like government interfering into my private life either, but I do not think this is the case. Occasionally, we all need a nudge to remind us to get a checkup, whether it be our eyes or whatever part of the body. Eyes are a factor and causes of highway accidents. I submit to you that many times faulty eyesight was the cause. You have all heard people say, "I never saw that car coming." Eye examination might have detected problems such as loss of side vision.

I urge you not to support the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker and Members of the House: I have a long record of law enforcement. I have been in law enforcement for over 25 years and I have investigated many, many accidents. I do not recall any accidents that I ever investigated that involved poor vision. The people who don't see the train or do not see the car coming are not looking. Anybody who can see to get into a car can see a train coming if they look, or a car coming at an intersection. I do not buy that argument, and when the vote is taken, I request a roll call.

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

Mrs. TARR: Mr. Speaker, Ladies and Gentlemen of the House: I oppose repealing this bill. I do not think it has even had a chance to work. I talked with Lin Ross when the original bill first came out, and he did not see any insurmountable problems with it. I talked with the driver examination people in my town and they did not see any big problems either. They said that when the other bill came in mandating it at 65 there was a little bit of a crush until they got it rolling, but they did not see a lot of problems. I represent, I think, about 6900 people and I received one letter. He will soon be 65, so he is going to have to take the eye test anyway. When I went down to the drivers' examination bureau, since I am only 39, I was not there to take the eye test, and he still felt that there would not be that many problems.

Just let me read something I cut out of the paper to you. This is an article by Dr. Solomon regarding eye testing. I will just read the last paragraph because they told me to be real fast. "Dr. Froock says that so far the most effective eye screening has been the testing of children in schools and automobile drivers by the state licensing bureaus. Many persons with some vision troubles are discovered in the course of the screening and are referred to ophthalmologists."

The SPEAKER: The Chair recognizes the gentleman from Limerick, Mr. Carroll.

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: At our last session, we defeated this law before it went on the statutes overwhelmingly, and the only reason that I did not get up and continue to defeat this legislation was that I had assurance that the Lion's Club and other civic organizations that they would make available eye testing all through rural Maine and for all the people who had to be tested. I find that this has not followed through, that facilities are not available for the people in the rural areas. I think it is wonderful for those that live in a community that have all the facilities that are necessary to live in this modern society, but I have great concern and great compassion for my fellow

men who live in the rural areas in the State of Maine. You have to travel, you have to have an automobile and we have extensive costs today to travel over highways. Our highways are not being maintained as we would like to have them, and then you come along and tell my people in the rural areas, you have to drive to Kennebunk to have your eyes tested or you have to make an appointment and wait two weeks to have your eyes tested. This is my greatest concern. If you are going to legislate, then let us put an appropriation on this, let it go through its proper procedure, let's provide the facilities, let's have a mobile eye testing program where they will move into your community and take care of all these people, do it in the evening so they won't have to lose a day's work. This is the reason this committee came out with a majority report. We just feel that this legislation was not properly provided for when it was passed and we were sold a bill of goods and the goods were never delivered, and that was the facilities in the rural areas for the rural people to have their eyes tested. City slicers make out fine nowadays; it is the rural people who don't make out so good, we don't have enough people fighting for us.

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

Mr. JENSEN: Mr. Speaker, Ladies and Gentlemen of the House: I was one of the members of the Transportation Committee who opposed this bill and supported the introduction and passage of the law last year. One of the reasons was, as the good gentleman from Limerick has suggested, that there was testimony to the effect that the Lion's Club and groups of that sort would be more than willing to try and go out with testing equipment, test people's eyes, give them a certificate and off they would go, minimum amount of hassle, minimum amount of time invested.

We can pass laws and we do; the problem is, there have got to be people to administer them to give a law half a chance. The Secretary of State's Office, to the best of my knowledge, has made absolutely no attempt to make this law work. There are Lion's Clubs members in my area that I have talked to that say, "gee, we would be glad to do it. Our primary purpose other than simply being a social group is to help improve eye vision, vision generally. We would be more than happy to go out with the pieces of equipment, go out to the Maine Mall or to go to town halls in different parts of the county, or go around and give the test," but they have never been contacted. The Secretary of State's Office has made absolutely no attempt to make this law work, and it seems to me that to remove the law so quickly after it has become effective, rather than putting some pressure where it belongs, on that office, to make them enforce the law as we enacted it is to be absurd.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, like to good gentelady from Portland, have not been out lobbying in the halls for fear of turning this issue into a political one, at least my party vs. the Secretary of State, but my feelings and my reasons haven't changed as to why I favored the bill and why I favored the enactment of the bill we passed last session and therefore would vote against this bill this session.

Some of the objections that people have raised is that we are taking away the rights of the people back home, while I might agree that that is probably one of our biggest faults up here, I don't consider this taking away rights of people back home. I consider the ability to drive or the ability to obtain a driver's license not a right but a privilege, and I think we here have the right to put certain restrictions on that, and I think it is to the benefit and protection of the other motorists who are on the highway that we ask people to have their eyes

checked once at the age of 40 and again not until after 52, depending on when they fall on the four-year license.

I don't think it is an imposition. Some people have said it is an imposition. Maybe it is to some extent, but I think there is a good deal of benefit that could be had by individuals who may not realize that their eyes have gone bad. They don't have to drive to Bangor, necessarily, as the good gentleman from Lincoln has stated. Their own doctor can do it, and I think this is where if we could have had some help and if people could have been informed as to just how the law was actually set up, and the law actually does say that you can have your eyes tested at anytime one year prior to your renewal, and if people had been made aware of that, they could have just had their eyes checked when they went to have their annual physical by their own M.D. or osteopath or whoever they might go to.

Some of the other objections are that it is an unwieldy law, and I think this is part of the objection that the Secretary of State has had. I don't think it is unwieldy at all. As Mr. Jensen has stated, I think the administration of this law has not been carried out to its utmost. I think he has misled the people a great deal, and I think most of the problems that we see today could have been handled a lot better administratively if he had had the right attitude and the right philosophy about the benefits of this bill. I think if he hadn't made such a big deal about it and sent out letters to everyone telling them how bad the law was and instead had sent out letters explaining what it was supposed to do and how it was supposed to benefit the people, all the people of the State of Maine, we would not have had quite as many complaints as we have received today.

The good gentleman from Belfast, Mr. Drinkwater, has stated about how he explained the law to someone and after they understood a little bit more about it and what it was supposed to do, they changed their opinion, and I think that is one of the major criteria that we should use in defending this bill.

As far as accidents go, Mr. MacEachern has stated that no one has ever reported to him that they could not see. I will go back to the same argument that I used last year — I don't think anyone who is involved in an argument is going to stand up or come over to the policeman and say, "Well, I just couldn't see; that is why I was involved in the accident." I don't think that is correct at all. He may not even know that he doesn't have the vision or the field of vision that he needs.

Civic organizations, I think, would have been involved, as Mr. Jensen said, if they had been asked. But I think they also feared to get involved with this to some extent when it became somewhat of a political issue, and they wanted to stay out of any political issues, and until this is resolved and until the legislature says that we do in fact stand behind this law, then I think they are going to stay off, but I think once we make an effort, they will, in fact, come to the foreground and will then help in administering this law.

I hope today that you will vote against the "ought to pass" motion on this bill and will go along to defeat it.

Mr. MacEachern of Lincoln was granted permission to speak a third time.

Mr. MacEACHERN: Mr. Speaker and Members of the House: I don't want to debate this thing to death, I just have two points to make. Number one, the last time I had my eyes checked in Lincoln, we have two eye doctors in the town, I had to wait six months for an appointment, that is how busy they are. Point number two, under the existing law, a person 40 years of age can go and have his eyes tested and get his license. He can wait 12 more years before he has to have another test. Now, it is my contention that between the ages of 40 and 52 is a period in life where eyes start to deteriorate.

rate. That is when mine did and most of my friends who are over the half century mark, the same thing has happened to them. It would make more sense to require a test every year after age 40 rather than letting them wait 12 years.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I have listened with interest to my good friend from Scarborough, Mr. Higgins. I might say to the gentleman and the members of the House, you can't legislate good judgment and common sense. I submit the reason I am standing up here this morning is because a number of people in my own community feel that they do have good judgment and common sense and that we do not have to mandate a law at age 40 for individuals to take an eye test.

It wasn't because of any letters or any comments made by the present Secretary of State that put them in that position or that posture, that is the way they feel. They felt the law was a little ridiculous at the time it was passed two years ago, and I might add that I was one who opposed it then.

I would hope you would support the good gentleman from Lincoln and repeal this law.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mrs. Kane.

Mrs. KANE: Mr. Speaker, Ladies and Gentlemen of the House: I guess this has gone on for quite a long time and I don't really want to drag it out, but I think that maybe I would oppose this particular bill, and I supported the bill last year from a different perspective from maybe some of the rest of you. I supported last year's bill, and I supported the law as the mother of a five year old child. My little tot is less than four feet tall, is probably about three and a half feet tall, he has to walk down in the wintertime and in the spring and fall on the street, on the side of the road, to get his school bus to go to school, and we have been talking about people not being able to see freight trains and people not being able to see other cars. Well, I don't think you need very much diminished vision not to be able to see a three and a half year old child next to a snowbank on the side of the road, and then he gets into a school bus and travels on the road to school about a mile. I would hate to think that for lack of this little inconvenience and this little financial effort my son was killed or some other little child was killed inadvertently by a person who was being as careful as he could but he just didn't know that he couldn't see properly. I think if I was the motorist responsible, I could never forgive myself. And I think perhaps the people who are opposing this bill are not thinking of that consideration. Not only are there freight trains, other cars and so forth on the road, but there are little, tiny tots five years old who are being as careful as they can and they are very hard to see.

The SPEAKER: The Chair recognizes the gentleman from Belfast, Mr. Drinkwater.

Mr. DRINKWATER: Mr. Speaker and Members of the House: I have, during my tour of duty as a police officer, stopped many cars and two things that I never heard, except on occasion, one was, I never heard anybody tell me at the accident scene that they couldn't see; another one in stopping motor vehicles for the violation of driving under the influence, I never had anyone admit to having more than two drinks, except one, and that one — and this is one hundred percent the way it was — said I don't remember how many I had, but I am loaded, so I left.

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

Mrs. BEAULIEU: Mr. Speaker, I would like to ask a question of the members of the committee. If monies have been set aside to conduct this program and equipment is available, where is it, why has it not been used prior

to the request for the repeal, and what happens to it if this law is repealed?

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Limerick, Mr. Carroll, that the Majority "Ought to Pass" Report be accepted on Bill, "An Act to Repeal Mandatory Eye Tests for the Renewal of Driver's Licenses for all Persons over 40," H. P. 1884 L. D. 1938. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA: Ault, Bennett, Berry, Berube, Birt, Bloodgett, Boudreau, P.; Brown, K.L.; Brown, K.C.; Bunker, Bustin, Carey, Carrier, Carroll, Carter, D.; Chonko, Churchill, Conners, Cote, Cunningham, Curran, Dexter, Dow, Dudley, Dutremble, Elias, Fenlason, Fowlie, Gill, Gillis, Goodwin, K.; Gould, Green, Greenlaw, Hall, Hickey, Hunter, Immonen, Jacques, Jalbert, Kany, Kelleher, Laffin, Lewis, Littlefield, Lizotte, Lougee, Lunt, MacEachern, Mackel, Mahany, Masterman, Maxwell, McBreairey, McHenry, McKean, McPherson, Mitchell, Morton, Nadeau, Nelson, N.; Palmer, Paul, Peakes, Pearson, Peltier, Perkins, Peterson, Plourde, Post, Quinn, Raymond, Rollins, Shute, Silsby, Smith, Spencer, Sprowl, Stover, Strout, Stubbs, Tierney, Tozier, Traf-ton, Truman, Twitchell, Valentine, Wilfong.

NAYS: Alopous, Austin, Bachrach, Bagley, Beaulieu, Benoit, Biron, Boudreau, A.; Brennerman, Burns, Clark, Connolly, Cox, Davies, Diamond, Drinkwater, Flanagan, Garsoe, Henderson, Higgins, Howe, Huber, Hughes, Hutchings, Jackson, Jensen, Joyce, Kane, Kerry, Kilcoyne, LaPlante, Locke, Lynch, Marshall, Martin, A.; Masterton, Nelson, M.; Prescott, Rideout, Sewall, Talbot, Tarbell, Tarr, Teague, Theriault, Torrey, Violette, Whittemore, Wood, Wyman.

ABSENT: Carter, F.; Devoe, Durgin, Goodwin, H.; Gray, Hobbins, McMahon, Mills, Moody, Najarian, Norris, Tyndale, The Speaker.

Yes, 88; No, 50; Absent, 12.

The SPEAKER: Eighty-eight having voted in the affirmative and fifty in the negative, with twelve being absent, the motion does prevail.

Thereupon, the Bill was read once and assigned for second reading tomorrow.

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

"An Act Concerning the Discount Factor and Capitalization Rate in the Tree Growth Tax Statutes" (Emergency) (H. P. 1882) (L. D. 1936)

Tabled — January 27, 1978 by Mr. Tierney of Lisbon Falls.

Pending — Passage to be Enacted.

The SPEAKER: This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor of this Bill being passed to be enacted as an emergency measure will vote yes; those opposed will vote no.

A vote of the House was taken.

124 having voted in the affirmative and none in the negative, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all Bills requiring reference in concurrence were ordered sent forthwith to the Senate.

The Chair laid before the House the following matter:

HOUSE DIVIDED REPORT — Majority (7)

"Ought to Pass" as amended by Committee Amendment "C" (H-989) — Minority (2) "Ought Not to Pass" — Committee on Marine Resources on Bill "An Act to Clarify and Limit the Authority of Municipalities to Establish Shellfish Conservation Programs and to License and Regulate the Taking of Shellfish" (H. P. 715) (L. D. 851) which was tabled earlier in the day and later today assigned.

Pending — Motion of Mrs. Post of Owls Head to accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Rogue Bluffs, Mr. Nelson.

Mr. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: I feel that I have to speak on this bill this morning because I come from an area that feels very strongly against it.

When this bill came in last year, there was a residency requirement attached to it. That residency requirement is still in that bill, even though you don't see it; it is in there, believe me it is.

Now, the little clam has been compared to a lot of things. He has been compared to trees and deer and everything else, but the clam is quite different from any other fish that is in the ocean, or in the flats of the State of Maine and any other state for that matter. Before he takes up his domicile in that flat, he is floating on the surface and as the tide rises, he rises with the tide, and as the tide falls, he lays back down and goes back down on the mudflats. After awhile, when the sun gets warm he finds a place where he is going to stay and he says, "This is where I am going to put in my roots" and he does. He takes up residence in those flats. The clam is a pretty steady person; he doesn't move around like the other fish in the ocean. Lobsters, they move around, they go from one state to the other, they come in shore and off shore. Fin fish, they swim up and down the coast, but the clam remains pretty stable, he stays there and he puts in his roots and that is where he stays. He may move up and down a little in the flat, but I really don't think that he gets up and walks around, swims around like the other fish in the sea. So now we have established that the clam has taken up residence in the flats.

In this Committee Amendment "C" to L. D. 851, it is going to cost the town a lot of money to implement and control these laws. For one thing, it is going to cost, in one instance, an enforcement officer to go out there and enforce that clam conservation ordinance. You don't expect a man to go out there and confront these clambers out there on the flats without getting paid for it because he can get a clam hoe in the face or in the chest or in the legs or anything else, so we have got to pay him to take that chance to go out there and confront these people and say, okay, you have got your license, if they are in the wrong place to get them out of that place, so it is going to cost the towns anywhere from eight to ten thousand dollars to implement that. Also, it is going to cost the town — it says periodically, which I assume from year to year it is going to cost the town quite a sum of money to survey those flats to find out how many clams are left, how many clams they can take out of those flats.

There are court cases pending and just waiting for this bill, whether it is going to be passed or whether it isn't. You may not know it, but I know it, there are people waiting out there to find out how this bill fares today in this House.

It says that the Commissioner of Marine Resources shall keep an eye on these towns and see that they are carrying out this conservation program and doing it adequately. It says, "He may only approve a program and ordinance that limits commercial digging to municipal residents or uses municipal residency as a qualification for digging in certain areas if..." and that big 'if' is right there. It is little, but it is followed by two little dots which are to call your attention to what is going to take place.

I have no quarrel with Subsection A, but Subsection B, if he has reviewed the number of licenses to be issued to commercial diggers and has found that that number of diggers may reasonably be expected to take the entire potential harvest. This means that they are going to have to set up licensing and survey the flats and if the flats will support 100 diggers and they only have 79; then 21 of those licenses have to be made available to non-residents. That is fine but it could also work in reverse. If the flats would only support 100 diggers and we have 147 in the town, then somebody has to tell these 47 other diggers, "you cannot dig clams." I do not want to mandate that onto anyone, especially back in my area. So, discrimination has been preached here and everything but we have discrimination right in this bill. It is right there in black and pink right in this amendment here.

Seventy percent of the clams taken off the Maine coast last year were taken off the flats adjacent to Washington and Hancock Counties. This is a pretty appealing thing to other clambers along the coast who have depleted their shellfish stock. Sounds real good. They have a lot of clams up there.

It was stated at a hearing at the Civic Center that, "why should I dig clams in my area when I can go somewhere else where I know there are clams that I can dig?"

I have gone on long enough. All I can say is, we would like to be left alone down there and left to our own devices.

This probably will try to be amended to make it look appealing to everybody but right there is the whole gist of it, discrimination in our paying the costs of the program to implement it and keep it going. Some of these towns cannot afford to spend \$20,000, \$25,000 or \$30,000 to implement that kind of program, that conservation program.

So, in light of the things that I have said here this morning, I would like at this time to move that this bill and all its accompanying papers be indefinitely postponed.

The SPEAKER: The Chair recognizes the gentlewoman from Owls Head, Mrs. Post.

Mrs. Post: Mr. Speaker, Men and Women of the House: I will tell House members that I think the Marine Resources Committee went at great lengths to try to come up with a compromise that we could all agree on so we would not be faced with another clam debate this session. However, we were not quite able to make it. I do think that people who have signed this report put a great of work into it and a lot of negotiating did take place.

I want to briefly tell you what is in the bill. Essentially, this proposal still allows municipalities to manage their clam flats. That has not changed with or without this particular bill. Presently, the power to manage their clam flats is being used by some towns to only keep out non-residents, nothing else. They are not doing anything else except saying, if you do not live in this town, you cannot dig on these flats and you cannot even dig in the summer to take a half a peck if you want to. That is the extent of some towns present clam conservation ordinances.

What this particular bill does is tell the municipalities that they can manage their clam flats and if they do so correctly and if they can show that they need to do so for conservation reasons, then they can limit it to only resident diggers but they have to do so for good conservation reasons. Essentially, what they have to go through for a process is that they need to survey the flats and if you are going to manage a resource, the first thing to find out is what is there. So, they survey the flats, they get an idea of the number of diggers in the town, what they can be expected to dig and they find out if there are enough clams in those flats to have 20 diggers dig and they are only 10 commercial diggers in the town, then they have to give 10 diggers 10 licenses to non-residents. It also says that they can only limit recreational dig-

ging to residents only for a three month period. So, that means for eight months out of a year that non-residents can recreationally dig in those flats and that for a three months period, most likely in the summer, if the town can show that a heavy amount of recreational digging would adversely affect the flats and that is most likely to take place in the areas around the state parks, then they can say for that three month period and they have to show to the Commissioner's satisfaction that they have a case in doing so, that in that three month period they can close it to recreational digging.

Right now, some towns can and some towns do not allow any resident of the state, unless they live in that municipality, to recreationally dig in those particular flats at any time during the year. Others, if they want to, can charge a \$100 license fee for recreational digging. If you want to go dig a half a peck of clams, you have to pay a \$100. This bill would not allow that.

I think presently the most important thing for people who are concerned about conservation of the resource is that within the past couple of years, the clam resource in the State of Maine has become pretty sadly depleted. We do not want to happen to us what has happened in New Hampshire. They have gotten to the point now where they only have recreational digging. There are not enough clams left to dig commercially. We do not want to get to that point.

We have decided that the best place for the resource to be managed is at the town level but we do want to set up some standards to make sure that they do manage those resources. If they want the right to manage their resources, they have to take the responsibility too and that is all this bill does.

I would ask you to vote against indefinite postponement.

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

Mr. HOWE: Mr. Speaker and Members of the House: I am a cosponsor of the bill. You may recall that the bill we debated last year was quite a bit different from this bill with respect to the requirement, if you will, that certain licenses be made available to non-residents. In fact, last years bill was pretty much wide open. There was no discrimination, if you will, permitted against non-residents. Their proposal did not fare very well and the committee, during its study this past summer, came up with a proposal which said, basically, that two-thirds of the licenses available had to be available to non-residents. That was still offensive to some of those towns that have prohibited non-residents to dig. What you have before you today in black and pink is considerably watered down, if you will, I do not necessarily use that term in a negative sense, it is much less offensive, I think, to those towns that have prohibited non-residents because it does not even specify, under all circumstances, that any licenses go to non-residents and I would respond directly to the comments to my friend from Roque Bluffs. He objects to Section 10B, which says that non-residents can be discriminated against only if the number of commercial diggers in that municipality would be expected to take all the clams available. Then he goes on to say that he thinks this provision means that it would even restrict residents if there were more of them then there were clams available. I am not sure in looking at this language that that is its effect but even if it were, I think that that is inconsistent with positions taken opponents of the bill in the past who said they did not want a lot of new diggers coming in and depleting their resource and yet, it almost seems as though he is advocating that the law permit residents to deplete a resource. I do not believe that that is proper conversation management.

I hope you will oppose the pending motion and support this compromise.

The SPEAKER: The Chair recognizes the

gentleman from Franklin, Mr. Connors.

Mr. CONNORS: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief as usual. This three months that they can close off the flats to recreational digging and it so states in the bill that any three months but I think I realize and a lot of us realize what three months that would be and those would be the three months right through the summer months when you have visitors coming in and some of them like to go down and try for a peck of clams to steam. They like to see if they can dig clams.

It is odd to me that, under this bill, all of the support for it is coming from south of Washington and Hancock Counties where only 30 percent of the clams are dug. 70 percent of the clams are taken from Hancock and Washington Counties and we oppose this bill from those two counties. It just strikes me odd that support is coming from such large areas of the state with such a small activity in the clam industry. I hope you will support Representative Nelson's motion.

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

Mr. GREENLAW: Mr. Speaker, Ladies and Gentlemen of the House: This issue is a rather complex one and I would like to address it a little bit differently perhaps from the previous speakers in terms of what I think it boils down to. I think it boils down to some extent what a lot of fishery management should boil down to and that is, employment of people to harvest resource vs. conservation of that resource.

The bill that Representative Blodgett and Representative Howe introduced last year that would prohibit municipalities from prohibiting non-residents from digging their flats, I opposed. I think as a result of what I saw take place within my legislative district this summer in terms of harvesting the resource, I am even more convinced that that position was correct and desirable. The clams that were dug to a large extent were really small, so small that they should not even have been sold to a dealer and I think what happens in many instances when the clams are so small, that they are not sold on the wholesale market but rather shipped to Canada and they are canned.

Let me just review some facts for you that I think are important to this issue. Back in 1971, you will recall that a very devastating hurricane by the name of Agnes struck the Chesapeake Bay area and for reasons that I am not sure are completely known pretty much wiped out the clam resource in that area. Maine is one of the other major clam producing states in the country and this puts tremendous pressure on our resource.

Clam diggers, at that point in time, were perhaps getting anywhere from \$6, \$7, to \$10 a bushel. Six or seven years later, they are now receiving \$20 to \$25 a bushel for clams. The pressure has gotten so great now that one of the Department of Marine Resources personnel estimates, regardless of what this legislation does and probably regardless of what any municipality does, that the clam production this coming year may be reduced as much as 50 percent of what it was last year. There will be some that would argue and perhaps rightly so, that this is secular of fisheries, as many of our fisheries are, that they come and go in abundance with some of the environmental conditions and this may well be true. But I think the point is that we need to take a very serious look at the conservation and management on techniques that we have used with this particular fishery. I think it is fair to say that the towns have not always done as responsible job as they should, and I think it is also fair to say that the state has not taken its responsibility as seriously as it should.

The reasons that I am supporting this bill are twofold. First, I think it places some desirable conservation measures in place; I think it places some additional responsibilities on the

town; I think it places some additional responsibilities on the state. The other reason is that by and large it gives the towns still the responsibility to manage that resource, and if they feel for conservation purposes they should limit that type of digging to non-residents and have the information to back it up, that they will continue to do so.

I am apprehensive about the bill. I do not know whether it will be as successful as I hope. I am sure in some areas that it will not be well received but let me emphasize I think it is necessary to consider the conservation in management consequences of leaving this fishery the way it is.

It is a compromise. It is perhaps more of a compromise on Mr. Blodgett's part than it is on the people that oppose his bill. I am willing to give it a try. I hope you will be willing to give it a try, and I hope that you will vote against the motion to indefinitely postpone it.

I would request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Franklin, Mr. Connors.

Mr. CONNORS: Mr. Speaker, Ladies and Gentlemen of the House: I have asked a number of people, clam diggers all along through my district, about the two-inch clam law. I know that we had a show of hands down in one of the meetings and then I have asked a number of them since and about 90 to 95 percent of the clam diggers feel that this is the best conservation measure that they could have, would be a two-inch clam law.

I know in some areas some of the clams may not grow to over an inch and a half or not grow to the two-inch length and with special authority to the commissioner, he probably has it now, to open certain areas and I think, myself, with what little I know of the clamming industry and the people I talk with, they would like to see this and they claim it would be the best conservation measure that could be put into effect.

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

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

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

Mr. STROUT: Mr. Speaker, I would like to pair my vote with the gentleman from Dexter, Mr. Peakes. If he was here, he would be voting no and I would be voting yes.

The SPEAKER: The gentleman from Corinth, Mr. Strout wishes to pair his vote with the gentleman from Dexter, Mr. Peakes. If Mr. Peakes was here he would be voting no and Mr. Strout from Corinth would be voting yes.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the gentleman from Rogue Bluffs, Mr. Nelson, that this Bill and all it accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Aloupis, Ault, Austin, Bagley, Birt, Boudreau, A.; Boudreau, P.; Brown, K. L.; Bunker, Carter, D.; Connors, Cunningham, Drinkwater, Dudley, Dutremble, Fenlason, Flanagan, Garsoe, Gill, Gillis, Gould, Higgins, Hunter, Hutchings, Immonen, Joyce, Kane, Laffin, Lewis, Littlefield, Lizotte, Lougee, Lunt, MacEachern, Mackel, McBrearity, McPherson, Nelson, N.; Palmer, Peltier, Perkins, Peterson, Sewall, Shute, Silsby, Smith, Sprowl, Stover, Strout, Talbot, Tarbell, Torrey, Tozier, Valentine, Whittemore.

NAYS: Bachrach, Beaulieu, Bennett, Benoit, Berry, Berube, Biron, Blodgett, Brenerman, Brown, K.C.; Burns, Bustin, Carey, Carrier, Carroll, Chonko, Churchill, Clark, Connolly, Cote, Cox, Curran, Davies, Dexter, Diamond, Dow, Elias, Fowlie, Goodwin, H.; Goodwin,

K.; Green, Greenlaw, Hall, Henderson, Hickey, Howe, Huber, Hughes, Jackson, Jacques, Jalbert, Jensen, Kany, Kelleher, Kerry, Kilcoyne, LaPlante, Locke, Lynch, Mahany, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McHenry, McKean, Mitchell, Morton, Nadeau, Nelson, M.; Paul, Peakes, Pearson, Plourde, Post, Prescott, Quinn, Raymond, Rideout, Rollins, Spencer, Stubbs, Tarr, Teague, Theriault, Tierney, Trafton, Truman, Twitchell, Violette, Wilfong, Wood, Wyman.

ABSENT: Carter, F.; Devoe, Durgin, Gray, Hobbins, McMahon, Mills, Moody, Najarian, Norris, Tyndale, The Speaker.

PAIRED: Peakes, Strout.

Yes, 54; No, 83; Absent, 12; Paired, 2.

The SPEAKER: Fifty-four having voted in the affirmative and eighty-three in the negative, with twelve being absent and two paired, the motion does not prevail.

Thereupon, the Majority "Ought to Pass" Report was accepted and the Bill read once.

Committee Amendment "C" (H-989) was read by the Clerk.

Mr. Greenlaw of Stonington offered House Amendment "A" to Committee Amendment "C" and moved its adoption.

Mr. GREENLAW: Mr. Speaker, Ladies and Gentlemen of the House: I think this is a very straight forward amendment. I think if you take a look at the Statement of Fact, you will see what this amendment is all about.

I think the committee would agree that there may be some additional cost to the department in implementing this particular piece of legislation and now, at least, we have accepted the Majority Report, it seems to me that we ought to earmark some funds to make sure that they will have to have sufficient resources to implement this law. What this bill does is obligate a maximum of \$50,000 from the shellfish fund, which is dedicated revenue, to implement this act.

I talked yesterday morning with the Commissioner and he is not, in his own mind, sure at this point in time just exactly what the additional cost would be, and I think this provides him with some flexibility to hire up to a maximum of three additional area biologists if, in fact, the municipalities request the type of assistance that would require additional support from the state.

This amendment is offered as a good-faith amendment. It will not have to sit on the Appropriations Table. I think it is responsible and I hope you do adopt the amendment.

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

Committee Amendment "C" as amended by House Amendment "A" thereto was adopted.

The Bill was assigned for second reading tomorrow.

The Chair laid before the House the following matter:

Bill "An Act to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies" (H. P. 2051) (L. D. 2111) which was tabled earlier in the day and later today assigned.

Pending — Passage to be engrossed.

On motion of Mr. Burns of Anson, retabled pending passage to be engrossed and tomorrow assigned.

The Chair laid before the House the following matter:

Bill "An Act to Allow the Town of Otisfield to Meet its Obligations to Cumberland County for Existing Bonded Indebtedness Through a Lump Sum Payment" (H. P. 1930) (L. D. 2003) which was tabled earlier in the day and later today assigned.

Pending — Passage to be engrossed.

Mrs. Tarr of Bridgton offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-994) was read by

the Clerk.

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

Mrs. TARR: Mr. Speaker, Ladies and Gentlemen of the House: This amendment increases the amount by \$2,940 that Otisfield will pay upon leaving Cumberland County to go to Oxford County. This takes care of the period from January 1, 1978 to July 1, 1978. I move its adoption.

Thereupon, House Amendment "A" was adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" and sent up for concurrence.

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

The following Bills were received and, upon recommendation of Committee on Reference of Bills, were referred to the following committees:

Argiculture

Bill "An Act to Readjust Disbursement of the Potato Tax Fund" (H. P. 2067) (Presented by Mr. Smith of Mars Hill) (Cosponsors: Mr. Lougee of Island Falls and Mr. McKean of Limestone) (Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25)

(Ordered Printed)

Sent up for concurrence.

Education

Bill, "An Act to Authorize the Town of Lincolnville to Withdraw from the Appleton-Hope-Lincolnville Community School District" (H. P. 2066) (EMERGENCY) (Presented by Mrs. Hutchings of Lincolnville) (Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25)

(Ordered Printed)

Sent up for concurrence.

By unanimous consent, the preceding Bills were ordered sent forthwith for printing.

The following paper appearing on Supplement No. 2 was taken up out of order by unanimous consent:

The following Communication:

State of Maine
DEPARTMENT OF EDUCATIONAL
AND CULTURAL SERVICES
Augusta, Maine

January 30, 1978

To: Edwin H. Pert, Clerk of the House
May M. Ross, Secretary of the Senate
From: H. Sawin Millett, Jr., Commissioner
Re: Report of Citizens Committee on Basic Skills

Pursuant to provisions of C. 78 of the Private and Special Laws of 1977, I am pleased to transmit to you the report of the Citizens Committee on Basic Skills.

This Committee was charged with the responsibility of overseeing an assessment of basic skills for all eleventh grade students in Maine high schools and was further required to obtain a broad consensus of the views of Maine citizens in regard to the need for such an assessment. The report which I am transmitting to Governor Longley and to the membership of the 108th Legislature summarizes the findings of the assessment and opinion-gathering activities and includes recommendations for future policy action at the State level.

The Communication was read and with accompanying Report ordered placed on file.

On motion of Mr. Goodwin of South Berwick, the House reconsidered its action of earlier in the day whereby Bill "An Act Concerning Substitution of Generic Drugs by Pharmacists," H. P. 1914, L. D. 1975, was passed to be engrossed as amended by Committee Amendment "A" (H-987).

The same gentleman moved that the matter be tabled for one legislative day.

Subsequently, Mr. Goodwin of South Berwick withdrew his tabling motion.

On further motion of the same gentleman, the House reconsidered its action whereby Committee Amendment "A" was adopted.

On motion of Mr. Goodwin of South Berwick, tabled pending adoption of Committee Amendment "A" and tomorrow assigned.

Mr. Laffin of Westbrook was granted unanimous consent to address the House.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I think that the members of this House, even though we are in the middle of a last term of our 108th session, probably one of the most disturbing things that could disturb a Representative is the fact that we have seen many murders, many vicious, heinous crimes throughout this state in the last year that we as members should be very concerned with, but outside of that, I think probably the biggest thing that should disturb this House this morning is the headline of the Portland Press Herald. In that headline, the New England Telephone Company is asking for more money than they have ever asked for before.

I didn't put a bill in this year against the New England Telephone Company and I didn't put one in for them either, but I never had too good luck with the Public Utilities Committee, in my opinion. Other members, they have felt that they treated me very well, but I don't think they did, so I didn't put anything in this year and I may not be back next year. But, members of this House, if this legislature does not take steps to stop the New England Telephone Company, we are going to be in such a serious state that we as individuals won't even be able to afford a telephone; it will be a luxury. Elderly people, retired people living on fixed incomes, it will be out of their reach, and I think that they deserve the consideration. They need a telephone just as well as big industries, millionaires and the numerous telephones that we have in this establishment in Augusta. We have so many telephones in this State House that I can't even find the number I want because there are so many.

We have got to take drastic action to stop this big company from demolishing all of us. It is not only us who are going to pay, but it is those in the future.

Many people up here have said to me, "Well, you know, they used to ask for it once every five years and then it went down to every three years, then they went down to a year and, you know, it is getting out of hand, they are asking for a raise every six months." The Public Utilities Commission is overworked, they have an awful lot of work to do, and you know, it is pretty hard for us to match their salaries compared to what a big company can pay for their salaries in terms of lawyers' fees, things of that nature, because they have the resources at their fingertips. These men are paid high, expensive salaries to literally get every penny they can out of the phone users of this state, and I think that we have an obligation to make good, strict laws to protect the people of this state, not only for the telephone company — I don't want anyone to think I am picking on them this morning — but to any other company that tries to get everything they can from the people of this state, and it is the working people who always pay the bills. I would advise the members who come back here next year to take a very hard and serious look at good, solid legislation that will stop these big companies from continuously draining the public.

(Off Record Remarks)

On motion of Mr. Gould of Old Town,
Adjourned until 9:30 tomorrow morning.