

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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APPENDIX

HOUSE

Thursday, February 9, 1978

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Russell J. Peppe of the United Methodist Church, Auburn.

Reverend PEPPE: Let us pray. Lord of creations, source of all wisdom, these persons assembled here are those who purpose to do the will of them that sent them. They stand before the awesome discipline of their job and the great requirements of our times committed to the task of doing good to all who abide among us. They have neither the time nor the money to do as they please, but by your grace may they do whatsoever they can without rancor or pettiness for the benefit of all. Let no selfish motive hinder their work, nor any personal ambition blind their eyes, but let all and each use the authority given unto them for the increase of all things good and true and excellent. This we pray for your own's sake. Amen.

The journal of yesterday was read and approved.

**Papers from the Senate
Non-Concurrent Matter**

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) which was passed to be engrossed as amended by Senate Amendment "B" (S-451) as amended by House Amendment "A" (H-1014) thereto in the House on February 6.

Came from the Senate with that Body having Adhered to its former action whereby the Bill was passed to be engrossed as amended by Senate Amendment "B" (S-451) in non-concurrence.

In the House:

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

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: This has been a long debated bill. I have had a lot of support; I appreciate that support, but I recognize defeat. I now move we recede and concur.

Thereupon, on motion of Mr. MacEachern of Lincoln, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Provide for the Payment of Costs for Relocating Utility Facilities in an Urban Renewal Area" (Emergency) (H. P. 2072) (L. D. 2131) which was passed to be engrossed in the House on February 3.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-459) in non-concurrence.

In the House: On motion of Mr. Kelleher of Bangor, the House voted to adhere.

Non-Concurrent Matter

Bill "An Act to Permit Persons other than Arborists to Take Down Trees by Topping or Sections" (Emergency) (H. P. 1858) (L. D. 1925) which was passed to be engrossed as amended by Committee Amendment "A" (H-981) in the House on February 2.

Came from the Senate with the Bill and accompanying papers Indefinitely Postponed in non-concurrence.

In the House: On motion of Mr. Tozier of Unity, the House voted to recede from its action whereby the Bill was passed to be engrossed and from the adoption of Committee Amendment "A".

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

House Amendment "B" to Committee Amendment "A" (H-1020) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Unity, Mr. Tozier.

Mr. TOZIER: Mr. Speaker, Ladies and Gen-

tlemen of the House: This amendment will remove the emergency preamble from the bill.

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

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

The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

Orders

A Joint Resolution (H. P. 2089) in memory of G. EMILIO OUELLETTE, a beloved civic leader of Lewiston who was, for 30 years, host of the radio program "La Revue Francaise"

Presented by Mr. Raymond of Lewiston. (Cosponsors: Mr. Cote of Lewiston, Mrs. Berube of Lewiston)

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

On motion of Mr. Curran of South Portland, the following Joint Resolution: (H. P. 2091) (Cosponsors: Mr. Diamond of Windham, Mr. Howe of South Portland, Mr. Marshall of Millinocket)

JOINT RESOLUTION IN HONOR OF THE UNIVERSITY OF MAINE AT PORTLAND — GORHAM

ON THE OCCASION OF ITS CENTENNIAL YEAR

Whereas, it has been said "there are few earthly things more splendid than a university;" and

Whereas, "it is a place where those who hate ignorance may strive to know, where those who perceive truth may strive to make others see;" and

Whereas, "it is a place where seekers and learners alike banded together in search for knowledge, will honor thought in all its finer ways, and will uphold ever the dignity of thought and learning and will exact standards in these things;" and

Whereas, one place fitting of this description was established by act of the Maine Legislature on February 19, 1878 and appropriately titled Western Normal School; and

Whereas, through the years its name has changed to Gorham Normal School, Gorham State Teachers College, Gorham State College, Gorham State College of the University of Maine, University of Maine at Gorham, and more recently to University of Maine at Portland — Gorham; but its purpose has endured, making it one of the State's leading institutions of higher learning; and

Whereas, the University in all its splendor has not only inspired those in attendance with the desire to fit themselves more thoroughly for the profession of teaching and other fields, but has supplied the means of gratifying that end; and

Whereas, now, on the eve of this, the centennial anniversary of its founding, the University of Maine at Portland — Gorham possesses even greater potential for providing increased service to citizens of the region and the State; now, therefore, be it

RESOLVED: That we, the members of the Senate and House of Representatives of the One Hundred and Eighth Legislature of the State of Maine, now assembled, being mindful of the paramount importance of education in our society, on this the 100th anniversary of the establishment of the University of Maine at Portland — Gorham, take this opportunity to publicly recognize the immeasurable contribution of that institution during the past century, to pay tribute to all those associated with it since its founding and to offer and extend to the University of Maine at Portland — Gorham our best wishes and encouragement for many more years of continued service and progress in the future; and be it further

RESOLVED: That as a token of tribute and of our support and encouragement that a duly authenticated copy of this Joint Resolution,

signed by the Speaker of the House and the President of the Senate be prepared and presented to the Chancellor and the President to commemorate this memorable occasion.

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

A Joint Resolution (H. P. 2088) in memory of Mrs. ELEANOR CROSS McGLAUFILIN of Brewer, a beloved civic leader

Presented by Mr. Norris of Brewer.

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

Consent Calendar

First Day

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

(H. P. 2058) (L. D. 2116) Bill "An Act to Set Off a Portion of Land from the Town of Wales and Annex the Same to the Town of Sabattus" — Committee on Local and County Government reporting "Ought to Pass"

No objections being noted, the above item was ordered to appear on the Consent Calendar of February 10, under listing of Second Day.

Tabled and Assigned

(H. P. 1921) (L. D. 1982) Bill "An Act Clarifying the Statutes Relating to Municipalities" (Emergency) — Committee on Local and County Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1019)

On the objection of Mr. Henderson of Bangor, was removed from the Consent Calendar.

Thereupon, the Report was read and accepted and the Bill read once. Committee Amendment "A" (H-1019) was read by the Clerk.

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

(S. P. 644) (L. D. 2011) Bill "An Act to Exempt the Industrial Accident Commission From the Administrative Procedure Act" — Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (S-457)

No objections being noted, the above item was ordered to appear on the Consent Calendar of February 9, under listing of the Second Day.

Consent Calendar

Second Day

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

(S. P. 642) (L. D. 2009) Bill "An Act to Require Compensation of State Agencies in Compiling Labor and Industrial Statistics for the Bureau of Labor" (C. "A" S-454)

(H. P. 1916) (L. D. 1977) Bill "An Act Appropriating Funds to Construct an Access Road to the Phase 2 Housing Project on the Penobscot Tribal Reservation" (C. "A" H-1018)

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.

Passed to Be Engrossed

Bill "An Act to Require Certain Out-of-State Sellers to Register Under the Maine Sales and Use Tax Law" (H. P. 2084) (L. D. 2134)

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

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

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: This bill got a lot of attention yesterday with out debate, but I can't let it go through without another fight.

On my way to work this morning, I live in Sanford, as most of you know, and I picked up a

radio station from Boston, WRKO. Much to my amazement, it had an advertisement put on by the State of New Hampshire advertising the state's liquor stores. Now, if I could pick it up from Boston, you can imagine the millions of people who might have heard it also. I can see this bill slowly developing where someday we are also going to try to get the State of New Hampshire to collect sales tax for booze that we might buy in New Hampshire — this bill has too many ramifications, too many problems. It is going to cause more harm than I feel it is going to do good. It is going to alienate our state. Therefore, Mr. Speaker, I move for the indefinite postponement of this Bill and all its accompanying papers.

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

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

Mr. CAREY: Mr. Speaker and Members of the House: I would hope that you do not indefinitely postpone this bill. As a matter of fact, it does have several ramifications and it tries to equalize for those people throughout the State of Maine the very same advantages that have been held by those people in the border territories, not only York County but Oxford as well. But it would be ironic, Mr. Speaker, if we were, for instance, to kill this bill because we are trying to protect Maine businesses doing business in Maine and hoping that they will stay in Maine, because were those same businesses to go out of business, while the people may have some savings on their sales taxes, because of the loss of property tax revenues for going out of business, then that would obviously be reflected on the people's property taxes. So it is interesting to note that while we are gearing everything to the sales tax field, we on the Taxation Committee have been very interested in protecting the property tax base in the State of Maine, as inequitable as it may be in some particular areas.

The arguments that have been thrown up are basically a smoke screen. There are some people who have an advantage in this state that are not offered to others, and I think particularly of the state liquor store down in Kittery, which is yet another argument, but I would certainly hope that you do not indefinitely postpone this bill, and if you are interested in keeping Maine businesses alive so that they can share in the payment of taxes to the glorious State of Maine, then you would vote to keep the bill alive and not vote for indefinite postponement.

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

Mr. VALENTINE: Mr. Speaker, Men and Women of the House: I am not going to argue this again at any length today. I think you heard a good deal of it yesterday and most people have probably made up their minds one way or another, but I do have an additional question. As I was thinking about the bill last night, as I understand it, it would require whatever organization it was that tried to lure Maine buyers into New Hampshire to register and to collect a sales tax. I guess one of the additional questions I have about the working aspect of the proposal, which I will pose to anybody who can answer it, how does a New Hampshire or whatever other state business, company, whatever, determine that the person making the purchase is from the State of Maine?

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

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

Mr. CAREY: Mr. Speaker, in answer to the gentleman's question. If, in fact, the people in New Hampshire don't know that the person comes from Maine, then, obviously, there is no concern on their part. However, if we get-

ting into charge accounts and we get into a bookkeeping system, as a condition of registering within the State of Maine, they have to make their books available to our particular people, and we are talking about those people who sell the mobile homes in opposition to the several mobile home dealers that are up along the border in the Oxford County area. Those are the ones we have concerned ourselves with as well as the white goods. We are not concerned with the guy who goes down into Boston and buys a suit or buys their groceries or liquor across the border, those are other areas that we have to concern ourselves about.

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

Mr. VALENTINE: Mr. Speaker, Men and Women of the House: I thank the gentleman from Waterville for his explanation. I understand that that is the intent but that also underscores one of my basic concerns about it.

Once again, I recognize that if I go to New Hampshire from York and buy a suit over at the Newington Mall, I am not going to tell them I am from Maine and I will pay cash and I will never pay a sales tax on it probably. I probably shouldn't admit that since it is probably a violation of some Maine State law, but, nevertheless, that is the common practice. But it does underscore the fact that obviously it ends up being a rule that is going to be applied discriminatorily in the sense that those who have charge accounts will end up paying and those who pay cash won't.

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

Mr. CAREY: Mr. Speaker, I would ask the gentleman one question. Is he opposed to Maine people doing business in Maine?

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

Mr. GOODWIN: Mr. Speaker, Men and Women of the House: Somewhat in answer to Representative Carey, I would just like to say that I am not opposed to Maine people doing business in Maine. What I am opposed to is spending \$17,000 of Maine tax money for something that is totally impossible to do. I think this is where my main objection comes from, because one person, one additional person in the Department of Taxation is not going to be able to do what this bill wants to do, what it is trying to do. You are going to need approximately, in York County alone probably 50 to 60 people, which is about the number of roads and bridges that go across into New Hampshire, for a person to be there 24 hours a day checking everybody who goes into New Hampshire and back, every business truck or person coming indelivering something if you want to make this bill effective.

A couple points I was thinking about on how a New Hampshire business could get around this particular law, first of all, they will just stop advertising in Maine, which would be a loss of advertising revenue to Maine businesses, at least in terms of, you know, "Come to New Hampshire, there is no sales tax." One way they could probably get around it is by a group of businesses or people getting together and hiring a Maine firm to advertise in Maine saying that you can go to New Hampshire and not have to pay a sales tax.

If Representative Carey is so worried about property taxes and the businesses along the Maine — New Hampshire border, I would just say that the legislature back in 1951 or 1952, when they originally passed the sales tax, should have worried about it at that point. I don't think we should worry about it now because there aren't any businesses down there to worry about going out of business.

The SPEAKER: The Chair recognizes the gentleman from Eliot, Mr. McPherson.

Mr. MCPHERSON: Mr. Speaker, Ladies and Gentlemen of the House: I happen to be one of those businessmen who operates in the southern part of the state and make purchases in the

State of New Hampshire on open accounts. I have slips from New Hampshire concerns and right on it is the Maine sales tax. We have been paying the Maine sales tax to the firms in New Hampshire who have been forwarding it to the State of Maine. I just can't see how you are going to collect enough money to warrant this bill. It is the same old question, I think it is going to be harassment for a few New Hampshire firms.

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

Mr. CARTER: Mr. Speaker, Men and Women of the House: I might say in this regard that there are many New Hampshire firms who have voluntarily registered with the Maine sales and use tax law because they did not want their customers harassed in collection of the use tax. I do not see any problem on enforcement here. This is a department bill and what precipitated it at this time was several recent U. S. Supreme Court decisions to the effect that a state does have jurisdiction over out-of-state firms doing business within that state. In view of these U. S. Supreme Court decisions, I am sure that our Attorney General can find some effective way of enforcing this bill.

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

Mrs. KANY: Mr. Speaker and Members of the House: I still believe that more than New Hampshire would be involved here. National catalogues are advertising in a single line, the way I read that language, stating that sales tax will not be necessarily paid to New York State or Illinois or California or whatever if you live out of state. That would mean that that should be enforced, and I can't understand how anyone would think that they would be able to enforce that. If I am incorrect, as someone has suggested, that catalogues would not be included under this language, then I certainly do believe that the language is still ambiguous and should have been corrected after having been twice in the Taxation Committee.

I hope you will support the motion for indefinite postponement.

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

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I have a question to pose to you. I have a daughter who lives in New Jersey. She lives seven miles from the border of Pennsylvania. I go to Pennsylvania to buy my clothes because I can get them to fit me there, they cater to large women there. I wonder, if I bring my clothes over the Maine border, would I have to pay my 5 percent? I agree with Mrs. Kany, that you can't enforce this thing.

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

Mrs. POST: Mr. Speaker, Men and Women of the House: To answer the gentlewoman's question, this does not change your liability as far as whether or not you have to pay that sales tax at all. Technically speaking, if you buy items out of state presently and you bring them back, you are supposed to pay a use tax. The only time the department really makes use of that law is when you are talking about large items, such as washing machines and that kind of thing.

This bill in no way changes the tax liability of any Maine citizen on whether you have to pay sales tax or you don't have to pay sales tax. All it does is try to give the tools to the Department of Taxation that it needs to make sure that out-of-state firms are not given unfair advantage over out in-state firms and that they have to at least, if they are going to try to advertise in the state saying "Come to New Hampshire, Massachusetts, or wherever, you don't have to pay a sales tax," that they have to register with the State of Maine. That is all it does.

To answer the gentlewoman's question from Waterville, I think that we discussed this yesterday, she discussed this yesterday. I told her

at that time that as far as the Taxation Committee was concerned, it was clear, and of course the bill would be in a position to be amended today if she wished, and I see no amendment on my desk concerning this particular L. D.

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

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to give anybody the wrong impression. I am for Maine businessmen and I want them to continue to grow in their businesses to enable them to pay Maine property taxes. I have never said I was against this. But I can't stop my constituents or the people from York County from going to New Hampshire. I don't have an army to do that. Once they are there, I don't want them getting stopped and hassled because they are going to come to me, and I said, well, this is the bill that did it.

My other major concern is, even though you have the U. S. Supreme Court ruling, if all the stores in New Hampshire together and say they simply refuse to register with the State of Maine, the Attorney General, I would imagine, I am not an attorney, would then take them to court. How much will it cost bringing these firms to court and the amount of money for litigation? Is that going to exceed the money we hope to bring in by getting Maine residents coming back over the border? Think about this, please.

The SPEAKER: The pending question is on the motion of the gentleman from Sanford, Mr. Nadeau, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Nadeau of Sanford requested a roll call.

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

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

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKeane.

Mr. McKEANE: Mr. Speaker, I desire to pair my vote with Representative Jalbert of Lewiston. If he were here, he would be voting yea and I would be voting nay.

The pending question is on the motion of the gentleman from Sanford, Mr. Nadeau, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Beaulieu, Bennett, Berry, Berube, Biron, K. L.; Brown, Bunker, Carroll, Conners, Cote, Cunningham, Davies, Dexter, Diamond, Dudley, Durgin, Dutremble, Elias, Garsoe, H.; Goodwin, Gould, Gray, Green, Hall, Hickey, Jackson, Jacques, Kane, Kany, Kerry, Kilcoyne, LaPlante, Lizotte, Locke, Lougee, Lunt, Mackel, Marshall, A.; Martin, McHenry, McMahan, McPherson, Mitchell, Morton, Nadeau, N.; Nelson, Palmer, Paul, Pearson, Perkins, Peterson, Raymond, Rollins, Smith, Spencer, Stover, Talbot, Theriault, Trafton, Truman, Valentine, Wilfong, Wood, Wyman

NAYS: Aloupis, Ault, Bachrach, Bagley, Benoit, Birt, Blodgett, A.; Boudreau, Brenerman, Burns, Carey, Carrier, D.; Carter, F.; Carter, Chonko, Churchill, Clark, Cox, Curran, Devoe, Dow, Drinkwater, Fenlason, Flanagan, Fowlie, Gill, Gillis, K.; Goodwin, Greenlaw, Henderson, Higgins, Howe, Huber, Hunter, Hutchings, Immonen, Joyce, Kelleher, Laffin, Lewis, Littlefield, Lynch, MacEachern, Mahany, Masterman, Masterton, Maxwell, McBrearty, Najarian, M.; Nelson, Norris, Peltier, Plourde, Post, Prescott, Quinn, Ri-

deout, Sewall, Shute, Silsby, Strout, Tarbell, Tarr, Teague, Tierney, Torrey, Toxier, Twitchell, Violette, Whittemore

ABSENT: Austin, P.; Boudreau, Bustin, Connolly, Hobbins, Hughes, Jensen, Mills, Moody, Peakes, Sprowl, Stubbs, Tyndale

PAIRED: Jalbert, McKeane

Yes, 65; No, 70; Absent, 13; Paired, 2.

The SPEAKER: Sixty-five having voted in the affirmative and seventy in the negative, with thirteen being absent and two paired, the motion does not prevail.

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

Mrs. POST: Mr. Speaker, having voted on the prevailing side, I move reconsideration and hope you vote against me.

The SPEAKER: The gentlewoman from Owls Head, Mrs. Post, having voted on the prevailing side, now moves we reconsideration whereby this Bill failed to be indefinitely postponed.

Whereupon, Mr. Nadeau of Sanford requested a roll call vote.

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

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

The SPEAKER: The pending question is on the motion of the gentlewoman from Owls Head, Mrs. Post, that the House reconsider its action whereby the Bill failed to be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Beaulieu, Bennett, Berry, Berube, Biron, K. L.; Brown, Bunker, Carroll, Conners, Cote, Cunningham, Davies, Dexter, Diamond, Dudley, Durgin, Dutremble, Elias, Garsoe, H.; Goodwin, Gould, Gray, Green, Hall, Henderson, Hickey, Jackson, Jacques, Jensen, Kane, Kany, Kerry, Kilcoyne, LaPlante, Lizotte, Locke, Lougee, Lunt, Mackel, Marshall, A.; Martin, McHenry, McMahan, McPherson, Mitchell, Morton, Nadeau, N.; Nelson, Palmer, Paul, Pearson, Perkins, Peterson, Raymond, Rollins, Spencer, Stover, Strout, Stubbs, Talbot, Trafton, Truman, Valentine, Wilfong, Wood, Wyman

NAYS: Aloupis, Ault, Bachrach, Bagley, Benoit, Birt, Blodgett, A.; Boudreau, Brenerman, K. C.; Brown, Burns, Carey, Carrier, D.; Carter, F.; Carter, Chonko, Churchill, Clark, Cox, Curran, Devoe, Dow, Drinkwater, Fenlason, Flanagan, Fowlie, Gill, Gillis, K.; Goodwin, Greenlaw, Higgins, Howe, Huber, Hunter, Hutchings, Immonen, Joyce, Kelleher, Laffin, Lewis, Littlefield, Lynch, MacEachern, Mahany, Masterman, Masterton, Maxwell, McBrearty, McKeane, Najarian, M.; Nelson, Norris, Peltier, Plourde, Post, Prescott, Quinn, Rideout, Sewall, Shute, Silsby, Smith, Tarbell, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Twitchell, Violette, Whittemore

ABSENT: Austin, P.; Boudreau, Bustin, Connolly, Hobbins, Hughes, Jalbert, Mills, Moody, Peakes, Sprowl, Tyndale

Yes, 66; No, 72; Absent, 12.

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

Mr. Nadeau of Sanford offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1022) was read by the Clerk.

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

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: I have been before you House Amendment "A" which, basically, if you pulled out L. D. 2134, removes Section 8

which is the advertising of tax avoidance. In other words, it says, "Every seller of tangible personal property who solicits retail sales of that property for use within this State by means of advertising, whether of not it originates from the State..." and it continues on. In other words, what this does, many of you have approached me about it, those who advertise from without the state now would not be liable to do so. All those who had agents in the state would then be liable to collect a sales tax. This removes some of the objections you have seen in the paper and which many people have also brought to my attention.

I hope you can go along with me on the passage of the House Amendment "A".

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

Mr. CAREY: Mr. Speaker, I notice that the amendment says "putting in its place Section 1, Subsection 8, other presence in the state." Yet, in the bill "other presence in the state" is labelled as subsection 9, so there may very well be problems with this amendment as being the very same section repeated, as I read it, and therefore is totally unnecessary. I would move indefinite postponement of House Amendment "A".

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

Mr. GOODWIN: Mr. Speaker and Members of the House: I don't want to take Representative Nadeau's thunder away, but I think what he is trying to do here is basically to get rid of Subsection 8 in the bill and putting Subsection 9 in the bill and therefore renumbering it, that is all.

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

Mrs. KANY: Mr. Speaker and Members of the House: This really would take away any ambiguous language and you would at least have something left.

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

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to go along with this amendment. It takes away a lot of the ambiguous language and a lot of the problems which we seemed to have in the other bill of trying to enforce this. If you are going to go after every little firm that advertises on New Hampshire stations, that is going to be one whale of a job. With this, you are going to remove that but you are still going to get those businesses that have agents in Maine, they are going to have to collect sales taxes. That is what we want, isn't it? I don't see the objection with this plot.

The other plot which I removed has a lot of bad things in it, and hopefully we can have a good compromise with this. I urge you to go along with the amendment.

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

Mr. GREEN: Mr. Speaker, I would like to ask a question through the Chair if I might of any members of the southern delegation. That is, are there any members in this House present who are opposed to this amendment, and if so, is it possible that all of these legislators could be elected if they didn't care about Maine businessmen?

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

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: In response to the gentleman from Auburn, Mr. Green, I care very much about the Maine businessmen. I also care for the Maine people. I am not running for reelection, but that has no bearing on this bill. I am just trying to help the State of Maine collect its taxes without having to put a big harassment on its citizens.

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

Mr. GREEN: Mr. Speaker, I am sorry if my point did not come across the way it perhaps

should have. My point is that it is obvious that all the legislators in southern Maine are opposed to this bill. My only question would be, why are we trying to cram something down their throats that they obviously don't want? Mr. Mackel was the only member of the Taxation Committee not to sign this bill out favorably and there must be a reason for that. These people, in my opinion, are responding to the needs of their constituents. Why are we trying to cram something down their throats that they obviously don't want?

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

Mr. CAREY: Mr. Speaker and Members of the House: We are not cramming anything down anybody's throat. However, we are trying to do a little something so that the Maine businesses would be somewhat protected. Those are the people who really pay the taxes, and if you were to really seriously consider property taxes, you would find that industrial property and commercial property is really the only property that pays its own way in the property tax field. Residential property with at least one child in the school system does not now and never will pay its way as far as the educational system in the state or the needs and services provided in the state are concerned. Bus businesses in the state do not send children to school, industry does not send children to school, and that is the very same tax base that we are trying to protect as far as the State of Maine is concerned.

It seems strange that somebody up in Aroostook County, somebody over in Washington County doesn't seem to have the very same benefits that might be derived by those living within a 20, 30 or 40 mile belt of the New Hampshire border. Mr. Carter was exactly correct when he said the Supreme Court has ruled — I was reading an article only yesterday where Vermont went to court against the State of New Hampshire and the Supreme Court said that this is an argument to be argued between the states, and Vermont is now going their route and is going to be putting in legislation very similar to this, if they have not already got it.

It is interesting to note that the very section that has been taken out was originally opposed by the press people. Gordon Scott, who is the lobbyist for the Maine newspaper publishers in particular, it is through his efforts that we were able to rewrite the bill so that it now has been put in a very satisfactory position as far as the advertising system is put together. The newspaper people themselves are now satisfied that the advertising language is correct.

That, basically, is the objection I have to the amendment, in that it takes out the very thing that we can all live with at this point. It seems strange that the Statement of Fact says that many out-of-state firms may advertise the lack of a sales tax on their sales, even though their advertising is not specifically directed at Maine residents. That interested me very much because I can't picture anybody in New Hampshire really caring that an ad says there is no sales tax, because if they live in New Hampshire, they don't have to pay a sales tax anyway. Obviously, the Statement of Fact is a sort of misfact, that advertisement is, in fact, geared at the Maine people.

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

Mr. VALENTINE: Mr. Speaker, Men and Women of the House: I would suggest that if we are concerned about the competitive disadvantage that Maine businesses have compared to New Hampshire and the purchasing disadvantages some Maine residents have by virtue of the fact that they don't live near New Hampshire, then maybe the Committee on Taxation ought to report out a bill proposing the repeal of the Maine sales tax.

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

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I think as one of the signers of the original majority "ought to pass" report on this bill, I should say a few things. In the first place, my consideration and my vote was to help enforcing of the laws of the State of Maine, and I find it rather ironic that so many members of this lawmaking body are trying to keep a loophole to help people break one of the laws which this body has made.

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

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: I don't think our concern is blocking a loophole. I think that we all would agree, and certainly I have always felt very strongly on the encouraging of business in the State of Maine. I think our problem is that we see \$17,000, plus a good deal more, that may go into litigation for a bill that in my opinion anyway, and I think in a lot of other people's opinion in southern Maine, this is an unworkable bill.

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

A vote of the House was taken.

70 having voted in the affirmative and 46 having voted in the negative, the motion did prevail.

Thereupon, the Bill was passed to be engrossed.

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

Mrs. POST: Mr. Speaker, having voted on the prevailing side, I move reconsideration and hope you will vote against me.

The SPEAKER: The gentleman from Owls Head, Mrs. Post, moves we reconsider our action whereby this Bill was passed to be engrossed. All those in favor will say yes; those opposed will say no.

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

Sent up for concurrence.

Passed to Be Enacted

An Act Amending the Law Relating to Habitual Truants and School Dropouts (H. P. 1893) (L. D. 1950) (C. "A" H-1000)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been making its way through and there are several questions I have in regard to it. Question one, has the effective day been changed on the reporting of the habitual truant? Secondly, under this bill now, are there any possibilities of forfeiture of funds for noncompliance with the reporting?

The SPEAKER: The gentleman from Anson, Mr. Burns, has posed questions through the Chair to anyone who may care to answer.

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

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: The original L. D. called for the suspension of the existing law. We have made considerable progress in the State of Maine in this area of truants and dropouts. I think it would be a grave mistake, and the committee felt the same way, to suspend a law that is just beginning to have some beneficial effect in the State of Maine and it would be a step backward.

What we have done is amend the bill. The area of concern was in the existing law under Section 911, Subsection 6. In that section, there were rigid procedures to be followed, and those proved to very cumbersome. In the amended version, we are allowing the local school boards, boards of directors, to write their own rules and procedures and file them with the commissioner. The rest of that section stays in

place.

We have redefined what is truancy. It now says that a child is determined to be a habitual truant if he is absent from school the equivalent of 10 full days or for one half a day on seven consecutive school days within any six-month period for other than an excusable absence.

We have changed the definition of absences. Where it did say "planned absences for personal or educational purposes which have been approved in advance," we have removed the "in advance." Many times a child had to be absent from school and there was no time to notify the school and it had to be approved after the fact rather than before it.

This, I think, is a step forward and hopefully will correct truancy and dropout problems in the State of Maine.

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

Mr. BURNS: Mr. Speaker, my second question was, is there any funding withheld for non-compliance as it was before?

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

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

Mr. LYNCH: Mr. Speaker, under the existing law, there was an implied threat that if the child was not in school 85 percent of the time, there would be a penalty imposed. Under the existing law, that penalty was delayed for one year. Now we have extended that for another year, but we are leaving the implied threat there to make local authorities recognize that truancy and dropouts are a problem in the State of Maine.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: I wish to comment on one portion of Representative Lynch's comments. The committee amendment, the first part of Section 120, 911, Subsection 2E where Mr. Lynch referred to the striking of the phrase "in advance." I agree with that, but I wonder just who is going to approve these educational purposes.

I had a member of my school board call me over the weekend who coincidentally questioned this section of the law. As a school board member, she felt that it was an infringement upon parents' or persons' rights to require that educational leave or personal leave, whatever, had to be approved by the school board, particularly in advance. The amendment does go to that, but I wonder who is going to approve it now and whether we shouldn't go a little further and simply drop the necessity for approval of all.

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

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: You have to have some approval procedures; otherwise, you leave the thing wide open and you have no way of gathering in these truants and dropouts.

The SPEAKER: The pending question is on passage to be enacted. This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor of passage to be enacted will vote yes; those opposed will vote no.

A vote of the House was taken.

119 having voted in the affirmative and 8 having voted in the negative, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act to Change the Name of the Industrial Accident Commission to Workers' Compensation Commission (S. P. 641) (L. D. 2008)

An Act Concerning Substitution of Generic Drugs by Pharmacists (H. P. 1914) (L. D. 1975) (H. "B" H-1007 to C. "A" H-987)

An Act to Increase Retirement Benefits for Teachers who Taught Prior to July 1, 1942 (H. P. 1888) (L. D. 1945) (C. "A" H-997)

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

Order Out of Order

An Expression of Legislative Sentiment (H. P. 2090) recognizing that:

Christopher Hoxie, the son of Joseph and Elizabeth Hoxie of Bradley, on January 27, 1978, performed a heroic lifesaving deed.

Presented by Mr. Gould of Old Town. (Cosponsors: Mr. Pearson of Old Town, Senator Curtis of Penobscot)

The Order was received out of order by unanimous consent and read.

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

Mr. GOULD: Mr. Speaker, Ladies and Gentlemen of the House: Representative Pearson and I are very proud to present this order, to be cosponsors of this order. It isn't every day that you have an order like this before the members of this House. My speech writer, Representative Pearson, wrote a nice speech, but I wish he would read it cause I can't decipher it.

Before I finish, may I say that 11-year-old Christopher is a "Hoxie with a lot of Moxie."

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Today we have with us in the balcony a genuine hero. Fate, circumstance and individual character combine to set the stage for heroism.

One certain thing that I can say about heroes is that they are unusual, and the one that we have with us today is no different. Christopher Hoxie is a 75 pound, 11-year-old boy scout from Bradley. This quick thinking youngster recently rescues a 14-year-old girl from near certain death in a brook in Bradley. After a recent torrential rainfall, young Christopher was exploring the edges of a swollen brook above the Boynton Streen culvert. Like many boys of his age, he was fascinated by the power of the current that seized the twigs and the branches and whisked them through the large culvert.

About three o'clock in the afternoon Lisa Danielson happened by on her way to visit Chris sister, Shiela. Together Chris and Lisa watched the stream suck the twigs that they were throwing into the culvert. When one branch was caught near the edge, Lisa attempted to knock it loose. It was, however, lodged between the ice and wouldn't easily be knocked loose. Lisa drew back and gave it more one knock and lost her balance, slipping into the turbulent waters. Down through the swirling white water she went and into the dark culvert. Young Christopher started for his house nearby but the frantic screaming of Lisa caused him to pause and to reconsider.

Analyzing the situation, Christopher realized that a short 25 yards downstream from the culvert were solid sheets of ice under which it was certain that Lisa would slide if she reached them. Chris yelled to Lisa to slow her speed down by grabbing at anything in the water that would decrease her speed. At the time, Christopher marked a spot on the bank, ran to it and perched himself in preparation for an attempt to grab at Lisa.

Already numb from the freezing turbulent water, Lisa was doing her best to keep her head above the water. Extended to his utmost, Christopher reached the girl, who is three years older and 60 pounds heavier. Chris plucked the shocked Lisa from the cold waters and hustled her to his nearby home.

In the presence of this brave, quick thinking boy scout from Bradley, I stand in appreciation and admiration.

The SPEAKER: The Chair recognizes Chris with his parents and would ask him to stand

and accept the greetings of the House.

(Applause, the Members rising)

Thereupon, the Order received passage and was sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Orders of the Day

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

Joint Resolution Declaring Opposition to the Proposed Production of a Film Contrary to the Spirit of Religious Toleration (H. P. 2086)

Tabled — February 8, 1978 by Mr. Tierney of Lisbon Falls.

Pending — Adoption (Parliamentary inquiry raised by Mr. Davies of Orono)

The SPEAKER: The Chair is prepared today to rule on the questions raised by the gentleman from Orono, Mr. Davies. The Chair would advise the members of the House that pursuant to Article I, Section 3, dealing with the religious section, the Chair would rule that the Resolution is not in violation of pending rules and regulations of this House. In reference to Section 4, the Chair would advise the gentleman and the members of the House, for the Chair to rule that this order would be in violation would also be a violation of the right of freedom to speak.

The pending question, therefore, is on adoption of the Joint Resolution.

The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker and Members of the House: I very much wish that I did not have to rise on this order. I wish it could pass through this body as any order would, but unfortunately, it pricked my conscience, it disturbs me a great deal.

Before I continue, I would like to read parts of the two sections of the Constitution which were just recently referred to by the Speaker to give you some idea of what my concern is.

In Article I, Section 3, of the Maine Constitution, it reads, "No one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship." It further reads, "and no subordination nor preference of any one sect or denomination to another shall ever be established by law."

In Section 4 of the same Article it reads, "Every citizen may freely speak, write and publish his sentiments on any subject." It also reads, "No law shall be passed regulating or restraining the freedom of the press."

My concern is, we have before us an order about a proposed film. This film does not exist now; it is a proposed film. We don't know what is in it, we don't know what its content is. We have before us the statement that it has been characterized by many as blasphemous an sacrilegious. We have no information of who these many people are, what within it is blasphemous or sacrilegious. We have the statement further on in the resolve that says that films of this type are contrary to the spirit of peaceful exercise of religion and of religious toleration which has characterized our country since its inception.

I am a historian, that is my professional training. I have studied American history in depth, and I feel fairly comfortable in speaking on the subject of religious toleration in this country. The principle of religious toleration that we have carried in our minds and in our hearts and in our written documents, such as the Constitution and the Declaration of Independence, has a long tradition in this country; 370-some years we have tried to practice this. But what religious toleration means, it means both the right to practice your religion, whichever religion that might be, or the right not to

practice a religion. It is my opinion that this order holds up those people in the State of Maine who do not hold the same religious values as expressed by the sponsor of this order or those opinions expressed by the people who are opposed to this proposed film, and I feel that it is inappropriate for this body, which is elected to represent all the people of the State of Maine, to take a position on a supposedly religious question that we really cannot examine at all because there simply is no movie for us to examine, to look at and see whether in fact it is blasphemous or sacrilegious. We have no evidence except for the statement of the sponsor in his Resolve that it is sacrilegious and blasphemous. I think this is a matter that is inappropriate for us to consider.

The great philosopher Voltaire once said, and he has since then been paraphrased by a famous Judge of the Supreme Court of the United States, Oliver Wendell Holmes, "I disagree with what you say, but I will defend to the death your right to say that." That is our principle of freedom of speech. We may not agree with what is said, but if we disallow a persons right to say what he chooses to say and to bear the consequences that might come, whatever, we have violated our idea of freedom of speech. When we have done that, we have violated our idea of freedom of speech. When we have done that, we have cause the foundation of our democracy to shudder and everytime this takes place, it makes our freedom that much less secure.

I wish this matter was not before us, I wish we did not have to debate it, for in fact, if this movie is as bad as it is portrayed, it certainly does not deserve anymore attention than it has already received. I am fearful that the attention that is going to be paid by this legislature today can only make the people of the State of Maine curious to see this movie so a movie that might have passed through our state never to be viewed by any of its citizens will get so much attention from this that people will go see it just to see what it is all about. I think if in fact it is blasphemous, then we do not want it to get any more attention than it should.

I would call your attention also to the fact that there have been other movies on television and in our theaters in the recent past that some people have accused of being blasphemous and sacrilegious. One that is still in this state is a movie called "Oh God" starring George Burns and John Denver. Numbers of church people criticized this as a sacrilegious film, a blasphemous film, but those of us in this House who have attended that movie and have seen it have come away saying that it is a very funny movie and it is not sacrilegious, it dealt with the subject very tastefully. So we have to be very, very careful about accepting the judgment of one individual who has not seen the movie because it does not exist and his interpretation that it is sacrilegious and blasphemous.

I hope that this body will choose not to pass this order. My own vote will be against it, but I hope you will all think very deeply about what American democracy means and what freedom of speech in its true sense really means and I hope you vote your consciences.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: I am very disappointed that Mr. Davies would rise in opposition to this order. The resolve that you have before you simply opposes the production of a film which deals with the life of Jesus Christ, portrays Jesus Christ as a homosexual. It is an x-rated film, and I do not care what your religious beliefs are, the Constitution of the United States and the individual rights that Mr. Davies is so concerned about cannot be stretched so far as to allow and Mr. Palmer last week talked about trash on the floor of the House, that is trash, and if we, the Representatives of the people of the State of Maine, cannot stand up in

this body and oppose this type of trash, I don't know who can.

People have come to me and said, "What can we do about this?" I looked at the Constitution and I know that we cannot say, "you cannot do it." I know that we can say, "we oppose that they do it."

There are four countries, ladies and gentlemen, who have said to this filmmaker, we do not want you here, we do not want you producing that type of trash in our country and he has left because of public pressure. They are no more moral in Italy than we are here in the United States and no one can convince me of that. That is the reason for this resolve before you.

I fully realize that we cannot force anyone into not doing anything, but we as Representatives of the people can and I think we should and I think we will speak our opposition to this type of film. That is the purpose of this order. I really do not care what every social liberal says about what we are trying to do here today, I really don't. I am as liberal as anyone else.

I sponsored a gambling bill and some people in religion felt that that was wrong, but I have my limit, and when someone tries to portray Jesus Christ as a homosexual, I am opposed to it and I am a Representative of the people and I can stand here today and put in a resolve saying that my people are against it, and I know they are, and, Mr. Davies, if your people are for it, vote for it. That is the way I feel about it.

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

Mr. KELLHER: Mr. Speaker, Ladies and Gentlemen of the House: I think the comments that were presented by Mr. Davies generally speak for themselves and that is the right of choice by any individual. I do not believe that Mr. Davies or any other member of this body or any citizen in this state, in terms of opposing this order, would be defending what, in fact, Mr. Biron has described is going to be in the presentation of this film. I believe that it is the right of every individual to either support or oppose an issue.

The National Civil Liberties Union now is defending the right bunch of individuals who I have no respect for whatsoever representing the Nazi Party in this country, or the rebirth of it, to demonstrate in a certain city in the United States. But the Constitution and the flag that waves over this building flows very freely for all individuals. So this morning if I decide, which I have already, to support his motion, it is the right of an individual to do whatever he chooses within the guidelines of the Constitution of this state and the United States and freedom of choice.

I do not agree with the film at all. I do not agree with the script. I don't like standing up here and urging this House to indefinitely postpone or not based on the contents and the intent of what has happened, but I think the point you have to understand is that it could be a reversed type of film and you could have someone else taking the devil's advocate here this morning in the right of choice and to express that choice. I agree with the good gentleman from Orono that in fact we have to express the right, as the Constitution so says, for all individuals.

Mr. Biron of Lewiston requested a roll call. The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, I would like to pose a question to the Chair. I am not sure what the study order is. Is it to have the film made in the United States or made in Maine or what?

The SPEAKER: The Chair will order the Clerk to read the Resolution.

Thereupon, the Resolution was read by the Clerk.

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

Mr. HOWE: Mr. Speaker and Members of

the House: Much of what I might have said on this has already been said. I must say that I think Mr. Biron should be ashamed of himself for suggesting that anyone who would oppose his Resolution supports the kind of film he described. However, that film is not described in his Resolution and before I can vote on a Resolution, I have to be prepared to support the words that are in that Resolution, not his other comments which would purport to describe a film which he nor I have ever seen nor which apparently even exists at this point.

There are a number of specific pieces of language in the Resolution which causes me concern. It talks about a British filmmaker and I know that there must be more than one filmmaker in that country, so that person is not identified. The film is not identified beyond its being described as blasphemous and sacrilegious, and those terms could describe any number of films, depending upon ones point of view, films which have already been produced and show in this country.

The Resolution talks about being opposed to the making of any film in this country which defames the religious tenants or beliefs of any religious group. My wife and I went to see "Oh God" a week ago, a film which is rated "G", not even "PG" but "G", as I recall. I found it not only humorous but in very good taste and made, I thought, an excellent spiritual or religious point to it, however, not a point with which I think everyone here would necessarily agree.

Although Mr. Biron may have in mind some specific film he has heard about, which I have not heretofore heard about, the wording in this Resolution is much broader than that and could put us on record as opposing the making of any film which might possibly offend anybody's religious beliefs. I simply cannot support anything as vague and as broad as this and I will vote against the Resolution.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: In response to Mr. Howe and again in response to Mr. Davies, the reason in the Resolution that opposes the making — if the film were already here, we would not need a Resolution. You see what I am trying to tell you? If we pass this Resolution saying that we do not want that kind of film, and I think we have that responsibility as representatives of the people to pass that kind of Resolution, maybe that film will never happen, and that is great, that is good. Do you want me to bring the film here so you can look at it and then tell me if you like it or not? Is that what the social liberals want, a free filming?

The point that I am trying to make is that the content of the film, what the film is about, has been explained. I have before me here, and I will make copies for anyone who wants to see it, headlines from newspapers all over the world, and I will pass one over to Mr. Howe now, which talk about the film and the opposition to the film because the filmmaker has made it public as to what the subject matter would be. After the people in those countries learned about it, they said, we don't want it done here and they did not do it there. If we here in the United States say the same thing, possibly it will not get done here. That is the intent of this resolution, not to deny anyone's rights. If he wants to do it here, fine, but let him know that the people of Maine, the people that I represent, do not want it here. I am not denying anyone's rights. I simply am saying that I am opposed to it, I am opposed to this kind of film of being done in the United States. I think if anyone should have the right to be opposed to something it is a representative of the people, and that is what we are. I think the people I represent are opposed to this type of film and that is the question before us, not a constitutional question. Are we or are we not opposed to the making of this kind of film?

That is what this resolution says. That is the choice that we have.

The SPEAKER: The Chair recognizes the gentleman from Gorham, Mr. Quinn.

Mr. QUINN: Mr. Speaker and Members of the House: I am speaking strictly as an individual from District 30 and not as a party leader, I support Mr. Davie's position completely. I did not want to speak on the bill, but I object to the fact that the speakers for this bill so far have characterized me by three terms: (1) if I vote against this resolution, I am a social liberal, which doesn't do me too much good in a Republican district; (2) they have also inferred that I am pro-porno and I believe they inferred that I am sacrilegious, and they have made those three valued judgments based entirely on how they think I am going to vote on a question. I think that that is too broad a brush. I remember some people in Germany who used to use a brush some 40 years ago called non-Aryan. If you did not meet their definition you were automatically non-Aryan and this put you in somewhat of a disadvantage in their society.

The kind of thing that Mr. Biron is trying to do, I sympathize with and understand, but I feel that we as a legislative body, whether we are passing a resolution or memorial or we are speaking in a sense of whatever we are doing, we are speaking collectively for the people of Maine and I think we should do it in as careful and as a precise manner as we can.

I read from the Resolution: "We are opposed to the making of any film in this country" and it goes on to say, "which defames" and I would want that defined "the religious beliefs or tenants of any religious group" and I would want the term group defined. Does this mean that if I have a religion all my own and I am not a member of a group, I am not eligible for protection and this legislature does not really care if someone makes a movie that hurts my feelings? I think it is unwieldy and impractical thing and I think to vote against this resolution in any way makes me a social liberal, which I may be. I haven't yet taken my position, I just object to being put in that group without asking me first.

It means that we are taking a rather broad brush and we are stroking an area that we have not yet defined. A common to all societies in the world in the early stages of development has been a religion which the sociologists and anthropologists refer to as animism in which people worship rocks, trees or inanimate objects. I would suggest that if we search hard enough from Gorham to Eagle Lake, we might find someone who still subscribes to animism. If this is the case, then I would suggest that Walt Disney movies, which animate a tree answering Bambi as Bambi runs through the forest, is sacrilegious to we animists, and I would suggest that you vote against this resolution.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, in inquiry Mr. Speaker? What is the pending motion?

The SPEAKER: The pending motion is passage.

Mr. GARSOE: Mr. Speaker, I would like to move the indefinite postponement of this resolution.

I am not a historian, I have trouble remembering what happened night before last and no one has ever applied the epitaph of social liberal to me, those are fighting words. But I think the gentleman from Lewiston perhaps should realize, and I know in his heart he does, that those of us who are not going to support the passage of this very much support the motives behind it. No one likes to see this kind of trash coming through here but I think it is an untimely and unseemly piece of business for us to be dealing with today and I hope you support the motion.

The SPEAKER: The Chair recognizes the gentleman from Millinocket, Mr. Marshall.

Mr. MARSHALL: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from Cumberland Mr. Garsoe. I would like to know if the gentleman is speaking as a member of the leadership or as an individual?

The SPEAKER: The gentleman from Millinocket, Mr. Marshall, has posed a question through the Chair to the gentleman from Cumberland, Mr. Garsoe, who may answer if he so desires.

The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, Ladies and Gentlemen of the House: I can hardly think of an occasion when I was speaking as a party leader that has had any impact whatsoever. I trust that that answers the gentleman's question.

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

Mr. VALENTINE: Mr. Speaker, Ladies and Gentlemen of the House: This is starting to get humorous and I have a little anecdote to relate here. I think everyone here already understands the difference between being opposed to a particular production as opposed to being opposed to the concept of freedom of speech, freedom of the press and so forth and that is really the key issue here and I hope that that does not get lost and do not confuse the two.

I was thinking when I looked at the last few words on the resolution that say "spirit of religious toleration," I was recently doing a little genealogy work and a little history work over in the Maine State Library and I was looking up specifically the history of the Littlefield family in Wells. Wells was founded by a clergyman by the name of Wilwright who came into the Boston area around 1630 or something, and he and a number of his parishioners, who were all from England, entered into disfavor with the religious establishment in Boston at that time and ended up literally being banned from Boston, which brought me to an aside about the old expression about something being banned from Boston, but he and his followers who were banned were given a certain period of time to get out of the greater Boston area, as the result of which he moved to Exeter, New Hampshire and founded that, then moved to Wells and founded that. But the reason he was banned from Boston was because he had a proposal as a clergyman that he espoused from his Pulpit, and that proposal which the establishment in Boston at that time was very much opposed to was the concept that he came up with called "freedom of speech and freedom of thought."

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

Mr. MORTON: Mr. Speaker, I have no idea how I might be characterized by the broad-brush appraisal, but I think at the present time we have the correct motion before us. I think this is an inappropriate matter to be before this body and I think the motion to indefinitely postpone can properly express the sentiment of this body.

The SPEAKER: The Chair recognizes the gentleman from Dexter, Mr. Peakes.

Mr. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: I think that I can probably be held as one of the liberals in this area, but it isn't very often that we have a chance as parents to express ourselves in this area. If we don't start expressing ourselves, our children and our brothers and sisters are going to be inundated by this type of films, this type of information being out. I have heard all this before and I am going against the stream right now. But if you truly represent your people in your areas and you think that they would want you to vote against this, do so, but if you feel that now is the time for you to indicate your real heartfelt feelings about this type of issue, then don't be afraid to vote along with Mr. Biron.

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

Mr. HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: I think all of us have been

very concerned about the moral deterioration of our country. The different religious groups are having problems. We aren't getting the support that we should, and I think Mr. Biron has done a commendable job here bringing to the public one more thing that is tearing down the religious groups of our country and I would like to support him.

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

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I agree with many of the previous speakers, and I would simply like to add that after listening to Mr. Kelleher, my good friend down in the left-hand corner, that I would say to the two young gentlemen in the right-hand corner that I have been here for 10 years, and in the 10 years that I have been here, I have never yet been intimidated by what I feel are remarks that really border on slander in the voting for anything, and I shall not do it this morning.

Mr. McHenry of Madawaska requested a roll call vote.

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Cumberland, Mr. Garsoe that Joint Resolution (H. P. 2086) be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Aloupis, Ault, Bachrach, Bagley, Beaulieu, Benoit, Berry, Brenerman, Brown, K. C.; Burns, Carter, F.; Clark, Connolly, Cox, Cunningham, Curran, Davies, Dudley, Dutremble, Elias, Fenlason, Garsoe, Gill, Goodwin, H.; Goodwin, K.; Hall, Henderson, Howe, Huber, Hughes, Jackson, Jensen, Kane, Kany, Kelleher, Kilcoyne, Lunt, Masterton, Mitchell, Morton, Najarian, Nelson, M.; Norris, Peltier, Perkins, Prescott, Quinn, Raymond, Silsby, Spencer, Talbot, Tarbell, Tarr, Trafton, Valentine, Wood

NAYS: Austin Bennett, Berube, Biron, Birt, Blodgett, Boudreau, A.; Boudreau, P.; Brown, K. L.; Bunker, Carey, Carrier, Carroll, Carter, D.; Chonko, Churchill, Conners, Cote, Devoe, Dexter, Diamond, Dow, Drinkwater, Durgin, Flanagan, Fowlie, Gillis, Gould, Gray, Green, Greenlaw, Hickey, Higgins, Hunter, Hutchings, Immonen, Jacques, Joyce, Laffin, LaPlante, Lewis, Littlefield, Lizotte, Lougee, Lynch, MacEachern, Mackel, Mahany, Marshall, Martin, A.; Masterman, Maxwell, McBreairty, McHenry, McKean, McMahon, McPherson, Nadeau, Nelson, N.; Palmer, Paul, Peakes, Pearson, Peterson, Plourde, Rideout, Rollins, Sewall, Shute, Smith, Stover, Strout, Stubbs, Teague, Theriault, Tierney, Torrey, Tozier, Truman, Twitchell, Violette, Whittemore, Wyman

ABSENT: Bustin, Hobbins, Jalbert, Kerry, Locke, Mills, Moody, Post, Sprowl, Tyndale, Wilfong,

Yes, 56; No, 83; Absent, 11.

The SPEAKER: Fifty-six having voted in the affirmative and eighty-three in the negative, with eleven being absent, the motion does not prevail.

Thereupon, the Joint Resolution was adopted and sent up for concurrence.

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

BILL, "An Act to Amend the Crime of Assault on a Law Enforcement Officer" (S. P. 661) (L. D. 2032) (C. "A" S-444)

TABLED — February 8, 1978 by Mr. Garsoe of Cumberland.

PENDING — The motion of Mr. Henderson

of Bangor that the House Reconsider Passage to be Engrossed.

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

Mr. HENDERSON: Mr. Speaker, there is an amendment that is in printing and I would like to ask you first of all, is this the last item of business for the day?

The SPEAKER: The Chair would answer in the affirmative.

Mr. HENDERSON: Mr. Speaker, I would like to just briefly describe the amendment and would like to table it if it is possible, but I want to be sure that that is possible.

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

Mr. LAFFIN: Mr. Speaker, a point of order. He is talking about the amendment and it has not even been presented yet. We haven't suspended the rules.

The SPEAKER: The Chair would advise the gentleman that he is out of order.

The gentleman from Bangor, Mr. Henderson, may continue, but I would suggest that the only debate before us is the matter to reconsider.

Mr. HENDERSON: Mr. Speaker, I hope we would reconsider this matter because without describing the contents, Representative McMahon and I have each, separately, after yesterday's session, drafted amendments to the proposal. When we compared our notes this morning, we realized that we both had ideas which were acceptable to each other and wanted to present them in a single, comprehensive amendment. In fact, that amendment may be at the Clerk's desk right now. I would like to ask if that is the case?

It is, so as a result of that, I would hope that you would vote to reconsider so that we can present the amendment to you today.

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

Mr. LAFFIN: Mr. Speaker, I ask for a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All 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 Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, will you please advise me on the latitude that I might have on this motion. That is, may I describe what I consider the deficiencies in the current bill and the possibilities of changing it?

The SPEAKER: The Chair would answer in the affirmative.

Mr. HENDERSON: Mr. Speaker and Members of the House: The current bill that you have before you is, of course, the bill plus the committee amendment. There were two deficiencies which were raised yesterday with respect to the bill. This is, by the way, not an attempt to kill the bill but rather to clarify it and to strengthen it. The amendment that you have on your desks now contains within it the issues that I would like to address and which I think Mr. McMahon would as well.

Two things—one, it reinstates the element that was in the original bill for medical documentation. As I understand it, the reason that was left out was because of the lack of definition at the time, and Representative McMahon's thought in this was to provide a definition of medical documentation. I think that is an important element of the bill.

The second objection that was raised yesterday was the question of the undercover officer and so forth and whether a person, while maybe knowingly assaulting another, also had knowledge that that other person was, in fact, a police officer. I think that obviously that is what we intend, and I would hope we would re-

consider so that we can consider an amendment that would indicate that the person has to know that the person being assaulted is a police officer.

I don't think this in any way reduces the effectiveness of the proposal but rather clarifies some of the issues that were before us. So as I say, I would hope you would reconsider.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: The Legal Affairs Committee worked through the summer on this particular piece of legislation and we had many different forms that we were going to come out with. I would urge everyone to vote for reconsideration so that we can put the amendments in front of us and deal with them properly. It is a policy decision to be made, and the place to make a policy decision is right here on the floor of the House.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. McKEAN: Mr. Speaker, Ladies and Gentlemen of the House: Going through this particular bill, I have had some background in law enforcement and I see here an attempt to water down what was previously a fairly decent bill. Perhaps some of the future amendments that come out will help us out.

I have four questions which just came into my mind on the medical documentation. First of all, what is going to be considered as probable cause for restraint and detention for an on-the-scene arrest which encompasses assault on a law enforcement officer? Will medical documentation be required prior to detention or incarceration?

Second, who will be liable for the cost of an examination to document this evidence? Internal injuries can be costly and expensive. Who is going to foot the bill, the municipality, the officer? I have a question there. What is the correlation between the penalties of a simple assault as Class C crime or assault with a deadly weapon? Under the rules of evidence, why are eyewitness reports not considered as prima facie evidence in lieu of medical documentation? These are just four questions which immediately pop into my mind, and there are a lot more.

This state has a high incidence of assault on police officers. This is the reason for the study. This is the reason that this bill was put together, and now I see the attempt to water it down. We come along and say, we had a problem, we are going to raise the penalties and try to eliminate that problem. But when we raise the penalties, we are going to make it just that much more difficult to prove. Have we helped law enforcement or have we not? These are the questions I have on this particular issue.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I prepared the order along with Representative Burns that eventually resulted in this bill, and after viewing it, I urge you vote for reconsideration so we can frame the bill up so it will be a much better bill.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: You know, everytime somebody wants to change something after it goes to committee, they have plenty of time to do so. He is asking for reconsideration this morning—and I am going to be very brief—he is asking for reconsideration this morning on something that the members of the Legal Affairs Committee put together, and he is not even a member. Why didn't he stop it before it came—I talked to the Chairman of the Legal Affairs Committee and asked him about this bill, and I was assured by that gentleman, who I have the greatest respect for, that there is nothing wrong with the bill as it came out of

committee. Now, all of a sudden, they are coming here and telling you, and even two members of the committee themselves got up and said that now they want to do some more work on the bill. That doesn't sound reasonable to me. All of a sudden, now, when we are getting in our final days, we are trying to push bills out of here and now they decide they have got to do more work on this bill.

I realize that I can't speak on the amendment because I am sure the Speaker wouldn't let me, but I am sure that he will let Mr. Henderson, who spoke on the bill. But I don't believe that this House is going to let the leadership dictate to you, even though he dictates to me, because I have a right to speak on the floor of this House, and I am elected by the people and not by the Speaker of this House. I will stay here as long as I am elected by the people and not by you.

The SPEAKER: The House will be at ease. Will Sergeant-at-Arms escort the gentleman from Westbrook, Mr. Laffin, out of the hall.

On motion of Mr. Tierney of Lisbon Falls, Recessed until the sound of the gong.

After Recess

11:30 A.M.

The House was called to order by the Speaker.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: If I have offended this body this morning by not sitting down at the sound of the gavel, I certainly do feel that I owe the membership of this House an apology. Under the rules, regardless of how we feel about an issue, we have to live by those rules.

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

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

Mr. CARRIER: Mr. Speaker, Ladies and Gentlemen of the House: I wish to say a few words on the reconsideration motion. I think I am against it and I will tell you the reason why. I am on the Legal Affairs Committee and, as a rule, regardless of whether we are together on an issue or not, I think everyone tries to use their best judgment and come out with the best we can.

The study that we had on this was very limited because we only had two off-season meetings. That was not because of lack of interest but rather a lack of funds. The study was not funded enough I am told. If we are to have studies in the future, I think we should think about it seriously; otherwise, it just confuses the subject.

I want to talk about the bill, I want to talk briefly about my position on the bill. At the beginning we had some very good and interesting hearings on this. We did have public hearings. I am all in favor of public hearings but I am against private hearings.

I wish to make a few comments on this, L. D. 2032 as passed by the committee with the committee amendment. We had hearings and I was at the hearings. We had workshops. Whatever we do, I hope we pass some part of this bill because we need this. The officers need this and need it very badly. Whether you approve of the amendment or not, it is immaterial to me. What concerns us is that we have a real good bill here and I think the bill itself, personally, was better than it was with the committee amendment or any other amendment presented before us this morning, at least the ones we have on our desks.

I think we subject ourselves to the bleeding hearts. I think the original bill is strong, complete and explicit, I think it was good.

After the hearings, I was in favor of taking out the words "intentionally, knowingly and recklessly." This bothers me. These words

which I think lawyers use or which the law allows anyone to use in order to get convictions or get them out of convictions. This is what I objected to in committee. On that particular day, it was agreed that we would take off those words or that clause. Later I found out we had an expert, probably a two year expert from the law office that came down on a private hearing and told us—and I was not there because I have to work for a living—to tell the committee and convince them that these words should be in there.

I claim that you do not need the word "intentional", because if you have the definition of any assault, it says in there "intentionally", so we do not need the word intentionally. It also says the word "knowingly"; we don't need the word "knowingly". You could question whether we need "recklessly" but I am convinced that we do not need recklessly because you cannot show me any assault which is not reckless.

It was also put in that someone has to have medical attention. I went along with this although I do not believe in it, because as an officer, if someone spit on me, I would consider it as insulting as if he had hit me because he probably doesn't hit too hard anyway.

I submit to you that we should not reconsider, because I think the two amendments that will be presented will weaken the bill. I agree with whomever said that this will weaken the bill, it does. I also say that the committee amendment weakens the bill, but being as liberal as I am, I went along to keep my liberal record on the committee and in this House.

I say the study was alright. We had all kinds of testimony, I have them here and all the members of the committee have them. In the State of Maine, we have 26 assaults per hundred, the highest assault record in the United States, you think about that. If any of your relatives or anyone you care for is a law enforcement officer, you think about it, because, in my opinion, the amendment would only serve to weaken the bill.

If we are going to pass anything at all, although I do not agree with the committee amendment, I was kind enough to make it an unanimous report because one of the small things it says on the committee amendment is that it shall be proved a culpable mental state of the one who does this. We do not go into this on this type of crime, this is what we need on murders and everything else but not on a crime that someone spits on someone else and gives them a shove, we do not need that, but it is still in there. The reason that I will vote not to reconsider is not because I am in total agreement with the bill and the committee amendment but because I think this is the best we have. It is better than the other two amendments if they are put on.

For the benefit and the protection of the police, to encourage them in their work, I hope you will vote against the reconsideration motion.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: May I again reiterate, please, let's reconsider and get this policy out on the floor where we can have a full-blown discussion on it.

The SPEAKER: The Chair recognizes the gentleman from Lisbon Falls, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: I agree entirely with the gentlemen from Anson, Mr. Burns, and I do not think you have to be a bleeding heart to vote in favor of reconsideration.

I think when people such as Mr. Burns and Mr. Joyce, who have spent their entire lives in law enforcement and who have spoken here this morning, ask you to reconsider, you should. The reason, I feel, this is one of fundamental courtesy.

We have two amendments, one which might

be sponsored by a Democrat, Mr. Henderson, and another one by Mr. McMahon, a Republican, and all they want is the opportunity to have these fully discussed on the floor of the House.

You will recall that Mr. McMahon was stuck in his dooryard, he testified to yesterday, and he could not get out on the day where he would have been here ordinarily to offer this amendment, so I am asking everyone in this House, both Republican and Democrat, to vote to reconsider. Let the entire discussion take place on either of those two amendments and if Mr. Carrier wishes to move to reconsider and to kill Committee Amendment "A", which I happen to agree with him on, I would rather have the original bill than the bill in the form with Committee Amendment "A" on it, but in any event, let this take place and all vote to reconsider.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Bangor, Mr. Henderson, that the House reconsider its action whereby this Bill was passed to be engrossed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS: Aloupis, Austin, Bachrach, Bagley, Beaulieu, Bennett, Benoit, Berry, Berube, Biron, Birt, Blodgett, Boudreau, A.; Boudreau, P.; Brennerman, Brown, K. L.; Brown, K. C.; Bunker, Burns, Carey, Carroll, Carter, D.; Carter, F.; Chonko, Churchill, Clark, Connors, Connolly, Cote, Cox, Cunningham, Curran, Davies, Devoe, Dexter; Diamond, Dow, Drinkwater, Dudley, Durgin, Dutremble, Elias, Fenlason, Flanagan, Fowlie, Gill, Gillis, Goodwin, H.; Goodwin, K.; Gould, Gray, Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Hunter, Hutchings, Immonen, Jackson, Jacques, Jensen, Joyce, Kany, Kelleher, Kilcoyne, LaPlante, Lewis, Littlefield, Lizotte, Locke, Lougee, Lunt, Lynch, MacEachern, Mackel, Mahany, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McBairty, McHenry, McKean, McMahon, McPherson, Mitchell, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Norris, Palmer, Paul, Pearson, Peltier, Perkins, Peterson, Plourde, Post, Prescott, Quinn, Raymond, Rollins, Sewall, Shute, Silsby, Smith, Spencer, Stover, Strout, Talbot, Tarbell, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Trafton, Twitchell, Valentine, Violette, Whittemore, Wilfong, Wood, Wyman

NAYS: Ault, Carrier, Garsoe, Laffin, Ri-deout, Stubbs, Truman

ABSENT: Bustin, Hobbins, Jalbert, Kane, Kerry, Mills, Moody, Peakes, Sprowl, Tyndale
Yes, 133; No, 7; Absent, 10.

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

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: Thank you very much for the opportunity to discuss this further. Hopefully, it will not be discussed at great length.

After reviewing House Amendment "B" which I was to present and now will not after a discussion with Representative Burns and other members of the Legal Affairs Committee, and looking over the consequences of that, it is often difficult, as it is point out accurately, to try to achieve perfection through the House amendment route, but Representative McMahon's amendment as originally proposed seems to be much closer to the desired result, so I would hope that we could listen to his proposal and I would support it if he does offer it.

On motion of Mr. McMahon of Kennebunk, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" was adopted.

The same gentleman offered House Amendment "A" to Committee Amendment "A" and

moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-1021) was read ably the Clerk.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: I appreciate your voting to reconsider to give me the opportunity to do this.

I was aware of this bill as it was moving through in its original form and I favored it in its original form. When the committee amendment was added, for reasons which the committee felt were important, I had one problem and that problem I sought to rectify with this House Amendment "A".

You will note that in the bill the need for "medically documented bodily injury" is inserted in order to justify making this a Class C crime, assault on an officer. I agree with that need both to protect the officer and the person who is accused of assaulting him. In the committee amendment, that need was stricken. It seems to me that if you are going to have a higher penalty for assault on a law enforcement officer than for a citizen in general, and I agree that that penalty is warranted, then you also have to have a higher standard which must be met in order to justify that higher penalty. The need for medical documentation, I think, is that higher standard.

The other problem Mr. Henderson and I remedied during our brief hiatus we had a moment ago, because there is a section of the existing law which is referenced in the bill pertaining the penal correction officers which, in fact, is left in tact, and that seems to be the committee's desire and I certainly share that.

Whether or not you like this bill, I would hope that you would adopt the amendment and then act on the bill, because I do believe the need for medical documentation should be in there and it is not now in the committee amendment.

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

Mr. BIRON: Mr. Speaker, I move the indefinite postponement of House Amendment "A".

I rise in opposition to this amendment only because in committee the original bill that was brought before it had the "medical documentation" as part of the language of the bill. After a lot of consideration by the committee, we found that it would almost be impossible if we put the words "medical documentation". I will give you an example. A police officer gets in a fight or is in a scuffle and cuts his finger, that is medically documented because there is a cut and there is a bandaid. Yet, another police officer is assaulted and gets a kick in the groin, that cannot be medically documented and that is why the language "medically documented" was taken out. An officer can be seriously assaulted and there cannot be any medically documented proof of that, and if we put that language in this law, we are giving an escape to those people who commit assaults on our police officers, because if it is not medically documented, they cannot be prosecuted under the law as proposed by Mr. McMahon. That is the reason the words "medically documented" were taken out. Now, Mr. McMahon is attempting to put the words back in which I personally feel would give an escape to those who assault police officers in a serious way, but that assault cannot be medical documented, therefore, the charge cannot be put against them.

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

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: To respond to the good gentleman, there are other charges which can be brought against an individual who assaults a police officer. We are talking about the creation of a new one which I happen to feel if you are going to have a higher penalty which you impose on an assault of a police officer,

and we are creating that here, that you also have to meet a higher standard to define that higher penalty or justify it. In my view, the need for medically documented evidence is the standard that we should ask for when we add this new law to the criminal code. As I said, there are other changes, simple assault, aggravated assault that can be brought under other circumstances.

The gentleman perhaps pointed out correctly that it is impossible to write a law that covers every area that you can think of. This perhaps is one of those examples. But the other side of the coin is true too, if you have a policeman and an individual in a one-on-one situation with no witnesses and you do not have the medical standard there, the new charge of assault on a police officer could very well become the beginning charge which would result in a plea bargained situation. I don't think that that is correct either.

I think we can balance the two interests here very nicely by requiring the medical information and I went ahead and defined what "medically documented" is to the best of my ability, realizing that there are other charges available that can be used in other situations.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: Representative Biron from Lewiston and I are on the same committee but we must have been listening to different testimony from what he is saying this morning.

The medical documentation was originally put in the bill meaning that the injury received by the officer was of sufficient severity whereby he had to see a physician. So, if his finger was cut and he just had to wrap it up, that is not medically documented if he did not go to a doctor for attention. If he is kicked in the groin, there would be medical documentation, he would be screaming all the way down.

We took out the phrase "medical documentation" at the insistence of the advisor to the Criminal Code Commission. He was quite persistent in stating that this is a new terminology to be added into the code and he asked us very strongly to please maintain the same verbiage, the same criteria throughout the entire code. This is why in our debate on reconsideration, I told you that it was a policy that had to be answered on the floor of the House here and this is it. Do we wish to put new terminology into the code because the "medical documentation" is new terminology and is a slight departure from the way the code is currently written?

I concur with Representative McMahon's amendment. I think it is very workable, and the reason we wanted medical documentation in there is so that the judge presiding on this case could be well aware of the injuries that were sustained by this officer to take into consideration when he comes up to the sentencing aspect of the trial if the individual is convicted.

Contrary to some popular belief here in the House, there is no mandatory sentence on this. All we are doing is moving up the class of the crime to a Class C, meaning that a judge could sentence up to five years if he felt that five years was necessary in this particular case.

By requiring medical documentation, the testimony of a licensed physician within this state will give that additional information to the judge so he would be able to take it into consideration in the sentencing.

I concur with the amendment.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: This is a good bill. Representative McMahon's amendment would make a good bill better. This bill will let us take a stand on the position that we no longer will tolerate an open season on police officers in this state. We do not want to be top of the statistics throughout the country as we are

today. I urge support of the McMahon amendment and passage of the bill.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: In the debate that we had on the bill in committee, the medical documentation was talked about quite a bit. Mr. Burns is correct in what he has said and I think I am correct in what I said earlier as well. However, another thing that was brought up in committee is that if a person is charged with assault on a police officer and is brought into a courtroom and the terminology "medically documented" is in our law, the physician will have to appear at the cost of the courts. It was felt by some people who testified that most physicians would not appear; therefore, the charges would be dropped. If we put this language in this bill, we are giving them an escape, because attorneys being what they are, they will find a day when the physician can't go and you are going to find yourself with the case being dismissed because the physician is not there to testify before the jury as to whether it was medically documented or not. That is the problem with putting that language in. I believe Mr. Burns will agree that that statement was made in committee. This is another problem that we have if we use the words "medically documented."

I don't have an amendment before this body, and I think some of you have a concern that there are some police officers, and I won't argue the point, that would take advantage of this position and charge people with assault when it is not really needed. Possibly the bill could be held and an amendment could be put on that a superior officer would have to make the charge of assault on that officer and not the officer himself. That might be an amendment that would work. But to put "medically documented" in this bill would, as far as I am concerned, reduce the impact of what we are trying to do because it would give that loophole that we don't want, and it is putting a loophole in the law.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I think the key work to this particular bill which would have a bearing on the policy decision that this body is to make, the key two words are "bodily injury." Bodily injury is defined in our code as physical pain, physical illness, for any impairment of physical condition.

If the requirement of medical documentation is left out of the bill, if would possible in some cases to prove bodily injury, which is physical pain, physical illness or an impairment of physical condition, without medical testimony. It might be such a clear case of bodily injury that you wouldn't need medical testimony. In a tight case, in order for the prosecution to go forward, it would seem to me that the prosecution would deem it advisable to bring in medical testimony to prove to a judge or a jury, whoever the fact finder is, that there is bodily injury.

I personally think that depending on facts and circumstances of the case, that would determine whether the prosecution deemed it advisable to have to use medical testimony to prove bodily injury as defined in our current code.

If we leave out medical documentation from the bill, it wouldn't be necessary to have medical documentation to prove bodily injury where it is a real clear-cut case, but in a tight case, as a practical matter, I think the prosecution would bring in medical testimony to prove its case; otherwise, it is wasting its time in court.

If we do, as the Representative from Lewiston has just stated, require medical documentation in every case to prove physical pain, physical illness of any impairment of physical condition, you would have to have to prove as a material element of the crime that you had

medical documentation. If you didn't have it, you would be thrown out of court. So I think that the dictates of practical trial practice could work nicely here and still serve the function that this bill is attempting in every case.

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

Mrs. KANY: Mr. Speaker, I have a question to any attorney or any member of the committee. I would think that some physician could just attest to the fact that he witnessed bodily injury, and can you tell me if this would be acceptable evidence in court? I do not know or I would not ask?

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

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

Mr. TARBELL: Mr. Speaker and Members of the House: I believe that if you are going to require medical documentation that there was bodily injury, that trial practice would require that that physician be there and subject to cross-examination by the defense, because that would be a key question of whether or not medical documentation proved bodily injury, and the other way you can examine that is under cross-examination, I would think.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. DeVoe.

Mr. DEVOE: Mr. Speaker and Members of the House: It is my opinion that House Amendment "A" to Committee Amendment "A" would weaken the bill. It seems to me in the final analysis what we are trying to do is to tell a judge in court what he must have before him in order to make a finding that the defendant in the case is or is not guilty of an assault on a police officer. Although I am not a tort lawyer, I have handled several tort cases and found it very frustrating when a client having been injured in an automobile accident, having experienced great continuing pain over a period of weeks and months, goes to an orthopedic surgeon, gets examined and the orthopedic surgeon finds no evidence that he can determine of bodily injury and yet the client who day in and day out, week in and week out, has pain, knows that it came from the assault that was inflicted upon him or in the case of a car accident, the negligence of another driver, and I think by putting the words "medically documented," we are giving the defense counsel a chance to play mischief with the facts before the court.

I pose a question to anyone supporting the amendment. Let us assume that we have a police officer who has been assaulted and goes to an orthopedic surgeon and says, "my back hurts". Yet, the surgeon x-raying him, giving him all kinds of test, makes a report that "I find no evidence of injury". Yet, the police officer is experiencing great pain, great discomfort and continues to experience great pain and discomfort. In a hypothetical situation like that, would the proponents of this amendment consider that there was medical documentation because the state is able to produce the physician in open court himself who could say the police officer made a complaint and told me that he is experiencing a great deal of pain and discomfort; yet, I find no objective evidence of it in my examination and in my review of the tests that were performed on him. Are you going to take away from the judge the opportunity to weigh all of the evidence and the credibility of the police officer himself simply because a particular doctor in a particular case may not be able to find any objective evidence?

I usually am not in disagreement with Representative Joyce and Representative McMahon, but I am in disagreement with them on this particular amendment.

The SPEAKER: The gentlemen from Orono, Mr. DeVoe has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. MCMAHON: Mr. Speaker, Ladies and Gentlemen of the House: I will respond and also ask permission to continue, I have listened to the testimony of the two previous speakers with a great deal of interest. I have the greatest respect for them and I understand the perspective from which they are speaking, both the gentlemen being lawyers. To answer the specific question, it would be my assumption as a non-lawyer that the doctor would come into court if necessary, or present a deposition, which ever was required, and that the judge would weigh the doctor's testimony and would determine whether that was medically documented evidence and if the testimony did not indicate that it was that, the defendant would not be convicted.

I would point out to the good gentleman, as he very well knows, that there are situations such as he describes all the time. Take the situation where a person applies for Social Security disability, an intricate part of that is the doctor's concurrence, and frequently the doctors are not clear on their concurrence, which results in a person having to go through a series of steps to finally either be granted or denied their disability.

Nothing is black and white and I do not think that we can write a law that is black and white. What this amendment tries to give you, as I said in my two previous comments, is a standard, it is something which we can measure against, which we can hold a person liable for the crime of assault on an officer.

I understand that attorneys and judges also need flexibility. Consider this scenario which I offer in a juxta position to the comments to the two previous speakers. An individual is charged with assault on an officer absent the requirement for medical evidence. In other words, if you pass it the way the committee amendment is without my amendment. That is a pretty serious crime, an individual facing a five year jail penalty.

Unlike the good gentleman's reference to a tort case, we are talking about a criminal situation, a Class C crime. In that particular situation, the defendant is pretty shaky. He goes to his attorney, his attorney meets with the prosecutor outside of the judge's office, all these people crowding around and it is a pretty horrendous situation in district court if you have ever witnessed plea bargaining, and what do you think happens? The prosecutor and the defense attorney reach an agreement whereby the individual agrees to plead guilty to a lesser offense. It happens all the time. Perhaps it is necessary that it happens in order that our court dockets may be cleared at all, I don't know. At least we require judges in some circumstances to outline the details of a plea bargain arrangement and I think that that is fine. In that particular situation that I presented to you, the defendant is at a basic disadvantage starting out because there is no need for the prosecution to present medical evidence. The defendant is going to cop the plea, no question about it.

If you pass this without the requirement for medical evidence, you are placing the citizens of this state at a grave disadvantage, this obviating the legal system, notwithstanding what the two previous speakers said.

In summation, I would say that I support the addition of this as a new crime to protect our police officials but let's be even-handed and balanced about it and provide the standards by which we are going exact the penalty which we are proposing to exact.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. MCKEAN: Mr. Speaker, Ladies and Gentlemen of the House: I get the terrible feeling as I listened to the scenario that what is being said is that the police officers within the State of Maine are not quite what they are sup-

posed to be. Yesterday, the comment was made that this would take care of the problem with untrained officers.

May I remind you, under our present statutes, we do not have any untrained officers because all full-time law enforcement officers are required to be graduates of the Maine Criminal Justice Academy. Some of these very situations which we are talking about now are part of academy training.

I posed four questions previous to the recess which have never been answered. I have the feeling that we will go along with another scenario. If I was to be arrested for assault on a police officer, I went to trial, they ask for medical documentation, the judge was unable to get the medical documentation, the case was thrown out of court, where do I stand as a police officer? Am I going to be liable for a countersuit? I can show you 50 different ways that you can perform an assault on an individual and never put a mark on him but you can perform the assault.

With House Amendment "A", you have done nothing more than weaken the bill. You have done nothing but weaken what we are trying to strengthen. We are trying to say to the people of the State of Maine, if you assault an officer, you will pay the penalty. You do not say, if you assault him, now you are going to have to prove the assault by medical documentation which may be impossible to get. You have just left a loophole.

Let's show the people that we are tired of assault on officers. The man is hired to do a job, let him do the job, do not string his hands where he cannot do the job.

Therefore, I would support the indefinite postponement of House Amendment "A".

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: As with the resolution with respect to the movie earlier, sometimes if you are not for them, you are often completely considered against them. I think we have to admit though, as much as we ought to support our law enforcement officers and we ought to strengthen this law as has been suggested, we cannot pretend that they are pure anymore than sometimes the public feels that politicians always should be perfect. Whenever there is a mistake, then damn the rest of them. I think the same situation applies here.

There are some police officers, because they belong to the human race as we all do, that do not know how to operate in a professional manner, that do have certain kinds of short comings and I think it is those kinds of situations that we have to protect citizens against. The argument that I have heard today is that even if there is no evidence whatsoever, other than that the officer feels a pain as a result of an alleged assault for which there is no evidence, that I or you may be sent to prison for five years. We have to consider that and see whether that is appropriate procedure. If we could be confident that all of our law enforcement officers were more perfect than we are or than any other profession is, then we wouldn't have to worry about that.

It is true that all officers must go to the academy, but there are some hedges about that: (1) Part-time deputy sheriffs don't have to; (2) I believe they have to go within a certain period after they are appointed and and it may not be instantaneous; (3) There are other factors other than the initial training. There is the recruitment criteria for officers to begin with. What kind of person has, in fact, been recruited to go through the training? Secondly, even if they go through the training, have they gotten a change or development in their position that they should have to become professional officers? Three, are they properly supervised? Once a person has gone through that training, that does not mean that forever more they understand how to deal with the citizenry as a

professional police officer. There needs to be continuous education and there needs to be supervision.

All I am saying is that there are possibilities that we should be willing to protect ourselves against, and we certainly should move forward with the protection of the police officers themselves through the bill.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: In reply to the good gentleman, Representative McKean, in reference to his question as to whether or not you could prove the bodily injury, if the District Attorney believes that he cannot prove the bodily injury, he has two other laws that he can fall back on. One is the simple assault, which carries Class D crime, or if the assault was of such magnitude, charges of aggravated assault could be brought, which is a Class B crime, so, one or the other.

Back to a question that was asked prior to, I believe it was Representative Devoe, indicated that if a doctor could not prove that an individual had a back injury, we are not saying that the doctor is going to have to say what the exact injury is to the individual, the definition of bodily injury says "physical pain, physical illness or an impairment of a physical condition." The doctor could testify that this individual has a pain in his back and that would be all that is necessary to come before the court.

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

A vote of the House was taken.

Whereupon, Mr. Cote of Lewiston requested a roll call vote.

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

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

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

ROLL CALL

YEAS: Ault, Austin, Bennett, Berube, Biron, Brown, K. L.; Carey, Carrier, Cote, Devoe, Dexter, Diamond, Drinkwater, Durgin, Hunter, Hutchings, Immonen, Jacques, Kelleher, Kerry, Laffin, Lewis, Littlefield, Mackel, Mahany, Martin, A.; McKean, McPherson, Paul, Perkins, Plourde, Raymond, Rideout, Sewall, Shute, Smith, Strout, Stubbs, Tarbell, Tarr, Torrey, Tozier, Truman, Violette

NAYS: Aloupis, Bachrach, Bagley, Beaulieu, Benoit, Berry, Birt, Blodgett, Boudreau, A.; Brenerman, Brown, K. C.; Burns, Carroll, Carter, D.; Carter, F.; Chonko, Churchill, Clark, Connors, Connolly, Cox, Cunningham, Curran, Davies, Dow, Dutremble, Elias, Fernalson, Flanagan, Fowlie, Garsoe, Gill, Goodwin, H.; Goodwin, K.; Gould, Gray, Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Jackson, Jensen, Joyce, Kane, Kany, Kilcoyne, LaPlante, Lizotte, Locke, Lunt, MacEachern, Marshall, Masterman, Masterton, Maxwell, McBreairty, McHenry, McMahan, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Norris, Palmer, Peakes, Peltier, Peterson, Post, Prescott, Quinn, Rollins, Silsby, Spencer, Stover, Talbot, Teague, Theriault, Tierney, Trafton, Twitchell, Valentine, Whittemore, Wood, Wyman

ABSENT: Boudreau, P., Bunker, Bustin,

Dudley, Gillis, Hobbins, Jalbert, Lougee, Lynch, Mills, Mitchell, Moody, Pearson, Sprowl, Tyndale, Wilfong

Yes, 44; No, 99; Absent, 16.

The SPEAKER: Forty-four having voted in the affirmative and ninety in the negative, with sixteen being absent, the motion does not prevail.

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

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

The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Birt of East Millinocket, Adjourned until twelve o'clock noon tomorrow.