

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

Wednesday, February 15, 1978

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

Pray by Father Harry R. Vickerson of St. Mary Star of the Sea Church, Stonington.

Father VICKERSON: God, Our Father, we gather together this morning as leaders and representatives of your people. We gather together aware of our own shortcomings, aware of our dependence upon You and Your guidance. We pray today that You send Your spirit upon us to give us the direction that we need, the guidance that we need, so that we can best serve all of Your people in justice. We pray this in the name of Your Son and our Brother, Jesus. Amen.

The journal of yesterday was read and approved.

Papers from the Senate
Reports of Committees
Ought to Pass in New Draft

Committee on Judiciary on Bill, "An Act to Revise the Statute on Operating a Motor Vehicle While under the Influence of Intoxicating Liquor or Drugs." (Emergency) (S. P. 614) (L. D. 1902) reporting "Ought to Pass" in New Draft (S. P. 696) (L. D. 2138)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

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

Under suspension of the rules, the New Draft was read the second time.

Mr. McKean of Limestone offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1039) was read by the Clerk.

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

Mr. McKEAN: Mr. Speaker, Ladies and Gentlemen of the House: We have had some problems with the operation of motor vehicles while under the influence of intoxicating liquor or drugs.

If you will note in the current statutes, the second offense requires a mandatory jail sentence, while the third offense does not, and this has brought up some problems.

To give you a little background, during 1977, there were 95 single car accidents involving fatalities. Of these accidents, 75.9 percent were attributable to alcohol. The average alcohol readout was .17 versus the prime facie evidence readout of .10. In the opinion of the Maine State Police, the .17 readout indicates that these are not social drinkers, these are problem drinkers and reoccurrence of OUI is likely. Even with the motorcycles, in 1977 there were 24 fatal accidents in which 15 were alcohol related for 62.5 percent. In these fatal accidents, again, the alcohol blood level was .17. In the automobile accidents, the average age was 30; in the motorcycles, the average age was 24. Now, these people are old enough to realize what they are doing. They are old enough to realize the chances they are taking, and they are old enough to realize that this is putting your life, my life, the lives of our families in their hands.

Here are some more interesting fact. In 1977, OUI arrests, ages 10 to 17, 149. One hundred twelve of them were 17 years old; the remainder were 15 and 16. Age 18, 344; age 19, 444; age 20, 414; from ages 21 to 29, 2,687; age 30 to 39, 1,493; age 40 to 49, 977; 50 to 59, 611; 60 and up, 211. What it totals up to is 7,181 arrests, and I don't think this is a situation that should continue. I think that our law should be strengthened, and I hope you would adopt this amendment to strengthen that law that we need.

Thereupon, House Amendment "A" was

adopted.

The Bill was passed to be engrossed as amended by House Amdnemndt "A" in non-concurrence and sent up for concurrence.

Messages and Documents

The following communication:

State of Maine

One Hundred and Eighth Legislature
Committee on Legal Affairs

February 13, 1978

The Honorable John Martin
Speaker of the House

State House

Augusta, Maine 04333

Dear Speaker Martin:

The Committee on Legal Affairs is pleased to report that it has completed all business placed before it by the second regular session of the 108th Maine Legislature.

Total Number of Bills	
Received in Committee	6
Recommitted Bills	0
Unanimous Reports	4
Ought to Pass	1
Ought to Pass as Amended	2
Ought Not to Pass	1
Divided Reports	2

Sincerely yours

Signed:

ALBERT E. COTE
House Chairperson

The Communication was read and ordered placed on file.

The following Communication:

State of Maine

Department of Finance and Administration
Bureau of the Budget
Augusta, Maine

February 14, 1978

To: Edwin H. Pert, Clerk of the House

May M. Ross, Secretary of the Senate

From: Otto W. Siebert, State Budget Officer

Re: Recommendation for Education Funding

Pursuant to the provisions of 20 MRSA, section 3746, as State Budget Officer, I am required to certify prior to February 15th, the recommendation of the Governor for the funding levels for the education subsidy program for 1978-79. I am hereby transmitting the Governor's recommendation in accordance with the provisions of the School Finance Act of 1976, notwithstanding the fact that this Act has to be changed during this session because of the decisions of the voters to repeal the Uniform Property Tax.

We are, therefore, transmitting a certification in accordance with present law that would allow the State to assume the burden of the loss of "pay-in" revenues and which can be funded by a \$168,652,370 general fund appropriation and local share established by a subsidy index of 10 mills.

The Governor is of the opinion that the level of general fund appropriation for education subsidies as approved in the first regular session in the amount of \$168,652,370 for 1978-79 will be sufficient to finance L.D. 2022 as it was submitted to the Legislature.

It should be emphasized again that the certification we are transmitting at this time is based upon present law which provides for 90% reimbursement of one-year-old spending estimates in three categorical programs — special education, vocational education, and transportation. In L. D. 2022, these programs would be subsidized on the basis of two-year-old known costs. It is, therefore, the Governor's position that, since this past reliance upon estimates has historically produced subsidy balances, L. D. 2022 as well as the certification under present law can each be adequately funded without additional general fund appropriations.

CERTIFICATION OF TOTAL
EDUCATION COSTS

PART A

Allocation

1. Elementary and Secondary Operating Costs	\$234,578,633
2. Special Education for Programs Operated by the Administrative Units	10,119,446
3. Special Education tuition & board excluding Medical Costs	
a. For pupils placed by administrative units	3,539,120
b. Adjustments under section 3748, subsection 3, paragraph H	200,000
4. Vocational Education Costs	7,505,340
5. Transportation Costs	
a. Operating	17,359,106
b. Purchase of Buses	2,999,461
6. Debt Service Costs	
a. Principal & Interest	26,500,000
b. Insured Value Factor	322,227
c. Approved leases	464,525

Sub-Total — Part A \$303,587,858
Less PL 874 Funds (1,900,000)

TOTAL — PART A \$301,687,858

PART B

7. Cost of Unusual Enrollment Adjustments	650,000
8. Cost of Geographic Isolation Adjustments	267,642
9. Cost of Adjustment for Small Administrative Units	85,000
10. Special Education tuition & board excluding Medical Costs for State wards and other pupils placed directly by the State	175,000
11. Cost of reimbursement for Private School Transportation	277,931
12. Audit Adjustments	50,000
13. Optional Local Appropriations with State Participation Maximum State Obligation	5,800,439

TOTAL — PART B \$7,306,012
TOTAL PARTS A & B \$308,993,870
Local Share \$140,341,500
General Fund Share 168,652,370

GRAND TOTAL \$308,993,870

The Communication was read and ordered placed on file.

Petitions, Bills and Resolves
Requiring Reference

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

Judiciary

Bill "An Act to require the Judicial Department to Reimburse Counties Quarterly for the Expenses of Bailiffs and Other Court and Jury Officers" (Emergency) (H. P. 2110) (L. D. 2143) (Presented by Mr. Burns of Anson) (Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25) (Ordered Printed)

Sent up for concurrence.
By unanimous consent, ordered sent forth-with.

Orders

An Expression of Legislative Sentiment (H. P. 2109) recognizing that: the outstanding achievement and exceptional accomplishment of ROBERT J. COAKLEY of Augusta who retires from the Department of Environmental Protection on February 28, 1978, after forty-three years of outstanding state service.

Presented by Mr. Hickey of Augusta.
The Order was read and passed and sent up for concurrence.

House Reports of Committees
Leave to Withdraw

Mr. Lynch from the Committee on Education on Bill "An Act to Provide Funding to Public Schools for Educating Residents of State Operated Institutions" (H. P. 1966) (L. D. 2047) reporting "Leave to Withdraw"

Report was read and accepted and sent up for concurrence.

Ought to Pass

Pursuant to Joint Order (H. P. 1986)

Mr. Henderson from the Committee on Local and County Government on resolve, for laying of the County Taxes and Authorizing Expenditures of Oxford County for the Year 1978 (Emergency) (H. P. 2105) (L. D. 2142) reporting "Ought to Pass" pursuant to Joint Order H. P. 1986

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

Consent Calendar

First Day

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

(H. P. 2038) (L. D. 2102) Bill "An Act to Establish a Solar Water Heater Demonstration Program for Maine" — Committee on Energy reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1038)

(S. P. 660) (L. D. 2037) RESOLVE, Authorizing the Commissioner of Educational and Cultural Services to Exchange Certain Lands at Southern Maine Vocational-Technical Institute — Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (S-462)

(H. P. 1889) (L. D. 1946) Bill "An Act Authorizing Municipalities to Provide Textbooks and Other Nonsecular Services to Elementary and Secondary Pupils Attending Private Schools" — Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1041)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 16, under listing of the Second Day.

Consent Calendar

Second Day

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

(H. P. 1912) (L. D. 1973) Bill "An Act to Expand the Elderly Low Cost Drug Program" (Emergency) (C. "A" H-1082)

On the objection of Mr. Tierney of Lisbon Falls, was removed from the Consent Calendar.

Thereupon, the Report was read and accepted and the Bill read once. Committee Amendment "A" (H-1028) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

(H. P. 2048) (L. D. 2110) Bill "An Act to Support Improvement of Air Passenger Services"

On the objection of Mr. McBreairty of Perham, was removed from the Consent Calendar.

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

Mr. McBREAIRTY: Mr. Speaker, I wish to move the indefinite postponement of L. D. 2110 and all its accompanying papers and would speak briefly to my motion.

The SPEAKER: The gentleman from Perham, Mr. McBreairty, moves the indefinite postponement of this Bill and all its accompanying papers.

The gentleman may proceed.

Mr. McBREAIRTY: Mr. Speaker and Members of the House: It is hard to oppose a bill sponsored by my good friends and colleagues from Aroostook County. I am sure that those who know me well realize that my opposition is against the bill rather than anything personal.

In no way can I support L. D. 2110 and still feel that I am representing the wishes of the taxpayers in my legislative district, Aroostook County and the State of Maine. I honestly be-

lieve the passage of L. D. 2110 will open up a can of worms that could easily spill over into any or all counties in the state.

L. D. 2110 states that the legislature finds that certain areas of Maine are not now adequately being served by commuter air service and the lack of such service is primarily economic. If this were true, we should amend this bill to include all areas that are not adequately served by community air service and fund all necessary improvements from the general fund. Washington County and western Maine could be included.

Presently, I feel that Aroostook County has as good or better air service than many other areas within the state. We have the Northern Maine Regional Airport at Presque Isle. Delta presently serves only three cities in Maine — Portland in Cumberland County, Bangor in Penobscot County and Presque Isle in Aroostook. Bar Harbor Airlines presently serves only five cities in Maine — Bar Harbor, Bangor, Portland, Augusta and Presque Isle. Aroostook presently has at least three towns that have excellent charter service — Frenchville, Caribou and Houlton. Bar Harbor Airlines, at present, is doing an extensive study to determine whether it will be economical or feasible to serve Houlton, Millinocket and several other towns within the State with commuter service.

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

Mr. PELTIER: Mr. Speaker, Ladies and Gentlemen of the House: L. D. 2110 is strictly a county proposition. It does not involve state funds. We are asking the legislature to authorize or give us permission to go on our own with our own funds to set up this attempt at providing some air service.

At a county delegation meeting, the vote was 15 to 1. This bill came out of committee "ought to pass" unanimously. This is a good example of local control in its purest form. If other countries want to attempt to subsidize airlines, go to it. We want authorization only.

Just a little information, for I fear you don't understand exactly what we are up to. The money which has been appropriated by our budget for authorization would apply only in case of empty seats. Should the airline, whomever they may be, and there will be someone who would come in under open bidding, should they have full seating capacity on the large number of flights, the amount of money expended would decrease accordingly.

To me, this program reflects the desire to generate a little progress, and when anybody talks about progress, I think you should give them a little encouragement.

This has been approved by the Attorney General's Office. Subsidizing of airlines is nothing new, and I can't sit down until I get in a little plug about if you live in Houlton, Maine, you have to drive north to fly south.

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

Mr. DRINKWATER: Mr. Speaker and Members of the House: I am a member of the Local and County Government Committee and I think I would like to clarify the position that I took on this bill.

We have an agreement in the first session of the 108th that if a majority of the delegation came before the committee and requested support of their budget, we would do so. I supported this, I took it as a budgetary item, which it was, I was the person on the committee who made the motion to report this out favorably.

There are a couple of things that did confuse me, but if I make a promise, I will stick with it, and I fully intend to stick with the promise that I made in the first session that I will honor the majority of the people. I feel as the last speaker that this is an Aroostook item, and if it were in Belfast, it would be a Waldo County item. I do think there are a couple of things that confuse me and maybe somebody can explain it here today, but one thing was that we have a

report. I thought it was 16 to 1, but I think that figure has changed back and forth slightly — one person, I think, but I have a 16 to 1 report on this item. A little later on the same day, we were hearing budget reports, I thought I heard reported out the budget for Aroostook with a unanimous approval. If so, this is a budgetary item and it must have been in the budget; therefore, I am confused on that.

Also, I think we had testimony before the committee that a certain city in Aroostook was in favor of this and then we had a letter that they were opposed to it.

Mr. Chairman and members of this House, I am going to stand by what I promised to do in the first session of the 108th, and that is to go with the majority, but I am confused.

The SPEAKER: The Chair recognizes the gentleman from Van Buren, Mr. Violette.

Mr. VIOLETTE: Mr. Speaker and Members of the House: We do have many county measures that affect only specific areas of Aroostook County. Aroostook County is an awfully large county, I know many of you realize that, and we do have many items on the county budget that are authorized by the county delegation on much closer votes than this particular item. But those people who lose the votes on those items do not put up such a fight over these particular items. We have items which were passed 8 to 7 on the so-called "Christmas List" and these people went along with the majority because that is the ruling of the majority of the legislative members from the county.

Now, Aroostook County just doesn't authorize funding for this so-called air service, from wherever it is going to go to wherever. It authorizes many other dollars for many other programs, and many of these other programs are effective in just one specific area — all types of programs, senior citizen programs in one town, fire departments in one town, mentally retarded programs, handicapped programs, old age programs, human relations programs, cemeteries, other airports. This particular project that the Aroostook County Delegation voted 14 to 1 in favor of — 14 to 1 — just because this particular project isn't going to affect a specific area, that is irrelevant. It was voted upon by 14 members of the delegation. They felt it was important enough to the county to warrant its inclusion in the budget and also to warrant my putting out this bill on the floor to change a state law, because this involves only Aroostook County and only Aroostook County funds.

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

Mr. MASTERMAN: Mr. Speaker, Men and Women of the House: I would like to ask a question through the Chair. It seems to me that maybe this bill isn't properly before us. Shouldn't this bill have a fiscal note on it?

The SPEAKER: The Chair would answer in the affirmative, that this is an authorization bill for a county, not an appropriation by the state to anyone.

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

Mr. McBREAIRTY: Mr. Speaker, Ladies and Gentlemen of the House: The part of L.D. 2110 that I object to most is Page 2, Section 2: that authorizes the county of Aroostook to expend any funds which may be appropriated in the county budget to support the establishment of a private commuter air service to serve an area or areas of the county not now having that service.

The money to subsidize this private commuter air service will have to come from local property taxpayers, most of whom are already being taxed way beyond their ability to pay.

I have contacted many people in Aroostook County on this bill. The phone calls I have had with these people and letters I have received leave no doubt in my mind that if the taxpayers of Aroostook were voting here today instead of the Maine Legislature, this bill would be de-

feated by an overwhelming majority.

Before you push your button on this bill, I hope you realize that passage could increase property taxes for everyone in Aroostook, including the poor and the elderly, so that the county commissioners could subsidize a private commuter air service. The only people who might benefit would be a very few industrial or business executives who could go from charter to commuter air service at a reduced rate.

If I was running for my own district seat or for the Senate or for Congress or for the Governorship, I would like nothing better than to be able to tell the taxpayers of Aroostook County that I helped kill this airplane bill.

I sent a copy of this bill to many towns in Aroostook and I have many letters back. I won't take the time to read them because it would take too much of your time, but I received one here this morning from Presque Isle that says they are not in opposition to better service but they are in opposition to this method of funding.

It has been mentioned that air services have been funded and other means of transportation, they have, but it has been by the federal government or by an individual town for all the people, not from local property tax coming from elderly people and people who can't afford to ride on a plane in any way.

I have one letter here that I will read. It is from the furthest town, I think, from air commuter service in Aroostook County. "Allagash, Maine, February 11, 1978. Dear Representative McBreairty: In regard to legislative document 2110, "An Act to Support Improvement of Air Passenger Service, I wish to inform you that we, the board of assessors of the Town of Allagash, oppose passage of this bill. We are now having difficulty collecting taxes imposed upon taxpayers. In the past few years, county taxes have increased approximately 150 percent. Extra taxation will make it more difficult to collect taxes. For the record, I have taken a poll of 15 local residents. All oppose passage of this bill."

The SPEAKER: The Chair recognizes the gentlewoman from Brunswick, Ms. Bachrach.

Ms. BACHRACH: Mr. Speaker, Men and Women of the House: I haven't spoken on anything relative to county government this year, but this touches me very closely. I think you will agree that I am not personally involved in what happens in Aroostook County, but I feel very strongly that no county should adopt new services without a county-wide referendum. I feel that the voters in Aroostook County should certainly have a chance to decide whether they wish to fund air service or not before a bill of this kind is passed. I think if you think it over, you wouldn't like your county to add new services. In Cumberland County, we are all at odds over the Civic Center, and this will be another bone of contention of the same sort.

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

Mr. PELTIER: Mr. Speaker, Ladies and Gentlemen of the House: On the question of referendum, all of the other items mentioned by Representative Violette have not been subject to referendum. I hate to come out and say this, but we give \$25,000 a year to a certain airport in Aroostook County, and they also write letters against this. We don't want to start a letter writing contest, but we also have letters which say that they think the air service would be a good idea. Here is one, Hodgdon, Maine, and we do have an accumulation of information.

I apologize for the misinformation on the vote. I guess the only thing we are sure of is that one member did vote against it. So it was either 14, 15 or 16.

The SPEAKER: The Chair recognizes the gentleman from Van Buren, Mr. Violette.

Mr. VIOLETTE: Mr. Speaker and Members of the House: I would just like to make a few

points. I was writing up my newsletter last evening to my district, and the Aroostook County delegation this year did not increase the county property tax including this particular expenditure or this particular service. The amount of revenue in Aroostook County that will have to be raised through the county property tax will be reduced some 10 to 12 percent from last year. I don't think including this amount is going to increase property taxes in Aroostook County. The Aroostook County delegation has actually decreased county property taxes from last year.

Also, I think it is particularly unfortunate that a community such as Presque Isle, and Mr. McBreairty brought this one particular community out, which has the regional airport which Delta and Bar Harbor land in, which are subsidized — maybe Presque Isle feel that this will be a little bit of competition, but they are being subsidized, they are being subsidized by the county and they are being subsidized by the state. I don't understand their rationale behind being opposed to the county trying to subsidize some other air service.

Also, I did get in touch with some of the people in Mr. McBreairty's district in the last couple of days and I think it is very unfortunate that those people do not understand that they are also receiving county monies for projects within their communities that are only for their communities, and some of the rationale behind the decisions by which these people are against this motion are just absurd — don't give anything else to the Valley; when are we going to get something? Well, they do receive things.

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

Mr. McBREAIRTY: Mr. Speaker, Ladies and Gentlemen of the House: We have funded many things in Aroostook County, I voted for many things, but we have been able to fund every one of them up until this without a special act of the legislature because they were considered something that could benefit everybody countywide. We have funded the Presque Isle airport, Houlton airport and the Frenchville airport. We have done it in the past; if they need help to maintain their airports, we may do it again.

As far as county taxes, I agree that the overall tax will be cut some. I wish it could be cut more. But I have towns in my district whose state valuation has gone up 106 percent. Don't tell me that their county taxes will be cut this year.

I am just going to name the towns that I have heard from in opposition to this bill — Presque Isle, Allagash, Perham — I have got a letter here from Charles Hatch, former city manager of Caribou — Westmanland, Sweden, Stockholm, Caribou. I have one letter in favor, and that was from Hodgdon. I have given some letters to some other people whose towns they represent along with those, and I expect to have a few more because they haven't had that bill very long.

All I did, if they misunderstood it, they shouldn't, because I sent a copy of the bill to these people and they sent me these letters back.

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

Mr. PETERSON: Mr. Speaker, Ladies and Gentlemen of the House: I have to speak in opposition this. In the beginning, there was one vote that was a dissenting vote as far as the county delegation was concerned, but a lot of minds have been changed since then because the people back home have been coming to us.

I would read a letter from the City of Caribou. I have one from the Town of Washburn and the Town of Woodland, which I represent, and they are against this. This a letter that was addressed to Senator Jackson of the committee, State and Local Government Committee, and it reads: "The Caribou City Council has instruct-

ed me to write you to express their reservations about L. D. 2110, a bill to authorize county subsidy of a scheduled airline service in Aroostook County. While we support the idea of additional air service in the county and sympathize with the efforts of those attempting to provide such service, we disagree with the method. We do not feel that it is fair to ask all people in Aroostook County to subsidize an airline which would be available only to segments of Aroostook County. We also do not feel that it is proper to use local tax money to subsidize a private business. Instead, perhaps a feasibility study could be considered to determine whether such an airline would work. Since the City of Caribou pays a substantial share of the county budget, the city council objects to the use of this tax money as proposed in this measure. Sincerely, Terrance St. Peter, City Manager, City of Caribou."

The SPEAKER: The pending question is on the motion of the gentleman from Perham, Mr. McBreairty, 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. McBreairty of Perham 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.

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

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: Although this obviously isn't a partisan issue, I feel strongly enough about it to stand and say to the people of this state that if there is one message they should have delivered to us loud and clear, it is the issue of local control. If the people of Aroostook County feel they need this service and they want to spend their dollars for it, then we shouldn't be down here in Augusta telling them they shouldn't do it.

I certainly hope we stick by our prior action and vote no on the pending motion.

Mr. McBreairty of Perham was granted permission to speak a fourth time.

Mr. McBREAIRTY: Mr. Speaker and Members of the House: If this bill is passed, that poor old senior citizen out there would have to take a little more of his money that he needs for food to pay for more property tax won't have much local control.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker and Members of the House: We are not going to be fooled by the gentleman from Perham, Mr. McBreairty. He is playing on our emotions. Let's not play on emotions. All Aroostook County is asking is for the right to expend money. I think we are fiscally responsible and our budget isn't going up.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Perham, Mr. McBreairty, 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: Aloupis, Bachrach, Boudreau, P.; Bunker, Carter, F.; Connors, Cunningham, Devoe, Dudley, Durgin, Fenlason, Garsoe, Gill, Gillis, Higgins, Hunter, Hutchings, Kane, Lewis, Littlefield, Mackel, Martin, A.; Masterman, Masterton, McBreairty, Najarian, Perkins, Peterson, Raymond, Sewall, Shute, Silsby, Smith, Tarr, Torrey.

NAYS: Ault, Austin, Bagley, Beaulieu, Benoit, Berry, Berube, Biron, Birt, Blodgett, Boudreau, A.; Brenerman, Brown, K. L.; Brown, K. C.; Burns, Bustin, Carey, Carrier, Carroll, Carter, D.; Chonko, Churchill, Clark, Connolly, Cote, Cox, Curran, Davies, Dexter, Diamond, Dow, Drinkwater, Dutremble, Elias,

Flanagan, Fowlie, Goodwin, H.; Goodwin, K.; Gould, Gray, Green, Greenlaw, Hall, Henderson, Hickey, Huber, Hughes, Immonen, Jacques, Jalbert, Jensen, Kany, Kelleher, Kerry, Kilcoyne, Laffin, Lizotte, Locke, Lougee, Lynch, MacEachern, Mahany, Marshall, Maxwell, McHenry, McKean, McPherson, Mitchell, Morton, Nadeau, Nelson, M.; Nelson, N.; Norris, Paul, Pearson, Peltier, Plourde, Post, Prescott, Quinn, Rideout, Rollins, Spencer, Sprowl, Stover, Strout, Stubbs, Talbot, Tarbell, Teague, Theriault, Tierney, Tozier, Trafton, Truman, Twitchell, Valentine, Violette, Whittemore, Wood, Wyman, The Speaker.

ABSENT: Bennett, Hobbins, Howe, Jackson, Joyce, LaPlante, Lunt, McMahon, Mills, Moody, Palmer, Peakes, Tyndale, Wilfong.

Yes, 35; No, 102; Absent 14.

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

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

(House at Ease)

Called to order by the Speaker

(H. P. 1947) (L. D. 2026) RESOLVE, Authorizing Cumberland County to Pay Deficits from Unappropriated Surplus (Emergency) (C. "A" H-1029)

(H. P. 1942) (L. D. 2108) Bill, "An Act to Revise the Salaries of Certain County Officers" (C. "A" H-1030)

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

(H. P. 1886) (L. D. 1943) RESOLUTION, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court the Power to Remove a Judicial Officer from Office.

On the objection of Mr. Gray of Rockland, was removed from the Consent Calendar.

Thereupon, the Report was Accepted, the Resolution read once and assigned for second reading tomorrow.

(H. P. 1900) (L. D. 1957) Bill, "An Act to Authorize the Supreme Judicial Court to Establish by Rule a Committee on Judicial Responsibility and Disability"

On the objection of Ms. Clark of Freeport, was removed from the Consent Calendar.

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

Tabled and Assigned

(H. P. 1935) (L. D. 2006) Bill, "An Act to Clarify Certain Definitions under the Subdivision Law and to Set Out the Intent of the Legislature in Enacting that Law" (C. "A" H-1032)

On the objection of Mr. Silsby of Ellsworth, was removed from the Consent Calendar.

Thereupon, the Report was accepted and the Bill read once, Committee Amendment "A" (H-1032) was read by the Clerk.

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

(H. P. 1931) (L. D. 2002) Bill, "An Act to Simplify the Procedure for Submission of Certain Small Claims Against the State" (C. "A" H-1033)

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

Later Today Assigned

Bill, "An Act to Prohibit Child Pornography" (H. P. 2106) (L. D. 2141)

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

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

Passed to Be Enacted
Emergency Measure

An Act to Exempt the Industrial Accident Commission From the Administrative Procedure Act (S. P. 644) (L. D. 2011) (C. "A" S-457)

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

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

Mr. MORTON: Mr. Speaker, I would like to pose a question through the Chair. May we have a brief explanation of why this is felt to be necessary?

The SPEAKER: The gentleman from Farmington, Mr. Morton, has posed a question through the Chair to anyone who may care to answer if they so desire.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: What this is, it is a moving-along procedure. We have situations that happen where they are overburdened by this type of work having claims put in so, consequently, what will happen is that it will just move the procedure along.

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

Mr. BUSTIN: Mr. Speaker, Men and Women of the House: The bill that you see before you today has to do with the Industrial Accident Commission and its relationship to the Administrative Procedures Act. Those people who were deeply involved with the establishment and passage of the Administrative Procedures Act here. Of course, spotted this bill immediately and were very concerned that what you would see from every agency in state government is a move to have special interest exclusion from the Administrative Procedures Act. That was not the intent of the Special Select Committee on Workers Compensation. The fact was that the provisions of the Administrative Procedures Act do not need to apply to certain procedures of the Industrial Accident Commission so the Attorney General, who worked on the Administrative Procedures Act, those members of the Committee on State Government, who had particular personal interest in the Administrative Procedures Act, attended all the hearings on this bill. They are completely satisfied and they will probably tell you so themselves if I sit down, and it is necessary that they are in favor of passage of this bill.

We do not want to have the hearing procedures subject to the Administrative Procedures Act. The reason for that is the consumer who is to be protected, in this case it is the worker, the worker is represented by counsel and you do not have an agency head hearing cases; you will have, in effect, a judge; namely, an industrial accident commissioner. So what is waived in this Administrative Procedures Act amendment is purely the procedures which relate to the hearing. What is not waived and this is the important part, and this is what the Administrative Procedures people were worried about, any promulgation of rules and regulations. That must go through the procedures of the Administrative Procedures Act.

If there are any other questions, I hope that I or other members of the Special Select Committee on Worker's Compensation would be able to answer them. I hope this bill receives passage today.

The SPEAKER: The pending question before the House is on passage to be enacted. This being an emergency measure, a two-thirds vote of all the members elected to the House is necessary.

118 voted in favor of same and none against,

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

Emergency Measure

"An Act to Provide for the Payment of Costs for Relocating Utility Facilities in an Urban Renewal Area" (H. P. 2072) (L. D. 2131)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 110 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

"An Act to Clarify the Law Concerning the Posting of Bonds by Electric companies with the Department of Environmental Protection for Certain Licenses or Permits" (H. P. 1925) (L. D. 1986) (S. "A" S-452 to C. "A" H-986)

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

Orders of the Day

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

House Divided Report — Majority (7) "Ought to Pass" in New Draft under New Title, RESOLVE, Authorizing Certain Employees of the State of Maine to Request an Extension of Employment After Their Mandatory Retirement Age, Years of Service Requirement or Age and Years of Service Requirement (Emergency) (H. P. 2101) (L. D. 2140) — Minority (6) "Ought Not to Pass" — Committee on Human Resources on Bill "An Act to Revise the Effective Date of the Act which Prohibits the Practice of Mandatory Retirement Age" (Emergency) (H. P. 1985) (L. D. 2068)

Tabled — February 14, 1978 by Mr. Talbot of Portland.

Pending — Motion of the same gentleman to Accept the Minority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Hope, Mr. Sproul.

Mr. SPROUL: Mr. Speaker, I would ask for a Division on the pending motion.

Unless this Resolve is amended, the Resolve goes beyond the intention of the committee and of my intent as sponsor.

I guess I will have to debate the bill and hopefully after that, we can amend it.

We passed the elimination of the mandatory retirement age in the last session of the legislature and that goes into effect July 1st of this year. I have a constituent in my area who became 60 years old since the first of the year and does not want to retire.

He notified the department that he works for, the Department of Inland Fisheries and Game, that he did want to continue in service and worked with them up until the first of the year and was then told that there was no way they could keep him on, that he would have to have the laws changed, so at that point, he came to me to find out if I could do anything for him. I went to his department and they said that there was nothing they could do as far as keeping him on and that the laws would have to be changed. I then went to the Personnel Department and there was nothing they could do — have to change the law. I went to the Governor's Office, he contacted the Attorney General's Office, they researched the law and came back with the same finding, that the laws would have to be changed. So that, in essence, is the substance of the bill.

The original bill would have changed the effective mandatory retirement date from July 1 back to January 1. However, the committee wanted to help this one individual but felt that the dates that were set should not be changed so the majority of the committee passed a spe-

cial resolve so that his department could reinstate him. The resolve does not say that he will be reinstated but it just gives his department the opportunity of reinstating him. When the resolve was drawn up, they went beyond the intent and that is where my amendment comes in, which I cannot speak about I guess.

I am hoping that you will see fit to go with the majority report of the committee and vote no, with all respect to Mr. Talbot on his motion.

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

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: This bill is nothing more than a bill to benefit one individual who has reached the age of 60. He works as a game warden for the Fish and Game Department. Most of you know what kind of work a game warden does. I do not feel that we should make any exceptions to our retirement law, particularly in the field of law enforcement. This is a special interest bill and I move the indefinite postponement of this bill and all its accompanying papers.

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

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

Mr. MASTERMAN: Mr. Speaker, Men and Women of the House: I agree with Representative MacEachern this morning. This is a bill that concerns one individual only, a law enforcement officer. I think my good friend Mr. MacEachern and myself and several of us who are in this particular age bracket, although we think we are pretty able and still able to take care of ourselves, in reality, a law enforcement officer is not able to perform his duty after 60 years old, and that is the reason that it was set up that after 20 years of law enforcement, they should retire.

I would like to submit to you, and I expect Mr. Sprowl could answer this, it is my understanding that this gentleman does not have too good a record. It is further my understanding that his pension which he is receiving currently is between \$1,100 and \$1,200 a month. I think if the gentleman, like the rest of us, still wants to work, there are plenty of jobs available for anyone of this age if they are capable of working, there are plenty of jobs for them and I don't think we should jeopardize any law enforcement agencies by catering to one gentleman.

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

Mr. DRINKWATER: Mr. Speaker, Ladies and Gentlemen of the House: Just one point. Having been a former game warden and having worked with this gentleman, I would take exception to the fact of his qualifications. I considered him an excellent man to work with and very fair. I would consider his record to be very good; that is my opinion.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I would hope you would support Mr. Sprowl, because I think we ought to give him the benefit of presenting his amendment and then debate it on the merits of what he really intends to propose.

It is very seldom that I oppose the gentleman from Lincoln, Mr. MacEachern, but I find myself in that position this morning.

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

Mr. GREEN: Mr. Speaker, Men and Women of the House: I was one of those members of the committee who signed the "ought not to pass" report, and I think I should at least explain to you some of my reasoning for doing that.

I think that when you deal with legislation specifically designed and geared for one individual, which this obviously is, I can sympa-

thize and empathize with Representative Sprowl's intent to help to help his constituency whenever he feels he can and should — indeed, fight.

What happens is, if you vote for the "ought to pass" report and reject the "ought not to pass" report, what you will essentially be doing, in my opinion, is opening up an incredible can of worms with regard to this mandatory retirement age. The law was not due to go into effect until July 1 of this year, and if we allow Mr. Sprowl's constituent to become an exception to this law, if we make it retroactive to January 1, 1978, we are in a lot of trouble, because I am sure we all have constituents who would like to come under who retired before July 1 of this year and, in fact, we will perhaps see all sorts of individual pieces of legislation coming in to take care of them as well. I think it is a dangerous precedent.

The Maine Committee on Aging who fought so very hard last year to establish repeal of the mandatory retirement age was opposed to this bill primarily because there has to be an arbitrary date established. Unfortunately, those who retire before the date goes into effect, I feel sorry for those people, sympathize with their cause, but just stop and think, be very careful before you vote this morning and make sure you realize just exactly what it is you are opening up here with this bill.

The SPEAKER: The Chair recognizes the gentleman from West Gardiner, Mr. Dow.

Mr. DOW: Mr. Speaker and Members of the House: It is my understanding that most of the law enforcement officers retire after 25 years. It is also my understanding that this gentleman has already worked 30 years with a five-year extension, and as Chairman of the Fisheries and Wildlife Committee, I urge you to vote for the indefinite postponement of this bill.

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

Mr. MARSHALL: Mr. Speaker, Ladies and Gentlemen of the House: In deference to Mr. Green, the Committee on Aging did oppose this basically because of the change in the effective date of the law, and under this resolution we haven't effectively touched that date, it still remains the same. I think that was probably the largest obstacle that they object to and that, of course, is no longer relevant.

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

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: I know nothing about the circumstances. I would simply like to point out that you ought to be very careful in making any changes in mandatory retirement because the problems are going to come in the future, and if you start letting appeals come to the legislature to be acted upon favorably, you are going to create tremendous disturbance in state departments.

The SPEAKER: The Chair recognizes the gentleman from Hope, Mr. Sprowl.

Mr. SPROWL: Mr. Speaker, Ladies and Gentlemen of the House: The fact remains that we did eliminate mandatory retirement effective July 1. This resolve is directed at one person and there is only one person who wants to continue his employment. There is no one else out there. The Personnel Department has written me a letter saying this would not affect anyone in a financial or administrative manner. It is a money saver for the State of Maine. As long as we continue the employment of this individual, we make money rather than pay his retirement, and I think that is why we passed the original elimination of the mandatory retirement age.

As far as his record, he has worked over 40 years. Someone said 25 years; he has worked over 40 years in my area, the area I represent, Camden, Rockport and Hope, they respect him very highly. He is a good man and he wants to continue his employment. Let's let him do that.

It costs money to train new men, and after

they are trained and have gone into the field, we don't know what the end product or result it will be, but we know the end product of this individual who is working down there. I operate a store in the area, I live out in the country, and I am aware of the people's feelings, and they would very much like to see this individual continue in his employment.

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

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: I don't know this individual, don't even know what his name is, but I have had considerable experience in law enforcement. Probably the gentleman has a fine record, he has worked for the department for 40 years. I don't think that I would like to work for a law enforcement agency for 40 years because I don't think I would be efficient. I don't think we should make an exception for one individual, particularly in the field of law enforcement. It is not the easiest job in the world, particularly in warden service. These people are out late nights and they are dealing with people who are armed. It is a tough job and it is not a job for somebody who is over 60 years old.

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

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would heed the comments of the gentleman from Livermore Falls, Mr. Lynch, because that is probably the primary reason that we signed the minority "ought not to pass" report. This is no time to be opening up that bill. The Committee on Human Resources worked long, hard and very diligently last year so that we could have a bill dealing with mandatory retirement which will take effect on July 1 of this year. This is no time to get into that bill and open it up with any kind of precedent such as this.

I would like to make another point very clear to you, and that is, when this bill left our committee after the workshop, it was unanimous "ought not to pass". Don't ask me what happened, because I am not sure that I know, but apparently one member of our committee decided to help Mr. Sprowl from Hope out and signed out the "ought to pass" report so he could debate it on the floor, and I have no problems with that, but then somehow it had a domino effect and we ended up with a majority "ought to pass" report. So it was the feeling of the Human Resources Committee that this bill should not pass. Therefore, I would hope that you would support the pending motion of indefinite postponement.

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

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will support the Representative from Hope, Mr. Sprowl, this morning on this bill. I believe very strongly that this is not only permissive legislation, it allows the department to hire this man or not as they please. We are not going to tell them that they have got to, just give them a chance to do this. I hope you will go along with Mr. Sprowl.

The SPEAKER: The Chair recognizes the gentleman from New Gloucester, Mr. Cunningham.

Mr. CUNNINGHAM: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the Human Resources Committee, I would generally concur that we should not enact legislation for one special interest. However, as a member of that committee, I, too, worked long, hard hours in the last session to help repeal mandatory retirement. I believe it was the intent of the committee, and I believe it was intent of this body and this legislature that mandatory retirement no longer be allowed. Therefore, the general interest not the special interest, the general interest is to repeal mandatory retirement.

We now have a special case before us being argued by the gentleman from Hope. We are asked to allow the department permission, to permit the department to hire or not to hire. We are not asked to make the decision for the department, we are just asked to allow them whether or not they want to go along with the intent of the mandatory retirement which we repealed in the last session, or do we want to allow them, if they choose, then they can enforce the regulation which will stay in effect until the mandatory retirement bill goes into effect in July.

If this were, indeed, special interest legislation, I would be opposed to it, but where this one special interest goes along with the general interest, which I supported in the last session, then I feel that we can support it, we can allow this bill to go to second reading, look at the amendment that comes on and vote on it at that time.

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

Mr. GREEN: Mr. Speaker, Men and Women of the House: I feel I should rise again to point out a couple of areas of concern that have not been touched upon yet, and the first is, be very careful before you vote this morning with regard to this bill and the motion pending before you, because if you move the date of mandatory retirement back to January 1, 1978, there are going to be some problems. For example, if an individual had been forced to retire on January 1, 1978, such as Mr. Sprowl's constituent was, and the replacement for this person has been found and indeed hired, what would happen if this resolve passed? Would the individual return to his old position, would the replacement be terminated, would the individual's salary be retroactively reinstated? What about the salary paid to the replacement? Please keep in mind that if this bill is passed, it would affect not only those people that Representative Sprowl is concerned with but any state, county, municipal and University of Maine employees retired since January 1, 1978.

If Mr. Sprowl or anyone else in this House can answer some of those questions for me, then I could perhaps sleep a little easier and perhaps could be convinced to vote the other way. But until I hear answers to those questions — I can see Representative Marshall is hot to trot down there, so perhaps he could answer these questions for me.

The SPEAKER: The Chair recognizes the gentleman from Bath, Mrs. Goodwin.

Mrs. GOODWIN: Mr. Speaker, Men and Women of the House: I very reluctantly rise to support the indefinite postponement motion. I could not accept an amendment to this to have it go for just one person. I don't believe that is fair. If you are going to open it up for one person, then it should be opened up for every person.

You might be interested to take a look at the bill on Page 2 in the 5th paragraph. What would happen to anybody who was reinstated is that they would have to pay back all their retirement benefits and lose that time in the retirement and would not be reimbursed for any of that pay that they had lost while they were off the job. Therefore, it is discriminatory as it stands.

July 1 was chosen for a very good reason, to allow for the orderly implementation of mandatory retirement, and how this is implemented in the public sector may well affect whether or not this is implemented in the private sector. I think we should try to make this thing work and make it work well, and I think the way we can make it work best is to leave it alone, and I would hope that you would vote to indefinitely postpone.

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

Mr. MARSHALL: Mr. Speaker and Members of the House: There seems to be some error here and I don't understand Representative

Green's pursuit along this line. We are not talking, there is no consideration whatsoever of changing the effective date of this bill. This would simply allow one department which does not comply presently with the effective date, or does comply but does not allow for an appeals process along that line, it allows for them to consider the intent of the legislature. It only pertains to this one particular department. It has nothing to do with the effective date of the bill. I think we ought to keep away from the aspect of it.

Mr. Sprowl of Hope was granted permission to speak a third time.

Mr. SPROWL: Mr. Speaker and Members of the House: I would like to concur with the gentleman from Millinocket, Mr. Marshall. The previous two speakers have addressed the original bill, and that is not before us: What is before us is the resolve. It has nothing to do with what Ms. Goodwin has referred to. To reiterate what Mr. Marshall said, we are not changing the effective date, we are not opening up a can of worms, we are only directed to one individual through this resolve. I thank you for letting me take so much of your time this morning.

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

ROLL CALL

YEAS: Bachrach, Bagley, Beaulieu, Bennett, Benoit, Berry, Biron, Blodgett, Brenerman, Brown, K. C.; Burns, Bustin, Carey, Carroll, Carter, D.; Chonko, Churchill, Clark, Conners, Connolly, Curran, Davies, Dow, Fenlason, Flanagan, Gillis, Goodwin, H.; Goodwin, K.; Gould, Green, Greenlaw, Hickey, Howe, Hughes, Jensen, Joyce, Kany, Kilcoyne, Laffin, Lizotte, Locke, Lynch, MacEachern, Mahany, Martin, A.; Mitchell, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Paul, Peakes, Prescott, Quinn, Smith, Spencer, Talbot, Theriault, Tierney, Tozier, Trafton, Truman, Twitchell, Valentine, Violette

NAYS: Aloupis, Ault, Austin, Berube, Boudreau, A.; Boudreau, P.; Brown, K. L.; Bunker, Carrier, Carter, F.; Cote, Cox, Cunningham, Dexter, Diamond, Drinkwater, Dudley, Durgin, Fowlie, Garsoe, Gill, Gray, Hall, Henderson, Higgins, Hunter, Hutchings, Immonen, Jacques, Jalbert, Kane, Kelleher, Kerry, LaPlante, Lewis, Littlefield, Lougee, Mackel, Marshall, Masterman, Masterton, McBairty, McHenry, McMahon, McPherson, Norris, Pearson, Peltier, Perkins, Peterson, Post, Raymond, Rideout, Rollins, Sewall, Shute, Silsby, Sprowl, Stover, Strout, Stubbs, Tarbell, Teague, Torrey, Whittemore, Wood, Wyman, The Speaker

ABSENT: Birt, Devoe, Dutremble, Elias, Hobbins, Huber, Jackson, Lunt, Maxwell, McKean, Mills, Moody, Palmer, Plourde, Tarr, Tyndale, Wilfong

Yes, 66; No, 68, Absent, 17.

The SPEAKER: Sixty-six having voted in the affirmative and sixty-eight in the negative,

with seventeen being absent, the motion does not prevail.

The pending question is on the motion of the gentleman from Portland, Mr. Talbot, that the Minority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Kelleher 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.

On motion of Mr. Tierney of Lisbon Falls, tabled pending the motion of Mr. Talbot of Portland to accept the Minority "Ought Not to Pass" Report and tomorrow assigned.

The Chair laid before the House the following matter:

Bill "An Act to Prohibit Child Pornography" (H. P. 2106) (L. D. 2141) which was tabled earlier in the day and later today assigned pending passage to be engrossed.

Mr. Wyman of Pittsfield offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1043) was read by the Clerk.

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

Mr. CONNOLLY: Mr. Speaker, I would like to pose a question through the Chair to the sponsor. I wonder if the sponsor could explain the amendment. It seems very long and rather detailed?

The SPEAKER: The gentleman from Portland, Mr. Connolly has posed a question through the Chair to the sponsor who may answer if he so desires.

The Chair recognizes the gentleman from Pittsfield, Mr. Wyman.

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to take this opportunity to explain to you, for those of you who have not had the opportunity to study this, what this amendment does.

The bill which was originally submitted by me before the Judiciary Committee has been completely rewritten. That bill, which was originally (L. D. 2017), now has an L. D. change on it and it is now (L. D. 2141) and does not in any major way resemble the earlier peice of legislation because of the legal ramifications that were involved by the Judiciary Committee with the very able assistance of their committee aide, Mr. John Hull, and also with the assistance of Mr. Brian Blaisdell in Legislative Research, who rewrote the bill to meet constitutional tests and also to clarify some legal questions.

In the amendment that you have before you today it does not in any way change the work that the Judiciary Committee has done. I have had the opportunity to discuss with Mr. Hull the changes that the Judiciary Committee did make and it meets with my approval and also the approval, I believe, of the cosponsors of the bill.

The amendment does make a policy change and the question that you have before you today perhaps will be a policy issue and not a legal issue. What the amendment does is change the term "sexually exploited" to "sexually explicit conduct" and that is a change that is carried out through the bill. It makes no substantive change, it is simply a change in the term that is used from "sexually exploited" to "sexually explicit." The reason for that was that I felt that term was more specific and could deal better with the problem that we are trying to deal with in the dissemination of the sexual explicit material.

The other major change in this amendment is that it does increase the penalties from what the new draft is recommending. The new draft is recommending a Class B crime with a mandatory five years in prison for a first offense. It does not mention a second offense. My amendment includes a second offense, it keeps the first offense the same — Class B, five year mandatory sentence, but it also adds a conviction for a second offense, which would be a Class A minimum sentence of 15 years in prison; both of those sentences, both the second and the first conviction, and be suspended by the judge if he places his reasons in writing.

I have also recommended in this amendment that the penalty for dissemination of child pornography be increased from what the committee has recommended. The committee recommended making dissemination of child pornography a Class C crime with a minimum of two years in prison and this amendment you have before you today will increase that penalty to what it was in my original bill, Class B, with a minimum of five years. This will make it consistent with the production of child pornography. The amendment also calls for a second offense penalty of Class A, minimum of 15 years in prison. That can also be suspended by the judge if he places his reasons in writing.

The only other change made in this amendment is dealing with another section of the obscenity law in the criminal code that the sexual abuse of minors is raised from a Class B crime, which it now is to a Class C crime.

I trust that this explanation will satisfy those of you who are wondering what changes have been made but I would repeat, once again, that there have been no substantive changes made from the Judiciary bill.

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

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I find myself in dealing with this amendment in an extremely difficult position because I can think of almost no crime that is more heinous than the crim of taking a child and exploiting that child for commercial purposes through the use of pornography. I am concerned about two aspects of the proposed amendment and they go really to the question of the integrity of the criminal code and the policy that we have tried to incorporate into the code of insuring that the penalties reflect the severity of the offense.

I think that there is a very significant and important difference between the offense of taking a child and producing pornographic films or pornographic magazines, actually taking a small child and inducing them to engage in that kind of conduct. I think that that is a very different type of offense than the dissemination of the material down the chain from somebody who simply acquires that pornographic material and then sells it to someone else. I think that if we are going to preserve the policy of trying to insure that the classification of the crime fit the seriousness of the offense, that there ought to be a distinction between the person who is actually doing this to a child and the person who later sells the film or the publication.

The committee amendment established a minimum sentence of five years for the hardcore pornographer who is taking the child and setting up the scenes and doing the filming and a two-year minimum sentence for the person who has passed on that material, selling it to another, either a newstand or whatever. I think that that distinction ought to be preserved.

I also think that establishing a five-year minimum sentence for the hardcore pornographer and a two-year minimum sentence for the person who disseminates it gets the message to the Judiciary that this is a very serious matter and that the legislature is not going to tolerate short sentences or a weak approach to this crime. I think that the mandatory 15-year sen-

tence on a second offense probably is not necessary. I think that the courts faced with this kind of a problem will deal with it severely, but the most important concern I have is to preserve the distinction between a person who is simply selling the books, which is a serious offense but it is not the same thing as taking a child or taking two children, and filming them to produce pornography. I think we ought to preserve that distinction.

I, therefore, will vote against this amendment.

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

Mr. TIERNEY: Mr. Speaker, Members of the House: It is very clear that we have a disagreement of opinion on this particular issue and since an issue like this would not escape without a roll call, I would request that someone table this item for one legislative day.

On motion of Mr. Quinn of Gorham, tabled pending adoption of House Amendment "A" and tomorrow assigned.

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

Mr. JENSEN: Mr. Speaker, is the House in possession of (L. D. 2134), Bill, "An Act Providing Allocations from the Unappropriated Highway Fund Surplus for Fiscal year Ending June 30, 1979" Emergency?

The SPEAKER: The Chair would answer in the affirmative, being held at the request of the gentleman.

Mr. JENSEN: Mr. Speaker, I would move that the House reconsider its action whereby the bill was passed to be engrossed.

On motion of Mr. Carroll of Limerick, tabled pending the motion of Mr. Jensen of Portland to reconsider and tomorrow assigned.

(Off Record Remarks)

On motion of Mr. Dutremble of Biddford, Adjourned until nine-thirty tomorrow morning.