

MAINE STATE LEGISLATURE

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



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

LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

INDEX

Senate Confirmation Session

June 14, 1978

INDEX

First Special Session

September 6, 1978 — September 15, 1978

INDEX

Second Special Session

October 18, 1978

INDEX

Third Special Session

December 6, 1978

INDEX

APPENDIX

HOUSE

Thursday, February 16, 1978

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

Prayer by the Reverend Richard C. Dyer of the Winthrop Center Friends Church, Winthrop.

Reverend DYER: Let us bow our heads in prayer. Dear Lord, Father of law and perfect justice, enter into this place with your presence and your power. Pray that these here gathered this morning may realize You as the epitome of all that we can but attempt to be. Father of law that is liberating rather than prohibitive, of justice that is equitable and absolutely unqualified, in the ice and the tragedy and the snow of this winter, pray that we may finally realize that Your effort and our effort to reshape Your creation are both futile and deadly. May we preserve what precious little remains, realizing it for its beauty rather than for its potential. Instill within these here gathered a reverence for life in all its forms, placing the common person as their sole special interest. Enter into this place that they may do that which must be done, not necessarily that which is easiest to do. Pour into this place wisdom to make laws and the courage to withstand both criticism and coercion. Pray that all here gathered may take to heart the massive disenchantment and suspicion, answering it with a reawakening commitment to integrity and to You in the certain faith that one day, that someday Thy will be done on earth as it already is in Heaven. Amen.

The journal of yesterday was read and approved.

The SPEAKER: The Chair is pleased to recognize in the back of the hall of the House the Senior Senator from the State of Maine, Senator Muskie. Could he please be escorted by the Sergeant-at-Arms to the rostrum?

Thereupon, Senator Edmund S. Muskie was escorted to the rostrum amid prolonged applause, the members rising.

The SPEAKER: The Chair has asked the Senator if he would, even though we know he is on vacation, provide us with a few words, perhaps, as our representative in Washington, as to what is going on that we might be interested in in Washington, and he has very willingly and graciously agreed to do so. So it is my pleasure to present to you Senator Muskie. (Applause)

Senator MUSKIE: Mr. Speaker and Members of the House: It is always a pleasure to come back to this chamber and a special pleasure to come back home after months of absence from Maine. My absence wasn't voluntary, it was involuntary, and I come back in better health than I have known for years. So if any of you face a weight problem or a back problem or an age problem, I suggest that one way of improving on all three is to have your back operated on. It is painful for a few weeks, but then the improvement makes it all seem well worthwhile.

I couldn't help but think that the first time I came into this chamber, of course it was much different in ways that now you take for granted, there used to be an aisle roughly half way up this side and up that side and I had Seat No. 150 or 151, which was then on the aisle and the Indian Representative sat beside me, which is rather a coincidence. Of course, they did not have the vote and they never attended sessions in those days, much as we would have welcomed them.

I asked Ed Kelleher if there were any members of the House who were members when I was. The only three that we could identify were Louis Jalbert, Albert Cote, Jim Dudley, and Bill Jacques, which only proves, I guess, that you have been more successful than I, more consistent, you have stayed in one place and I have been wandering.

This notebook, actually, just so you might know what a Senator does when he comes home, John referred to this as a vacation, this is some of the homework that I bring with me in anticipation of questions I might be asked of problems that we are dealing with for constituents or legislation in which we are involved. There are three of pressing importance that I would enjoy discussing with you this morning, but I am not going to discuss all three; any one of them could take more time than I should take with you — the Indian problem, the Panama Canal Treaty problem, Dickey-Lincoln School, not that there is any mystery about how I stand on that issue, but I would like to talk to you this morning, if I may and if you are willing to give me the time, not too much time, I hope, about the Indian Lands Claim controversy. I would like to do it in person, because try as on may, these points don't always come through clearly in the press.

I am not now making an accusation directed against the press. By in large, I think they do as well as they can and most of the time that is pretty good. But you can't control the headline writers; that I gave up on long ago. And when I find this morning that my discussion of the Indian problem yesterday is interpreted by Maine headline writers that "Muskie Supports, Indian Plan," it simply isn't an accurate description of what I said yesterday. So, I would like to explain it myself and then at least you people in this room will understand what it is that I have on my mind.

First of all, I think it is important that the people of Maine understand clearly what is at stake and what the options are. For too long, it seems to me, the rank and file citizen has tended to think of this Indian claim as such an unthinkable thing, of such magnitude, that it is beyond comprehension to them, it couldn't possibly be true and it would somehow go away if we pay no attention to it. The only people who have been discussing it seriously are the Governor, the Attorney General, their assistants, people they consult, the Congressional Delegation because we had been asked by the Governor and the Attorney General to be helpful, other state officials who are directly involved in the talks that have been going on. Well, all these discussions and all that has gone on before has come to a head and some decisions have to be made. I think the people of this state, the legislature of this state, have a right to influence those decisions when they are made.

I am not here to sell a particular point of view this morning. Obviously, since I have been thinking about these things for a number of years, I have developed some points of view, but I am not here to sell my point of view on any particular proposal; I am here to try to explain as best I can, and I may not be the most effective spokesman to do it, exactly what is at stake and what the choices are.

I think beginning with a little history is a useful point of departure. The immediate history involved is the Indian Nonintercourse Act of 1790. Now, what was that? That was the response of the first Congress of the United States to a situation involving Indian rights to land which had been exploited cruelly and unmercifully almost from the time that the first white man came to this continent.

Ownership of land to the Indians was an entirely different thing than ownership of land to those of us who were descended from Europe. The Indians viewed land as a place or an area in which to roam, to get their living, to live their lifestyle. There was no such thing as private land ownership, and their occupation of the land of eastern Maine was typical of the way Indians occupied land all across this country, and it was a virtually empty continent when the white man first came. They covered one area in the summertime when they had recourse to the streams or to the sea for their food and for some agriculture on the side. Then

the cold weather came, they moved to another area for game, for hunting and for winter quarters. So they were constantly on the move over the land areas which they occupied in that sense. They didn't own land by metes and bounds in the sense that we do, they simply occupied it for the purpose of using it.

The whites, of course, who moved in thought of ownership as we do. They were interested in acquiring the title to land, a notion that was unfamiliar to Indians. They found ways to influence Indian decisions about where they would move in ways that dispossessed the Indians of these tribal lands for little or no compensation. Because the first Congress of the United States understood this, the Nonintercourse Act was passed to try to protect the Indians from this kind of exploitation. Its provision was very simple — very simple. The transfers of title to Indian land were not valid unless approved by the Congress of the United States. One of the movers of the Nonintercourse Act was a very famous citizen of Maine, Henry Knox, who was in George Washington's first Cabinet, so it was a very significant piece of legislation at the time.

For some reason, everyone involved acted as though the Nonintercourse Act did not apply to the original 13 Colonies or the original 13 States, as they became, the assumption being that because these 13 states were already established and already had a relationship of their own within the Indian tribes within their borders, the Nonintercourse Act didn't apply, that it applied only to the western lands which, at that point, were unorganized, which were territories.

So, subsequent to 1790, Massachusetts, which then, of course, owned Maine, or we were a part of Massachusetts at the time, negotiated treaties with the Passamaquoddy and the Penobscot's involving the transfer of huge blocks of Indian land in this state, and those treaties were never submitted for approval to the Congress. It apparently didn't occur to anybody, Indians or Whites at that time, to do so. There were subsequent transfers following that. This is a very concise and brief description of that history, and I don't want to spend too much time on it, but that is where the whole problem originated. Then Maine became a state, assumed all of the obligations of the treaties that Massachusetts had entered into with the Indian tribes, and it was assumed that those obligations were the obligations of payment to the Indians of one kind or another, or services to the Indians of one kind or another that were provided in the treaties.

We come down to the present time. In 1972, the tribes had brought suit and as a result of that suit, in 1975, the District Court of the United States in Portland, in an opinion written by Judge Gignoux, who is known to all of you by reputation as an outstanding judge and lawyer, made three important decisions in that decision — one, that the Nonintercourse Act did apply to the 13 original states; two, that the federal government, which for 200 years had refused to recognize the so-called state Indian tribes as federal obligations for the purposes of services and programs that are provided for the western Indians, for example, that the federal government had a similar obligation with respect to these tribes in Maine and the other original Colonies; thirdly, that the federal government had a responsibility as trustee of the Indians to represent the Indians in their claim under the Nonintercourse Act. That was regarded all across the country as a model decision in the field of Indian rights, and I repeat that it was made by Judge Gignoux in January of 1972.

The implications of that decision were so enormous that very few people focused on them or even accepted them, let alone understood them. The case was appealed and went to the First Circuit Court of Appeals in Boston. The Circuit Court affirmed Judge Gignoux's

finding.

Those cases did not take the next step, which is to determine to what extent, if any, the Non-intercourse Act was violated by the treaties that were negotiated by Massachusetts and subsequent. That issue was left to be decided and the Justice Department of the United States was under orders from the Court to proceed to represent the Indians adequately in pressing whatever those claims were, and that is where we are today. So since the decision in 1975, the Court has been pressing the Justice Department to announce its intentions with respect to the Indian claims.

As a member of the Maine delegation in Congress, our first official involvement in this whole matter began in the fall of 1976. At that time, the pendency of these claims and the orders of the Court to the Justice Department, the responsibility of the federal government began to influence a lot of decision makers in the private sector, people who owned property in the claim's area involving twelve and a half million acres of land, people who owned property, people who held mortgages on property in the claim's area, people who loaned money on property in the claim's area, lawyers who were asked to certify titles in the claim's area, all of these people began to be alert to the fact that a claim of this magnitude and significance was hanging over that area and involving them directly — title insurance companies; in other words, the question of titles and the validity of titles in that area is impacted by the pendency of this litigation.

So, the Governor foresaw, as he should have, he was wise to do so, the possibility of economic stagnation in that area wholly attributable to the fact that this litigation is pending there. And whatever its outcome ultimately — and a case of this magnitude could take years to decide in the judicial process — the mere fact that it is hanging, even though it ultimately rejects the Indian claims, has an impact and this is what troubled the Governor, the state's own credit was put in jeopardy. He came to us the last day or two of that Congress and asked us if there was some way that we could get emergency legislation enacted in order to avoid that result. Well, of course, there wasn't in the last day or two of Congress any way to deal with a question of this magnitude, let alone finding the solution to it in the last day or two of a session.

The delegation did introduce legislation simply to indicate our concern with the possibility of economic instability and the filing of the legislation, I think, had some calming effect.

In the meantime, a new administration was elected in Washington, hadn't yet taken office, wouldn't take office until January 20, and the Justice Department was under orders to report its intentions to the District Court prior to the end of January. So we could see the whole thing erupting again. I undertook to get in touch with the new administration. I talked to the President's General Counsel Designate, and he contacted the Attorney General Designate. They shared our concern and offered to help or to try to help. The best they could do at that point, the President not yet having taken office, was to indicate to the judge that the President would take the problem under advisory, and the Justice Department as well, and try to develop a policy by the first of March, I think it was. The President did. The action he took was to appoint a special representative, Judge Gunter, who had recently retired from the Supreme Court of Georgia, to develop recommendations to the President. The Court accepted that as a basis for continuing the case several months, I think until mid year, so Judge Gunter would have adequate time to dig into the problem, and he did. The fact that the President took this action had a further calming effect on the economy of the area. People assumed that if the President of the United States was willing to take on the problem, that somehow, in some

way, eventually a solution would be produced, so people could be less uneasy about the impact of this decision on their own economic prospects. So the President's action did serve a useful purpose.

Judge Gunter presented his recommendations to the President in June and neither the tribes nor the state were willing to support his recommendations — his recommendations were rejected. I am not going to go into detail with respect to them unless I am asked to, and I would be perfectly willing to do it then, but those recommendations are behind us, they have no standing or validity at this point because without support by the parties to the litigation, there is no way for them to fly. Congress wouldn't pay any attention to them if the parties don't support them, and the President wasn't satisfied to try to support them if the parties didn't support them, and at that point, neither side seemed to want negotiations. The state clearly did not. The Indians were talking privately about their willingness to negotiate, but given the state's view on it, the Indian tribes were not particularly articulate about going to negotiations themselves. The tribes wanted a way to present their view of a settlement.

Remember, at that time they were talking about twelve and a half million acres of land which would involve, including trespass damages, \$25 billion. The Indians wanted to present in some way their view of what a reasonable settlement would be in an official way, and they asked the President if he wouldn't appoint a task force or a work group to which they could submit their proposal. That is what has happened. Those are the proposals that have been worked out. They are not binding on anybody except the Administration and the Indian tribes, not binding on anybody. They will not be implemented except with respect to the first one, and I will get to that in a moment, they will not be implemented in any way unless the state and the large landowners are willing partners to the implementation. What does the proposal present? First of all, and this I had something to do with, you will note that it is called a "Memorandum of Understanding" not a Memorandum of Agreement, that was the first word used, it is called a Memorandum of Understanding. There is one definite commitment in it.

The President is prepared to recommend to the Congress that the Congress appropriate \$25 million to be given to the Department of the Interior in trust of the Indians. In return for that, the Indians have agreed, and they are bound by this, they can't escalate their claim, they are bound by this, they have agreed to the \$25 million, if the Congress is willing to provide it, they will clear the title to 9.2 million acres of land. That includes all the land owned by small homeowners, small businessmen, municipalities, counties and private holdings up to a maximum of \$50,000 for any given property owner. That means that the large landowners, the paper companies and so on, would be exempted for a total of 700,000 acres. All of that would be cleared for \$25 million paid by the federal government. The state wouldn't contribute a nickel to that settlement, the large landowners wouldn't contribute a nickel or a square inch of land to that settlement, and if that is all that is done, the rest of the Indian claims, and these would be claims against the state's public lands, the large landowners, the holdings above 50,000 acres would be settled in the courts. That is where the state has said it would prefer to have the matter settled, that is where I think the major newspapers of this state have editorialized the matter ought to be settled, and that seems to be the prevailing mood among average citizens.

The White House felt that the President, having taken on the responsibility at the request of the state, ought to try at least to trigger or set in motion a settlement process that

would clear the whole business.

The White House work group was under some limitation in trying to do this because it was dealing with only one side, the Indian tribes, the state not being interested in negotiating. So what the White House did was try to get the Indians to the most reasonable settlement that they could persuade them to take unilaterally.

What does that amount to with respect to the state? Remember that the Gunter proposals would have put the burden on the state to put together — and those are the exact words that were used — put together 100,000 acres of land as the state's contribution to a settlement. Everyone jumped to the conclusion that that meant 100,000 acres of public land and, of course, there was wide indignation about that because Maine doesn't really have all that much public land, and most of that which we hold has a special value for us — Baxter State Park, the Allagash Waterway, Bigelow Mountain, and you can add others, the public lots. But actually, what Judge Gunter had in mind was that that 100,000 acres probably ought to be made up of contributions not only by the state but by private landowners, but he left that to the state.

Now, what this proposal to the state is is this — it would drop any claim against the state for land of any kind. It would instead request that the state continue its present level of payments to the tribes which are now made in order to provide services which would be made under this agreement, if it were reached, as the state's contribution to the settlement. At the present time, that payment amounts, I understand, to \$1.7 million, and the Indian proposal is that that level of \$1.7 be continued for 15 years, at which time it would end, it would be made to the Department of the Interior to go into the Indians' trust fund and the state would have no further responsibility nor would it face any further request for Indian services or of any further payment to the settlement.

The federal government, on the other hand, under the court case and under this agreement, would pick up the Indian services and would continue them indefinitely into the future. It is interesting to make the point that if that case which created so many problems for us in the state had never been filed and never settled, the state would face the burden of Indian services into the indefinite future. And given inflation as we can project it, in 15 years, that could amount to \$3 million.

This is the new proposal to the state. It involves no land, it involves no lump sum. It involves simply the continuance of Indian payments at the present level for that amount of time. It would amount to \$25 million over that amount of time. That is the new proposal to the state. I emphasize that it is a proposal for the state to evaluate. I am not going to make a judgement at this point as to whether I think it is more reasonable than the first proposal, but whether it is as reasonable as it ought to be is something for all of us to consider together. I am not selling that, I am trying to explain what this new proposal for the state is.

Now, with respect to the large landowners. There are 14 of them, and they hold a total of 3,655,000 acres of land — 14 owners. Under the agreement, 700,000 of that would be exempt altogether, without any payment by the large landowners. Of the three million that would be left, the Indians propose that 10 percent or 300,000 acres be contributed to its settlement upon payment which the landowners, of course, would describe as token, of a million and a half dollars, or five dollars an acre.

In addition, the tribes asked that they have options on another 200,000 acres which they would pay for at the fair market value when the options were exercised — no contributions here, just a fair market value price.

In addition to these numbers, there is also a commitment on the part of the White House Task Group to try to get some easements and

some rights to perform religious ceremonies that are described in the agreement, which I won't undertake to describe here.

The proposal to the land holders is a proposal. The White House, and let me make this clear, in a statement by Mr. Cutler, who is a part of the White House Task Group, this part of this memorandum sets forth without an endorsement by the Administration, terms on which the tribes have promised that they will drop their claim. So these proposals are being transmitted to the state and landowners respectively for consideration and each, of course, has the option of accepting, rejecting or making a counter proposal.

Finally, may I say with respect to the large holders, I don't think the history of their activities in this state suggest that they are not skilled in the art of hard bargaining. The fact that 14 of them own 3.6 million acres of land in this state speaks for itself. But in any case, what the White House is trying to do by transmitting these proposals is the process of negotiation if that is the desire of the state, the desire of the large landowners after they have evaluated their own interest.

I had a meeting with the representatives of one of the largest landowners and they were very upset about this whole business. They wanted to know what my view was and I said, gentlemen, I don't know what your companies' views, of what its interests require may be. I haven't had access to your corporate books or to your balance sheets or to the extent to which your operations depend upon 10 percent of your land holdings for the viability of your company. You see, I am willing to be educated. It seems to me it is your option to back to your company and to evaluate its interest, whether or not it would benefit from a settlement rather than long, drawn out litigation and tell us, the people of Maine, whether of not this is a reasonable offer that the Indians have made or an unreasonable one, and I certainly will study whatever you have to say as carefully as I have tried to study this proposal. The same is true of the Indian tribes. I met with the Governor and the Attorney General yesterday afternoon and I said the same thing to them as I have said to them for the last year and a half. I think only the Governor is in the position to speak for the state, with, I am sure, the advice of the legislature and other appropriate state officials. It is not for me. But if my advice is sought as we move toward a decision, I will try to contribute that advice as frankly and as candidly as I can.

I primarily want to emphasize that we still face the two problems that triggered the Governor's first visit to Washington, whether or not there is a chance of losing this case in the courts, and we lost two we didn't expect to. I used to be a lawyer. I never had a case that I thought was 100 percent proof against losing. I was lucky if I had a 3 to 1 chance of winning. I thought that was pretty good. So I never had a case that I wasn't willing to settle at some point. Whether or not this is the kind of case which we ought to settle, I don't know. The Attorney General says he thinks the Indian case has no merit, and he has raised, among others, two principal arguments, one that the Indian tribes have already given away this land or lost it by conquest before 1790; the other, if that wasn't the case, when Maine was admitted into the Union, the federal government in effect, by admitting us, ratifies those treaties that were negotiated prior to that time, in 1820. The Attorney General has presented those arguments to the Department of Justice and has said that he would like to present them to an appropriate court, and that is a perfectly responsible kind of judgment to make. Whether it is the final decision we ought to make a state, it is still an open question.

There may be other things, but whatever the defense is, I submit, given the decisions that have already been made, that there is some risk that you will have to evaluate, each for

ourselves, that we might lose the suit. The large landowners, instead of giving up 10 percent of their land, may have to give up a larger portion of it. The small property owners, homeowners and so on, may see themselves saddled with a burden of some magnitude on their property. So there is the risk of losing any court case, it would seem to me, but, again, evaluate that after you have heard the Attorney General and consider the matter.

The other problem is still the economic one. Up until now, the economic waters have been quieted by the President's action thus far. If those actions produce nothing, the matter is thrown back into the courts. I wouldn't want to be responsible for a guarantee that there wouldn't be some economic disruption in the area. There may be those who think that, well, everything is calm now and it will stay that way. Maybe it will but it didn't before, and that is a risk that we have to evaluate.

No matter what you think about the merits of the case, there still may be some advantage to settling on some terms, and it is those decisions that I am glad to see are now wholly out into the open where the people of Maine can share them, influence them, where the legislature can discuss them, and out of it, I hope, would produce a settlement or at least a solution. I will support whatever solution you wish to pursue. If you want to go to court and all you ask of us in the delegation is to get the support of the Congress for the \$25 million, we will do our best to get it. Twenty-five million is a lot here, it isn't all that much in Washington, as you all know, but we will do our best to be helpful, whatever our views about the settlement ought to be.

I regard myself, on matters of this kind, the instrument to the people of this state, and I am not going to try to force my views on them, but I think they ought to share them, and we have, under the agreement, 60 days from the time that this memorandum was presented to make our decisions. If no decision for settlement is made on the state lands or the big landowners' lands, then the President will submit just the first proposal to the Congress and assume that the matter will go into the courts. A disagreement would not be binding the Indians after 60 days, so the thing would be thrown out in the open. So we have got a 60-day period of decision making facing us.

I have talked quite a long time, really, longer than I would prefer, unless I am in the Senate itself, where our time is there to be killed, but I hope it has been useful and I hope that you at least understand exactly what I am trying to do. There are other subjects I would like to discuss while I am up here, but I think this is so critical, so important, it may well be the biggest single event in Maine public life impacting on the welfare of our people since I entered politics in 1946 and I would like to see it turn out right. It is for that reason I come.

Thank you for welcoming me and making me feel at home. (Applause)

Therefore, Senator Muskie was escorted from the hall by the Sergeant-at-Arms amid prolonged applause, the Members rising.

The SPEAKER: Would the Sergeant-at-Arms escort the gentleman from Stonington, Mr. Greenlaw, to the rostrum for the purpose of serving as Speaker pro tem.

Thereupon, Speaker Martin retired from the Hall and Mr. Greenlaw assumed the Chair as Speaker pro tem.

Papers from the Senate Indefinitely Postponed

The following Joint Resolution: (S. P. 698)

Joint Resolution Urging
the Department of Agriculture
to Provide for an Additional 30-day
Grace Period Under the Nonreturnable
Beverage Container Statute

WHEREAS, the Department of Agriculture,

which is the enforcement agent for the recently effective returnable beverage container statute, has permitted retailers of certain beverages packaged in returnable flip-top containers a 30-day grace period in which to sell those beverages; and

WHEREAS, during this 30-day grace period, the State of Maine experienced several disastrous storms, which severely hampered the daily lives of Maine's citizens; and

WHEREAS, many small business retailers were thus unable to sell all of their stocks of beverages in returnable flip-top containers before the grace period ran out; and

WHEREAS, immediate enforcement of the returnable beverage container statute will cause extensive financial hardship on these small retailers; now, therefore, be it

RESOLVED, that we, the members of the 108th Legislature assembled in second regular session, urge and respectfully request that the Department of Agriculture grant an additional 30-day grace period to retailers to allow them an opportunity to sell their remaining inventories of returnable flip-top beverage containers, and thus avoid serious financial harm which would result from immediate enforcement of the statute; and be it further

RESOLVED, that upon passage in concurrence, the Secretary of the Senate shall make suitable copies of this Resolution available to the public.

Came from the Senate read and adopted.

In the House, the Resolution was read.

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

Mr. QUINN: Mr. Speaker, Ladies and Gentlemen of the House: Relative to this resolution, I would move its indefinite postponement and would speak to my motion.

The SPEAKER pro tem: The gentleman from Gorham, Mr. Quinn, moves that this Resolution be indefinitely postponed in non-concurrence.

The gentleman may proceed.

Mr. QUINN: Mr. Speaker and Members of the House: Not addressing the merits of the resolution itself, I contacted the Attorney General and I read to you from a letter from him dated this morning.

"Dear Representative Quinn: We are responding to your request for advice from this office relative to matters set forth in the proposed joint resolution. The proposed resolution would express the desire of the legislature to let the Department of Agriculture grant an additional 30-day grace period to retailers of certain beverages to bring themselves into compliance" and so forth.

"The statutory returnable beverage containers provisions in question were enacted by the legislature as Chapter" and so on "of the laws, which was approved at a statewide referendum. The Department of Agriculture is identified as the enforcement agency and given the authority to issue the necessary rules and regulations in order to carry the provisions into effect. Once the legislation was approved at referendum, it became effective on January 1, 1978," and I read now the operative sentence, "There is no provision in the statutes for extending the effective date to provide for grace periods." This was signed by S. Kirk Studstrup, Assistant Attorney General. I would suggest, therefore, that this legislature has little business in urging a portion of the Executive Department to break our own laws.

The SPEAKER pro tem: The Chair recognizes the gentleman from East Millinocket, Mr. Birt.

Mr. BIRT: Mr. Speaker, Ladies and Gentlemen of the House: I completely support the comments and recommendation made by the gentleman from Gorham, Mr. Quinn.

I think that due to the fact that primarily this was an action taken by the people of this state, it behooves us to go and extend this any further. There was one 30-day grace period that

adequately took care of the problems that any of the grocers or the people had, bottles on the shelves in the non-returnable condition.

I would ask for a roll call.

The SPEAKER pro tem: The Chair recognizes the gentleman from Blue Hill, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: I rise to support the motion before us today and the fact that we have already had a 30-day grace period. To add another 30 days would only add confusion to what now seems to be a very well working system. While none of us are well into it and we find it may be cumbersome at this point, a delay for 30 days more will not make the matter any less troublesome. I feel at this time that if we continue our progress, it will be well behind us.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I always felt that it was duty of this legislature when there was a problem facing us that it should be handled by the legislature regardless of what the situation is. I know that many times we in the legislature refuse to accept that responsibility.

All this resolution does is ask for 30 more days. How many in this House know the hardships that have been put on the small stores of this state? I say there are not many in this House who know it, but it is the law and we will live by the law. All this resolution is asking for is a little more time. When you make a drastic change such as the people of this state voted for, we will abide by the law, but when you make such a drastic change, this takes time. I think that the consideration of the people involved is far more important, whether the gentleman in the right-hand corner stands up with his philosophy on the bill. That doesn't mean a thing. What it does mean is the consideration of the people who have to live with this bad law, and this is a bad law. It is a hardship on the people of this state. It is a hardship on the people who have to enforce this law. It is a hardship on the small store owners who make their living, and I don't believe that 30 more days is going to make any great big, drastic change in what has already been taking place.

I know it is easy to sit up here and say that is the law, that is the way it is going to be, we don't give, that is it and we will go by it. Well, I say to you, my friends, that consideration of the hardship is far superior. I have heard many of you get on the floor of this House and state hardships of your people back home. I think the majority of us listened, whether it is on this bill or insurance, on many bills that you have spoken on because you are concerned. Well, there are 1,200 small businesses in this state that are faced with this hardship that the people have imposed upon them. Many of them are going out of business because of this bad situation that we are faced with. It is not the answer, and 30 more days is certainly not going to make that burden any lighter, the law is not going to be any more perfect than it is now, the situation is not going to go away. They live with it, they will accept it because it is the wishes of the people. But this legislature has a right as an elected body of the people that when a hardship does take place, we have a right to help them in any way that we can.

I would urge your member to support this resolution, give these small store owners a chance because they know what they are dealing with. And I will tell you something, it is a hardship that not many in this House are going to have to face day in and day out.

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

Mr. QUINN: Mr. Speaker and Members of the House: I sympathize with the thrust of the remarks of the gentleman from Westbrook, I understand. I simply argue procedurally that this is not the way to do it. The last sentence of the Attorney General's opinion says, "it should

also be noted that the legislature does have the legislative power to amend the statutes to specifically grant such authority." Therefore, if the gentleman from Westbrook wants this done, I would suggest that he would submit legislation to do, since that is the only way we can.

I repeat, a resolution of this body urging the Executive Department to break our own laws is no way to do it.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I think it ought to be made clear to everybody in the House, and I am sure that is with most people, that the month of January was supposed to have been a transition month for these people in these stores and the distributors who distribute the products that we are talking about. As a matter of fact, that accommodation was made by the state taking into account the fact that during the Christmas and New Year holidays it was very difficult for the distributors and the local stores to be able to predict how many cans of soda or beer or whatever it is would be consumed. They had the entire month of January to do that, and they didn't do it in some cases.

The distributors, my information tells me, are still distributing some of these containers that are illegal even into the month of February, when they knew full well that they could not do that and had a whole month of a grace period to make the transition. Now they are asking for 30 more days, when they knew since last June or July that they were going to have to have this all wrapped up in the month of January 1978. What kind of people do they take us for? It just seems to me that — I think there have probably been very few things that have irritated me any more than to see the flagrant abuse, violation of this law, and I think it all boils down to greed on the part of some of those individuals.

The SPEAKER pro tem: The Chair recognizes the gentleman from Portland, Mr. Torrey.

Mr. TORREY: Mr. Speaker, Ladies and Gentlemen of the House: I certainly agree with the statement of the gentleman from Old Town, Mr. Pearson. I think the whole industry has known for a long time that this was legally going into effect January 1. They gave them an additional month's grace period, and those distributors have just been lax or perhaps greed is the word, they haven't really tried to legally comply and be in full regulation by February 1.

This order just came through yesterday, as you know. I talked with a few of my small grocers and neighborhood stores and none of them are having any problems. They say they have gotten rid of all their stock and they don't have any problems themselves. They say there is a little pressure from the distributors, but they just absolutely refuse to take any of those old containers.

I think we certainly should support the motion of the Representative from Gorham, Mr. Quinn.

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

Mr. HUGHES: Mr. Speaker and Members of the House: I would simply add a couple of comments to what has been said, and I guess I generally support the thrust of most of the speakers here, but it is not all distributors involved who are contending to violate this law. There may be one or two "rotten apples" who are doing it.

Most companies involved in soft drink or beer distribution had 14 months to plan for the conversion. They were then given what may have been an illegal additional 30-day grace period to make that conversion, and most of them did it and did it proficently. If there are companies continuing to evade that, then I think this legislature simply has got to show that it has run out of patience and let the law take its effect as it was meant to be, with a fine on them.

There has been plenty of time for the conversion, and the companies with which I am familiar not only made that conversion in time, but if there are some store owners with a case in the back room somewhere that didn't get sold, I think they would be very reasonable about taking that case back and selling it in New Hampshire or another state where those flip tops are still legal. So there are mechanisms for adjustments in real cases of hardship for the small owner, but for the few companies which may be continuing to sell cans illegally, I think this legislature ought to have no more patience.

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

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

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I want to congratulate the wholesalers and distributors that complied with the law. I understand we have many of them who have made a supreme effort and in good faith have complied with this law knowing full well they were given a 30-day grace period. But we do have two or three wholesalers in this state that refused to believe this law was going to have any teeth in it. Recently, I asked them what to do about a man who had a business on the line over near New Hampshire and I was told to tell him to ignore the law and to keep on selling these bottles. Now, there is an old saying, when you get free advice, you get what you pay for, and that is what I paid for out here in the hall.

I am very much concerned. We have a large farm, we have picked up beer bottles for 25 years off our property. We bought two new tractor tires last year and a new school bus tire, and I think the people of this state have suffered an indignity of the highest and lowest order. We have picked up behind them, we have paid taxes for our Department of Transportation to send out trucks picking up bottles on the highway. We have suffered your abuse for 20 years, and now I think you should be reprimanded by complying with the laws of this state in manner that is concise, an honorable manner, just as we all do. We have to obey the speed limits, we have to obey all the laws, so let us all get our shoulders behind the wheel. The Agriculture Department has been very generous. They have made provisions. Let us now kill this order right here and now.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: I rise this morning in support of the resolution that you have before you and I would like to give you my reasoning behind that. I urge you to vote against the pending motion for indefinite postponement.

As most of you, I believe, in talking with your constituents, your constituents have come to the realization that the passage of this law as it was written, many people who voted for it do not feel it serves the best interest of themselves and/or of the environment because of the way the law was written. And I don't think it is our responsibility here today to put a hardship on anyone in the State of Maine, a consumer and/or a distributor.

We find ourselves in a position in this state where we have some people who have a substantial financial investment in these various containers, and because of the weather situation and because of circumstances that they weren't able to control, they will take, I feel, a substantial loss of income. I think it is our responsibility — and I feel very, very strongly in

saying that if this same law was brought before the people of Maine today, it would be defeated without any question, unanimously defeated. I think the people of Maine look upon the legislature now to make a decision to help the distributor comply with this law, and this is an attempt to allow these people to comply, to take another 30 days, which is not going to break anyone's back, and I feel that this resolution that we have before us this morning is a very, very important resolution and we shouldn't take it lightly. It is far more important than the Sun God resolution that will be coming up later on.

I urge you to consider what your constituents are saying to you about this bottle bill, about the impact that it has had upon them, and take the time to vote in the way you think your constituents would vote today on that same bill, because I am convinced that when the next regular session of the legislature meets next year, there will no longer be a bottle bill in the State of Maine. I am convinced of that because the surveys that have been taken by the media have shown that the people feel they have made a mistake and they ask us today to show that we agree that a mistake was made.

Thirty days is not unreasonable and no one can convince me that it is. I think it is our responsibility today to speak for the people, and I urge you to defeat the pending motion.

The SPEAKER pro tem: The Chair recognizes the gentleman from Biddeford, Mr. Lizotte.

Mr. LIZOTTE: Mr. Speaker, Ladies and Gentlemen of the House: I wish to concur with the gentleman from Lewiston, Mr. Biron, and hope that we vote against the motion to indefinitely postpone.

Yesterday, a good question was put in the other body, and it said, who gave the Agriculture Department the right to extend the deadline of returnables until February 1 when the law went into effect on January 1? All we are asking is that the "Mama and Papa" stores get a chance to dispose of the cans with flip-top covers. We are not telling the Agriculture Department, we are just asking them for an extension.

A lot of stores have got an awful lot of odd brands, such as Rolling-Rock beer, which not everybody buys, and I think it would be a great help to the corner store if we asked for an extra month.

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

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question to someone who can answer this. Can these stores put stickers on these bottles or cans so they can be returned back to the store?

The SPEAKER pro tem: The Gentleman from Lewiston, Mr. Jacques, has posed a question through the store to anyone who may care to answer.

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

Mr. HUGHES: Mr. Speaker and Members of the House: The issue before us really has nothing to do with the returnable feature of the bill; it only deals with the feature of the bill which requires that cans be sold without flip tops anymore, without detachable tops, and I think that point ought to be emphasized, because if there is objection to the returnable container bill, and I know that there is, it is not to the feature that requires that these flip-top cans be banned. I think that generally speaking people like the new top can and there is not a whole lot of disagreement about that. That is the only feature that this resolution addresses.

The question is, is 15 months enough time to have made that adjustment or shall we go for 16 or more? I think the second question is, how long do we allow departments of the government to override the laws of the state by giving these grace periods when there is a law in effect and that law was voted by the people of Maine?

The SPEAKER pro tem: A roll call has been ordered. The pending question is on the motion of the gentleman from Gorham, Mr. Quinn, that this Resolution be indefinitely postponed in non-concurrence. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS — Ault, Austin, Bachrack, Bagley, Beaulieu, Benoit, Berry, Birt, Blodgett, Boudreau, A.; Brenerman, Brown, K.C.; Bunker, Burns, Bustin, Carroll, Chonko, Churchill, Clark, Conners, Cox, Cunningham, Davies, Devoe, Dexter, Diamond, Dow, Drinkwater, Dudley, Elias, Fenlason, Flanagan, Fowlie, Gillis, Goodwin, H.; Goodwin, K.; Gould, Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Hunter, Hutchings, Jackson, Jensen, Joyce, Kany, Kilcoyne, LaPlant, Littlefield, Locke, Lougee, MacEachern, Mackel, Mahany, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McHenry, McMahon, McPherson, Mitchell, Moody, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Paul, Pearson, Peltier, Perkins, Plourde, Post, Prescott, Quinn, Raymond, Rollins, Sewall, Shute, Silsby, Smith, Spencer, Stover, Strout, Stubbs, Talbot, Teague, Tierney, Torrey, Tozier, Trafton, Valentine, Violette, Whittemore, Wood, Wyman.

NAYS — Aloupis, Bennett, Berube, Biron, Boudreau, P.; Brown, K. L.; Carey, Carrier, Carter, D.; Carter, F.; Cote, Curran, Durgin, Dutremble, Gray, Immonen, Jacques, Jalbert, Kelleher, Laffin, Lewis, Lizotte, McBrearity, Norris, Peterson, Rideout, Sprowl, Tarbell, Tarr, Theriault, Truman.

ABSENT — Connolly, Garsoe, Gill, Hobbins, Kane, Kerry, Lunt, Lynch, McKean, Mills, Palmer, Peakes, Twitchell, Tyndale, Wilfong. Yes, 104; No, 31; Absent, 15.

The SPEAKER pro tem: One hundred four having voted in the affirmative and thirty-one in the negative, with fifteen being absent, the motion does prevail.

Sent up for concurrence.

Bill, "An Act to Revise the State Criminal Extradition and Criminal Codes" (S. P. 697) (L. D. 2144)

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

In the House, referred to the Committee on Judiciary in concurrence.

Reports of Committees

Leave to Withdraw

Report of the Committee on Education reporting "Leave to Withdraw" on Bill, "An Act Authorizing Municipalities to Provide Textbooks and Other Nonsecular Services to Elementary and Secondary Pupils Attending Private Schools" (S. P. 619) (L. D. 1907)

Came from the Senate with the Report read and accepted.

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

Ought to Pass as Amended

Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (S-464) on Bill, "An Act to Provide for Specific Liability for Person or Corporations Contributing to a Public Nuisance." (S. P. 658) (L. D. 2035)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-464) as amended by Senate Amendment "A" (S-467) thereto.

In the House, the Report was read.

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

Mr. CARRIER: Mr. Speaker and Members of the House: I have looked this bill over and I think that the members of this House and especially the members of the Judiciary should take a look at this because this Senate Amend-

ment that they have put on here actually contradicts totally what the Committee Amendment says where the Committee Amendment makes it permissible for somebody to find something, and if he does, he may do this and he may do that. This Committee Amendment, in fact, makes it mandatory that it is a public nuisance, and if it is identifiable, he has to report it to the Attorney General.

The Committee Amendment removes the specific statement that infestation is a public nuisance, and the amendment put in by the other body yesterday does make it a public nuisance. So I say that these two amendments are in conflict. I would suggest to somebody that we should get this straightened out. If you read it very closely, I think this would be a very bad law the way it is here.

Thereupon, the Report was accepted in concurrence and the Bill read once. Committee Amendment "A" (S-464) was read by the Clerk. Senate Amendment "A" to Committee Amendment "A" (S-467) was read by the Clerk and adopted in concurrence. Committee Amendment "A", as Amended by Senate Amendment "A" thereto was adopted in concurrence and the Bill assigned for second reading tomorrow.

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:

State Government

Bill, "An Act to Except Certain Procedures from the Maine Administrative Procedure Act" (Emergency) (H. P. 2114) (Presented by Mrs. Kany of Waterville) (Approved for introduction by the Legislative Council pursuant to Joint Rule 24.)

(Ordered Printed)

Sent up for concurrence.

Orders

An Expression of Legislative Sentiment (H. P. 2111) recognizing that:

Margaret L. Webber, of Gorham, has retired as Cumberland County Register of Deeds, after 30 years of service to the citizens of that county

Presented by Mr. Curran of South Portland.

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

On motion of Mr. Quinn of Gorham, the following Joint Order: (H. P. 2112)

ORDERED, the Senate concurring, that the Legislative Finance Officer be authorized and directed to pay each member of the Legislature prior to February 24, 1978, a \$200 allowance for constituent services as authorized by the Revised Statutes, Title 3, section 2.

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

A Joint Resolution (H. P. 2113) in memory of the Honorable Frank S. Rand, prominent businessman of Yarmouth

Presented by Mr. Jackson of Yarmouth. (Cosponsor: Mr. Cote of Lewiston.)

The Resolution was read.

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

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: This order says he was a prominent businessman in Yarmouth. Frank Rand was a great deal more than that. He also served in this House for over 10 years and he represented his town and the Town of Harpswell very well. He was a leading citizen of Yarmouth and did a great deal for the town.

I know there are many people here in the House who remember Frank when he served here, it would be the 105th Legislature, I believe, was his last term here. I am very pleased to present this order, I am proud to, and it is

cosponsored by Albert Cote of Lewiston who knew him personally.

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

On motion of Mr. Davies of Orono, the following Joint Resolution: (H. P. 2116) (Cosponsors: Mrs. Huber of Falmouth, Mr. Perkins of Blue Hill, Mr. Brenerman of Portland)

Joint Resolution to
Declare May 3, 1978, as
"Sun Day"

WHEREAS, in this age of increasing energy scarcity, humankind is turning towards the sun, recognizing it as an essentially inexhaustible source of power for man's future; and

WHEREAS, a coalition of environmentally concerned citizens has decided to increase public awareness of the sun's potential for energy by declaring May 3, 1978 as "Sun Day;" and

WHEREAS, a Joint Resolution is currently pending in The United States Congress to proclaim "Sun Day" on a federal level; and

WHEREAS, this resolution states that May 3, 1978, will be "a day of national recognition of solar energy in all its forms — including wind, small hydroelectric power stations, biomass conversion and direct solar energy — as a positive and available energy production option to meet America's energy needs;" and

WHEREAS, it is fitting that, on May 3, 1978, the Citizens of Maine join with other like-minded citizens in celebrating the great gift of energy which the sun presents to us all, therefore, be it

RESOLVED: That we, the members of the 108th Legislature assembled in the Second Regular Session, declare May 3, 1978, to be "Sun Day" in Maine; and call upon all of our citizens, upon our local governments and upon our State Government, to observe this day with appropriate ceremony, celebration and cooperation; and be it further

RESOLVED: That, upon passage in concurrence, the Secretary of State shall make suitable copies of this resolution available to the public.

The Resolution was read:

The SPEAKER pro tem: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker and Members of the House: Several years ago, we commemorated "Earth Day" in the United States as the day with the flowering of the environmental movement. It came to national attention as a powerful group that demanded that their air, their water and their environment be maintained in a humanly decent form. It was tremendously successful and the State of Maine is in the forefront of passing environmental legislation to carry out the needs that were so wisely expressed on Earth Day.

We are proposing in this Joint Resolution that the State of Maine, once again, should join in a flowering of a movement, a movement that recognizes that solar energy for so long has been supplying us with most of our energy in various forms and that it offers to us in the future an unlimited amount of non-polluting, inexhaustible energy that can be used in many fashions, that is compatible with many living styles and it can be used at a minimal cost. It has the great advantage of costing us nothing for the energy source. All we have to do is find the ways of converting it to our use.

We have presented this order to put the State of Maine on record, with many other states in the country, as supporting this and encouraging our citizens to express themselves on the various forms that solar energy does take; to take May 3, 1978 as a day to examine ways that solar energy can be applied to our own lives as a cost-efficient way of generating heat, hot water, potentially electricity and motion for all citizens of this country.

Right now in the State of Maine, solar energy is not a future alternative, it is a present reality,

something, if used in the ways it is properly designed and is cost effective for right now, can save people in the State of Maine substantial amounts of money that they normally spend on electricity, gas or oil, for heating hot water and for heating their homes. If it is properly developed, if it is funded at a reasonable level at the federal level, is given support at the state levels in innovative programs such as the State of Maine is now venturing into, that it offers a real option for the State of Maine and for the entire country, it has the possibility of assuming a sizable portion of our energy budgets and it gives us the opportunity to be independent of foreign sources of energy, meaning, that our money is going to stay right here in Maine where it belongs.

I urge you today to pass this Resolution and urge all of your constituents to get involved in whatever way they see fit to make this a very successful day.

The SPEAKER pro tem: The Chair recognizes the gentlewoman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker, Members of the House: You have before you at the moment a Joint Resolution in recognition of "Sun Day", not "Sun God Day," thank goodness, of which I am also a sponsor. Perhaps your first reaction, as mine was, when I learned of this event several months ago, perhaps you were mildly amused. However, I urge you not to be amused this morning but to consider the implications Sun Day holds for us, the people of Maine, as seen in the context of our efforts to provide energy security for our state.

This winter, while a number of other states faced drastic economic and lifestyle slowdowns due to the curtailed of coal supplies, Maine life goes on pretty much as usual. Last winter, a bruising natural gas shortage caused businesses and industry in many states to come to a complete standstill. Schools were closed and people moved into armories and churches to survive. Maine was pretty much unaffected last year, too.

Four years ago, however, in the State of Maine and every other state in the country, we had what was called the energy crisis. Supplies of petroleum on which Maine today depends for 72 percent of its total energy consumption was so scarce the cars waited in line for hours to fill up, prices climbed overnight to levels which continue to rise today. For example, a typical monthly electric bill to a Maine residential customer rose 63 percent — from \$11.79 in 1971 to \$19.18 in 1977. The real issue, then, is that we are not running out of energy but that we are running out of our ability to pay for it, and this is an issue.

Four years after the Arab oil embargo brought this problem to our attention with emphasis, where do we stand? Where have we gone? The people of Maine and the country have responded, I feel, and I am sure that you would agree, by insulating their homes, installing wood stoves and other supplemental heating devices, some solar hot water heaters, and buying cars that get better mileage as well as driving slower. Business and industry, I believe, has responded dramatically by cutting the amount formerly wasted energy. How has government responded? I wish I could tell you that the government has enacted a national energy policy. We all know that it has not, however, at least not yet.

The federal government has done some significant things despite this omission. There has been established a cabinet-level Department of Energy and there has been a significant expansion of the energy section of the federal budget — \$9.6 billion this year, bringing spending on energy to more than double what was only two years ago. Incentives for energy conservation an alternative energy development about to become law at the federal level.

How has Maine government responded? First, let me tell you that in my opinion the

Maine Legislature has made a good start on addressing its energy problems. Second, I must tell you that Maine suffers, not from quarreling over whether we have energy problems but from the lack of leadership in coping with and solving our energy problem.

In the last session, the Maine Legislature enacted a number of significant energy-related bills. Among them were the energy conservation bond issue ratified by Maine voters in December, "An Act to Create A Commission on Energy Efficiency Building Performance Standards;" "An Act to Provide Home Winterization for the Low Income, Elderly and Disabled;" "An Act to Provide for Life Cycle Costing for State Owned Buildings and Sales and Property Tax Incentives for Maine Purchasers of Solar Energy Equipment. I might add that we did not enact several other energy-related bills but those bills did receive a fair hearing. They were considered and found wanting, however, by the majority. They were not, we said, the best answer for solving Maine's energy problems."

The legislature, I believe, is aware of Maine's energy problems and aware that some action on the part of state government is necessary. Some action is needed to break down the non-technical barriers to alternate energy supplies. Some action is needed to secure a continued supply of energy to the industries and to the businesses upon which our people's employment depends. Some action is needed to insure Maine people a dependable and affordable source of clean, renewable energy.

The legislature, this House, know this and by your actions are working to achieve this goal.

What is lacking then? I say to you today that what is lacking is leadership. Every energy bill that we passed here last session was considered because Representative Carter, or Representative Palmer or Representative Davies or I or some other Representative wanted to address Maine's energy problems. Not one of these bills and not one of the energy bills you are considering in this session came from the Governor. Instead of leadership on energy policy, we are treated to a benign neglect, even more careless and indifferent to Maine's energy problems.

Consider, if you will, the following facts. First, the Office of Energy Resources has been without a director for over a year now. It functions in an uninsulated building right across the street from the Blaine House. It might just as well be on the moon for all the effect it has on Maine's energy policy. I say this despite its work in drawing up a Maine energy policy, because although we have a policy, it is not an implemented policy and the Governor has made no attempt to implement it.

Second, last year, in L. D. 1034, the Governor of Maine attempted to submerge the Office of Energy Resources in the State Planning Office. This legislature courageously refused to acquiesce in such a down-grading of the EOR. Bear in mind that President Carter was fighting for and achieving a new Department of Energy at the same time this legislature was being asked to deemphasize our energy office by our Governor.

Third, the Commission on Energy Efficiency Building Performance Standards created by an act of this legislature last Spring to be comprised of 11 persons, four of whom legislators. These legislators were promptly appointed after the effective date of the act last October. I will quote to you from the act. "The commission shall be appointed promptly upon the enactment of this act and the Governor shall notify all members of the time and place of the first meeting." To date, the Governor is responsible for naming the other seven members of the commission and, as of this date he has not done so.

Fourth, last year the Governor proposed in L. D. 362 to remove the sales tax from all residential electricity. If this proposal passed, the

energy hog would have received the benefits to a greater degree than a conservation-minded consumer. As you may recall, my amendment to limit the tax exemption for the first 500 kilowatt was a version voted out by the Taxation Committee last year, and I believe it is still alive today.

I believe that now is the time to make energy decisions, to set priorities, to implement Maine's energy policy, not somewhere down the road where options no longer remain open to us when shortages and viscusly higher energy prices can push us into solutions that may not be in the best interest of Maine people. Your mail may not be running heavily concerning Maine's energy problems but I bet it will when we have another embargo or prices continue to rise. People expect government to be part of the solution. People expect the Governor of the State to lead us to reasonable solutions.

Let me close by paraphrasing someone, probably famous, who once said, "If you are not working to solve the problem, you are part of the problem." To the man, whose State of the State message to this legislature last month did not even mention the word energy, I say, Governor, you appear to be part of the problem.

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

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: You know I have seen a lot of doozy bills come before this legislature and I know that there are a lot of people in this House this morning that would like to waste their time. We have been talking on this for over 10 minutes now, on something that is as foolish as this. What do we have here? Is it going to be a legal holiday? It says in the order that we are going to have appropriate ceremonies. What is appropriate ceremonies? Are we going out and worship the sun? Are we going to have a legal holiday? I have seen some things come before this legislature but this is one of the dumbest I have ever seen. I am astonished that the members of this House would even allow such a thing to take up our time when we have pressing matters such as payraises for people, people working with less than the minimum wage, working people getting no consideration and here we are, members of this intelligent body, debating something that really doesn't mean a thing to begin with.

What kind of holiday are we going to have? Is the state legislature going to go into recess for one day? Are we going to have a paid holiday? It goes on and says: "and be it further ordered to notify the people of this."

I think the people of this state know we have a problem. I think the people of this state know that the sun generates energy. I don't think they have to be told like school children. We are wasting our time here. In fact, I have wasted too much time already talking about this dumb bill.

I move for the indefinite postponement.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: The good gentleman, Mrs. Huber, has risen and spoken about the problems we have with energy and I fully concur. We have several problems in the state, but I fail to see how this Joint Resolution is going to do anything to solve the problems that we have in energy. With what Mr. Laffin just spoke about, appropriate ceremonies, I assume Mr. Davies would prefer all of us to join hands around the State Capital on May 3rd and run around and that would be an appropriate ceremony. I question the reasoning behind this. It does nothing, to quote Mr. Laffin. I see no impact from it, and as Mr. Laffin says, it is a total waste of legislative time. If Mr. Davies is seriously concerned with energy, why doesn't he address a bill in that area instead of writing resolutions that don't do anything?

The SPEAKER pro tem: The Chair will order a vote. The pending question before the House is on the motion of the gentleman from Westbrook, Mr. Laffin, that this Resolution be indefinitely postponed, Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Laffin of Westbrook requested a roll call.

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

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

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: I sit here this morning and I cannot understand how members of this body would prefer to go on record as supporting a resolution of this nature when just a few days ago you rejected a resolution which meant something. You have a responsibility in this House, ladies and gentlemen, and this is totally ridiculous. It does nothing. If we are concerned about energy, let's address the problem. Let's not pass resolutions to say that we are going to have ceremonies. What kind of ceremonies? What are we going to do? Let's get serious here. I am very serious. This thing does not do anything. How does Mr. Davies know that the sun is going to shine on May 3rd? It might be cloudy. What are you going to do then? No ceremony — cancelled until the 4th. This is totally ridiculous, and you have a responsibility to speak out. I realize that it doesn't do anything so it is easier to vote for it, but when you have a resolution before you that you have to take a stand on, everybody ducks it.

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

Mrs. TARR: Mr. Speaker, I would like to pose a question through the Chair to either Mr. Davies or Mrs. Huber. Is this a paid legal holiday?

I really have to agree with Mr. Biron, I can appreciate how they feel about the sun and I like the sun too, but I really don't think this resolution is properly before us and I do not think that it is going to accomplish anything. I would like to know if it is a paid holiday because I am going to have to pay the electricians at Tarr Electric.

The SPEAKER pro tem: The gentleman from Bridgton, Mrs. Tarr, has posed a question through the Chair to the gentleman from Orono, Mr. Davies, who may answer if he so desires.

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

Mr. DAVIES: Mr. Speaker, Ladies and Gentlemen of the House: It would not be a legal holiday. There would be no need to pay the electricians at Tarr Electric or anyplace else. It is merely to get people who are interested in solar energy together to discuss ways that can be used to benefit the State of Maine and those benefits are quite many.

In response to the gentleman from Lewiston, Mr. Biron, the reason why I have some faith that the sun is going to shine on May 3, 1978 is because of the good Lord that we debated the other day of whether an order was blasphemous or not. Because I have that faith, even if the clouds happen to be in the way, I am sure that the sun is going to be there someplace.

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

Mr. STUBBS: Mr. Speaker, Members of the House: The gentleman from Lewiston indicated it might be cloudy that day or something, and I would suggest that perhaps we could amend this so if it rains that day, we could call it Rain Day. In that way, water is a great source of energy and so forth, water power,

and it is nutritious for the soil and so forth and until this is done, I think we probably ought to go along and indefinitely postpone this thing.

The SPEAKER pro tem: The Chair recognizes the gentleman from Sanford, Mr. Wood.

Mr. WOOD: Mr. Speaker, Ladies and Gentlemen of the House: I think this order has generated a certain amount of humor which we certainly need, but I think if we look back at the record of the environmental movement, we will realize when Earth Day was proclaimed, people were saying, why should we have Earth Day? I think the momentum and ideas generated from that day, have borne a lot of fruit in terms of legislation. I see this as a day when we can begin to look at the problem of energy, begin to look at the potential source that is being unused or underused at this time and come up with some meaningful ideas. I think it is a chance for us to tell the citizens in the State of Maine that we want to hear them on this important issue and I do not think it is a laughing matter although I do think if we all held hands and ran around the State House, that certainly would have a significant impact on something here.

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

Mr. QUINN: Mr. Speaker, Ladies and Gentlemen of the House: I agree to some extent with several of the speakers on either side. I would note that the gentleman from Hallowell, who suggested an alternative of Rain Day, coming from an area such as he does that is particularly sensitive to large influx of rain, might possibly have flood control in mind. I have no objections to the kind of thing that Mr. Biron says. I agree to some extent that this may not have immediate significance and perhaps we will be moving in this year at least, Sunday to Wednesday and perhaps next year, Sunday will become Monday. I would see nothing wrong with that. It is, as he says, perfectly harmless. It does not cost us anything. Our time goes on up here anyway. We draw the same pay and I think the thrust of what the sponsors are trying to do is perfectly legitimate thing and I would urge you in good conscience and good humor to pass it.

The SPEAKER pro tem: A roll call has been ordered. The pending question before the House is on the motion of the gentleman from Westbrook, Mr. Laffin, that this Resolution be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS — Alopis, Austin, Bennett, Berube, Biron, Birt, Boudreau, P.; Brown, K. C.; Bunker, Carey, Carrier, Carter, F.; Connors, Cote, Devoe, Durgin, Dutremble, Fenlason, Flanagan, Gillis, Hunter, Immonen, Jackson, Jacques, Jalbert, Joyce, Kany, Kelleher, Kerry, Laffin, Littlefield, Lizotte, Lougee, MacEachern, Marshall, Martin, A.; Masterman, Maxwell, McHenry, McMahon, McPherson, Nelson, N.; Plourde, Raymond, Rideout, Rollins, Shute, Smith, Strout, Stubbs, Tarr, Teague, Theriault, Tozier, Truman, Twitchell, Whittemore

NAYS — Ault, Bachrach, Beaulieu, Benoit, Berry, Boudreau, A.; Brennerman, Brown, K. L.; Burns, Carroll, Carter, D.; Chonko, Clark, Cox, Cunningham, Curran, Davies, Dexter, Diamond, Dow, Elias, Fowlie, Goodwin, H.; Goodwin, K.; Gould, Gray, Green, Greenlaw, Hall, Henderson, Hickey, Higgins, Howe, Huber, Hughes, Hutchings, Jensen, Kane, Kilcoyne, LaPlante, Lewis, Locke, Mackel, Mahany, Masterton, Mitchell, Moody, Morton, Nadeau, Nelson, M.; Norris, Paul, Pearson, Peltier, Perkins, Peterson, Post, Quinn, Sewall, Silsby, Spencer, Sprowl, Stover, Talbot, Tarbell, Torrey, Trafton, Valentine, Violette, Wood, Wyman

ABSENT — Bagley, Blodgett, Bustin, Churchill, Connolly, Drinkwater, Dudley, Garsoe, Gill, Hobbins, Lunt, Lynch, McBreairty, McKean, Mills, Najarian, Palmer, Peakes,

Prescott, Tierney, Tyndale, Wilfong
Yes, 57; No, 71; Absent, 22.

The SPEAKER pro tem: Fifty-seven having voted in the affirmative and seventy-one in the negative, with twenty-two being absent, the motion does not prevail.

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

House Reports of Committees Ought Not to Pass.

Mr. Carroll from the Committee on Transportation on Bill "An Act to Revise the Powers and Duties of the Maine Turnpike Authority and to Provide Commuter Passes for Turnpike Users" (H. P. 2061) (L. D. 2124) reporting "Ought Not to Pass"

Mr. Carroll from the Committee on Transportation on Bill "An Act Concerning the Administration and Operation of the Maine Turnpike" (H. P. 2063) (L. D. 2126) reporting "Ought Not to Pass"

Were placed in the Legislative Files without further action pursuant to Joint Rule 20, and sent up for concurrence.

Leave to Withdraw

Mr. Curran from the Committee on State Government on Bill "An Act to Create a Department of Cultural Resources" (H. P. 2009) (L. D. 2092) reporting "Leave to Withdraw"

Report was read and accepted and sent up for concurrence.

Ought to Pass in New Draft

Mr. Kelleher from the Committee on Public Utilities on Bill "An Act to Expand the Purposes for which Brownville Junction Water District may Issue Bonds" (Emergency) (H. P. 2065) (L. D. 2121) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Revise the Brownville Junction Water District Charter" (Emergency) (H. P. 2115) (L. D. 2147)

Report was read and accepted, the New Draft read once 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. 1998) (L. D. 2079) Bill "An Act to Establish Standards to Protect Maine Consumers Against Unsafe and Improperly Manufactured Cellulose Fiber Insulation" (Emergency) — Committee on Energy reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1045)

(H. P. 2036) (L. D. 2100) Bill "An Act to Provide for the Sale of Electricity to Public Utilities" — Committee on Energy reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1047)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 17 under listing of the Second Day.

Tabled and Assigned

(H. P. 1911) (L. D. 1972) Bill "An Act Concerning the Catastrophic Illness and Medically Needy Programs" — Committee on Health and Institutional Services reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1046)

On the objection of Mr. Goodwin of South Berwick, was removed from the Consent Calendar. Thereupon, the Report was accepted and the Bill read once. Committee Amendment "A" was read by the Clerk.

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

(H. P. 1999) (L. D. 2080) Bill "An Act to Make Trafficking in Five Pounds or More of Marijuana a Class C Crime under the Maine

Criminal Code" — Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1048)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 17 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. 2038) (L. D. 2102) Bill "An Act to Establish a Solar Water Heater Demonstration Program for Maine" (C. "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 (C. "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" (C. "A" H-1041)

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 Papers were passed to be engrossed and sent up for concurrence.

Second Reader Tabled and Assigned

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Oxford County for the Year 1978 (Emergency) (H. P. 2105) (L. D. 2142)

Was reported by the Committee on Bills in the Second Reading and read the second time. Mr. Theriault of Rumford offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-1051) was read by the Clerk.

The SPEAKER pro tem: The Chair recognizes the gentleman from Rumford, Mr. Theriault.

Mr. THERIAULT: Mr. Speaker and Members of the House: This is a matter I hate having to bring up at this time because it is more or less a family problem within the Oxford County Delegation. This amendment would simply bring back this item to the figure agreed upon by the majority of the county delegation at two separate budget meetings. At the last meeting, it was agreed that no change would be made in the budget; therefore, this change was made without my knowledge and at least two other members of the county delegation knew nothing about it. Therefore, I hope that this amendment is adopted.

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

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Theriault is right about his saying that this was agreed upon in a second meeting of the delegation. I wasn't able to be there at that meeting. I did go to the first meeting that they had. There were only two of us there, Mr. Immonen and I. The second meeting, I wasn't able to go. Therefore, this \$5,000 was deleted from the extension services.

When I found out what had been done at that meeting, I went to the Local and County Government Chairman, James Henderson, and asked him if I could amend it on the floor. He told me there was a better way to do this, to get a majority of the delegation on a petition and get the majority to sign. I did this. I went to the different ones in the delegation, the Representative from Norway, Mr. Twitchell, and the Representative from Mexico, Mr. Brown, the Representative from Bethel, Miss Brown, Representative Wilfong from Stow, Representative Maxwell from Jay, Representative Rollins from Dixfield and the two Senators, Jackson and Snowe. This is 8 out of 11 in the delegation who wanted to put this back into the budget. I

feel that is a majority and I believe that we should defeat the amendment that Representative Theriault has put in.

I would ask for a division.

The SPEAKER pro tem: The Chair recognizes the gentleman from Rumford, Mr. Theriault.

Mr. THERIAULT: Mr. Speaker and Members of the House: Some of these members of the delegation who now want this in the budget did not want it enough to attend the budget meetings.

The budget meeting that Mr. Rollins of Dixfield said there were only two members at was not a delegation budget meeting. This was a meeting for the public. The first meeting on the budget by the delegation was the one where a motion was made to put that amount of money in the budget that was requested. The motion was made but it wasn't even second. That is how much the members of the delegation who were at that meeting thought of it. I can't remember exactly how many were there, but there was more than half of us anyway.

One member, Mr. Rollins, who wanted this additional amount, told us at the last budget meeting that he would get an amendment made up and present it at the appropriate time. He said nothing about getting signatures that would override the will of the majority of members attending the budget meeting. The fact is, I never knew that this could be done. If this is the way that county budgets are to be finalized, what is the sense of having legislators attending meetings to take care of budgets in the first place? In my estimation, it is just a waste of time. Let's have the county administrator go around and get the legislators to sign the budget papers. Look at all the time and traveling it would save us.

While we are at it, why bother to have the legislature meet in Augusta? Why can't we all stay home and the Speaker could have messengers going around the state having us sign bills while we sit home and watch the Speaker and the Clerk do their job on TV? It would be so much easier on us, especially on stormy days like we have been having lately. Don't tell me you couldn't have debates if we did that, because that is just what happens when a number of people sign a paper to get something in the county budget. No one was there to argue that this should not be done. It is pretty hard for an individual to say no when he is alone face to face with a person asking for his signature.

Why do I feel that this sum should not be included in the budget? Last year, these people asked for an additional amount above their required budgetary needs to pay back a sum that they had overspent in prior years. I objected to this, but the majority of the delegation voted to give them that increase and I bowed to the majority's wish and they got their request.

Now, they came back this year and the additional amount that was given to them last year became part of their regular budget request. And this is the amount I object to and this is the part that this amendment would take out of the budget. So I do hope you will accept this amendment.

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

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: This budget in Oxford County, the way I understand it, comes to \$920,974. We are asking for \$5,000 of this amount to be put back into it. I don't think it is unreasonable in a budget of this size to give this to the county extension, the people that I have faith in who are running this extension in the county, some very fine people, and I hope you will defeat the amendment.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I feel this is an item that involves the Oxford delegation, and I would like to propose that we table this for one day and

the Oxford delegation be polled and we would be aware of what their feelings are at this time.

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

Passed to Be Engrossed

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

Was reported by the Committee on Bills in the Second Reading, Read the Second time, passed to be engrossed and sent up for concurrence.

Second Reader Tabled and Assigned

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

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

Mr. Gray of Rockland offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-950) was read by the Clerk.

The SPEAKER pro tem: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Men and Women of the House: L. D. 1943 presently before us is a Resolution proposing an amendment to the Constitution to grant to the Supreme Judicial Court the power to remove judicial officers from office. The amendment which I am offering would reduce judicial officers' terms from seven years to four years.

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

Mr. SPENCER: Mr. Speaker, I would like to pose a parliamentary inquiry as to the germaneness of House Amendment "A".

The SPEAKER pro tem: The Chair would rule that the amendment is not germane, as the L. D. deals with power to remove a judicial officer and the amendment deals with the terms of those officers.

The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, I respectfully disagree with the Chair and would ask for a division.

On motion of Mr. Palmer of Nobleboro, tabled pending request of Mr. Gray of Rockland to appeal the ruling of the Chair and tomorrow assigned.

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

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

(On motion of Ms. Clark of Freeport, tabled pending passage to be engrossed and specially assigned for Wednesday, February 22.)

Amended Bill

Bill "An Act to Expand the Elderly Low Cost Drug Program" (Emergency) (H. P. 1912) (L. D. 1973) (C. "A" H-1028)

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

On motion of Mr. Goodwin of South Berwick, 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-1044) was read by the Clerk.

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

Mr. GOODWIN: Mr. Speaker and Members of the House: The purpose of the original bill was, basically, to expand the eligibility of those

people under the elderly low cost drug program. Since it was reported out of committee, or when we were talking about it in committee, it was kind of understood that the Department of Taxation would be able to handle this additional responsibility when they were dealing with the property tax rent relief program. The problem is, after we reported it out, the people in Taxation had a few problems in terms of whether or not they really had the responsibility. So what this House Amendment does basically is that it takes the responsibility away from the Department of Human Services to actually do the paying of the money or actually sending out the checks or the money, places it in with the Department of Taxation and gives them the authority to do this but doesn't change the property tax rent relief program at all or the elderly low cost drug program. It is basically to give the Department of Taxation the authority to go ahead and issue the checks and everything else that they need.

The SPEAKER pro tem: The Chair recognizes the gentleman from Bath, Ms. Goodwin.

Ms. GOODWIN: Mr. Speaker, Men and Women of the House: At the risk of one Goodwin contradicting another, the bill as it has come out would not provide for the Bureau of Taxation to actually make payments. All it will do is provide for the Bureau of Taxation to mail out the eligibility cards with the tax and rent refund checks if that person is eligible. If the person is not eligible for a tax or rent refund check but does meet the income guidelines, then the Bureau of Taxation would just send the eligibility card. The payment mechanism will stay within the Department of Human Services, as will the kinds of drugs which will be dispensed. So it is just a matter of making it administratively easier in terms of getting the cards to the people as fast as possible, and since the Department of Human Services has not been too crazy about administering this program from the very beginning, I was more than happy to have the Bureau of Taxation take over this responsibility. The payment mechanism does remain with the Department of Human Services.

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 and sent up for concurrence.

Passed to Be Enacted Emergency Measure

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

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. 111 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.

At this point, Speaker Martin returned to the rostrum.

SPEAKER MARTIN: The Chair thanks the gentleman from Stonington, Mr. Greenlaw, for acting as Speaker pro tem.

Thereupon, Mr. Greenlaw of Stonington returned to his seat on the floor and Speaker Martin resumed the Chair.

Passed to Be Enacted

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

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

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

Mr. McMAHON: Mr. Speaker, Ladies and

Gentlemen of the House: It will come as no surprise what I am going to say. I am in favor of increasing the penalty for assaulting a law enforcement officer, make no mistake about that. But as I said several days ago, I feel strongly that if you are going to create this new offense which is greater than assault on an average citizen, then you have to also have a higher standard that should be met. If you vote to enact this bill in its present form without making it requirement that medical documentation be provided, when a citizen is charged with assaulting a law enforcement officer, as provided in this bill, then I submit that you are putting the citizens of this state at a grave disadvantage.

I would request a roll call on enactment.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to correct one statement made by the previous speaker. This is not a new offense. It is currently on the books and has been since we adopted the criminal code.

I would like to state a couple more things. The reason that this study order was placed in and why Legal Affairs studied it over the summer was because of the alarming statistics received in 1975. The State of Maine was the highest in the nation on assaults on police officers. We had 26 assaults per hundred on police officers. The New England average was 19.9 per hundred, with a national average.

Why did this come about? We feel that because we classified the assault on the police officer as a Class D crime, that the Judiciary within this state felt that the legislature believed that it was not a very serious crime. Therefore, we are reporting out a bill, which has two major differences than what is currently on the books. One is that we move the classification from a "D" sentencing to a "C" sentencing, which would allow imprisonment up to five years.

Secondly, we now have in a bill "only bodily injury," a phrase indicated as offensive physical contact has been removed and what we mean by bodily injury is that the officer is substantially injured by an individual.

A couple of side notes or things that came out during the study. There was one area in the state in the first six months of 1976 whereby a 110 cases of assault on police officers were taken to court, were filed. You know that 70 of those cases they cannot even find? They don't know what happened to them? The don't know whether they were dismissed for a higher crime or if they were just forgotten or what happened. They cannot find those 70 lost assaults on police officers.

There was testimony in front of the committee that on two occasions two different individuals were convicted of assault on police officers. They each were fined \$15. They walked out to the clerk and each laid \$30 down. There clerk said, "Your fine is only \$15." He said, "I am going to hit him again when I go back outside." That is how effective our law has been.

I hope you do vote for the bill and pass it overwhelmingly.

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, a couple of points. First, I am not arguing about the merits for the need for this bill. I am only arguing about the lack of a key phrase in it, a phrase which this House inserted in it after some debate last week. I agree with the gentleman that assaults on police officers are a problem and it is appalling to ask a police officer, who is frequently underpaid, to literally risk his life and I am in favor of increasing the penalties. I guess to answer the gentleman's point about the existing law, I view this bill as an expansion and increase in

penalty over the existing law, which is in the code. That is why I consider it a new law.

The gentleman quoted statistics for Maine have been compiled very carefully. This careful compilation may reflect a greater concern about reporting those incidents which are called assaults here in this state. In my view, that just points out all the more a need for a clearly defined standard: that is all I am saying. In the day-to-day district court realities of life, if you do not include this standard in there, which the original bill included, I might add, you are going to put the citizens of this state in a grave disadvantage. I don't want to be a party to that. I hope I am wrong. I hope the good gentleman is right. We have the same goal, we just want to reach it in a slightly different manner.

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

Mr. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: I agree with my seatmate, Mr. McMahon. I believe that the statements made by Mr. Burns were directed to the matter of enforcement and I think if the courts would enforce the present laws, we would have less of a problem. The situation is that in my experience there have been instances where there have been assaults on the citizen by the police officer and if he has any statistics in that area, I would be happy to hear them. A great many of the assaults that occurred upon police officers, there is some provocation. I would think if it is a matter of enforcement, we could take care of this problem and not expand the amount of sentencing, since the judges are already reluctant to impose the present sentences that we have.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I signed the initial Order asking for the study. I feel that I should say a very few words. Last week, I rose in this House and supported Representative McMahon's amendment. At that time, I said the amendment would make a good bill better. We could not carry the amendment through. I now look back at the original bill and tell you this — you may proudly return to your districts after voting for passage of this bill. Politics, after all, is the art of compromise, and I feel this is a good-compromise-and-urge-your-vote.

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

Mr. McHENRY: Mr. Speaker, I would like to pose a question through the Chair.

How many times do we have assault by police officers on our citizens? Do you have statistics on this?

The SPEAKER: The gentleman from Madawaska, Mr. McHenry, has posed a question through the Chair to anyone who may respond if they so desire.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: The study order directed the Legal Affairs Committee to study assaults on police officers. To my knowledge, there was no request in the study order on the reverse. However, I do feel it might be an item for future study. During the process of our deliberations, there was some indication that it should be looked at. I would like very much to be a part of that if it is possible.

I would like to, if I may, respond to one other item that was alluded to by Mr. McMahon, and this is assaults and reporting of them. The definition of assault which is used in all reporting for FBI purposes is any assault that is reported, and those assaults include verbal assaults, not necessarily assault and battery. So, the statistics that we are looking at, and unfortunately have been reported in the papers, are not as severe as they appear because they are any assault. It is not the definition that we have in the criminal code that is being reported but is the

definition laid down by the FBI report.

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

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to respond to the gentleman's question, perhaps expand on that a little bit by way of avoiding asking for permission to speak a third time. The gentleman asked about statistics on assaults on individuals by police officers and I would like to relate to this body a situation, one of several, that happened in my district two years ago which I became involved in, which perhaps will give you an indication of why I feel concerned about this.

I was contacted by a constituent who owns a tow truck service who told me that he had been assaulted by a state police trooper assigned to our town. I know both individuals and it was a difficult situation for me to get involved in but the request, I thought, was legitimate. So, I asked my constituent first for his recounting of the events of the day and basically they are these. My constituent owns a small tow truck service and he was called by the owner of a vehicle which had been involved in a one-car accident and was disabled on the road and asked to be and retrieve that vehicle. He did so and he was at the vehicle with his tow truck hooked up to it when the state trooper and another tow truck came to the vehicle. The allegation was made that the state trooper had a sweetheart agreement with the owner of the second tow truck. I do not know if that is true or not but it was quite a coincidence that the trooper and the second tow truck showed up at the same time.

The situation did not get better. The trooper ordered my constituent, who was there first, who was there in response to the owner's request, to unhook his chain from the disabled vehicle. My constituent argued with him — he is rather a blustery fellow, and so is the trooper, quite an argument ensued. According to my constituent the trooper grabbed him by the shirt, whereupon my constituent responded by grabbing the trooper and one thing led to another. The result is that the trooper arrested my constituent and charged him with resisting arrest, assault and several other charges. That was the story given to me by my constituent. Naturally, I checked the other side. I talked with the trooper and I talked with several witnesses who, fortunately, were present at the site. Every single witness corroborated the story as my constituent told it to me.

In a one-to-one situation like that, my constituent was at a total disadvantage, this being that state trooper. If there had been no witnesses at all, I would not have been able to justify asking the department to investigate the situation, which I did do. Fortunately, for my constituent, there were witnesses. Perhaps because of the investigation or the witnesses, the whole matter ended up being dropped, but in the heat of the moment, when you have a police officer and a citizen, the citizen is at a disadvantage and will be, under the terms of this wording, much more so than he is today.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: I believe that Mr. McMahon has risen this morning with a legitimate concern as to the law that we are, at this point, ready to enact in this body. The concern that he has is in the area of medical documentation. I believe that Mr. McMahon feels, as most of us do here, that there is a need for this legislation. I have not heard a motion for indefinite postponement, so I have to assume that. However, the problem that he has was addressed in this body three or four days ago and the bill was amended to include the language "medically documented." When the bill went to the other body, that amendment was taken off, and I would just like at this time to talk a little bit as to why that amendment was taken off.

Many people who served on the committee, and also maybe some of the Senators, in looking at the language "medically documented" felt that it did, to a certain extent, put an escape in the law which I do not think we as members of this body wanted to do saying that if an officer appears in court and the proof of medical documentation is not there, the case could be dropped. That is a very, very serious consideration in passing this law. I understand that and if I was a trial lawyer, I would like to have the words "medically documented" in the law, because I feel that as a trial lawyer I could possibly postpone, or do the things that they do so well, long enough to get the case dropped. I feel that it is time that we as a legislative body pass a law in this area fully realizing that there are some police officers who abuse their privilege as an officer. In the testimony that I have been able to get from the legal Affairs Committee, I would readily admit that.

I feel that the majority and the vast majority of people in Maine have a tremendous amount of respect for the police officer. However, there is a minority that does not, and these are the people that this legislation is addressing. I have some reservations, I think we all do, but this legislation is needed and I sincerely hope you all vote and pass this unanimously.

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

Mr. CONNOLLY: Mr. Speaker, Members of the House: If I understand what Mr. Biron has said, we don't need now any proof, if this bill becomes law, that a police officer is physically assaulted. All we need is the officer's word. The officer and an individual, the two of them are alone, the officer claims that he was assaulted and the only proof that you have is the officer's word.

I would like to pose a question to Representative Joyce or Representative Burns. The bill, when it first went into committee, required that there be medical documentation that bodily harm was done, and that was taken off by the committee amendment. The question is, what proof is there then now required to prove that bodily assault occurred if you do not have medical documentation? If there isn't any proof other than the officer's word, isn't it true that the police officer who wants to get a particular individual could use this law to go after that person?

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

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question. The allegation must be proved in court to the best ability of the prosecutor to present the information he has available to him, and believe me, if a prosecutor does have medical evidence, he is sure going to put that into the testimony. The accusation, as indicated by Representative McMahon with his constituent, proves out the system that we have in this country and this state. He was able to prove that there was no allegation, it was false, in fact, the civilian had been assaulted. These are questions that are properly before the court and cannot be written into legislation. The rules of evidence govern what will be in there. May I remind you that the preponderance of evidence must be on way or the other.

Mr. McMahon of Kennebunk was granted permission to speak a third time.

Mr. McMAHON: Mr. Speaker and Members of the House: I will also rather respond to the question. The gentleman from Portland asked a question and the gentleman from North Anson responded. My further response is, what you will have is a much greater tendency to plea bargain. That is the long and short of it.

To further answer the gentleman, Mr. Burns, the only reason that my constituent's testimon-

ny was corroborated was because there were witnesses there. I would not have made a judgement on behalf of my constituent in that particular situation that I described to you without witnesses. Why should I? Why should I assume that my constituent is right and the policeman is wrong? I couldn't make that assumption; I wouldn't have. I did call the witnesses who were there. Had there been no witnesses there, my constituent, I venture to say, would have gone to court and would have ended up pleading perhaps guilty to a lesser charge.

Again, to answer Mr. Connolly from Portland, it is a wide open invitation to plea bargaining, the ultimate result of which will be that the citizen comes out the loser. And we can solve it so simply by putting in the need for medical documentation.

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

Mr. DEVOE: Mr. Speaker and Members of the House: I support the bill in its present form. As we indicated last week in debate on this bill, it is my opinion that the words "medically documented" do not add anything to the bill.

There are two steps in a complaint process when a police officer alleges that he has been assaulted by a citizen. First of all, he has to go to the district attorney and satisfy the district attorney as to what he says. Naturally, the district attorney is going to inquire as to the nature and the extent of his injuries and is going to ask what doctor has examined him and he is going to ask to look at the reports. So there is going to be production initially to the district attorney of some medical evidence. The words "medically documented" being included in the statute are not going to change that initial desire by the DA to have some medical documentation.

I submit that the gentleman from Kennebec is mistaken in submitting to this House that the addition of the words "medically documented" is likely to reduce or eliminate plea bargaining. There is a dissatisfaction among a lot of citizens about plea bargaining. But I submit that those two words will not eliminate plea bargaining as long as we have cases in court with the system that we have now. Plea bargaining is going to be a fact of life whether we like it or not, and the insertion of these two words is not going to change it. So I ask you, please support the bill in its present form.

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

Mr. PEAKES: Mr. Speaker and Members of the House: In Mr. Burns' statements before, he mentioned that approximately 75 assaults had been lost somewhere. I would submit that they lost those assaults in plea bargaining, that it is very common for the officer to charge a person with two or three different offenses knowing that they only really want to have him plead guilty to one of them.

Now, what we are talking about here is a pushing and shoving situation. Are we going to send our fathers and our mothers, and their mothers out there who occasionally lose their temper and resist, are we going to send them away for five years without some type of documentation that there has been some bodily injury?

I personally know of a situation in my own town where the individual was being restrained, had been restrained, there were two officers present. He was taken out of a bar in the area and he was completely restrained. The officer had lost his temper and proceeded to beat knobs of his head with his club. He came to me and he asked me what his rights were. I said, you have the right as a citizen, if he went beyond what was necessary to restrain you and you have witnesses, to file an assault. This individual did file and assault and the police chief said it couldn't be done. The judge advised him very clearly that it could be done.

I think there is a real danger here. You are talking about five years of someone's life and you are not requiring any documentation. A great deal of weight is given to the police officer's statements. If there are no witnesses controverting that evidence before the court, the man has no defense.

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

Mr. DEVOE: Mr. Speaker and Members of the House: I submit that some of what the gentleman from Dexter, Mr. Peakes, has said I can agree with. I submit, however, to the members of the House that if we are faced in our local communities with a police officer who is using his position as a police officer to mistreat citizens, the place to handle that problem is on the local level by bringing it to the attention of the police chief and the town fathers or the city council and letting them do something about it. That is where the problem originated, when the man was hired, and if it turns out that a mistake was made in the hiring of a man and placing him in a position to mistreat citizens, then it should also be handled on the local level.

Passage of this legislation with the words "medically documented" would not eliminate that problem. The problem lies with the town fathers and the police chief and that is the place to take care of it, right on the local level.

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

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: The Legal Affairs Committee didn't go into this thing blindfolded. We talked with several people and the result of this bill came right out of the Attorney General's Office. The way it was worded at first, the Attorney General seemed not to like it. I forgot the name of the person who came down from that office, but that is how the wording of this bill came about.

Who are we dealing with here? Just the ordinary citizen, you and I? Once in a great while, maybe, but we are dealing here mostly with hoodlums, people who repeatedly go around beating other people, whether they be police officers or not. This is what we are trying to correct, and I don't believe that the Attorney General's Office would let us come out with a piece of legislation that was not proper, that would let anybody assault any of our citizens. That is not the intent.

We are trying to upgrade from day to day, week to week, month to month, our police officers. We are now sending them to school. If they don't learn anything in these schools, let's close the academy; we don't need it. They are going there for public relations, how to handle certain cases and so forth, and it was said by Mr. Devoe must a few minutes ago, if we have a problem with a police officer in our own locality, I think that is the way it should be handled. It is up to our police commission or through the police chief, and all the evidence we got in front of the committee, in very few rare cases, before someone is arrested on an assault charge on a police officer, he has to report to his captain of his precinct and they go through the whole procedure and so forth, and just pushing as individual, these cases are not brought in as assault. We feel that we must protect the man with the badge, the man with the uniform. I think this is a start. We don't say that this bill is perfect, but I think it is something to start it off with, and if we have had cases in the past that were not just so, I think they will be corrected in the future. I urge the passage of this bill.

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

Mr. CONNOLLY: Mr. Speaker and Members of the House: I really didn't want to get into this issue from this particular point of view that I am going to speak to now, but I really feel that I have to. I originally wanted to see this bill defeated and it was just the sense, from talking with members of the committee,

Representative Joyce and others, whose opinions I respect, that I realized that that was not going to be possible, but at least the best thing we could come out with was the medical documentation that was in the original bill.

In reference to the remarks that Representative Cote and others have made, I agree. I don't think that anybody, regardless of who they are, should be allowed to take a club or a fist or a brick or an iron bar or anything and attack and assault a police officer, particularly if they haven't been provoked. But there are an element of people who wear badges and carry guns as state policemen, as county sheriffs, as county deputies and as municipal police officers who are just as much hoodlums as the kind of people that Mr. Cote refers to.

I was one of those people back during the late sixties and early seventies who was considered an activist and involved in a lot of things, marches against the war, involved in civil rights marches, things of that nature, both on the national level and then in Portland. When I was arrested several times, most of the time there were no incidents, and one time in particular, and this occurred in the City of Portland, I was arrested, and the reason that I was arrested, we were in a march and the march was very peaceable until a point, but at one point two or three police officers jumped on a girl who they said was causing a disturbance. I don't know whether she was or not, but they jumped the girl, and my reaction was to jump on top of the cop, the back of the cop, to pull him off the girl, which I did. As soon as that happened, three or four police officers grabbed me, dragged me inside of a van, took me to the police station, and on the way to the cell, dragged me down stairs and began to kick me as I was being taken into the cell. A lot of people here know me, and I am not a very violent kind of a person. My reaction, after they tool the handcuffs off me and were about to put me into the cell, was to take a swing at the police officer who was there because I was so angry and frustrated at the way I had been treated. I didn't hit the police officer, and I was thrown into the cell.

Under this particular piece of legislation, I felt I was provoked and I felt I had a right to self-defense, I had taken a swing at that police officer and I had hit him, cut his lip, busted his nose, bruised him, whatever, he could charge that I assaulted a police officer and I would be facing, under this legislation, with or without the medical documentation, a possible five years in jail for what I saw as a right to self-defense, having been provoked.

I really would like to move for the indefinite postponement of the bill, but I understand that it won't be passed. I would at least hope that we could get the medical documentation into the bill.

Mr. Speaker, I would like to pose parliamentary question. I understand that the pending motion is passage to be enacted. If that motion is defeated, can the bill then be backed up to a point where "medically documented" can be inserted into the bill again? Is that possible even though we did it once and it was defeated in the other body?

The SPEAKER: The Chair would answer in the affirmative, under suspension of the rules.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I just want to comment on one thing said by the previous speaker. Had he struck the police officer in the jail or had he touched him in any way, he currently, under the criminal code, could have been sentenced to five years. We are not touching that one bit. That is when you are in custody, and this L. D. does not address itself to that area at all.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I think some very in-

interesting points were raised this morning both by Mr. Connolly, by Mr. Devoe and Mr. Cote. I, personally, haven't followed this bill with any great interest simply because it came out of the committee in the fashion it did and the study process that it had. But I am interested to the point this morning, and I think this House should be, that the bill should be recommitted back to that committee. I think there were some very serious arguments raised here this morning from both sides.

I don't want to see the bill killed; however, I think the committee, in its good judgment, based on some of the arguments that were presented here this morning, might take a different viewpoint in terms of looking at it.

Mr. Speaker, I move that this Bill be recommitted to the Committee on Legal Affairs.

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, moves that this bill be recommitted to the Committee on Legal Affairs.

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

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: I respect Mr. Kelleher for his motion but I don't think the committee, at this date, would get the bill back, that we could do any better than we have done now. I will leave it to your wisdom, whether you feel that you want a bill—someone is going to protect the police officer and the citizen or whether you don't.

If we go back to committee and we put back in there, for instance, "medically documented," then what you are doing is opening up the door, I call it the escape hatch, for the trial lawyers. If this is what you want, let them get away with it, nobody will ever get convicted on that because it is almost impossible because there are many bodily injuries that are not visible.

We have had three or four meetings on this, we have had about 15 or 20 people who testified. We had one who came and objected to the bill—the gentleman from Old Orchard Beach—and he is the only one who objected to the bill. Everyone else was for the bill. We worked hard, we worked with the Attorney General. We have got two legal aides on the committee, and that is what we came up with at the suggestion of the Attorney General's Office. Even though you send the bill back to us, we couldn't do any better, I don't believe.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to speak against the motion of the gentleman from Bangor, Mr. Kelleher. Let me assure each member of this House that the members of the Legal Affairs Committee did take time and listen to arguments, and the arguments that have been brought forth before this body today were heard in committee. I, myself, understand that there are police officers who might abuse their privilege. However, I do personally feel that we have a court system here in the State of Maine and the proof of injury, heresay, would not necessarily constitute a five-year prison term. I am sure that a defense attorney, a good defense attorney, and I understand that 50 percent of them aren't, could bring up substantial proof and protect the citizen against a charge which could incarcerate that person for five years.

The words "medically documented" does not need to be in this legislation. As a prosecutor, I am sure that if a police officer had a broken arm or leg or any other major injury, I would make sure that when I went into a court of law that I would have that documented. We don't need to have that in the legislation. We have a court system and we have attorneys for the defense as well as for the prosecution, so that is the decision we have to make here today. I would hope you would vote against the motion, keeping in mind that the deliberation that has

taken place here this morning has been heard by the committee and the decision has been made.

The SPEAKER: The pending question is on the motion of the gentleman from Bangor, Mr. Kelleher, that this Bill be recommitted to the Committee on Legal Affairs. The Chair will order a vote. All those in favor of this Bill being recommitted will vote yes; those opposed will vote no.

A vote of the House was taken.
31 having voted in the affirmative and 60 having voted in the negative, the motion did not prevail.

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

Mr. PEAKES: Mr. Speaker, Ladies and Gentlemen of the House: I am not opposed to this bill, only that it include some protections for the citizens. I think that Mr. Cote's remarks that this only affects hoodlums is totally incorrect. The hoodlums know how to act when they are in police custody, when they are approached by a police officer. It is our good citizens that go out and have a little bit too much to drink or they have an argument with their wife or husband or some family matter, they start disputing an officer shoving them around or making them move a little faster, and these are the type of people who more violently object to the treatment they get, just as Mr. Connolly said. Many of these individuals that would come to me were so-called hoodlums generally know the ins and outs of the criminal law better than I do.

I am not a criminal attorney and I practice very little in the criminal courts, but I have had real evidence of some problems. Last night, I went to a high school basketball game, and just as I came in the door, there were three of the players rolling on the floor fighting with the opposite side and there were a couple of reserve officers who watch these events and control them rolling around with a couple of the players. Now, I suggest to you that under this law, these players might be charged with assault and maybe spend five years, if they are older players.

In any event, I would like to put this into a posture where we can perhaps have a committee of conference and look into this, because I think it is a very serious area where the citizens need the protection.

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

Mr. GREENLAW: Mr. Speaker, I move the rules be suspended for the purpose of reconsideration.

The SPEAKER: the Gentleman from Stonington, Mr. Greenlaw, moves that the rules be suspended for the purpose of reconsideration. Is there objection? The Chair hears objection and the Chair will order a vote. All those in favor of the rules being suspended will vote yes; all those opposed will vote no.

A vote of the House was taken.
Whereupon, Mr. Peakes of Dexter 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 Stonington, Mr. Greenlaw, that the rules be suspended for the purpose of reconsideration. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEAS — Ault, Bachrach, Benoit, Berry, Berube, Blodgett, Boudreau, A.; Brennerman, Brown, K. C.; Bunker, Bustin, Carey, Carroll, Carter, D.; Chonko, Clark, Connolly, Cox, Cunningham, Curran, Davies, Dexter, Diamond,

Dow, Elias, Fenlason, Fowle, Gillis, Goodwin, H.; Goodwin, K.; Gray, Green, Greenlaw, Hall, Henderson, Higgins, Howe, Huber, Hughes, Jacques, Jensen, Kane, Kany, Kelleher, Kilcoyne, Locke, Mackel, Masterton, McBairty, McHenry, McMahon, Mitchell, Nadeau, Najarian, Nelson, M.; Peakes, Pearson, Peltier, Perkins, Peterson, Plourde, Post, Prescott, Rollins, Silsby, Smith, Spencer, Talbot, Tarbell, Tarr, Tierney, Tozier, Trafton, Twitchell, Valentine, Whittemore, Wood, Wyman, The Speaker

NAYS — Aloupis, Beaulieu, Bennett, Biron, Birt, Boudreau, P.; Brown, K. L.; Burns, Carrier, Carter, F.; Conners, Cote, Devoe, Drinkwater, Dudley, Durgin, Flanagan, Garsoe, Gould, Hickey, Hunter, Hutchings, Immonen, Jackson, Jalbert, Joyce, Laffin, LaPlante, Lewis, Littlefield, Lizotte, MacEachern, Mahany, Martin, A.; Masterman, McPherson, Moody, Morton, Nelson, N.; Norris, Palmer, Paul, Quinn, Raymond, Rideout, Sewall, Shute, Sprowl, Stover, Strout, Stubbs, Teague, Theriault, Truman, Violette

ABSENT — Austin, Bagley, Churchill, Du Tremble, Gill, Hobbs, Kerry, Lougee, Lunt, Lynch, Marshall, Maxwell, McKean, Mills, Torrey, Tyndale, Wilfong
Yes, 79; No, 55; Absent, 17.

The SPEAKER: Seventy-nine having voted in the affirmative and fifty-five in the negative, with seventeen being absent, and seventy-nine being less than two thirds, the motion did not prevail.

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

Mr. HOWE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to draw your attention to Section 208 in Title 17-A of the Maine Criminal Code which is entitled "Aggravated Assault." (1) A person is guilty of aggravated assault if he intentionally, knowingly or recklessly cause (A) serious bodily injury to another; (B) bodily injury to another with the use of a dangerous weapon; or (C) bodily injury to another under circumstances manifesting extreme indifference to the value of human life. Such circumstances include but are not limited to the number, location or nature of the injuries or the manner or method inflicted.

Subparagraph 2, aggravated assault is a Class B crime, which is a higher class of crime than we are considering here today.

Mr. Speaker, I would like to pose a question to perhaps the Chairman of the Legal Affairs Committee or anyone else who would care to answer. Why does not the Legal Affairs Committee consider Section 208 of the Criminal Code to adequately deal with the problem of serious assault, including bodily injury on a police officer?

The SPEAKER: The gentleman from South Portland, Mr. Howe, has posed a question to any member of the Legal Affairs Committee who may care to answer.

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

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question, this is exactly what we did do. The classification of assault and battery aggravated is Class B. The classification of assault or assault on an officer is currently Class D. So what we have done or what we hoped to do is to move the assault on an officer to a Class C crime, then the prosecuting attorney would have the opportunity of going three different ways on the assault of a police officer. Number one, it could be simple assault; number two, assault on a police officer; number three, aggravated assault. I will submit to you that in the majority of the cases that are going to be tried in the state, they will be either simple assault or aggravated assault, because the prosecuting attorneys do not want to get into another area of proof, and when you have to prove that an individual is a police officer, this is another item, and this is the reason why the

medical documentation was turned down, because he would then be required to prove it in court by medical documentation. He is going to use the medical documentation anyway. Does that answer the question posed?

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

Mr. HOWE: Mr. Speaker and Members of the House: I think that does adequately answer my question as to what the committee's position was on this. It seems to me that the gentleman from Anson is suggesting that the prosecutors may not use this provision because if the new provision requiring some other form of proof than what they are used to, and in fact, if that is the case, I am not sure we need to put on the books something that they are not likely to use. I am just concerned because we are not limiting the bodily injury in this new proposal to serious bodily injury, that we aren't creating something that makes somebody subject to a pretty stiff penalty for causing an injury which might be rather insignificant. It seems to me that the route we have now available to us, either simple assault or aggravated assault, is adequate to deal with the problem.

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

Mr. BIRON: Mr. Speaker, Ladies and Gentlemen of the House: In response to the good gentleman from South Portland, Mr. Howe, the language which is going to be added to the statutes simply makes the assault on a police officer a more serious matter. However, the reason why I feel "medically documented" is not needed in the language of the present legislation is that by your own admission you said that we have language in the statutes now in reference to aggravated assault. I think that language should remain and should be used. However, when the person is brought into a court of law, I am sure and I am positive that that person would not be charged with a Class C crime for a minor injury.

If we put the words "medically documented" into the law and the person is brought to court and they have a minor injury that is medically documented, let's say I have a cut on my hand and I had to have treatment for it, that, obviously, is medically documented, does that mean we will prosecute that person under a Class C crime? I hope not. If we put that language in, they could, and that is the concern that I have. Those who have some problems with this legislation, I think are looking at it in a very positive way and they are saying, okay, these under these circumstances. But let's look at it the other way, ladies and gentlemen. What I am trying to do is to give as much ammunition as possible to those who prosecute those people who assault police officers without — and believe me when I say that — without taking away any of the rights, privileges, of the citizens of this state.

Again, I am not totally satisfied with the language that we have, but I did personally work on this legislation for one year and I have heard all the arguments and I know that several of you this morning, on the roll call we just took, indicated that you wanted to maybe back the bill up and put the same amendment on that we had before. The concern that I have is that if we do that, if we don't pass this legislation, it will die, the legislation will die between the two bodies, and I think it is time that we passed some legislation in this state and I am convinced in my mind that people will not be charged with a Class C crime for a minor assault on police officers. If that is the concern that you have, I feel confident enough to say that that will happen. However, those who do commit assault on police officers, knowing today that it will only be a Class D crime, in the plea bargaining that takes place in the courts, it will be dropped, these are the people I think we are trying to address with this legislation. If you make it a Class C crime, it is not going to be one that is going to be easily plea bargained;

yet, if you leave it as a Class D crime, it will be.

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

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I have listened intently to this debate because I think this is a very serious situation and I guess I tend to agree with the Legal Affairs Committee. I look back to my own youth, before things were not as complicated as they are today, and I know when I was a young man, if you thought of assaulting or resisting a police officer, you usually did so at your own peril. There was a kind of unwritten law that if you decided to assault someone, you got treated unkind, but as the courts have changed certainly by the number and the evidence that has been brought forth this morning, the number of assaults as they have increased indicate that probably the law enforcement officers are at a disadvantage.

I am not sure this is the proper answer, but I am going to vote for the passage of this and I hope that there can be some way that this can be strictly monitored. I would hope that there would be a further study into the number of assaults of police officers on citizens and brought back, perhaps, to the next regular session of the legislature.

I believe we have discussed this and I think we do have a problem and I feel that we can address it in this manner.

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

Mr. PEAKES: Mr. Speaker and Members of the House: I thank Mr. Norris for stating there is a problem. I apologize to the members of the House. I was not aware of this problem until I came in this morning. What we have, according to Mr. Burns' statements, is multiple choice prosecution. We have three alternatives that we can proceed on. I would suggest, without a committee of conference, that we, as responsible legislators, select a fourth alternative which is none of the above.

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

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

The SPEAKER: The pending question is on passage to be enacted of L. D. 2032, An Act to Amend the Crime of Assault on a Law Enforcement Officer. All those in favor of this bill being passed to be enacted will vote yes; those opposed will vote no.

ROLL CALL

YEAS — Aloupis, Ault, Beaulieu, Bennett, Benoit, Berube, Biron, Birt, Blodgett, Boudreau, A.; Boudreau, P.; Brown, K. L.; Brown, K. C.; Bunker, Burns, Carey, Carrier, Carter, D.; Carter, F.; Churchill, Clark, Conners, Cote, Cox, Cunningham, Devos, Diamond, Drinkwater, Dudley, Durgin, Elias, Fenlason, Flanagan, Fowle, Garsoe, Goodwin, K.; Gould, Gray, Green, Hall, Hickey, Higgins, Huber, Hunter, Hutchings, Immonen, Jackson, Jacques, Jalbert, Joyce, Kerry, Kilcoyne, Laffin, LaPlante, Lewis, Littlefield, Lizotte, Locke, Lynch, MacEachern, Mahany, Martin, A.; Masterman, Masterton, McPherson, Morton, Nelson, M.; Nelson, N.; Norris, Palmer, Paul, Pearson, Perkins, Plourde, Post, Prescott, Quinn, Raymond, Rideout, Sewall, Shute, Sprowl, Stover, Strout, Stubbs, Tarr, Teague, Theriault, Tierney, Trafton, Truman, Twitchell, Violette, Whittemore, Wymann, The Speaker

NAYS — Bachrach, Berry, Brenerman, Carroll, Connolly, Curran, Davies, Dexter, Dow, Goodwin, H.; Greenlaw, Henderson, Howe, Hughes, Jensen, Kane, Kany, Kelleher, McBrearity, McHenry, McMahon, Mitchell,

Moody, Nadeau, Najarian, Peakes, Peterson, Rollins, Silsby, Smith, Spencer, Talbot, Tarbell, Tozier, Valentine, Wood

ABSENT — Austin, Bagley, Bustin, Chonko, D'utremble, Gill, Gillis, Hobbins, Lougee, Lunt, Mackel, Marshall, Maxwell, McKean, Mills, Peltier, Torrey, Tyndale, Wilfong

Yes, 96; No, 36; Absent, 19.

The SPEAKER: Ninety-six having voted in the affirmative and thirty-six in the negative, with nineteen being absent, the motion does prevail.

Signed by the Speaker and sent to the Senate.

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

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

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

Mr. STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I call your attention today to Item 9-3. I realize the amount of money is only \$30,000 and I am not concerned with that. My only concern in this L. D. is the committee amendment where it says, "Allocation of funds for the construction of a state highway in the Indian Reservation of Indian Island." My concern here is that I don't think at this time we should be constructing an additional piece of state highway. I think what we are doing here, we are setting up a new piece of road that means we are going to have to continue to maintain in the future. That is my only concern with this amendment.

Mr. Speaker, I would ask for a division on enactment.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: This is an amendment put on by the Transportation Committee which would provide for an access road to phase two housing projects on the Penobscot Reservation. Mr. Strout is correct in that it would be a state highway. All of the roads on the Penobscot Reservation are state highways. It is not inconsistent with anything else. This is the second road that has been built for the housing projects. The previous one was enacted in the 107th. That is a state highway. This is only 710 feet, but it is built to state highway specifications per the requirements of that department.

The SPEAKER: A vote has been requested. The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

92 having voted in the affirmative and 13 having voted in the negative, the motion did prevail.

Signed by the Speaker and sent to the Senate.

"An Act Relating to the Inspection of Dams" (H. P. 2007) (L. D. 2084) (S. "A" S-463 to C. "A" H-1015)

"An Act to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies" (H. P. 2051) (L. D. 2111) (H. "A" H-995; H. "B" H-1002; H. "D" H-1006; H. "E" H-1016)

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.

Orders of the Day

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

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

Tabled — February 15, 1978 by Mr. Blodgett

of Waldoboro.

Pending — Adoption of Committee Amendment "A" (H-1032)

Mr. Blodgett of Waldoboro offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-1053) was read by the Clerk and adopted.

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

Mr. SILSBY: Mr. Speaker and Members of the House: I had this item set aside yesterday because I had some concerns with Committee Amendment "A" and what I felt were some confusing aspects. Members of the committee have been very helpful and I have also talked with the MMA lobbyist who has resolved several of the problems which I had with this piece of legislation. I would like to point out to the members of the House that this committee amendment extends the authority of planning boards to go into land development, an area which by statute they can get into. The original subdivision statute applied to development as well as subdivisions, but I think you are all well aware that subdivisions are commonly felt to include a division of a lot of land in a three or more parcels within a five-year period. This is what planning boards are normally concerned with and interested in.

This committee amendment, as you can see on the face of the document, will extend the reviewing authority's area into — and I will read some of these — all recreational, residential, commercial and industrial development, including but not limited to apartments, condominiums, mobile home parks, nursing and boarding homes, hospitals, hotels, motels, stores, shopping centers and facilities, service facilities, factories and recreation facilities. So included in there, of course, is your residence, for example. If this legislation is approved at the local level, the planning board can require you to come in and show what you are doing and really get into what I consider your own personal affairs.

I have no objection, basically, to municipal control through municipal ordinance and I think this is where it should be done. I don't care for an extension of rules and regulations down to non-elected officials. My point is that I do not mind regulation by municipal officials who are elected by the people, but I don't like legislation that allows non-elected officials, such as planning board members, to impose their will and subject people into the development of their own lot of land. Here we are not talking about cutting up a piece of land by division of the land area itself. We are talking about a piece of land on which you might want to put a residence or any other item. I feel that municipalities, for the most part, control this by their own zoning ordinances, which have minimum lot size requirements set back requirements, sideline requirements and things of that nature, and if the people in your areas are anything like my area, they feel that they are being already over regulated on this land business.

I would ask for a division on the enactment of this bill.

The SPEAKER: The Chair recognizes the gentleman from Waldoboro, Mr. Blodgett.

Mr. BLODGETT: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry that certain members of this body are confused over this bill but it is easy to see in the subdivision law has been very confusing from its inception, going back to 1971. This bill will help to clarify the existing problems which have made it so lawyers get a lot of money because of all this confusion. Hopefully, if we adopt this change, we can get the people out of some of the problems.

To start with, the present subdivision law is not too clear as the result of opinions by various attorneys general and so forth over the years as to exactly what a subdivision does do,

or what it is, I should say.

This bill would state very clearly that a subdivision is a division of tract or parcel of land into three or more lots within any five-year period. That is what it is talking about, and it does not include and it would not allow people to start talking about apartment houses or some of these other things which some people might like to do. It just clarifies the present law. It also would clarify such things as the question of cemeteries. Should cemeteries be used as subdivisions? That was not the intent, the members of the committee felt, so this would specifically exclude cemeteries from the subdivision law, which I think would be fairly reasonable.

The next part has to do with what the subdivision law is, we explained, and finally, the most important thing here, with the interest in local control, we say that the local people can make a decision, they may review various projects but they cannot go any less than the three units of land that we are discussing, and that would simply clarify the present law.

I would certainly hope that you would want to do this for the people back home and try to get this thing straightened out right now.

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

Mr. DEVOE: Mr. Speaker, I would like to pose a question through the Chair to anyone who may care to answer. If you would take Committee Amendment "A", which is H-1032, and take a look at it, Section 2, a land use development. In addition to the foregoing, the municipal reviewing authority "may" review. This is all new language. I would like to pose the question, what happens if the municipal reviewing authority decides not to review it? If you have discretionary power, what good is the statute as written anyway?

The SPEAKER: The gentleman from Orono, Mr. Devoe, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentleman from Waldoboro, Mr. Blodgett.

Mr. BLODGETT: Mr. Speaker, Ladies and Gentlemen of the House: In response to this, we are trying to get back to this idea of letting the people in a municipality decide for themselves whether or not they want to have this reviewing power.

We can take two approaches here. One is to say that they cannot do it. The other is that they shall do it. People on the committee felt that the needs in the various communities did vary, depending upon which section of the state you live in. For example, in Orono, the municipal officers or the town may decide that they would like to review all systems but, on the other hand, in Sangerville they decide that they do not need to worry about any large shopping center going in there or Evergreen Valley complex, so they don't need to bother with this reviewing, so the town is free, they may review their various projects if they wish, but they shall not be mandated that they must do it.

Again, we are just emphasizing the idea of local control here that a community "may" do it but we are not forcing them to. We are not ramming any state law down their throat that they must do this at all.

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

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: I hate to say that you have heard from two attorneys on this case and now you are going to hear from a third, but I am speaking purely to relate to you a very difficult problem that I am having in one of my communities that I represent, the town of Durham. It is a very small town and a developer came in with a proposed mobile home park of such size and dimension, it would have dramatic affect on the entire community. It would need the delivery of services, adding a wing on the local school, and issue of great im-

portance to the municipality.

However, because under our local planning board and the recent Supreme Court decision, we found that our local planning board did not even have jurisdiction to sit down and discuss the element of this mobile home park, where it was going to go, how many homes, where the roads were going to go, or whether the soil was suitable to put in a mobile home park of this size. The planning board did not have any jurisdiction under the subdivision ordinance to even discuss this very, very important issue to my town. One mobile home park could increase the size of our town 20 percent. This a dramatic and important issue; yet, our local planning board had no jurisdiction to discuss it under the subdivision ordinance.

This bill does not affect my town because, naturally, this amendment will grandfather in this particular case which is in litigation and is going to cost the town a significant amount of money battling this thing in the years ahead. Had we had a planning board which was already on board, and been able to address this problem under our current subdivision ordinance, we could have worked it out and saved ourselves a lot of problems. That is what this is about, to allow your community to have some local control over the very significant development which goes on.

We know that certain things are already covered and why shouldn't we be able to cover a mobile home park that wants to come in or a huge shopping center? That is why we have local planning boards so, for heaven's sake, ladies and gentlemen, let's pass on this bill.

First of all, I would like to clarify something, the remarks of Mr. Silsby were not addressed in House Amendment "A", they were addressed to the bill itself so I hope we will not have any problems with adopting the House Amendment and then let the discussion proceed on the bill itself.

The SPEAKER: The Chair recognizes the gentlewoman from Cape Elizabeth, Mrs. Masterton.

Mrs. MASTERTON: Mr. Speaker, Ladies and Gentlemen of the House: I just want to make it quite clear that we are not extending any powers in this bill.

I would like to give you just a brief history of why I got interested in this problem, in the subdivision definition. The current language was passed in 1971. As a matter of fact, practically every legislature in the last decade has had a bout of the subdivision law. It has been an extremely difficult legislation every time.

The reason I got involved with this bill is that after new language was put in 1971 which added development, building or otherwise to the old definition of by lots, three or more lots, there was a considerable amount of confusion in the municipalities as to what this meant — development. The Maine Municipal Association got dozens and dozens of calls and inquiries, so they went to the Attorney General's Office and the Attorney General's Office issued an informal interpretation of subdivisions by development, and from that point on, the municipalities were apprised and advised that they could review such things as apartments, shopping centers, malls, campgrounds and numerous other types of development, where the subdividing was not by land but by units of space allocated for certain uses, which have every bit as much impact on a community as the subdivision by lot.

So, since 1972, when that attorney general's opinion came down, it was not an opinion, it was a memorandum of interpretation, the various municipalities in the state have been using the state subdivision law to review developments in their communities.

Not every municipality has a subdivision ordinance. We have one in our town. I served on our planning board. We reviewed subdivisions by lot and development subdivisions within the state law and our local subdivision ordinance

side by side and we filled all the requirements of both. There are about 200 municipalities in this state that do not have local subdivision ordinances and they have been relying on the state subdivision law for reviewing developments.

Last June, in the waning days of the legislature, a case came down from the law court on a local subdivision situation. This opinion struck down campgrounds as one of the reviewable items under the state subdivision law. That fact, and from other things that the court said in that very important opinion, led to great fears in municipalities that one by one all of these other types of developments were going to be struck down in separate court cases which developers might take to court. That is why it becomes imperative to clarify this definition of subdivision by development.

I came in with L. D. 2006, the committee had problems with it, there were loopholes and the committee worked very hard hammering out, literally hammering out this bill. There were a lot of interests buzzing around — developers, real estate people and lawyers. Every lawyer that looked at this bill wanted something different out of it. But I want to emphasize today that we are not doing this for the lawyers, we are doing this for 197 communities in the State of Maine that do not have local subdivision ordinances and rely upon this very important law to control growth, to review development in their communities. If you want to allow them to continue to do this, then we will pass this bill right over to the Senate.

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

Mr. MCMAHON: Mr. Speaker, I would like to pose a question. I understand that we are discussing whether to advise House Amendment "A" that Committee Amendment "A" is already adopted?

The SPEAKER: The Chair would answer in the negative. The pending question before this body is adoption of Committee Amendment "A" as amended by House Amendment "A".

Mr. MCMAHON: Mr. Speaker, I would like to ask the second question, since it does pertain to Committee Amendment "A", of the previous speaker.

As I read Committee Amendment "A" and the bill, Committee Amendment "A" really adds to the bill and my question is, is the wording of the bill in Section 1, except for the business about cemeteries, does that remain intact? If the answer is yes, might we assume that in this situation where a person buys a building, perhaps an old house, and wishes to divide that into three or more offices, that they would need planning board approval?

The SPEAKER: The gentleman from Kennebunk, Mr. McMahon, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentlewoman from Cape Elizabeth, Mrs. Masterton.

Mrs. MASTERTON: Mr. Speaker and Members of the House: That question has arisen previously and the feeling is that it would not apply to an existing building. If you want it to, you can put the word existing in.

The SPEAKER: The Chair recognizes the gentlewoman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker and Members of the House: I think the explanation given to you by Representative Masterton is very helpful.

I would like to go back briefly to the question that Mr. Devoe raised earlier, if I may, concerning exactly how we could condone doing less, perhaps, than we are under current law. I would point out that the definition of land subdivision which exists now would remain. In other words, you would have a subdivision as the division of a tract or parcel of land with three or more lots within any five-year period, so we have a basic minimum there. I think that is the concern that the state has. The state has an interest in what happens to land and primar-

ily to water, I think. We are saying that anything that involves the division of land into three or more parcels within a five-year period would have a significant effect on the water quality and that is a state interest.

What the committee has essentially done is, I believe, three things. First, we have clarified what a municipality may review under subdivision law. Secondly, we have provided that a municipality "may", by ordinance, not under subdivision, with all of its attendant processes of adoption and public hearing, etc., review development does not come under the subdivision law by definition and including the definition that exists today. Finally, we have said that a subdivision as defined in current law, cannot be more strictly defined. We have, in fact, told the communities that if they want to more strictly control development in their communities, they will have to do so by ordinance and all its attendant public procedures. I feel that this is a compromise that serves the best interest of the municipalities and of the state. I hope that you will adopt Committee Amendment "A".

The SPEAKER: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, Ladies and Gentlemen of the House: This has been one of the toughest bills I have ever seen. It did not make a heck of a lot of sense when it came before us but it made less sense to the people back home. First, it is a heck of a hard job to get anyone to serve on the planning board. About everyone that does serve on it are either bakers, farmers or mill workers and they have very little time to put into studying what goes on in the town. Then when you leave them with a law that is not defined anymore than it was before, you do not give them much chance to get ahead to work for anything beneficial in the area. What we have tried to do is clarify a little section in there so we know if we make a statement in our own way and without any lawyers getting into the act or anything, that we have something we can make a definite statement on. I think that is what we have tried to do in this bill so far.

The SPEAKER: The Chair recognizes the gentleman from Waldoboro, Mr. Blodgett.

Mr. BLODGETT: Mr. Speaker, Ladies and Gentlemen of the House: In response to part of Mr. McMahon's question, certain businesses, such as trailer parks, need to come up for periodic licensing and in this licensing procedure, that amendment is put on there so these people would not, if they remained exactly the same as when they were originally okayed they would not have to come up for review with that. The only difference would be, if they wanted to expand their business, such as trailer parks, then they would have to through the reviewing process because the business had been changed or they wished to change the business, and that is the time and the only time that they would review, when they were going to change it or expand it or enlarge it.

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

Mr. HICKEY: Mr. Speaker, I would like to pose a question through the Chair to Representative Blodgett. I find Section 2 a little ambiguous. Are these incorporated things in Section 2 proposed or existing?

The SPEAKER: The gentleman from Augusta, Mr. Hickey, has posed a question through the Chair to the gentleman from Waldoboro, Mr. Blodgett, who may answer if he so desires.

The Chair recognizes the gentleman from Waldoboro, Mr. Blodgett.

Mr. BLODGETT: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question, right at the present time, the whole law is ambiguous. We have this memorandum from the Attorney General's Office which would imply that they could, and yet there have been court decisions which question this, so this is why we are trying to clarify it and give the municipalities "they may, if they wish, review the following" and give this little laun-

dry list. So nothing should be left up in the air as far as the courts are concerned as to the intent of the legislature.

The SPEAKER: The Chair recognizes the gentleman from West Bath, Mr. Stover.

Mr. STOVER: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to reaffirm that the protection this bill intends to give is very important to the small towns such as I represent. Fast growth in a town such as ours could be catastrophic. As Mr. Tierney pointed out, we just don't have the facilities to take care of a large influx of any type of population, especially if you are in a town that is adjacent to a fast growing area. So this type of bill is something that we definitely do need and I urge your support of it.

The SPEAKER: A vote has been requested. The pending question is on the adoption of Committee Amendment "A" as amended by House Amendment "A" thereto. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

72 having voted in the affirmative and 9 having voted in the negative, Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

The Bill was assigned for second reading tomorrow.

(Off Record Remarks)

On motion of Mr. Gould of Old Town,
Adjourned until twelve o'clock noon tomorrow.