

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

KJ PRINTING
AUGUSTA, MAINE

SENATE

Wednesday, April 6, 1977

Senate called to order by the President.

Prayer by the Reverend Father James Khoury of St. Joseph's Maronite Church in Waterville.

Rev. KHOURY: O Mighty Father, accept our efforts here as you accepted the oblations, vows, first fruits and ties as a sign of our love for you in your Holy Name. May our work be as pleasing as the accepted sacrifice of Abraham on the mountain top, and the sweet smelling perfume of your Priest, Aaron. Protect and shower these efforts put forth with every spiritual blessing, and make all here present worthy of the sacred trust placed before us.

Keep away from earth and all of its inhabitants the spirits of wrath; eliminate dangers and disturbances; protect us from war, captivity, famine and illness; have compassion on us, and grant forgiveness to sinners; bread to the poor, health to the sick, hope to the broken hearted, consolation to the depressed, companionship to travellers, and rest to our dead; guide the civic and religious leaders of this State, country and throughout the World, and remove from it hatred, indifference, trials and afflictions, so that all men may live in peace and harmony; forgive the shortcomings of this community and all mankind, that through our efforts we might glorify and praise you all the days of our life. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

Papers from the House
Non-concurrent Matter

Joint Resolution, Re: Capitol Planning Commission Report. (S. P. 62)

In the Senate March 30, 1977, Read and Adopted.

Comes from the House, Recommended to the Committee on State Government, in non-concurrence.

On Motion of Mr. Collins of Aroostook, The Senate voted to recede and concur.

Non-concurrent Matter

Bill, "An Act to Provide Accessible Polling Places for the Physically Handicapped and the Elderly." (H. P. 68) (L. D. 98)

In the House, March 22, 1977, Passed to be Enacted.

In the Senate, March 24, 1977, Passed to be Enacted, in concurrence.

Recalled from Governor's Office by Joint Order (H. P. 1208)

Comes from the House, Bill and accompanying papers Recommended to Committee on Election Laws, in non-concurrence.

The Senate voted to recede and concur.

Joint Order

An Expression of Legislative Sentiment recognizing that: Mrs. Marguerite R. Lary has been chosen the Maine Merit Mother of the Year for 1977, (H. P. 1223)

Comes from the House, Read and Passed.

Which was Read and Passed, in concurrence.

Joint Order

STATE OF MAINE

WHEREAS, the Mill Act, Title 38, chapter 5, subchapter I, has been the law of Maine since 1821 regarding the construction of dams; and

WHEREAS, there are numerous and complex federal and state laws regulating the construction and operation of dams; and

WHEREAS, the energy crisis may encourage the development of hydroelectric power and generation sites to a degree heretofore unknown; and

WHEREAS, there may be several antiquated provisions in the Mill Act or other state laws

that are no longer relevant to the operation or construction of dams in Maine; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Standing Committee on Public Utilities undertake a study to determine the fairness, feasibility and need for all laws regarding dams including the Mill Act; and be it further

ORDERED, that the committee shall complete this study no later than December 1, 1977, and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form, and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order be forwarded to the members of the committee. (H. P. 1210)

Comes from the House, Read and Passed. Which was Read.

On Motion of Mr. Speers of Kennebec, Tabled pending passage.

Bills and Resolve received from the House requiring reference to Committee were acted upon in concurrence.

Senate Papers

Mr. Conley of Cumberland presented, Bill, "An Act to Make Housing Advocacy Services a Priority Area in the Priority Social Services Program and to Appropriate Funds to Fund this new Priority Area." (S. P. 409)

Which was referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

Mr. Pierce of Kennebec (Cosponsors: Mrs. Snowe of Androscoggin and Mr. Lovell of York) present, Bill, "An Act to Clarify Physician Certification of Patient Deaths in Maine Nursing Homes." (S. P. 408)

Mr. Minkowsky of Androscoggin presented, Bill, "An Act to Regulate the Dispensing of Prescription Drugs." (S. P. 407)

Which were referred to the Committee on Health and Institutional Services and Ordered Printed.

Sent down for concurrence.

Mr. Greeley of Waldo presented, Bill, "An Act Appropriating Funds from the General Fund for the Purpose of Developing a Parking Lot in Lincolnville." (Emergency) (S. P. 410)

Which was referred to the Committee on Transportation and Ordered Printed.

Sent down for concurrence.

Order

On motion by Mr. Chapman of Sagadahoc, ORDERED, the House concurring, that H. P. 253, concerning study of 200-mile limit by Joint Standing Committee on Marine Resources, as amended by Senate Amendment, filing No. S-7, is further amended by striking out in the last line of the 8th paragraph the word and figures "April 15, 1977" and inserting in their place the word and figures "May 1, 1977" (S. P. 406)

Which was Read and Passed.

Sent down for concurrence.

Expressions of Legislative Sentiment recognizing that: The Madison Woman's Club, whose purpose is service to its community through work with children, will celebrate its 35th anniversary of federation on April 30th, 1977. (S. P. 411) (Presented by Senator Redmond of Somerset)

Mrs. Sonya Cirks of Industry has been awarded the Outstanding Community Leader Certificate for her environmental improvement activities, including work with anti-litter and sign ordinances. (S. P. 412) (Presented by Senator Redmond of Somerset)

Mary E. Thombs of Waterville has won the Kennebec County Spelling Championship for 1977 (S. P. 413) (Presented by Senator Pierce of Kennebec) (Cosponsors: Representatives:

Boudreau and Carey of Waterville) Which were Read and Passed. Sent down for concurrence.

Committee Report
House

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 20 of the Joint Rules:

Bill, "An Act to Appropriate Funds for Municipalities Involved in Special Elections for State and National Offices." (H. P. 478) (L. D. 593)

Leave to Withdraw

The Committee on Election Laws on, Bill, "An Act to Require Certification of Nomination Petitions." (H. P. 1) (L. D. 1)

Reports that the same be granted Leave to Withdraw.

Comes from the House, Recommended to the Comm. on Election Laws.

Which Report was Read. The Bill and Accompanying Papers Recommended to Committee on Election Laws in concurrence.

The Committee on Taxation on Bill, "An Act to Provide that the Uniform Property Tax Rate shall be Established in Conformity with Statutory Limits on Educational Funding." (Emergency) (H. P. 6) (L. D. 16)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Reduce the Uniform Property Tax by 1/4 Mills." (Emergency) (H. P. 60) (L. D. 81)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Public Utilities on Bill, "An Act to Repeal the Mill Act." (H. P. 389) (L. D. 521)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Ought to Pass

The Committee on Human Resources on, Bill, "An Act to Define "North American Indians residing in Maine" for Purposes of the North American Indian Scholarships." (H. P. 324) (L. D. 415)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

The Committee on Natural Resources on, Bill, "An Act to Eliminate Membership Deadlines for the Cobbossee Watershed District." (H. P. 294) (L. D. 351)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

The Committee on Taxation on, Bill, "An Act Relating to Tax on Pari-mutuel Pools and State Stipend Law." (Emergency) (H. P. 506) (L. D. 625)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which Reports were Read and Accepted in concurrence and the Bills Read Once, and Tomorrow Assigned for Second Reading.

Senate

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 20 of the Joint Rules: Bill, "An Act Concerning County Clerk Hire by County Commissioners." (S. P. 208) (L. D. 659)

Divided Report

The Majority of the Committee on Labor on, Bill, An Act to Provide for Local Hearings by the Public Employees Labor Relations Board. (S. P. 27) (L. D. 40)

Reported that the same Ought Not to Pass.

Signed:

Senator:

REDMOND of Somerset

Representatives:

BEAULIEU of Portland
 PELTIER of Houlton
 BUSTIN of Augusta
 MCHENRY of Madawaska
 LAFFIN of Westbrook
 DUTREMBLE of Biddeford
 TARR of Bridgton
 ELIAS of Madison

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass as amended by Committee Amendment "A". (S-47).

Signed:

Senators:

McNALLY of Hancock
 PRAY of Penobscot

Representatives:

FLANAGAN of Portland
 LEWIS of Auburn

Which Reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I move the acceptance of the Minority Ought to Pass Report, and I would like to speak to my Motion.

The PRESIDENT: The Senator has the floor.

Mr. McNALLY: This is a Bill that was presented to us by the good Senator Collins from Knox, and it is an Act to provide for local hearings by Public Employees Labor Relations Board.

Now this is brought about by the fact that due to having to meet several times before the Public Relations Board, to hear the necessary appeals, and due to the fact that 20 people were tied up from the municipal government in Rockland, the need was seen for some such a Bill since that there will probably be many more appeals due to the unionization or other things that have come about in the last Session of the Legislature.

Now we listened to this Bill and debated it very much, and finally decided that there should be a Committee Amendment put on it, and the Committee Amendment is under S-47, and what it says is, besides the appropriation that is necessary in case this Bill is passed, that there would be a yearly charge of \$12,850.00 for each one of the years in the biennium, that the hearings shall be held in the County where the public employer has its headquarters, if both parties to the hearing so request. This makes it possible that if there is an appeal up in Madawaska that it can be decided as to whereabouts in Aroostook County it will be held and not down here in Augusta, and the same thing would apply to Washington County and any other county that would have to travel a long way, tie up the different municipal employees, in order to have this appeal.

I think with the addition of this Amendment that it is a very good and necessary Bill.

On Motion of Mr. McNally of Hancock, The Minority Ought to Pass Report was Accepted, and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Second Readers

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

House

Bill, An Act Relating to Inspections and Inspection Fees of Elevators. (H. P. 142) (L. D. 172)

Bill, An Act to Increase the Fee Charged for

U.C.C. Certificates of Information. (H. P. 403) (L. D. 513)

Bill, An Act Increasing Compensation of Trustees of Gray Water District. (H. P. 500) (L. D. 618)

Bill, An Act Permitting Sunday Operation of Bowling Alleys. (H. P. 639) (L. D. 783)

Which were Read a Second Time and Passed to be Engrossed, in concurrence.

Bill, An Act to Clarify the Definition of Activities Reportable as Lobbying. (H. P. 1183) (L. D. 1236)

Which was Read a Second Time.

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

Mr. MERRILL: Mr. President and Members of the Senate, those members of the Senate who were present here during the last session remember that there was some disagreement between myself and the Senator who used to occupy this Chair as to the lobbying laws, and I do not think there was any disagreement as to the end we were all seeking.

For my own part, at least, I have always had concern that we might over-react to the needs to strengthen the reporting requirements of lobbying activities, so that we unnecessarily restrain what is obviously a constitutionally protected privilege. I say that in the context of making it clear in the debate a year ago during the Special Session that the Bill that we had would probably require some more modification and some more tightening of the screws in order to get it in its proper balance.

I do not have any major problems with the great part of the Bill that is before us today, but I do have to admit that I do have some concerns that I would like to have somebody from the Committee on State Government answer for me, if they can. What we are doing here is we are redefining what has to be reported as far as compensation is concerned on the part of lobbyists, and the first one is for lobbying, and we understand what that means, it is defined in the Bill as attempts to directly influence Legislators, that is to talk to them; and 3 I think is pretty precise and clear. It says for the preparation of documents and research for the primary purpose of influencing legislative action. But 2 removes the need for 3 it is so broad in scope, and it says for any efforts to influence legislative action.

Now I think that the Senate ought to understand that that is the major modification in the law. The legislative action is defined rather broadly, and when you say any effort, of course, that is very broad. The law as it stands now, for example, does not require reporting of expenses of people to testify before Committee, and the reason that we exempted that activity is because we thought there was some constitutional question as to even whether it was proper when you invite the public to come with an ad, and I think that the Senate ought to understand that the activities which we are talking about here reach all the way to some business who has hired a lobbyist picking up the telephone and calling a member of the Legislature to talk to him about it, and I suppose that would include also a Member of a Labor Union who is an employee of the Labor Union, who does do some lobbying down here and, therefore, is registered as a lobbyist, picking up the telephone and telling some of his shop stewards. Now if we want to have the reporting go to that extensive activity, if we want to make that major modification, I guess I am not going to fight it, I am not a lobbyist now, nor do I ever intend to be one, but I think that the Senate ought to understand that this is a major departure, and Part A-2 of this Bill, I think, really goes a long way to strike out of balance what we put into balance the last Session.

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

Mr. MANGAN: Mr. President, in each of the

lobbying Bills that I have seen in the last couple of years, and this includes this one here, which is LD 1236, nothing is ever made mention of with regard to municipal officials, county officials or state officials. Now if we look at the old laws, going back two or three years ago, there were specific exemptions in the laws for municipal officials who wished to lobby Bills.

Now in kind of a harassment move, I suppose, if that is the word for it, a kidding move last night, I did go and discuss this matter with Jerry Berube, who is the City Clerk of the City of Lewiston, incidentally, and who had mentioned that he had spent quite a few hours up here this past week on certain Bills that he felt were important, not only to the municipality of the City of Lewiston, but most municipalities in the State of Maine, regarding either burials or matters specifically relating to the City Clerks or Town Clerks, and I said, Gee, aren't you registered, I said, because every time that you can speak for a Committee you are doing fine, but as soon as you leave that Committee and you start trying to lobby in the hallways relative to that Bill, technically you fall under the requirement that you have to report the number of hours that you spend as compensation thereof under each of the Bills that we have had, and he kind of passed it aside, but it is true.

Now there were some specific exemptions in the old Bills for municipal officials acting in their official capacity as either selectman, county commissioner, county treasurer, city clerk or what have you, and I would somehow like to see any Bill that we put out return that exemption in there, because I feel that a municipal official or public official who lobbies in any way for a Bill does it for the public interest, the public good, the people of the municipality or the people of the State or the County which he represents, and I just do not see this many of these Bills, and I would like to see this amended. I am not sure that I would get much support for it.

I would probably ask the Chairman of the Committee that reported this Bill out whether these exemptions were considered.

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

Mr. COLLINS: Mr. President, the Bill before you is about the eleventh re-draft of a Bill that would amend the Lobbying Disclosure Act, and I was not privy to the conversations and discussions that took place in the previous Legislature.

It is my understanding that the Bill does not prohibit consultation. It does not change the definition of lobbying. It does provide that the time spent in drafting documents, for research and for Bills be included as lobbyist's time and be reportable in terms of the compensation involved as the time that that requires. I do not think that there was any attempt to preclude people from speaking at public hearings, and for constituents in the Districts making their wishes known. To my knowledge, this does tighten up the reporting procedures essentially to include drafting of Legislation and to the documentary work that is involved therein.

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

Mr. MERRILL: Mr. President and Members of the Senate, there is no doubt in my mind that the intentions are good as far as this Bill is concerned, but I just have to object to the language.

As I said before, 3 is specific. I think it is a needed addition. I think it would be helpful. I think it will strengthen our laws. But for those who have the Bill in front of them, 1236 A-2 is the most broad language, and it strikes out all of the careful distinctions that we made in the Lobbyist Disclosure Act. It irritates me a little in a way that I am always up here defending the lobbyists, because I do not have any great love or association with any of them. But the ability

of people to speak to their Legislators, whether they are lobbyists or communists or capitalists is a very important constitutional right, and I think we ought to see to it that there is no more harassment than necessary, whether we like or dislike any of those groups. I just think that when we say for any efforts to influence Legislative action, that means that you are a lobbyist if you spend so many hours down here a month as part of your duties for your trade association or whatever, and that really means that any activity that you take, whether it is writing a news letter, whether it is talking to the members of your Organization, if it has the effect of influencing Legislative action, then it is going to have to be reported. I think that is too far a step, and I would ask that this Bill be tabled for one legislative day so that an Amendment may be prepared which would strike A-2 from the Bill.

On Motion of Mr. Collins of Aroostook,
Tabled for One Legislative Day
Pending Passage to be Engrossed.

House — As Amended

Bill, An Act to Amend the Laws Relating to Payments for Care of Children. (H. P. 124) (L. D. 157)

Bill, An Act Pertaining to Rat Control on Public Dumps. (H. P. 387) (L. D. 477)

Bill, An Act to Increase the Maximum Authorized Maine Veterans Mortgage Limit to \$30,000. (H. P. 535) (L. D. 650)

Which were Read a Second Time and Passed to be Engrossed, as Amended, in concurrence.

Senate — As Amended

Bill, "An Act to Transfer the Alcohol Treatment and Education Progress of Operating under the Influence Offenders to the Department of Human Services." (S. P. 130) (L. D. 310)

Bill, "An Act to Clarify the Law as to Fraud by a Guest or Customer in a Hotel, Inn, Boarding House or Eating House." (H. P. 255) (L. D. 780)

Which were Read a Second Time and Passed to be Engrossed, as Amended.
Sent down for concurrence.

Reconsidered Matters

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

Mr. MORRELL: Mr. President with reference to L. D. 1342 (H. P. 1124), Bill, An Act to Require an Annual Adjustment in the Standards of Need for Families Receiving Aid to Dependent Children, I would ask that we reconsider our action whereby this was referred to the Committee on Performance Audit.

The PRESIDENT: The Senator from Cumberland, Senator Morrell, now moves the Senate reconsider its action whereby LD 1342 was referred to the Committee on Performance Audit. Is this the pleasure of the Senate? It is a vote.

On Motion of Mr. Morrell of Cumberland, Referred to Committee on Health and Institutional Services and Ordered Printed in non-concurrence.

Sent down for concurrence.

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

Mr. COLLINS: Mr. President, I move that we reconsider our action as to LD 1340, (H. P. 1122)

Bill, An Act to Reduce Traffic Accidents and Fatalities by Providing for the Establishment of Education and Treatment Programs for Persons Convicted of Operating under the Influence of Alcohol.

Whereby this matter was referred to the Committee on Liquor Control.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves the Senate reconsider its action with reference to LD 1340, whereby this Bill was referred to the Committee on Liquor Control. Is this the pleasure of the Senate? It is a vote.

Mr. COLLINS: Mr. President, a Bill treating this same subject matter has already been heard by the Judiciary Committee.

On Motion of Mr. Collins of Knox, Referred to Committee on Judiciary and Ordered Printed in non-concurrence.

Sent down for concurrence.

Enactors

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

"An Act Relating to Representation of Maine Maritime Academy on the Post-secondary Education Commission of Maine." (H. P. 219) (L. D. 283)

"An Act Concerning the Required Height of Motorcycle Handlebars. (H. P. 279) (L. D. 344)

"An Act to Clarify and Confirm the Municipal Boundary between the City of South Portland and the Town of Scarborough." (H. P. 524) (L. D. 642)

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

RESOLVE, "Authorizing the Purchase of 'University of Maine at Farmington — A Study of Educational Change, 1864 to 1974.'" (H. P. 384) (L. D. 472)

On Motion of Mr. Huber of Cumberland, Placed on Special Appropriations Table. Pending passage.

Emergency

An Act to Exempt Small Water Districts from Regulation by the Public Utilities Commission. (H. P. 1060) (L. D. 1116)

Emergency

An Act Relating to Vehicle Sizes and Weights. (H. P. 90) (L. D. 214)

These being Emergency Measures and having received the affirmative votes of 27 members of the Senate, were Passed to be Enacted, and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Orders of the Day

The President laid before the Senate, Bill, "An Act to Require that Newly-constructed or Reconstructed Public Buildings be Made Accessible to the Physically Handicapped." (S. P. 307) (L. D. 969) Emergency.

Tabled — April 4, 1977 by Senator Lovell of York

Pending — Enactment

On Motion of Senator Conley of Cumberland, Tabled for one Legislative day.

Pending Enactment.

The President laid before the Senate, HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act to Provide for 8-person juries in Civil Cases." (H. P. 574) (L. D. 698) MAJORITY REPORT — Ought to Pass; MINORITY REPORT — Ought Not to Pass
Tabled — April 5, 1977 by Senator Curtis of Penobscot

Pending — Acceptance of Either Report
The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins:

Mr. COLLINS: Mr. President, I move that we accept the Minority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves the Senate accept the Minority Ought not to Pass Report of the Committee.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

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

Mr. CURTIS: Mr. President, I request a Division on the Motion. I had signed the Ought Not to Pass Report of the Committee with the understanding that the present rules were a certain way regarding the size of civil juries. I investigated the matter to a little greater extent

and found out that I was incorrect. I would like to tell you a little bit about the situation as it has developed.

There is a provision in the Maine Constitution under Article I, Section 20 that provides for jury trials in civil suits. It says: "In all civil suits and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it is heretofore been otherwise practiced. That the party claiming the right may be heard by himself and his counsel or either at his election."

Now the size of the Jury is determined by Statute and that Statute has been revised several times in the last few years. The most recent revision was two years ago, and in the action two years ago the Maine Legislature provided the following language: "The Supreme Judicial Court may by rule provide for the trial of civil actions only by juries of not less than 6 jurors . . ." That provision has been eight prior to the change two years ago — " . . . Provided, however that the parties to a civil suit may stipulate that the jury may consist of any number less than six jurors."

Now during the debate two years ago, there were some interesting remarks made, and I had recalled the debate on this issue, and some of you who were here at that time may also have recalled it. During the discussion, Senator Robert Clifford from Androscoggin County and a member of the Judiciary Committee at that time, made the following statement: "Mr. President and Members of the Senate, I also might point out that the use of an eight-man or six-man jury is not mandatory, but requires the consent of both parties so that if there is no consent, the twelve-man jury is still in effect."

Now, Mr. President, the statement by Senator Clifford at that time was incorrect. I personally had recalled that situation and thought there was still a provision that it would be possible for both parties in a civil trial to request and obtain a jury of more than six people. However, the rules as promulgated in accordance with the Statute by the Law Court provides that this is not the case. Rule 38(a) regarding jury trial of right says: "The right of trial by jury is declared by the Constitution of the State of Maine or it is given by Statute, shall be preserved to the parties inviolate. The jury shall consist of six members unless otherwise agreed by the parties in accordance with Rule 48 (b).

Well, Rule 48 (b) provides that it is possible for the parties to agree to have a jury of less than six but not more than six. It is that distinction which causes my problem and my change in my position on this piece of Legislation. We have had some time of experience using this rule, and after listening to the people who do indeed practice before a jury, which I do not, I have come to the conclusion that it might be wiser to have more people on the jury. I know there are other people who have opinions on this matter and I respect, to a great extent, the opinion that has been expressed in the committee and I am sure will be well expressed on the floor here today, by the Chairman of the Judiciary Committee.

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

Mr. COLLINS: Mr. President, when we debated this matter two years ago, the material that has been recited to us by the Senator from Penobscot, Senator Curtis, was being spoken at a point in the procedure, as I recall it, prior to the amendment of this act by the other body. Another development occurred after the Act became law, which was not anticipated by some members of the Committee, and that was a change in the civil rules that the Senator has spoken of, our Rule 48.

It was my intent, as the sponsor of this Bill two years ago, to accomplish two things: one was to experiment with somewhat smaller juries in the interest of efficiency and economy.

Experience had proven in the Federal Courts and in the Courts of several states that the old magic number of twelve jurors was not as magic as we once thought. Six person juries had worked out very well in the Federal system and in several states there was experimentation authorized with six-person juries.

The other objective that I hoped to accomplish was to have some flexibility in our jury system. And it was my hope that the Supreme Judicial Court would provide that when the parties wished to have more jurors than six, that they could so stipulate. The Law Court went further than I expected they would and set the six-person jury without that flexibility to enlarge the jury to, for example, eight members, or even twelve members in some cases.

I would argue to the Senate that there is an important reason for not changing the law at this time in the Legislature. The Legislature sets the outer parameters of judicial procedure, but there are certain activities within those parameters that seems to me can best be decided by the Court, by the litigants themselves and the Judges before whom they litigate.

In talking about this issue with trial lawyers and Judges in the past two weeks, I have certainly found a good deal of difference of opinion, which is not uncommon in my profession, and I find that there are just as many who favor the six-person jury as who think that an eight-person jury is the answer.

There is a procedure well established now, whereby when lawyers have an issue of this type, they can present their ideas to the Court-established committee on civil procedure, which is composed of ten lawyers from all over the State. I served on that committee for ten years before coming to the Legislature. It meets at least twice a year and considers problems of this sort. It includes a large number of trial lawyers and this committee makes recommendations to the Supreme Judicial Court. Almost invariably the Supreme Judicial Court has accepted those recommendations and has established Court rules to go along with these improvements in Court procedure that the lawyers see as a result of their experience.

I would like to see any effort to change the size of jurors within these limits that we have set up, six at the bottom and twelve at the top, worked out so that the system could be flexible. There are cases where it is desirable to have more than six jurors. The usual case for that would be a personal injury case, permanent injuries, where the size of the verdict is very critical and a larger cross-section of the community is desired than six. But the great bulk of our cases, breach of contract cases, routine accident cases, collection cases, that go before a jury, can just as well be handled by six people as by eight people. And there is a small economy involved, not very much, but a little, and we certainly need all of the efficiencies and economies that we can have in our Court system.

I think that the last Legislature made some important moves in that direction. I hope that the Senate will not throw out the six-man jury as this Bill requests. I think that the lawyers who are concerned that they want larger juries for some cases, can find a way to work that out by asking the Law Court to re-establish the flexible rule so that when a jury of larger size is really needed, it can be had under Court rule.

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

Mr. MERRILL: Mr. President and Members of the Senate, I certainly cannot add a great deal to the excellent debate that has been presented by the two previous speakers, both members of the Judiciary Committee. I think that the issue is clear before the Senate.

I would just like to make two observations:

one, that unlike the Chairman of the Judiciary Committee, the Senator from Knox, Senator Collins, most lawyers, by far the overwhelming majority of lawyers that I have spoken to, have told me that they prefer eight jurors, and there are a lot of reasons why it helps to have more people on the juries: Some have been touched on by the Senator's arguments, there are others. As has been rightly pointed out, as we moved from twelve there has been an element of experimentation involved.

I would also like to say that I prefer eight as the bottom limit, partly because I think it was the intent of the Legislature last time, as pointed out by the Senator from Penobscot, Senator Curtis, that we only go below eight when it is a matter agreed to by both parties. I think that was the Legislative intent last time. The remarks of Senator Clifford that have been quoted here were taken exception to and I think in keeping with that intent I shall vote for eight, but in any case certainly I hope that if we do not make the change here, that the changes will be forthcoming from the Judicial branch as suggested by the chairman of Judiciary.

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

Mr. MANGAN: Mr. President, I, on the Judiciary Committee, signed the Minority Ought Not to Pass. My rationale for the whole thing is fairly interesting. I am probably one of the most litigious attorneys around. The rationale on either side is basically if you have an eight-man jury instead of a six-man jury, you would probably get two additional people which may provide a wider representation of the general population. Some people feel that with a six-man jury it is easier for one individual to really control that jury in the long run.

My primary reason, I think, for signing the Ought Not to Pass and hoping to retain a six-man jury is that I personally felt a lot more comfortable before a six-man jury and I could, seemingly, relate a lot easier to each of the individual people, and it seems to me they appear to have a better understanding of the case, rather than float back and forth and try to convince twelve or eight people.

However, I do not have any strong feelings one way or the other and if the Senate wishes to vote for eight-man juries, that is fine.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins that the Senate accept the Minority Ought Not to Pass Report of the Committee. A Division has been requested.

Will all those Senators in favor of accepting the Minority Ought Not to Pass Report, please rise in their places to be counted.

Will all those Senators opposed to accepting the Minority Ought Not to Pass Report please rise in their places to be counted.

11 Senators having voted in the affirmative and 17 Senators in the negative, the motion to accept the Minority Ought Not to Pass Report does not prevail.

The Majority Report Accepted in concurrence. The Bill Read Once and Tomorrow Assigned for Second Reading.

The President laid before the Senate, Bill, "An Act to Facilitate the Sale of Community Industrial Buildings." (S. P. 134) (L. D. 376)

Tabled — April 5, 1977 by Senator Huber of Cumberland

Pending — Enactment

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

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following additional

Paper from the House
Communication
OFFICE OF THE GOVERNOR

April 5, 1977

To: Honorable Members of the Senate and House of Representatives of the 108th Maine Legislature

I am this date returning without my signature and approval H. P. 738, L. D. 752, AN ACT to Revise the Salaries of County Officers.

While there are many provisions in this act, the major focus of attention is upon the salary levels set for county officials in Maine's sixteen counties. The salaries outlined in this bill are almost without exception an increase over the present salaries received by county officials and the salaries which existed when the present officeholders sought these positions.

I cannot in good conscience support the salaries that have been presented in LD 752. I can appreciate the pressure upon the Legislature and the dilemma which they faced with budget requests which emanated from the counties themselves. I also realize that there are many conscientious, dedicated individuals working within county governments and that several of these persons may well deserve salary increases, but a virtual across-the-board pay increase for county officials cannot be justified at this time. In an era when tax dollars are at a premium and when fiscal responsibility is being practiced throughout State government, I cannot endorse an increase in salaries that I already consider to be excessive compensation for the public functions performed by some county officials.

LD 752 is a redraft of LD 62. The purpose of LD 62 was to bring some order and uniformity to the compensation provided county officials and was the thoughtful result of a study on county officers conducted by the Local and County Government Committee of the 107th Legislature. The rejection of the salary recommendations of that study is but one more example of the insulation of county officials from the sort of critical and fiscally responsible evaluation which all other levels of government are subject to.

The taxpayers of the State of Maine deserve better than an insulated layer of government which is receiving a high rate of compensation for duties that are no more time consuming and which carry no more responsibility than those duties undertaken by a large number of municipal officials and involved citizens who work for less statewide in many capacities, such as serving on school committees, boards of selectmen or city councils.

In addition, it is important to note that the present compensation for these posts was known and considered when the officeholders sought to fill these positions. To increase these salaries, which I consider to already be more than sufficient, at a time other than at the beginning of a new term of office is inappropriate. If these salaries are going to be increased, those increases should take place at a time when the higher salaries would be a factor to be considered by any interested citizen who might be seeking the office, or voting for a candidate, and should not be a fortunate turn-of-events for someone who happens to be occupying the office when a pay raise is approved. This would constitute a 16% increase in cost to the taxpayers of Maine for elected officials after they have been elected to offices which they chose to seek knowing the existing salary levels in advance. We have witnessed this in the Congress of the United States and hopefully we will not witness this in the State of Maine.

I must admit that the part of LD 752 which removes fees from the compensation of full-time county employees is an important reform. However, the fact that this reform, which has been called for for well over twenty years, is accomplished in this legislation does not outweigh the negatives of the entire bill.

In summary, I feel that the county government system in Maine deserves a very long and hard examination. The Local and County Government Committee of the Maine Legislature made a first step in that direction and was almost totally rejected by the political interests involved in setting county budgets. The people of Maine and municipal taxpayers deserve better, and those with responsibility in the area of determining compensation for county officials must show the same commitment to fiscal responsibility and to the alleviating of the burden of Maine taxpayers as shown by the other levels of government which are responsive and accountable to Maine citizens. For these reasons, I cannot in good conscience support LD 752.

Very truly yours,

James B. Longley
(H. P. 1234)

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

Which was Read and Ordered Placed on File in Concurrence.

The Accompany Bill, (H. P. 738) (L. D. 752) AN ACT to Revise the Salaries of County Officers.

Comes from the House with the following endorsement:

In the House April 6, 1977, this Bill, having been returned by the Governor, together with his objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

117 voted in favor and 27 against, and accordingly it was the vote of the House that the Bill become a law notwithstanding the objections of the Governor, since two-thirds of the members of the House so voted.

/s/ EDWIN H. PERT
Clerk of the House

The PRESIDENT: The pending question before the Senate is shall this Bill become a law notwithstanding the objections of the Governor?

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Members of the Senate, I am in sort of a dilemma this morning to see this veto message up here. I understood there was one coming up, but the Governor failed to contact either the House Chairman or myself pertaining to this item. The input that we had had on it sort of disputes some of the sentences that the Governor has used in his veto message.

I think that every Legislator in this Legislature had an opportunity, and took the opportunity, to review the salaries at the county level and possibly up-grade these salaries to compensate for the job that was being done. We took the original Bill, L. D. 62, which was the County Salary Bill, which was unsuccessful in being passed in the Legislature, it was recommended to Committee. We then took and lifted all the salaries from the budgets that were approved by the Legislative delegation.

Now I do not really understand that the Sheriff's salary would be excessive at \$13,000.00 in Cumberland County or \$12,500.00 in Oxford County for the type of job that is being done by those people and the responsibilities that they have. This is one of the main concerns that I have.

Now you take your Register of Probate, the Register of Deeds; these people are 40-hour-a-week persons. Their responsibility is extremely high and to say that is excessive, these salaries of possibly \$9,100.00, \$7,800.00 or \$5,300.00 — I just do not see his reason.

I would urge the members of this Body this morning to vote to override the veto because I do not exactly know if we do not override the veto, if we sustain the veto, what you people want to do as far as salaries go for county of-

ficers. We can go back to the Committee and possibly have a Legislature by Joint Order, order us to draft another salary Bill. We know we have a deadline to meet May 1st, and I think the salaries that are in this Salary Bill are not excessive and I feel that when the vote is taken, that the members of the Senate will see that they are not excessive, because they are figures that you people helped to implement and put into the budget.

So when the vote is taken, I would urge that every member join in overriding the Governor's veto.

The PRESIDENT: The Chair recognizes the Senator from Seomerset, Senator Redmond.

Mr. REDMOND: Mr. President and Members of the Senate, I wish to express my feelings on this veto. If we pass this pay raise, I am sure that this will make the Sheriff get out of the civil process business and make them be a Sheriff. It will be another step in professionalizing the law enforcement and the Sheriff's Department.

In the past the Sheriffs have been living in County quarters, free, and they have been living off the taxpayers and they have been serving civil papers and this veto, I propose that we override it.

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

Mr. PIERCE: Mr. President, I would pose a question through the Chair as to whether or not the Governor is correct in indicating that the passage of this measure would constitute a 16 percent increase in the cost to taxpayers of Maine for elected officials?

The PRESIDENT: The Senator from Kennebec, Senator Pierce has posed a question through the Chair should any Senator care to answer.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: I could perhaps respond in this way: Each county Legislative delegation has set the salary for the elected officers. In some elected positions there are no increases whatsoever and in others there may be 20 percent. It is hard to say that the figure of 16 percent may be correct, I have no way of knowing.

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

Mr. MANGAN: Mr. President, when this Bill came up before the Senate, I fought it twice. I fought it once on one of the official salaries not going up 16 percent but going down closer to 30 percent, and I also fought it on the basis of the deputy sheriffs who are working full time and getting their fees.

I think that the Local and County Government Committee did end up with the goose with bird feathers, or what have you, and the thing did not really fly that well, and they considered it twice. It has been through the Amendment process. The Bill is now the result of a fairly good compromise, and I would hate to see it go any further.

I would suggest that the Senate vote to override.

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

Mr. KATZ: Mr. President, in recent weeks I know the Committee has done an extraordinary job in trying to deal with what amounted to a negotiated solution, but when the Senator from Kennebec, Senator Pierce, stands up and asks the basic question, the basic question as to whether this reflects a 16 percent average increase on County salaries, I think the Senate simply has to know the answer before we can vote intelligently.

We are going to be facing, on some kind of an equalized standard, I hope, the needs of our State employees, and if we deal with State employees on anything less than an equitable basis, I think that we will not be living up to our responsibilities.

It is a complicated question, but I for one

would hope that I am not going to have to vote on this overriding of the Governor's veto until I realize what it is we have done. The question is have we raised County salaries 16 percent, and that question simply must be answered before we take a position on the Governor's veto.

On Motion of Mr. Speers of Kennebec,
Tabled for One Legislative day pending consideration.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland,
Adjourned to 2:00 tomorrow afternoon.