

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 Ninth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

January 3, 1979 to May 4, 1979

HOUSE

Monday, April 30, 1979

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

Prayer by Mr. Daniel Johannes, Principal, Temple Academy, Waterville.

Mr. JOHANNES: I am honored that I can be here today with you. I will not take too much of your time. You certainly have a great bit of work to do. I would remind you of a piece of scripture in Ephesians that reminds of the unity with which all of us must be in, and the first verse in Chapter 4 of Ephesians tells us that we are the prisoner of the Lord that beseeches you that you walk worthy of the vocation wherewith you are called.

In these days when so much pressing business is at hand and you have a lot on your mind, I am so glad that our God is big enough to do all things. Would you bow with prayer with me, please.

Father, in heaven, we are so thankful for this day, we are thankful that you have called this body together to do the business of our state and we pray, dear Jesus, that you would cause them to think diligently and conscientiously of the decisions which they must make. We are thankful they are your servants, as well as the citizens of the State of Maine, and we ask your blessing on them, and I pray, dear Jesus, that the decisions they make will cause us to have a better State of Maine. Amen.

The members stood at attention during the playing of the National Anthem by the Edward Little High School Band of Auburn.

The journal of the previous session was read and approved.

Papers from the Senate Reports of Committees Leave to Withdraw

Report of the Committee on Energy and Natural Resources reporting "Leave to Withdraw" on RESOLVE, Authorizing the Sale of Certain Public Reserved Lands to Cobb's Bosebuck Mountain Camps (S. P. 85) (L. D. 176)

Came from the Senate with the Report read and accepted.

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

Non-Concurrent Matter Tabled and Assigned

Bill "An Act to Clarify and Correct Laws Related to Real Estate Brokers and Salesmen" (S. P. 391) (L. D. 1202) which was passed to be engrossed as amended by House Amendment "A" (H-261) in the House on April 25, 1979.

Came from the Senate with that Body having adhered to its former action whereby the Bill was passed to be engrossed in non-concurrence.

In the House: On motion of Mr. Vincent of Portland, tabled pending further consideration and tomorrow assigned.

Non-Concurrent Matter

Bill "An Act to Provide Student Loans to Candidates for Practice of Chiropractic in Maine" (H. P. 694) (L. D. 872) on which the Majority "Ought to Pass" Report of the Committee on Education was read and accepted and the Bill passed to be engrossed in the House on April 26, 1979.

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

In the House: On motion of Mr. Connolly of Portland, the House voted to insist.

Non-Concurrent Matter

Bill "An Act to Require that Certain Employers Provide Regular Physical Examinations for their Employees to Detect Carcinogenic and Pulmonary Disorders" (H.

P. 220) (L. D. 268) on which the Minority "Ought to Pass" as amended by Committee Amendment "A" (H-237) Report of the Committee on Labor was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-237) in the House on April 25, 1979.

Came from the Senate with the Majority "Ought Not to Pass" report of the Committee on Labor read and accepted in non-concurrence.

In the House: On motion of Mr. Tierney of Lisbon Falls, the House voted to insist and ask for a Committee of Conference.

Non-Concurrent Matter Tabled and Assigned

Bill "An Act to Require that Persons Convicted of Habitually Sexually Molesting a Child under the Age of 14 may be Asexualized" (H. P. 816) (L. D. 1018) on which the Bill and accompanying papers were indefinitely postponed in the House on April 18, 1979.

Came from the Senate with the Majority "Ought to Pass" in New Draft (H. P. 1310) (L. D. 1564) Report of the Committee on Judiciary read and accepted and the New Draft passed to be engrossed in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, I move that we recede and concur.

The SPEAKER: The Chair would advise the gentlewoman that motion would not be in order.

The Chair recognizes the same gentlewoman.

Mrs. SEWALL: Mr. Speaker, if it is a non-concurrent matter and the Senate has done one thing and we have done another, why can't I ask to recede and concur?

The SPEAKER: The Clerk will read the endorsement.

The CLERK: On April 18, 1979, the Speaker of the House ruled that House Paper 1310, Legislative Document 1564, was not germane.

The Chair recognizes the gentlewoman from Auburn, Mrs. Lewis.

Mrs. LEWIS: Mr. Speaker, I wonder if you could explain to me why this cannot come back as a non-concurrent matter and we recede and concur.

The SPEAKER: The Chair would advise the gentlewoman that a matter which has been ruled not germane may not come back in non-concurrence, since that matter is not before us. The only matter that was ever before this body after the ruling was on the original bill itself. The gentlewoman could, if she so desired on the original bill, go back to that.

Mrs. LEWIS: Mr. Speaker, I could then amend it?

The SPEAKER: The Chair would advise the gentlewoman that she could, I suppose, amend it, assuming it wasn't anything like the one that the Chair ruled not germane, but the Chair would advise the gentlewoman that the amendment is no longer before this body, was removed from us last week by a ruling of the Chair on germaneness. However, original bill, the bill which the gentlewoman from Auburn put in, is, in fact, before this body. If the gentlewoman wishes to go back to that original bill, then the gentlewoman has that prerogative.

Mrs. LEWIS: Mr. Speaker, if I may ask another question. If we did go back to the original bill, could it be amended so that it would be in the same form as the bill that has come to us in non-concurrence.

The SPEAKER: The Chair would answer in the negative.

Whereupon, on motion of Mr. Garsoe of Cumberland, tabled pending further consideration and tomorrow assigned.

Orders

A Joint Resolution (H. P. 1353) in memory of Flora (Flo) Dickens of Sullivan, an ardent hunter and fisherman and secretary of the Frenchman's Bay Conservation Club for the past 25 years presented by Mr. Silsby of Ellsworth (Cosponsor: Senator Perkins of Hancock)

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

House Reports of the Committee Ought Not to Pass

Mrs. Beaulieu from the Committee on Education on Bill "An Act to Establish the School Finance Act of 1979" (H. P. 589) (L. D. 746) reporting "Ought Not to Pass"

Mr. Nelson from the Committee on Local and County Government on Bill "An Act to Limit Increases in the Bonded Indebtedness of Municipalities without Referenda thereon by the Same Municipalities" (H. P. 830) (L. D. 1037) reporting "Ought Not to Pass"

Mr. L. Dutremble from the Committee on Local and County Government on Bill "An Act to Clarify the Requirements for the Adoption of a Development District Program Under the Municipal Developments District Act" (H. P. 645) (L. D. 774) reporting "Ought Not to Pass"

Mr. Stover from the Committee on Local and County Government on Bill, "An Act to Revise the Statute for Municipalities Undertaking Activities Pursuant to Housing and Community Development Act" (H. P. 612) (L. D. 754) reporting "Ought Not to Pass"

Mr. Bordeaux from the Committee on Local and County Government on Bill "An Act Relating to Special Entertainment Permits" (H. P. 222) (L. D. 270) reporting "Ought Not to Pass"

Were placed in the Legislative Files without further action pursuant to Joint Rule 22, and sent up for concurrence.

Leave to Withdraw

Mr. Brown from the Committee on Local and County Government on Bill "An Act Concerning the Openings of Private Ways by Municipal Officers" (H. P. 1031) (L. D. 1271) reporting "Leave to Withdraw"

Mr. Hobbins from the Committee on Judiciary on Bill "An Act Relating to Certain Agreements in Construction Contracts" (H. P. 303) (L. D. 422) reporting "Leave to Withdraw"

Mrs. Post from the Committee on Marine Resources on Bill "An Act to Require a Degradable Section in all Lobster Traps" (H. P. 525) (L. D. 647) reporting "Leave to Withdraw"

Mr. Hanson from the Committee on Marine Resources on Bill "An Act to Prohibit Commerce in Atlantic Salmon in the State of Maine" (H. P. 495) (L. D. 658) reporting "Leave to Withdraw"

Mr. Tuttle from the Committee on Labor on Bill "An Act Concerning Unemployment Benefits for Persons Mandatorily Retired because of Age" (H. P. 705) (L. D. 880) reporting "Leave to Withdraw"

Mr. Connolly from the Committee on Education on Bill "An Act to Revise the Method of Allocation of Educational Subsidies to Local Units" (H. P. 591) (L. D. 747) reporting "Leave to Withdraw"

Reports were read and accepted and sent up for concurrence.

Ought to Pass in New Draft

Mr. Gray from the Committee on Judiciary on Bill "An Act Concerning Liability of Landowners to Recreational Users of their Land" (H. P. 243) (L. D. 288) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Concerning the Liability of Landowners for Recreational or Harvesting Activities on their Land" (H. P. 1350) (L. D. 1588)

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

Ought to Pass**Pursuant to Joint Order H. P. 1349**

Mr. Pearson from the Committee on Appropriations and Financial Affairs on Bill "An Act to Extend the Deadline for Enactment of Educational Funding Legislation for 1979 from May 1st to May 15th" (Emergency) (H. P. 1352) (L. D. 1590) reporting "Ought to Pass" — pursuant to Joint Order (H. P. 1349)

Report was read and accepted and the Bill read once. Under suspension of the rules, the Bill was read the second time, passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

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

(Off Record Remarks)

On motion of Mrs. Locke of Sebec,
Recessed until the sound of the gong.

After Recess

11:00 A.M.

The House was called to order by the Speaker.

Divided Report

Majority Report of the Committee on Energy and Natural Resources reporting "Ought Not to Pass" on Bill "An Act to Require Commercial Timber Harvesters to Replace Destroyed Trees" (H. P. 1084) (L. D. 1351)

Report was signed by the following members:

Messrs. O'LEARY of Oxford
McBREAIRTY of Aroostook
— of the Senate.

Mrs. HUBER of Falmouth
Messrs. DEXTER of Kingfield
PELTIER of Houlton
KIESMAN of Fryeburg
DOUKAS of Portland
AUSTIN of Bingham
HALL of Sangerville
BLODGETT of Waldoboro

— of the House.

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

Report was signed by the following members:

Messrs. JACQUES of Waterville
MICHAEL of Auburn

— of the House.

Reports were read.

On motion of Mr. Blodgett of Waldoboro, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

Divided Report

Majority Report of the Committee on Energy and Natural Resources reporting "Ought Not to Pass" on Bill "An Act to Direct the Office of Energy Resources to Promote Energy Conservation through the Media and Public Demonstrations" (H. P. 889) (L. D. 1079)

Report was signed by the following members:

Messrs. McBREAIRTY of Aroostook
O'LEARY of Oxford

— of the Senate.

Messrs. MICHAEL of Auburn
PELTIER of Houlton
Mrs. HUBER of Falmouth
Messrs. JACQUES of Waterville
DOUKAS of Portland
KIESMAN of Fryeburg
HALL of Sangerville
AUSTIN of Bingham

— of the House.

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

Report was signed by the following members:

Messrs. DEXTER of Kingfield
BLODGETT of Waldoboro

— of the House.

Reports were read.

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

Mr. BLODGETT: Mr. Speaker, I move the House accept the Minority "Ought to Pass" Report.

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

Mr. HALL: Mr. Speaker, I would request a Division.

The SPEAKER: The pending question is on the motion of the gentleman from Waldoboro, Mr. Blodgett, that the House accept the Minority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

27 having voted in the affirmative and 59 in the negative, the motion did not prevail.

Thereupon, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

Consent Calendar**First Day**

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

(H. P. 1256) (L. D. 1510) Bill "An Act to Provide for Ancillary Complaints in Second Offense Operating under the Influence Cases" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-294)

(H. P. 1129) (L. D. 1398) Bill "An Act to Increase Fees Charged by Bail Commissioners" Committee on Judiciary reporting "Ought to Pass" by Committee Amendment "A" (H-293)

(H. P. 701) (L. D. 861) Bill "An Act to Amend the Alternative Method of Support Enforcement" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-292)

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

Tabled and Assigned

(H. P. 411) (L. D. 528) Bill, "An Act Authorizing the State to Contract with Tufts University School of Veterinary Medicine" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-291)

On the objection of Mr. Connolly of Portland, was removed from the Consent Calendar.

Thereupon, the Committee Report was accepted and the Bill read once.

Committee Amendment "A" (H-291) was read by the Clerk.

On motion by Mr. Connolly of Portland, tabled pending adoption of Committee Amendment "A" and tomorrow assigned.

(H. P. 1133) (L. D. 1401) Bill "An Act Concerning Warning Signs Posted at Certain Railroad Grade Crossings under the Public Utilities Commission" Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-290)

(H. P. 755) (L. D. 937) Bill "An Act to Permit Depuration Facilities to Operate during Red Tide" Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-296)

(H. P. 1139) (L. D. 1518) Bill "An Act to Merge the Septage and Hazardous Waste Law into the Solid Waste Law and to Conform them with the Requirements of the Federal Resource Recovery and Conservation Act" Committee on Energy and Natural Resources reporting "Ought to Pass"

(H. P. 164) (L. D. 196) Bill "An Act Relating to Action by the Public Utilities Commission on Petitions by Electrical Companies for Certificates of Public Convenience and Necessity" Committee on Public Utilities reporting

"Ought to Pass" as amended by Committee Amendment "A" (H-298)

No objections being noted, the above items were ordered to appear on the Consent Calendar of May 1, under listing of 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. 76) (L. D. 84) Bill "An Act to Permit the Inhabitants of Garland to Withdraw from the Maine State Retirement System" (C. "A" H-280)

(H. P. 942) (L. D. 1176) Bill "An Act to Extend World War Assistance to Single Veterans"

(H. P. 844) (L. D. 1046) Bill "An Act Relating to the State Apprenticeship Council" (C. "A" H-275)

(S. P. 291) (L. D. 853) Bill "An Act to Enable the Ocean Park Association to Qualify for Tax Exempt Status under the United States Internal Revenue Code" (Emergency)

(H. P. 608) (L. D. 776) Bill "An Act to Establish the Beer and Wine Franchising Act" (C. "A" H-285)

(H. P. 1186) (L. D. 1459) Bill "An Act to Authorize the State to Provide Technical Assistance and Legal Assistance to Recipients of Wastewater Planning and Construction Grants" (C. "A" H-284)

(H. P. 296) (L. D. 386) Bill "An Act to Establish a Solar Water Heater Demonstration Program for Maine Small Businesses" (C. "A" H-281)

(H. P. 1014) (L. D. 1248) RESOLVE, Authorizing an Appropriation of \$300,000 to Provide Administrative and Other Initial Operating Expenses Incidental to the Construction and Operation of the Maine Veterans Home (Emergency) (C. "A" H-282)

(H. P. 431) (L. D. 548) Bill "An Act Concerning Fire Permits for Registered Guides" (C. "A" H-286)

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

Tabled and Assigned

(H. P. 803) (L. D. 1006) Bill "An Act Relating to the Term of Membership on the Inland Fisheries and Wildlife Advisory Council" (C. "A" H-287)

On the objection of Mr. McHenry of Madawaska, was removed from the Consent Calendar.

Thereupon, the Report was accepted and the Bill read once.

Committee Amendment "A" (H-287) was read by the Clerk.

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

Passed to Be Engrossed

Bill "An Act to Decrease the Maine Guarantee Authority Bonding Limit for Industrial Building and Recreational Project Mortgage Insurance to \$40,000,000; and to Conform Maine Guarantee Authority Statutes to Recent Constitutional Changes" (S. P. 520) (L. D. 1583)

Was reported by the Committee on Bills in the Second Reading, read the second time, and the Senate Paper was passed to be engrossed in concurrence.

Second Reader**Tabled and Assigned**

Bill "An Act to Provide for Lifeline Electrical Service" (H. P. 840) (L. D. 1043)

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

On motion of Mr. Tierney of Lisbon Falls, tabled pending passage to be engrossed and to

morrow assigned.

Amended Bills

Bill "An Act Concerning Licensing of Head and Hide Dealers by the Department of Inland Fisheries and Wildlife" (H. P. 275) (L. D. 357) (H. "A" H-288 to C. "A" H-272)

Bill "An Act Relating to the Administration of School Dental Health Programs" (H. P. 733) (L. D. 920) (C. "A" H-273)

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

Finally Passed

RESOLVE, to Authorize Kennebec County to Develop a Pilot Program for Inmates Incarcerated at the County Jail (H. P. 301) (L. D. 398)

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

Orders of the Day

The Chair laid before the House the first item of Unfinished Business:

Bill, "An Act to Permit Prosecuting Attorneys to Initiate Petitions for Revocation of Probation" (H. P. 503) (L. D. 611) — In House, Indefinitely Postponed on April 19, 1979 — In Senate, Passed to be Engrossed as Amended by Committee Amendment "A" (H-225)

Tabled—April 25, 1979 by Mr. Simon of Lewiston.

Pending—Motion of Mr. Joyce of Portland to Adhere.

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

Mr. CARRIER: Mr. Speaker, I move that the House recede.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I rise today as a wounded eagle; I have laryngitis. However, I must, because of this bill that has already been referred to as an atrocious bill, and because I have lost my voice; I am going to be extremely brief.

We voted just a few days ago by overwhelming majority to indefinitely postpone this bill. I ask today for the sympathy vote of this House. They have me down, but it is up to you, my friends, over 80 of you, to see that I am not out.

I urge that you vote against the motion that is before us now so that we can move then either under the hammer or by vote, to adhere to our previous actions of a few days ago.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, Ladies and Gentlemen of the House: I would ask that we move to recede so I would try to present an amendment. If you don't care for the amendment, at that time, that is strictly up to each individual member of the House, but I do have an amendment that I thought might add some sense to this bill. I voted against it with Mr. Joyce last time and signed the report out "Ought Not to Pass" but I thought this amendment was worthy of a vote. So, I would hope that you would move to recede.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the gentleman from Westbrook, Mr. Carrier, that the House recede. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Joyce of Portland 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. Those in favor will vote yes; those opposed will vote no.

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

ordered.

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

Mr. SIMON: Mr. Speaker and Members of the House: I would stress the point that the gentlelady from Newcastle, Mrs. Sewall, made. This vote to recede is merely a vehicle to allow the House to consider an amendment. This amendment will bring an overwhelming majority of the Judiciary Committee behind this judiciary bill.

We ask that regardless of your views on the merits of the original bill or of the amendment, that you accord us this courtesy of allowing the amendment to be presented. It is my understanding that this is a common courtesy that one legislator allows to another in every legislature in this country, and I hope you will allow it to our committee at this time.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Westbrook, Mr. Carrier, that the House recede. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Portland, Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, I ask leave of the House to pair my vote with Representative Barry of Fort Kent. If he were here, he would be voting yea and I would be voting nay.

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

Mr. MICHAEL: Mr. Speaker, I would like to pair my vote with the gentleman from Lewiston, Mr. Jalbert. If he were here, he would be voting yea and I would be voting nay.

ROLL CALL

YE — Alopis, Benoit, Berry, Berube, Blodgett, Bordeaux, Boudreau, Brown, A.; Brown, D.; Brown, K.L.; Brown, K.C.; Bunker, Carrier, Carroll, Carter, D.; Carter, F.; Churchill, Damren, Davis, Dellert, Dexter, Doukas, Dow, Dudley, Dutremble, D.; Elias, Fenlason, Fillmore, Fowlie, Garsoe, Gavett, Gillis, Gould, Gowen, Gray, Hanson, Higgins, Huber, Hutchings, Immonen, Jacques, E.; Jacques, P.; Kany, Kiesman, Laffin, Lancaster, LaPlante, Leighton, Leonard, Lewis, Lizotte, Lougee, Lowe, MacBride, MacEachern, Mahany, Marshall, Masterman, Masterton, Matthews, Maxwell, McKean, McMahon, Morton, Nadeau, Nelson, A.; Paul, Payne, Pearson, Peltier, Peterson, Post, Reeves, J.; Rolde, Rollins, Roope, Sewall, Sherburne, Simon, Small, Smith, Soulas, Sprowl, Stetson, Stover, Studley, Tarbell, Theriault, Torrey, Twitchell, Wentworth, Whitemore.

NAY — Bachrach, Baker, Birt, Brannigan, Brennerman, Brodeur, Call, Chonko, Cloutier, Connolly, Cox, Cunningham, Curtis, Dutremble, L.; Gwadosky, Hall, Hickey, Hughes, Joyce, Kane, Locke, Lund, Martin, A.; McHenry, McSweeney, Mitchell, Nelson, M.; Nelson, N.; Norris, Paradis, Prescott, Tierney, Tozier, Tuttle, Vincent, Violette, Wood.

ABSENT — Austin, Bowden, Conary, Davies, Diamond, Drinkwater, Hobbins, Howe, Hunter, Jackson, Kelleher, McPherson, Reeves, P.; Silsby, Strout, Vose, Wyman, The Speaker.

PAIRED — Barry-Beaulieu; Jalbert-Michael.

Yes, 92; No, 37; Absent, 17; Paired, 4.

The SPEAKER: Ninety-two having voted in the affirmative and thirty-seven in the negative, with seventeen being absent and four paired, the motion does prevail.

Mrs. Sewall of Newcastle offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-276) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker and Members of the House: The new amendment before you on An Act to Permit Prosecuting Attorneys to Ini-

tiate Petitions for Revocation of Probation limits the time when the prosecuting attorneys may start the revocation of probation ball rolling and it says, "A new criminal offense committed while someone is on probation must be a murder, Class A, B or C crime, which murder or crime is other than the one for which he was placed on probation." This would take out the misdemeanor and less serious crimes, the D and E crimes, on which a prosecutor would be able to start the revocation proceedings.

It is an idea and I hope you consider it seriously.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I did vote for the motion to recede so that the amendment could properly be placed before us and to extend the courtesy of debate. I do not think the motion really gets at the heart of the objections to the bill. It seems to me that if a person is on probation and has been arrested for a murder or a Class A or Class B or a Class C, all of which are felony crimes in our state, it would seem to me that all the police would have to do and the district attorney would have to do is, first, arrest the person, charge him with committing an A, B or C Class crime and prosecute him for that crime, and during the pendency of that charge, if that charge violated a condition of probation, go to the probation officer, bring the facts before the officer and ask the officer to bring a petition to revoke probation. That is how the system currently works. It seems to me that we don't need the amendment, we do not need the bill, and I would move the indefinite postponement of the amendment before us.

The SPEAKER: The gentleman from Bangor, Mr. Tarbell, moves the indefinite postponement of House Amendment "A" to Committee Amendment "A".

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

Mr. JOYCE: Mr. Speaker, a point of information. Would this be the time for indefinite postponement of the bill?

The SPEAKER: The Chair would answer in the negative, since that motion is not properly before this body at this time, and cannot be since it is a non-concurrent matter.

Thereupon, on motion of Mr. Tarbell of Bangor, House Amendment "A" to Committee Amendment "A" was adopted.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, I move we reconsider whereby we voted to recede.

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

Mr. CARRIER: Mr. Speaker and Members of the House: This is an unusual situation we find ourselves in but a very simple one. If you didn't notice, an amendment was killed and as a result of it, we are going to go back and try to kill the whole bill. I think we are on the right track here, so I suggest to you that this bill has some good in it, I think it is a good bill and hope you do vote against reconsideration of the motion to recede.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I think this bill has been debated for several days. We have played many games with it. It is an interesting bill when you look back and see where it was born.

One district attorney in this great state had a single disagreement with one probation officer. Because that DA felt he was all-powerful, he did not go to the supervisor of the gentleman he disagreed with, but he thought himself, I should be granted the power supreme over the probation officer. If I don't like what the probation officers do, I can then act.

I think everybody in this House realizes what a judge's responsibility is in the criminal justice system. Everybody has assigned duties.

There are certain areas. We don't permit the judge to go out on the street and arrest people and drag them into his court. This is how the system began 300 years ago down on Bow Street in merry old England, but we didn't take that system that way in this country. The judge sits and judges the facts before him.

On the other end of the spectrum, we have the police. They are the ones who deliver before the court. The law enforcement officers.

We now have a very efficient probation and parole system with real professionals operating in this state. Now we have district attorneys. Where do you place them? They are not judges—district attorneys are not probation, parole officers. Where do we put them in the criminal justice system? They are law enforcement officers. The district attorney in your county is the chief law enforcement officer of your county. Always keep that in mind. We don't want him playing the part of a probation-parole officer, not in a system that we have in this state so professional. I am proud of that system.

And you know why I am so proud of it? Because I had the opportunity in my career to work in this system in the old way, the way it used to be, and in the new, modern way. Yes, police officers, law enforcement officers and district attorneys could go about the street and pluck from the streets a person that you felt that you had probable cause to believe had violated their probation. Today, police officers can't arrest for violation of probation.

Yes, I worked under that system and it was an atrocious system. It was a system that we in law enforcement used to refer to when we talked to that parolee or probationer, we used to point to him and say, "He is going to do a life sentence on the installment plan" and that is what it amounts to, it is archaic law. To think, because of one individual, maybe his vanity was damaged, I can understand that, a lot of DA's are proud people, but I can't see turning the law upside down. I think it is about time that we use the laws, use the probation system, the parole system, the way this legislature intended it to be. We don't want that lone ranger on that white horse wearing the belt buckle "DA" to ride through our communities and pluck people from the street. There is due process and it is a very good due process.

Mr. Speaker, the motion that I need now, the motion before us is?

The SPEAKER: The motion is to reconsider whereby we voted to recede.

Mr. JOYCE: Mr. Speaker, what are my options on the motion?

The SPEAKER: From the way the gentleman spoke, he is opposed to the bill. Therefore, in order to get to that position. He would have to vote to reconsider whereby we voted to recede, vote again to oppose the motion to recede and then entertain the motion of the gentleman from Newcastle, Mrs. Sewall, to adhere.

Mr. JOYCE: I urge you to follow my light.

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

Mr. SIMON: Mr. Speaker, Members of the House: I do not rise in anger but I do feel obliged to express regret that a personal attack has been levied on a gentleman who is not here to defend himself. I would say one thing on that particular point, that the gentleman to whom I believe my friend from Portland refers was acting not as an individual but as the head of the Prosecutors Association in this state.

We have heard a lot about the way the probation system worked 30 or 40 years ago. When this bill was fully debated, had its first reading and was passed by this body, the gentleman from Saco, Mr. Hobbins, who also is not here to look out for himself today, presented data from his practice of the criminal law in 1979 under the new criminal code after the war in court. He did not regale us with civic lessons; he did,

however, explain that a bill of this character could, in the nature of things, only be used in emergency situations. The emergency situations, as the gentlelady from Newcastle, Mrs. Sewall and other members of the committee and I agreed upon and tried to amend this bill to cover exclusively, and that amendment was defeated under the hammer. I don't know why. I would merely point out that if the bill is not indefinitely postponed and if the merits of that amendment are considered more fully, perhaps something can be done to put them back in.

As it is, Mr. Speaker, I would merely ask that you follow the light of the majority of the Judiciary Committee. We heard it, we don't think it is just one person's gripe, and I would remind you all of your experience with bureaucracies, that after a given period of time, a bureaucracy acquires goals that may, occasionally, become more important to them than their coalition. It may be that a bureaucracy may become more interested in protecting its turf than in doing its basic job. It may be more interested in adhering to standard operating procedures.

The amendment that the committee worked out initially, the amendment that Mrs. Sewall presented, would have focused narrowly on dangerous criminals, as it does now, focuses on criminals per se. It does not circumvent the judicial process. Only a judge can order a probation revoked. Therefore, I would ask that you vote against the motion to reconsider our action whereby we receded.

The SPEAKER: The Chair will order a vote. The pending question before the House is on the motion of the gentleman from Newcastle, Mrs. Sewall, that the House reconsider its action where it voted to recede. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

66 having voted in the affirmative and 22 in the negative the motion did prevail.

The SPEAKER: The Chair recognizes the gentleman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, Men and Women of the House: I presented the amendment this morning, which has failed, hoping that there was a ground swell of support for it and that it would be passed and it would satisfy everyone's problems. It appears that it does not satisfy very many people and that there is not a ground swell of support for it, so I hope we will proceed to vote against the recede motion so we can then move to adhere and kill this Bill finally.

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

Mr. CARRIER: Mr. Speaker and Members of the House: I hope that you do vote on the motion to recede as you did about ten minutes ago. There is a lot to be said and I feel at this time that I should say a little bit about it, because I think this is a good bill.

In the first place, there have been some statements made that this will give the district attorney power over the probation officer. This is not true. I don't mind losing a motion, I don't mind losing a bill, but let's stick to the truth. This does not give power to the district attorney over the probation officer. All it does, is give them somewhat of an equal power to bring somebody to court. He has to swear under oath that he believes there is probable cause. This is what the probation officer has to do anyway. As far as judges' responsibilities, let me tell you something, the judges are doing the best that they can. We have some good judges, we have some that are mediocre, we have others that are probably undesirable, but let's give everybody the benefit of the doubt that they are doing the best they know how with the ability they have. When such a case comes up in front of them, they do what they think is best.

If everyone hollers and demands that we do something about all these crimes that are going on, I think if we are to do something with

all these crimes, we have got to give everybody within law enforcement a chance to arrest and to bring these people to court, regardless of who gets credit for it. This should be the ultimate motive of everyone that is in law enforcement, whether he is a police officer, a judge, a probation officer, a district attorney or anybody else. If you want to keep law and order in this state, this is what you will have to do.

I cannot accept, and never will the fact that people are unwilling to give somebody a chance to actually enforce the law that we have at present. It is nice to be proud of this system, but let's take this system as it is today, not the way it was a couple of years ago or five or six years ago. Five or six years ago, if somebody else had been in charge of a certain department, and I am thinking mostly of Cumberland County and I know what goes on down there, then the same opponents of this bill would be all in favor of it. Why? Because they have their pet peers in there, that is what it would amount to.

This is not archaic law, this is a very modern law and if you want to have law and order in this state, this is one way to do it. It doesn't matter who does the work as long as it is done and we get the proper results.

The county attorney down our way is no lone ranger and neither is the county attorney in Androscoggin or York, but I can tell you that we have better county attorneys now than we had district attorneys a few years ago. They haven't got the guts to get up here and say any different, because I knew the county attorneys then and I know the district attorneys and they are a hundred times better.

I believe that this is a good bill. I don't know about the amendment, whether that should have been on there or not, but I wasn't that opposed to the amendment. I just want to save the bill. I think it is a good bill and I hope that you do vote for the motion to recede.

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

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: If I am not mistaken, we are in a position to concur with the other body. Is that correct, Mr. Speaker?

The SPEAKER: The Chair would advise the gentleman that the motion to concur is in order at this time.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to save a little time and hope that that is the only vote that is stated and, therefore, I would make that motion.

The SPEAKER: The Chair would advise the gentleman that the motion to recede must be eliminated first before he can make the motion to concur. Once that is eliminated, he could then proceed. If the motion to recede is passed, the motion to concur is in order. If the motion to recede does not pass, the motion to concur is not in order. So, if you are in favor of the bill, the Chair would suggest that you vote to recede, which is the pending motion. If you are opposed to the bill, you would vote against the motion to recede.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to proceed then, and I hope this assembly would vote with me and I would like to speak to that motion.

I would point out that the public has a real jaundiced opinion of probation these days; they don't really understand it. Judges sentence convicted persons and they impose sanctions that they deem to be fair and, occasionally, and perhaps in many instances because of circumstances in the case, they give probation. They allow probation on that sentence but you must understand that the person on probation is still under sentence, just as if he were serving his sentence, except that he is not having to serve it except in Maine.

Now, the gentleman from Portland pointed out that district attorneys are not judges. Well,

I would agree that they are not judges but neither are probation officers. It is pretty obvious that all we are deciding on here is a feud between district attorneys and probation officers.

Again, I say persons placed on probation are a little different from you and I as we walk the streets. I do believe that they are under an obligation to obey the law very carefully. Well, so are we. But they have already disobeyed it once and attention is called to their situation, and it should be, in my opinion. Therefore, they should watch their ways particularly carefully. So, if a person has been granted the privilege of probation and has not been committed to jail, if that is what his sentence called for and he continues to pursue his criminal ways, it is pretty important to move fast. I think the public wants the law enforcement people to move fast. I believe they are in favor of probation being a very circumspect area for someone to behave themselves. Therefore, if they don't behave themselves, I believe that law enforcement people should have the authority to make the move. The only authority granted here is to initiate probation violation proceedings. The ultimate decision is still with the judge and it is a two stage proceeding that remains with the court and it is subject to due process and other constitutional provisions. So, I believe that is what the people want and I am going to vote that way.

If you want another motive, it is even possible that if someone has committed another criminal violation and would have to be arrested in a normal manner and have another trial, it is even possible that the mere revocation of probation with the judge's concurrence, might make it not necessary to spend the money for the extra trial. I think the people are a little bit upset about that too, the fact that repeated trials for repeated offenses are necessary under the system as it is now.

Therefore, I urge you to vote to recede so that we can make the further motion to concur with the other body.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I really, in all due respect, think we have spent a great deal of time in the last three weeks on this bill. We did extend the courtesy and I voted to extend the courtesy today, along with many of you in the House, to recede so the gentlady from Newcastle could offer her House Amendment. She did offer the amendment and it was defeated.

I would now urge you to back up and get out of this particular predicament we are in, to oppose the motion to recede, so that the gentlady may proceed with her motion to adhere.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I stand to urge you to vote no on the motion to recede. Then we will give this bill its proper treatment by voting to adhere.

I have heard this morning many things that have never gone on in the criminal justice system. I heard people speak about their favorite politician, the D.A. and I stand here to support the criminal justice system, those professionals in the field. I think they deserve your vote to vote no on the motion to recede.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Westbrook, Mr. Carrier, that the House recede. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Simon of Lewiston requested a roll call vote.

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 the motion of the gentleman from Westbrook, Mr. Carrier, that the House recede. All in favor of that motion will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Portland Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, I request permission to pair my vote with the gentleman from Fort Kent, Mr. Barry, if he were here, he would be voting yes; I would be voting no.

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

Mr. MICHAEL: Mr. Speaker, I request permission to pair my vote with the gentleman from Lewiston, Mr. Jalbert. If he were here, he would be voting yes; I would be voting no.

ROLL CALL

YEA — Austin, Brown, A.; Brown, D.; Brown, K.L.; Call, Carrier, Carroll, Carter, D.; Damren, Davis, Dexter, Doukas, Dow, Fillmore, Fowlie, Garsoe, Gray, Hickey, Immonen, Kelleher, Kiesman, Laffin, LaPlante, Leighton, Lizotte, Lougee, Matthews, McHenry, Morton, Nadeau, Nelson, A.; Paul, Peterson, Roope, Simon, Stetson, Twitchell.

NAY — Aloupis, Bachrach, Baker, Benoit, Berube, Birt, Blodgett, Bordeaux, Boudreau, Bowden, Brannigan, Brenerman, Brodeur, Brown, K.C.; Bunker, Carter, F.; Chonko, Churchill, Cloutier, Connolly, Cox, Cunningham, Curtis, Dellert, Diamond, Dutremble, D.; Dutremble, L.; Elias, Fenlason, Gavett, Gould, Gowen, Gwadosky, Hall, Hanson, Higgins, Huber, Hughes, Hunter, Hutchings, Jacques, E.; Jacques, P.; Joyce, Kane, Kany, Leonard, Lewis, Locke, Lowe, Lund, MacBride, MacEachern, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McKean, McMahon, McSweeney, Mitchell, Nelson, M.; Nelson, N.; Norris, Paradis, Payne, Pearson, Post, Prescott, Reeves, J.; Reeves, P.; Rolde, Rollins, Sewall, Sherburne, Small, Sprowl, Stover, Studley, Tarbell, Theriault, Tierney, Torrey, Tozier, Tuttle, Vincent, Violette, Wentworth, Wood.

ABSENT — Berry, Conary, Davies, Drinkwater, Dudley, Gillis, Hobbs, Howe, Jackson, Lancaster, Mahany, McPherson, Peltier, Silsby, Smith, Soulas, Strout, Vose, Whittemore, Wyman.

PAIRED — Barry-Beaulieu; Jalbert-Michael.

Yes, 37; No, 89; Absent 20; Paired, 4.

The SPEAKER: Thirty-seven having voted in the affirmative and eighty-nine in the negative, with twenty being absent and four having paired, the motion does not prevail.

Thereupon, on motion of Mrs. Sewall of Newcastle the House voted to adhere.

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

Mr. JOYCE: Mr. Speaker, having voted on the prevailing side, I now move that we reconsider our action whereby the House voted to adhere and I ask the House to vote against me.

The SPEAKER: The gentleman from Portland, Mr. Joyce, moves that the House reconsider its action whereby the House voted to adhere. All those in favor of reconsideration will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion did not prevail.

The Chair laid before the House the second item of Unfinished Business:

An Act Concerning the Powers of the Board of Trustees and the Treasurer of the University of Maine and Concerning Real Property Belonging to the University (H. P. 793) (L. D. 1001)

Tabled—April 25, 1979 by Mr. Hughes of Auburn.

Pending—Passage to be Enacted.

On motion of Mr. Hughes of Auburn, retabled pending passage to be enacted and specially assigned for Wednesday, May 2.

The Chair laid before the House the third item of Unfinished Business:

HOUSE REPORT — "Ought to Pass" as amended by Committee Amendment "A" (H-274) — Committee on Education on Bill, "An Act to Prohibit a School District from Offering Driver Education Courses for a Fee to a Student when a Duly Licensed Commercial School is Available" (H. P. 237) (L. D. 283).

Tabled—April 26, 1979 by Mr. Diamond of Windham.

Pending—Acceptance of the Committee Report.

Thereupon, the Report was accepted and the Bill read once. Committee Amendment "A" (H-274) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

The Chair laid before the House the fourth item of Unfinished Business:

Bill, "An Act to Revise the Qualifications for Burial in the Veterans Memorial Cemetery" (H. P. 923) (L. D. 1138)

Tabled—April 26, 1979 by Mrs. Nelson of Portland.

Pending—Adoption of Committee Amendment "A" (H-264).

Thereupon, Committee Amendment "A" was adopted and the Bill assigned for second reading tomorrow.

Reference was made to (H. P. 482) (L. D. 613) Bill "An Act to Eliminate the Jurisdiction of the Maine Milk Commission over 1/2 Pint Containers of Milk."

In reference to the action of the House on Thursday, April 26, whereby it Insisted and Joined in a Committee of Conference the Chair appointed the following members on the part of the House as Conferees:

Messrs. BRENERMAN of Portland
WOOD of Sanford
STOVER of West Bath

Reference was made to (H. P. 498) (L. D. 622) Bill "An Act Regulating Hunting with Muzzle-loading Rifles"

In reference to the action of the House on Monday, April 23, 1979, whereby it Insisted and Asked for a Committee of Conference the Chair appointed the following members on the part of the House as Conferees:

Messrs. DOW of West Gardiner
JACQUES of Waterville
MASTERMAN of Milo

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

HOUSE DIVIDED REPORT — Majority (7) "Ought Not to Pass" — Minority (6) "Ought to Pass" — Committee on Legal Affairs on Bill, "An Act Equalizing the Retail Price of Alcoholic Beverages throughout the State" (H. P. 674) (L. D. 834)

Tabled—April 26, 1979 by Mr. Violette of Van Buren.

Pending—Motion of the same gentleman to accept the Majority "Ought Not to Pass" Report.

On motion of Mr. Violette of Van Buren, was recommitted to the Committee on Legal Affairs and sent up for concurrence.

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

Bill, "An Act Concerning Access by Physically Disabled Persons to Certain Public Facilities" (H. P. 707) (L. D. 891)

Tabled—April 27, 1979 by Mrs. Prescott of Hampden.

Pending—Adoption of Committee Amendment "A" (H-283).

Mrs. Prescott of Hampden offered House

Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-297) was read by the Clerk and adopted.

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

The Bill was assigned for second reading tomorrow.

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

An Act to Extend the Deadline for Enactment of Educational Funding Legislation for 1979 from May 1st to May 15th (H. P. 1352) (L. D. 1590)

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. 117 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.

(Off Record Remarks)

On motion of Mr. Nadeau of Lewiston, adjourned until eight o'clock tomorrow morning.