

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

HOUSE

Thursday, February 21, 1980

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

Prayer by the Reverend Reginald Couture of the Ellsworth Falls Congregational Church.

Rev. COUTURE: As we once more begin the lenten season, O God, make us aware of the possibilities in our lives and the responsibilities that we have as citizens and leaders in our state. We pray, O God, that you give us the courage, the wisdom and the knowledge in order to be better leaders in the government of the people, by the people, so that we may be better followers of thy son, Jesus Christ, our Lord. Amen.

The journal of yesterday was read and approved.

Papers from the Senate

The following Communication:

February 20, 1980

The Honorable Edwin H. Pert
Clerk of the House
109th Legislature
Augusta, Maine 04333
Dear Clerk Pert:

The President today appointed the following members of the Senate to the Committee of Conference on Joint Order relative to Lakeville Plantation (H. P. 1811);

Senators:

McBREAIRTY of Arrostook
TEAGUE of Somerset
CLARK of Cumberland.

Respectfully,
S/MAY M. ROSS

Secretary of the Senate

Was read and ordered placed on file.

Non-Concurrent Matter

Bill "An Act Authorizing the Bureau of Consumer Protection to Inform and Advise the Public and to Investigate and Prosecute Complaints Under the Fair Credit Reporting Act" (H. P. 1814) (L. D. 1926) which was passed to be engrossed in the House on February 11, 1980.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-419) in non-concurrence.

In the House: On motion of Mr. Howe of South Portland, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act Concerning Mobile Barber Shops" (H. P. 1658) (L. D. 1767) which was passed to be engrossed in the House on February 12, 1980.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-415) and Senate Amendment "B" (S-417) in non-concurrence.

In the House:

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

Mr. DEXTER: Mr. Speaker, Ladies and Gentlemen of the House: This is my first time up this year. I just heard the gentleman from Kittery say under his breath, "I hope it is the last."

I came here a little over three years ago determined to learn the system, and at the urging of my good friend, the Speaker, I did some studying. One of the first things that caught my eye was that if you could get a bill out of committee with a unanimous "Ought to Pass", it would sail right through under the hammer.

Well, it was easy to figure out what the hammer was—that is the thing that the gentleman from Eagle Lake is trying to kill the Clerk of the House with.

There are some rumors going around this complex that I harbour some ill feelings towards the other body for the manner they have handled this bill. Well, I would like to dispel

those rumors at this moment, especially to those two great leaders in the other body who led the bipartisan effort to kill this bill. If they are ever in my neck of the woods, while I realize they can step out of their door and find a dozen hair stylists anytime, but if they are ever up in my neck of the woods, I will style their hair with a chainsaw free of charge.

To my good friend from Kittery, I want to assure him that smoke did not get into my eyes on this bill. The bare fact of the matter is that there is going to be a lot of hair in the eyes of my constituents if this doesn't pass.

At this time, Mr. Speaker, I move that we recede and concur.

Thereupon, the House voted to recede and concur.

Petitions, Bills and Resolves
Requiring Reference

The following Bill was received and referred to the following Committee:

Appropriations and Financial Affairs

Bill "An Act to Amend the Emergency Home Heating Act of 1979" (Emergency) (H. P. 1866) Presented by Mr. Tierney of Lisbon) (Cosponsors: Mr. Michael of Auburn and Mr. Baker of Portland) (Governor's Bill)

(Ordered Printed)

Sent up for concurrence.

Orders

Tabled and Assigned

On motion of Mr. Jackson of Yarmouth, the following Joint Order: (H. P. 1864)

WHEREAS, the Division of Recreational Safety and Registration within the Department of Inland Fisheries and Wildlife collects and expends funds as part of its statutory duties; and

WHEREAS, the amount of funds collected and the administrative costs involved is not readily available to members of the Legislature; and

WHEREAS, the actual purposes for which these funds are disbursed have not been fully disclosed to the satisfaction of the Legislature; now, therefore, be it

ORDERED, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Audit and Program Review shall study the collection and disposition of funds by the Division of Recreational Safety and Registration to determine the actual administrative costs and purposes for which these funds are utilized; and be it further ORDERED, that the committee report its findings and recommendations, together with all necessary implementing legislation to this session of the Legislature, if possible, otherwise to the Legislative Council in accordance with the Joint Rules, for submission in final form at the First Session of the 110th Legislature; and be it further

ORDERED, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

The Order was read.

On motion of Mr. Dow of West Gardiner, tabled pending passage and tomorrow assigned.

On motion of Mr. Cox of Brewer, it was

ORDERED, that Representative Harold Fenlason of Danforth be excused February 20, 1980 and for the duration of his illness.

Special Sentiment Calendar

In accordance with House Rule 56, the following Joint Orders (Expressions of Legislative Sentiment) recognizing,

A Joint Resolution (H. P. 1858) in memory of the Honorable Alma H. Oakes, of Portland, a member of the 101st Legislature.

Presented by Mrs. Payne of Portland.

A Joint Resolution (H. P. 1863) in memory of Captain Samuel C. Gamache of Islesboro.

Presented by Mrs. Hutchings of Lincolnville. (Cosponsor: Senator Shute of Waldo)

Thomas Henderson of South Portland, who has been selected as the Guy Gannett Publishing Company's outstanding newspaper carrier; (S. P. 760)

Mrs. Joyce Rossignol, of Waterville, 1980 Maine Mother of the Year; (H. P. 1859) by Mr. Jacques of Waterville. (Cosponsor: Senator Pierce of Kennebec)

Kevin Huber of Lawrence High School, who won the Bausch and Lomb Science Award for highest scholastic standing in science subjects; (H. P. 1860) by Mr. Hunter of Benton. (Cosponsors: Senator Teague of Somerset and Mr. Gwadosky of Fairfield)

Homan H. Hallock of Portland, an internationally known and respected engineer, who will celebrate his 97th birthday on February 22, 1980; (H. P. 1861) by Mrs. Payne of Portland. (Cosponsor: Senator Najarian of Cumberland)

The Town of Wells' Historic Preservation Committee, co-chaired by Hope Shelley and Jean Foss, for successful efforts in preserving the heritage of early architecture; (H. P. 1862) by Mrs. Wentworth of Wells. (Cosponsor: Senator Hichens of York)

Amanda Driscoll of Brewer, who celebrated her 101st birthday on February 16, 1980; (H. P. 1865) by Mr. Tarbell of Bangor.

There being no objections, the Joint Resolutions were adopted and the Expressions of Legislative Sentiment were considered passed and sent up for concurrence.

House Reports of Committees

Leave to Withdraw

Mrs. Kany from the Committee on State Government on Bill "An Act Concerning the Director of the Division of Special Investigations and Membership on the Board of Directors" (H. P. 1624) (L. D. 1734) reporting "Leave to Withdraw"

Report was read and 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:

(S. P. 720) (L. D. 1870) Bill "An Act to Allow School Districts to Account for Federally-subsidized Pupils as Residents of the District and not of the Municipality in which they Reside"—Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (S-416)

No objections being noted, the above items were ordered to appear on the consent Calendar of February 22, under listing of Second Day.

Orders of the Day

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

An Act to Validate Proceedings Authorizing the Issuance of Bonds and Notes by School Administrative District No. 37 (Emergency) (S. P. 659) (L. D. 1697)

Tabled—February 20 (Till Later in the day) by Mr. Connolly of Portland.

Pending—Passage to be Enacted.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: My understanding of this document that is before us here this morning is that there was an error in the proceed-

ings that were voted upon down in six towns in Washington County. The reason that this bill is in here this morning is for clarification and correction, as I understand it.

A gentleman from Bangor who has counseled concerning this particular document called me and said that it was, in his opinion, unnecessary to delay any action in the House of Representatives concerning this document because it was just a minor error in his opinion. In talking with him, I said that generally creates a difference of opinion and people usually go to court over errors. If the error was not in your light, I am sure that you wouldn't feel it to be as minor a problem as you are concerned about it concerning this telephone conversation.

My comment to him was, because of interest involving a couple friends of mine from one of the towns in question, they felt that in fairness to the voters in districts that they came from that they should have an opportunity again to vote on something for validation. It brought to mind a problem that we are constantly confronted with here in this legislature and in past legislatures, that when the legislature itself, in its judgment, passes documents from one branch to the other and it ultimately ends up on the Governor's desk and becomes law, if there is an error, we have a committee called Judiciary and we do our own housekeeping in correcting any errors or inconsistencies with the law.

It seems to me that if we believe in the principle of home rule as we apply it to ourselves in correcting mistakes that we make, then the people in the six towns in the school administrative district that this involves should have that opportunity no matter how minor the opposition might try to present its arguments this morning saying that I am unrealistic in presenting mine before this august body, and I think we should prevail upon the good judgment of the people in the school administrative district because there is an error in the article that was before them that they voted on, that they have the honest opportunity to correct it themselves and not this House of Representatives. If you want to arbitrarily take their right away, then I suggest you vote for this bill, but I shall not do that because I believe that opportunity belongs in the very hands of the voters, the very hands of the taxpayers in that particular district that are going to have hands of the taxpayers in that particular district that are going to have to vote on it.

I don't care how they vote down in those six towns, to be very honest with you, but I do care that they have their honest and entitled opportunity to do so.

I request the yeas and nays, and just for the Legislative Record, I do hope that this body will allow the citizens in the six towns the opportunity to make the corrective judgment values themselves and not us take their right away.

The SPEAKER: The Chair recognizes the gentleman from Roque Bluffs, Mr. Nelson.

Mr. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: I think it is about time some light was shared on this bill that is before us now. It has been in here, it has been tabled three or four times, and I think something should be said on it.

I was down and saw the Harrington school and it is a mess. That is as plain as I can say it—it is a mess. It is an old square, wooden school that was built in 1923 or 1924. It was used as a high school before Narraguagus High School was built in the district. There are classrooms down in the cellar, and I mean in the cellar. They have had to put the sixth and seventh grades down in there and they are sitting there in the heat, it is a steam boiler, there is a cellulux wall between that steam boiler and this classroom. The heat is secured to the ceilings, with radiators right up on the ceilings. You are pretty warm down to your shoulders, but when you sit down in the seats on that cement floor, I am telling you, it is uncomfort-

able there.

I don't see any reason why we can't pass this bill this morning. We should not use these young people as pawns in this game that is being played here. Two or three people are trying to circumvent the will of the people; that is what is happening. You heard it said right here—home rule. They have home rule, they voted for this bill, it passed 3 to 2 in the district. The board of education okayed this project September 12 of last year. The law that my friend Representative Kelleher is speaking about took effect on the 14th of September, two days later.

This came out of the Education Committee with a unanimous "ought to pass." Why this bill is here is because they want this legislature to make it legal for the bond bank to be able to sell these bonds.

I talked with an opponent of this bill and I said, "Why didn't you lobby this bill before it went to referendum?" He said, "We did and we almost won." Does that tell you something? It does me.

This project, last year in August it was the first priority in the state, number one in the State of Maine to be built. This is how bad this school is needed down there in Harrington.

Mr. Kelleher says that home rule should fly. I think it has a fly. The district voted on it and I have the records here. This school is not going to be just for the town of Harrington. The principal has told me that the Harrington School, the seventh and eighth grades from Columbia Falls will be brought over there, the seventh and eighth grades from Cherryfield will be brought over there and the special education students in the district will be going into that school. This could make all the difference in the world, but while these young people are sitting there in that cellar trying to study, we are over here trying to play games. Let's not play games anymore; let's pass this bill and let them go ahead with this project and get these young people out of the cellar.

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

Mr. JALBERT: Mr. Speaker, this bill has been around quite a while and I have forgotten, could I ask what the report of the committee was on this bill, please.

Thereupon, the unanimous "Ought to Pass" Report was read by the Clerk.

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

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

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

ROLL CALL

YEA — Aloupis, Austin, Bachrach, Barry, Beaulieu, Berry, Berube, Birt, Blodgett, Bowden, Brennerman, Brown, K. C.; Call, Carroll, Chonko, Churchill, Cloutier, Connolly, Cox, Cunningham, Damren, Davies, Davis, Dellert, Dexter, Diamond, Doukas, Dow, Drinkwater, Dutremble, D.; Dutremble, L.; Elias, Fenilson, Fillmore, Fowlie, Garsoe, Gowen, Gray, Gwadosky, Hall, Hanson, Hickey, Hobbins, Howe, Hughes, Hunter, Hutchings, Jackson, Jacques, E.; Jacques, P.; Jalbert, Kane, Kiesman, Laffin, LaPlante, Lewis, Lizotte, Locke, Lougee, Lund, MacBride, MacEachern, Mahany, Marshall, Martin, A.; Masterman, Masterton, Matthews, Maxwell, McHenry, McKean, McSweeney, Mitchell, Morton, Nadeau, Nelson, A.; Nelson, M.; Nelson, N.; Paradis, E.; Paradis, P.; Paul, Payne, Pearson, Peltier, Peterson, Post,

Prescott, Reeves, P.; Rolde, Rollins, Roope, Sewall, Sherburne, Simon, Small, Smith, Soulas, Stetson, Strout, Studley, Tarbell, Theriault, Tierney, Torrey, Tozier, Tuttle, Vincent, Vose, Wentworth, Whittemore, Wood, Wynan, The Speaker.

NAY — Bordeaux, Brodeur, Brown, A.; Brown, D.; Brown, K. L.; Bunker, Carrier, Carter, D.; Carter, F.; Dudley, Gavett, Gillis, Higgins, Immonen, Kany, Kelleher, Lancaster, Leighton, Lowe, McPherson, Norris, Silsby, Stover, Twitchell.

ABSENT — Baker, Benoit, Boudreau, Branigan, Conary, Curtis, Huber, Joyce, Leonard, McMahon, Michael, Reeves, J.; Sprowl, Violette.

Yes, 113; No, 24; Absent, 14.

The SPEAKER: One Hundred thirteen having voted in the affirmative and twenty-four in the negative, with fourteen being absent, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

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

An Act Relating to Maine Educational Advisory Organizations (H. P. 1646) (L. D. 1756)

Tabled—February 20, 1980 by Mr. LaPlante of Sabattus.

Pending—Passage to be Enacted.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. LaPlante.

Mr. LaPLANTE: Mr. Speaker, Ladies and Gentlemen of the House: I have asked for information from the Maine School Board Association and there is also some information coming down from the Attorney General that we haven't got yet and we may not get tomorrow. The good gentleman from Cumberland, Mr. Garsoe, wanted it tabled yesterday and I gave him that courtesy and would hope someone would give me the courtesy of tabling it for two legislative days.

Thereupon, on motion of Mr. Connolly of Portland, tabled pending passage to be enacted and specially assigned for Monday, February 25.

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

Bill, "An Act to Amend the Pay Schedule of Physicians to Include Actuaries" (S. P. 707) (L. D. 1843)

Tabled—February 20, 1980 by Mr. Tierney of Lisbon.

Pending—Adoption of House Amendment "B" (H-795)

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

Mr. HOWE: Mr. Speaker and Members of the House: Welcome back to Chapter 3 in the continuing Saga of the Flawed Fiscal Note Folies. I want to present to you today the third fiscal note that I am going to attempt to put on this bill.

In defense of my honor and dignity, I would point out that I had nothing to do with either the writing of this one or the first two.

First I must withdraw my motion to adopt House Amendment "B", so I will do that now.

The SPEAKER: The gentleman from South Portland, Mr. Howe, withdraws House Amendment "B".

The Chair recognizes the same gentleman.

Mr. Howe of South Portland offered House Amendment "D" and moved its adoption.

House Amendment "D" (H-799) was read by the Clerk.

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

Mr. HOWE: Mr. Speaker and Members of the House: This fiscal note process has taken a little time. I am attempting to coin a new political phrase known as the "fiscal buster" and I hope that this new fiscal note meets the high standards of the founding father fiscal notes which have gone before it and I urge its adoption.

Thereupon, House Amendment "D" was adopted.

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

House Amendment "C" (H-797) was read by the Clerk.

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

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: In addition to the continuing saga on fiscal notes, we have had a continuing saga about this particular bill, and I would hope and trust that by now most of you are at least generally acquainted with the arguments on both sides of this particular issue.

This bill will permit the hiring of actuaries which deal with determination on whether insurance rates, Blue Cross and Blue Shield and Workers' Compensation especially, are fair and just. There has been no question whatsoever that we need the actuaries and there has also been no question whatsoever that we ought to give them more money.

The question has been, however, as to whether or not the Legislature should take action which could be regarded as unilateral in moving the actuaries onto the physician's pay scale, which is what the bill does.

This particular amendment will permit the administration to hire the actuaries and move them into the physician's pay scale but it will also permit the Maine State Employees Association which, as you know, represents the majority of state employees in Maine to contest that and to bring that before the Labor Relations Board, not to contest the hiring of the actuaries but to contest whether or not the administration has the right to move the actuaries into the physician pay range without taking it, first of all, to the collective bargaining table. So, the real question is whether or not this bill without the amendment, would possibly be construed as circumventing or in effect pulling an end run around the collective bargaining process. I don't think any of us want that and, hopefully, with the adoption of this amendment, we will give the administration an opportunity to hire the actuaries immediately but we will also give the opportunity for the Maine State Employees Association to go to the Labor Relations Board and to permit that board to make a final determination on whether this particular action should be negotiable or whether it is not a negotiable item.

I would hope in the spirit of compromise we will be able to adopt this amendment.

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

Mr. GARSOE: Mr. Speaker, Ladies and Gentlemen of the House: I hope we will not pass this amendment today, and I want to give you just slightly different perspective on what I think this is doing from the distinguished gentleman from Pittsfield, Mr. Wyman.

There is no disagreement, absolutely no disagreement. I don't care who you talk to, the unions, will agree that there has to be legislative action to move the actuaries from pay scale 1 to pay scale 1-A, absolutely no disagreement on that at all, so we can start from that common ground.

However, when Mr. Wyman says that to pass this amendment and give the union the right to challenge the negotiability and then says, of course, they won't stand in the way of this action, he is asking you to place a lot of faith in the union organization, because the very fact, and I commend the amendment for being very open, that this is what it is designed to do is to make it subject to negotiation — the very fact of making it subject to negotiation means that it is subject to the binding decision of an arbitrator. The union wants the right to challenge the ability of the state to make this change. Otherwise, they would have no objection for us mandating it, unilaterally.

When you bargain, it is a case of I will give you this and you give me that, that is what bar-

gaining is all about. I get something for giving you something. What possible reasons have we got to put the union in the position of demanding something from the state in order to stand still and allow the state to put the actuaries into the physician pay scale? I say absolutely nothing. We should not give in on this point.

The only argument that I bet everyone of you have heard is what I would describe as the union paranoia, that next year somebody is going to come in here and change the pay grades of the correctional people down at Thomaston or the game wardens up in Millinocket. I say, let the legislature deal with that if, indeed, that comes about. It is very unlikely that it is going to come about, and it would certainly be an invasion of the contract if it were to come about because the present contract has devices in it that take care of disputes as to what the appropriate pay grade is.

You are not going to hear any challenge over the fact that there has to be legislative action. I am going to make another statement that I don't think can be challenged. Once this legislature passes the legislation in the form that it is right now and without this amendment, the Personnel Department will say, we are putting those actuaries in pay grade 52 or 53 or what it would be in that new scale. The union can then say, now wait a minute, we don't think that is an appropriate pay scale.

The device that I have just described to you in the contract enables the union to challenge this, to take it to a decision of an arbitrator who will then decide which pay grade they will go into but in the new scale. So, far from setting a precedent that would be hurtful to the state of Maine, I think adopting this amendment will start a precedent that would be hurtful to the state of Maine.

I would take exactly the opposite viewpoint of Mr. Wyman, and I hope we will let this go forward in exactly the format that the Governor wants, in exactly the format the Personnel Department wants and exactly the format that those people at the table, looking out for the best interests for the State of Maine and its citizens, in exactly the format that they want and not give in to what I can only describe as the paranoia of union leaders who feel that down the line somewhere some damage may be done. We have the potential for doing the damage right here today if we adopt this amendment, and I solicit your 'no' vote on a division.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Whittemore.

Mr. WHITEMORE: Mr. Speaker, Ladies and Gentlemen of the House: I am very much opposed to this amendment. I don't think it is needed.

An actuary is a very skilled person, it is a very skilled job, and many of them, if we are lucky enough to get them here in Maine, it isn't because they need to come to Maine it is only because they want to, because they can get much more money elsewhere. I don't think they are interested in getting involved with unions.

In fact, if I was an actuary and I was going for a job and there was any inclination that somebody out there is trying to tell me what I am going to get paid and what I am not going to get paid, I would walk away from it. As an actuary, I could do it and go within the next hour or so and get a good job at much higher pay.

I think this is very harmful to us and I don't think it is needed and I certainly hope you will vote against it.

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

Mr. HOWE: Mr. Speaker, Members of the House: I want to speak as House Chairman on Business Legislation, which heard this bill and reported it out unanimously. I also want to take this opportunity to point out that the committee was put in a very uncomfortable position, the members on this committee, and I think the

blame for the position we were put in must be shared pretty much equally by the administration and by the Maine State Employees Association, neither of whom brought the labor relations implications of this legislation to us until the bill was out onto the floor with a unanimous report pending second reading. Enough said on that point. I consider the two parties sufficiently chastised for failing to see these implications soon enough.

I felt in my role as House Chairman of the committee that my primary responsibility was to see to it that the actuaries, which the Bureau of Insurance have sorely needed for years, were hired in the most timely fashion. I have spent a good deal of the last week or ten days weighing the question of whether the actuaries or that position of actuaries would have a greater, darker cloud hanging over it if this bill were passed with the amendment or without it.

In the event that the bill were to pass with the amendment that is pending now, I attempted to seek some reassurance from the Maine State Employees Association that within their ability to control any decision of the MLRB, which is not obviously in a position to control that decision but they are in a position to ask for certain remedies on the question of negotiability of this item, what they would seek, and I want to read into the record a letter that I received dated February 20th.

"Dear Representative Howe: This is to confirm the assurance that I gave you yesterday with respect to the adoption of the amended version of L. D. 1843 pertaining to assignment of insurance actuaries to the physician pay schedule. Should the state seek to unilaterally upgrade the actuary positions after enactment of the amended bill and MSEA should decide to challenge that action on the question of its negotiability, we would not be seeking to rescind the upgrading. We do not seek pay reductions for employees and, in fact, we agree with the state's position on upgrading the actuaries. Our effort before the MLRB would be simply to establish negotiability. I wish to stress that this holds true only with respect to the amended version of the bill. Passage of the bill in its original form would have other effects and require different legal avenues by us to protect bargaining rights. Sincerely, John B. Oliver, Executive Director."

I just want to convey to you on the question only of hiring of actuaries that it is my personal judgment that whether the bill is passed with or without the amendment, the degree to which those positions will be clouded for some period of time is a tossup.

I am going to intentionally stay out of the quagmire of the labor relations issue and I hope you have listened closely to the debate thus far and any that follows in making your decision on this amendment.

The SPEAKER: A vote has been requested. The pending question before the House is on the adoption of House Amendment "C". Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Garsoe of Cumberland 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 Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, Ladies and Gentlemen of the House: I will rise very briefly and ask one question. I think it is a sorry day when we have to pass legislation in this body on the strength of a guarantee from a union that they aren't going to do us damage. If it doesn't make it clear that what you are going to be

doing here if you pass this amendment, makes us viable to that damage, then I don't know what does.

There has been a note addressed to me that I should consider myself in conflict here, and I want to state that I do not consider myself in conflict. Unless somebody has some information that I am not aware of that would establish my conflict, I am going to proudly vote no on this issue.

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

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: I certainly don't feel the gentleman from Cumberland, Mr. Garsoe, is in conflict anymore than the gentleman from Lisbon Falls is in conflict, so I certainly hope that he would vote no, just as I am going to vote yes. As a matter of fact, I would be almost surprised and hurt if my good friend from Cumberland voted the same way I did on an issue like this.

The principles are very simple and very clear. There are some people who are against collective bargaining in the state sector and they feel that having lost that battle, as Mr. Garsoe did many years ago, that we should continue to intrude and we should not be afraid to impose our will almost every chance we get, and I just think that is wrong. So, those of us who do believe in collective bargaining in the area of state employees and do feel that we should honor a process, then I feel that we should, in this amendment as we have in almost every other issue in this House, a House that I am proud of, we never exactly got two-thirds, but certainly a clear majority of this House has said time and time again that we should keep out of the collective bargaining process, that is why we have two parties, that is why we have statutory framework and that this amendment offered by Mr. Wyman is totally in keeping with the position that this House has taken consistently for the entire eight years that I have been here.

So, I do hope you support the amendment; it is a good one.

The SPEAKER: The Chair recognizes the gentleman from Fairfield, Mr. Gwadosky.

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I hate to stand up and oppose my majority leader in the corner, but I really don't feel that his remarks are what we are talking about today. I think we are all familiar with the bill. It is a unanimous report from the Committee on Business Legislation and it is my feeling today and I would like to submit to you that this is a consumer bill and is not a labor bill, as many people would have you believe.

The State of Maine is presently at a competitive disadvantage because we are unable to hire actuaries. This is not to say that the State of Maine is in competition with the various insurance industries but by not having actuaries we are unable to effectively regulate the insurance industry. I think there is no question that we need actuaries. Actuaries who are presently employed in the State of Maine, so I guess it is pretty easy to figure out why nobody wants to jump on the bandwagon and work for the state all of a sudden.

I am simply submitting that I don't believe that we need this amendment today. I have talked with some members of the Maine State Employees Association and their feelings to me have been that whether we pass the amendment or not, they are going to go to the Maine Labor Relations Board and present their case either way. I think I would like to have them go with a clean slated bill. I would like to have this bill pass without the amendment. If they want to take their case then, perhaps that is the time they can do it, so I would hope that you would oppose the amendment today.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Miss Aloupis.

Miss ALOUPIS: Mr. Speaker, Ladies and

Gentlemen of the House: I really do feel that many of us on the committee have been put in between two rocks. The administration says they feel is not negotiable, the MSEA says it is. I guess I would like to vote, and vote so that when it does go out — and MSEA has said that it will take it to the Labor Relations Board one way or the other, with the amendment or without the amendment.

My feeling is, and I would hope someone would perhaps be able to respond to me, is it going to be clearer and unclouded for this bill to go in its present form, without the amendment, or in fact, if we go without the amendment, are we saying, yes, the administration does have that right? On the other hand, I did ask Joe Mackey and John Oliver, by saying 'may', are you putting us in the situation of the board looking at it and saying, in this instance, yes, you 'may' raise them from 1 to 1-A; however, there may be times that you will not be able to.

I have to admit to you, as a member of that committee, I am confused on the issue. I think it is a much deeper issue than the fact, yes, we all agree that we need actuaries, and I guess my feeling is, I would like to see it go to the board without a cloud on it and I really don't know that answer.

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

Mr. TIERNEY: Mr. Speaker and Members of the House: I will do the best I can to answer the gentleman from Bangor's question.

I don't blame the good people on the Business Legislation Committee for being confused on the matter because it is not a business legislation issue, it is a labor relations issue. I have committed myself to the Governor and to the administration that under no circumstances will I vote to indefinitely postpone this bill because I think it is a good one and I think with the amendment or without the amendment, it ought to be enacted. I would like to hopefully take that burden off the minds of the members of the Business Legislation Committee. I am not trying to kill the bill.

The answer, I think, and maybe Mr. Garsoe will disagree, but it is very clear to me that House Amendment "C" leaves open the question of negotiability; is it negotiable or is it not negotiable under our current statutes? That is an issue which is appropriately before the Maine Labor Relations Board and should be discussed.

If, however, the bill is enacted without this amendment, then the issue is, in essence, foreclosed, because we will have passed a subsequent statute since the enactment of the Labor Relations Act which could clearly show legislative intent to the contrary, that it is not negotiable, and there is ample debate on the floor of this House which also accentuates that point.

So, basically, if you want to leave the bill open to the Maine Labor Relations Board clear and without a cloud, you have got to have House Amendment "C" on it. That is how I view the statute and that is how I read the law. That is why I think it is necessary. I think we are still going to get our actuaries, I think we still leave our process of negotiating open and the way it should be if we do it this way.

I have discussed the matter—everyone says they have discussed it with MSEA; I have discussed it with Mr. Lanny Mosher, who represents us collectively in his management capacity, and while I am not exactly sure how he feels about House Amendment "C", he is probably against it, he did tell me that this whole issue was never even brought to his attention until after the public hearing. Until after the hearing, until after the bill was virtually voted out of committee. Neither union nor management knew anything about it. So those of you on the Business Legislation Committee, please, try to work your way into a labor management frame of mind until we deal with this amendment one way or the other and then you

can go back and it will be your bill again once House Amendment "C" is dealt with one way or the other.

I hope I answered your question, but I think the good gentleman will probably disagree.

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

Mr. GARSOE: Mr. Speaker and Members of the House: Most typically around here, it is not unusual at all to find two answers to the same question and I would like to give the other one.

You only have to read the amendment to see what is being done here. They want to make the change negotiable. The State of Maine has found it in the public's interest to set up a physician's pay scale because we couldn't hire physicians in our regular pay scale. They now find it in the public's need to put actuaries in that pay scale. Now, do you want the union participating in that decision, because that is what you are being asked to do? That is what Mr. Tierney wants you to agree to, that, yes, the union has an interest here in determining whether or not actuaries are even going to be put into pay scale 1-A. Nothing could be a better illustration of that than the letter I understand the members of the committee received that says, yes, we will have this power but we won't abuse it. I say they don't need it.

It is agreed that once the actuaries go into Table 1-A, the union will negotiate their salary through the procedures already in place in the contract. It is as simple as that. If you think the affairs of the State of Maine need to have union agreement for such a basic move as we are being asked to make here today, pass this amendment. But if you feel that as representatives of the people, meeting the needs of the people, we should say yes, put those actuaries into Table 1-A and then let the union negotiate what is going to be paid within that range, then you will vote no, and that is what I hope you will do.

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

Mrs. KANY: Mr. Speaker and Members of the House: What is worse than a second opinion? Perhaps a third opinion, so I will give you one, for what it is worth.

Basically, it appears to me, after looking at our personnel system and some of our contracts that are in effect, that we can negotiate anything we want. It is just like passing a new law when amending any law because the agreement comes to the legislature to be ratified, and at that moment we determine what is actually negotiable.

My opinion is, vote how you want on this bill. Really, it doesn't make any difference at all.

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

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: If this amendment is not adopted, then we have already made the decision.

Now, the good gentleman from Bangor, Miss Aloupis, says, how can we put this bill in a position so that we are not making a decision and we are not clouding it? If we vote the bill out, we are in effect saying that this is not a negotiable item. We agree with the administration that we can do this without going to the Labor Relations Board or without negotiating it. Mr. Garsoe failed to mention that. That is what we will be doing.

If we adopt the amendment, we are not saying, as Mr. Garsoe has suggested in his statement, that this is a negotiable item, we are not saying that at all. What we are saying is that rather than the legislature deciding what is negotiable and what is not negotiable, we are going to let the Labor Relations Board make that decision because that is what they are there for, that is their responsibility, that is their expertise, that is their experience and that is their prerogative and responsibility under the law in the way our collective bargaining process functions and the way it was

originally established.

We established collective bargaining in the State of Maine, as I remember it, I wasn't in the legislature at the time, some of you were and you can correct me if I am in error, but I believe we established collective bargaining so that the legislature would not have to make these decisions on what is negotiable and what is not.

The amendment says that we are not going to touch this, we are not going to make this decision; we are going to send it to the Labor Relations Board and let them make that decision. They may decide that in fact moving these actuaries from Table 1 to Table 1-A is not negotiable. I think there is a presumption, and I incur a presumption from the gentleman from Cumberland's remarks that in effect the Labor Relations Board will automatically decide that this is negotiable. They will not; that is an erroneous assumption to make. They may very well decide that it is not a negotiable item.

Let me read to you, and I am going to try to curtail my remarks but I think there is some misunderstanding here as to what the present contract says in relation to what is negotiable and what is not. I would like to read to you from the present contract. It says—this is the present contract between the administration and the executive and the state employees:

"Neither party will, during the term of this agreement, seek to unilaterally modify its terms through legislation or other means which may be available to them."

To me, the issue is very clear—wages, hours and working conditions are negotiable items (that is my opinion and I am stating it on the floor of the House). Some of you don't agree with that, you don't think it is negotiable.

Well, all we are saying with the amendment is rather than debate that and try to decide on it here and circumvent collective bargaining and say, well, in this case we will forget collective bargaining, we will make the decision so next year when Bonnie Post comes in with a bill affecting the people who run the ferries, they will want to be moved into a different pay scale, or maybe some engineers will want to be moved into a pay scale, or wardens or other groups of public employees—so it really seems to me that what is good for the goose would be good for the gander, and if we pass this and we say yes, the legislature is authorized to move these people into a different pay table, then we will do it for other employees as well.

I am really concerned about the precedent. I understand the concerns that Mr. Garsoe has and Mr. Whittemore and other people, and I would just like to say in closing that I am not surprised that they would not want to trust the unions, either the MSEA or other unions, but it seems to me that the issue is not a matter of trust, the issue is whether or not we are going to negotiate and we are going to decide what is negotiable.

I hope you will adopt the amendment. Let the Labor Relations Board make this decision and not the state legislature.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I have appreciated the robust debate on the floor of the House today. I think some of the issues are finally being refined and defined in the public arena here on the floor.

Obviously, what we have before us today, if I understand the debate from both sides, is a test case. We have got a legal test case and we are being asked not to inject ourselves into that in any way. And the test case apparently, and I am not an expert on the collective bargaining statute, goes back to that statute that was passed several years ago in the mid or early seventies. As you recall, last year we had a round or two on what that statute meant, as passed by a former legislature, on another given issue.

My question is moving actuaries into the same pay scale, which is 1-A, of physicians. At the time when the collective bargaining statute was passed and enacted, was it envisioned that the state, through the administration and through the legislature, the State of Maine, the sovereign State of Maine, would have the power and retain the power to make those kinds of moves as the employer? Or was it envisioned that that is an issue that was to be left up to negotiation at the collective bargaining table? I am wondering what foundation in the past, in that background of that collective bargaining statute that is really at the heart of the dispute and the debate today, I am wondering what can really be pointed to to clarify whether or not at the time it was passed it was envisioned that it would be a province of the state or it would simply be a province of the collective bargaining process in negotiation or that that point was never considered and now we have got a fresh, first-instance test case of something that was never previously considered at all of a gray area, or are we, by this legislation and this amendment, making an area that is clear, with legislative history to back it up, are we muddying the waters and making it grayer? I would appreciate it, if anybody has got some specific information without muddying it further, if they could help in defining that further.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of Mr. Wyman of Pittsfield that House Amendment "C" be adopted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Austin, Bachrach, Barry, Beaulieu, Benoit, Birt, Blodgett, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, K. C.; Call, Carrier, Carroll, Carter, D.; Chonko, Churchill, Cloutier, Connolly, Cox, Curtis, Davies, Diamond, Doukas, Dow, Dutremble, D.; Elias, Fowlie, Gowen, Hall, Hickey, Hobbins, Howe, Hughes, Jacques, E.; Jacques, P.; Jalbert, Joyce, Kane, Kany, Kelleher, Laffin, LaPlante, Locke, Lowe, MacEachern, Mahany, Marshall, Martin, A.; Maxwell, McHenry, McKean, McSweeney, Mitchell, Nadeau, Nelson, M.; Nelson, N.; Norris, Paradis, P.; Paul, Pearson, Post, Prescott, Reeves, P.; Rolde, Simon, Soulas, Strout, Theriault, Tierney, Tuttle, Vincent, Vose, Wood, Wyman, The Speaker.

NAY — Berry, Berube, Bordeaux, Bowden, Brown, D.; Brown, K. L.; Bunker, Carter, F.; Conary, Cunningham, Damren, Davis, Dellert, Dexter, Drinkwater, Dudley, Dutremble L.; Fenlason, Fillmore, Garsoe, Gavett, Gillis, Gray, Gwadosky, Hanson, Higgins, Hunter, Hutchings, Immonen, Jackson, Kiesman, Lancaster, Leighton, Leonard, Lewis, Lizotte, Lougee, Lund, MacBride, Masterman, Masterston, Matthews, McPherson, Morton, Nelson, A.; Paradis, E.; Payne, Peterson, Rollins, Roope, Sewall, Sherburne, Silsby, Small, Smith, Sprowl, Stetson, Stover, Studley, Tarbell, Torrey, Tozier, Twitchell, Wentworth, Whittemore.

ABSENT — Baker, Boudreau, Huber, McMahon, Michael, Peltier, Reeves, J.; Violette.

Yes, 78; No, 65; Absent 8.

The SPEAKER: Seventy-eight having voted in the affirmative and sixty-five in the negative, with eight being absent, the motion does prevail.

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

Mr. WYMAN: Mr. Speaker, having voted on the prevailing side on this question, I now move that we reconsider our action and hope you all vote against me.

The SPEAKER: All those in favor of reconsidering whereby House Amendment "C" was adopted will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion does prevail.

Thereupon, the Bill was passed to be en-

grossed as amended by House Amendment "C" and House Amendment "D" in non-concurrence and was sent up for concurrence.

(Off Record Remarks)

On motion of Mrs. Beaulieu of Portland, adjourned until twelve o'clock noon tomorrow.