

# 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

Monday, March 10, 1980

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

Prayer by Lieutenant David W. Childs of the Salvation Army, Sanford.

Lt. CHILDS: O Lord, who makes the day begin with the splendor of the sunrise, help us this morning hour to lift our eyes on high and to derive from the majesty of the pageant there unfolded a renewed sense of dignity of human life, the joy of daily work.

Give us open minds, responsive hearts, that we may strengthen each other as our spirits stream deeply from the everlasting fountain of thy love. Enlarge our visions and show us the path of righteousness. Fill us with a sincere desire to do thy will, for we ask it in the name of Christ, thy fullest expression of love toward us, in his name, who is the daybreak, we pray. Amen

The members stood at attention during the playing of the National Anthem by the Sedomocha Junior High School Band of Dover-Foxcroft.

The journal of the previous session was read and approved.

## Papers from the Senate

Bill "An Act to Require Registers of Deeds to Provide Copies from the Records within a Reasonable Time" (S. P. 785) (L. D. 1981)

Came from the Senate referred to the Committee on Local and County Government and ordered printed.

In the House, was referred to the Committee on Local and County Government in concurrence.

## Later Today Assigned

The following Joint Order: (S. P. 772)

WHEREAS, the Office of Energy Resources was established and funded by the Maine Legislature in 1974 to provide emergency and long-range planning, management and development of energy resources of this State; and

WHEREAS, since 1976 this office has increased from 7 positions and a budget of \$65,000 to 47 positions including 8 new field assistants and a budget of \$1,730,000; and

WHEREAS, the Office of Energy Resources is now being funded by over 90% of federal funds; and

WHEREAS, the taxpayers of the State of Maine pay both Federal and State taxes; and

WHEREAS, this office is presently seeking to enlarge its quarters and to further enlarge its staff with taxpayers' dollars from the Federal or State government; and

WHEREAS, conservation comes from the market place and economic conditions and not through added bureaucracy; and

WHEREAS, the citizens of Maine are installing insulation, woodstoves, water savers and alternative sources of energy despite this bureaucracy; now, therefore, be it

ORDERED, that a freeze be imposed on any further hiring or expansion of the Office of Energy Resources until Legislative oversight is exercised as provided in this Order; and be it further

ORDERED, the House 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 operation and proposed expansion of the Office of Energy Resources; and be it further

ORDERED, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the First Regular 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.

Came from the Senate read and passed as amended by Senate Amendment "B" (S-439).

In the House, the Order was read.

On motion of Mrs. Mitchell of Vassalboro, tabled pending passage in concurrence and later today assigned.

## Reports of the Committees

## Ought to Pass in New Draft

Committee on Health and Institutional Services on Bill "An Act to Assure Advocacy Services for Children Committed to the Custody of the State of Maine" (S. P. 676) (L. D. 1783) reporting "Ought to Pass" in New Draft (S. P. 782) (L. D. 1977)

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

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

Ought to Pass with Committee Amendment  
Later Today Assigned

Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-429) on Bill "An Act to Authorize a Bond Issue in the amount of \$4,500,000 for Energy Conservation Improvements for Public School Buildings and the University of Maine" (S. P. 734) (L. D. 1913)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-429) as amended by Senate Amendment "A" (S-443) thereto.

In the House, the Report was read and accepted, in concurrence and the Bill read once. Committee Amendment "A" (S-429) was read. Senate Amendment "A" (S-443) to Committee Amendment "A" (S-429) was read.

On motion of Mr. Blodgett of Waldoboro, tabled pending adoption of Senate Amendment "A" to Committee Amendment "A" and later today assigned.

## Non-Concurrent Matter

## Later Today Assigned

Bill "An Act to Provide Broad Public Representation on the Board of Pesticides Control and to Improve the Level of Information Available to it and the Public" (H. P. 1891) (L. D. 1966) which was passed to be engrossed as amended by House Amendment "A" (H-829) in the House on March 4, 1980.

Came from the Senate passed to be engrossed as amended by House Amendment "A" (H-829) and Senate Amendment "B" (S-444) in non-concurrence.

In the House: On motion of Mr. Mahany of Easton, tabled pending further consideration and later today assigned.

## Non-Concurrent Matter

Bill "An Act Relating to the Effective Date of Administrative Changes in the Employment Security Law" (Emergency) (H. P. 1762) (L. D. 1888) which was passed to be engrossed as amended by House Amendment "B" (H-830) as amended by House Amendment "A" (H-831) thereto in the House on March 5, 1980.

Came from the Senate passed to be engrossed as amended by House Amendment

"B" (H-830) in non-concurrence.

In the House: The House voted to recede and concur.

## Non-Concurrent Matter

Bill "An Act Concerning the Temporary Certification of Driver Education Teachers" (H. P. 1894) (L. D. 1967) which was passed to be engrossed in the House on March 5, 1980.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-441) in non-concurrence.

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

## Non-Concurrent Matter

## Later Today Assigned

Bill "An Act to Amend Allocations from the Highway Fund for the Fiscal Years from July 1, 1979 to June 30, 1980 and from July 1, 1980 to June 30, 1981, Decrease the State Aid Bonus from 40% to 20%, and Revise Drivers' License and Examination Fees" (Emergency) (H. P. 1723) (L. D. 1827) on which the Bill and accompanying papers were recommitted to the Committee on Transportation in the House on March 3, 1980.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-812) as amended by Senate Amendment "B" (S-434) thereto in non-concurrence.

In the House: On motion of Mr. Carroll of Limerick, tabled pending further consideration and later today assigned.

## Non-Concurrent Matter

## Later Today Assigned

Bill "An Act to Permit the Department of Transportation to Acquire Railroad Operating Equipment" (S. P. 666) (L. D. 1720) which was passed to be Enacted in the House on February 29, 1980.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (S-411) as amended by Senate Amendments "B" (S-422) thereto and Senate Amendment "A" (S-422) thereto in non-concurrence.

In the House: On motion of Mr. Carroll of Limerick, tabled pending further consideration and later today assigned.

## Messages and Documents

The following Communication: (S. P. 786) March 6, 1980

Honorable Howard M. Trotzky  
Honorable Laurence E. Connolly  
Chairmen, Joint Standing  
Committee on Education  
State House  
Augusta, Maine 04333

Please be advised that Governor Joseph E. Brennan is nominating Mary E. LeBlanc of Madawaska and Gerald E. Talbot of Portland for appointment as members of the State Board of Education.

Pursuant to Title 20 M.R.S.A., Section 51, these nominations will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/JOSEPH SEWALL  
President of the Senate  
S/JOHN L. MARTIN  
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Education.

In the House, was read and referred to the Committee on Education in concurrence.

The following Communication: (H. P. 1926) March 7, 1980

To The Honorable 109th Legislature of the State of Maine

I have the honor to transmit herewith an initiated bill, "An Act to Prohibit the Generation of

Electric Power by Means of Nuclear Fission," and the results of the examination by this office of the initiative petitions relating to it. The minimum number of valid signatures required to initiate this legislation is 37,026. On and before February 21, 1980, our office received 4,027 petitions said to contain 55, #424 signatures. After extensive review we have determined the number of valid signatures to be 55,384.

In view of the foregoing determination, I hereby certify that these petitions have met the constitutional requirements of the minimum of 37,026 valid signatures. Since the petitions have previously satisfied the constitutional requirements in all other respects, under the provision of Article IV, Part Third, Section 18, of the Constitution of Maine, I do hereby declare this initiative petition to be valid.

In the event the Legislature rejects this initiative proposal, a referendum election will have to be called not earlier than four nor later than six months after the Legislature adjourns. For your information, a special election costs this office between \$65,000 and \$75,000, and I estimate that it costs municipalities all across the State another \$175,000 to \$200,000. It would appear that if the Legislature were not to officially adjourn until the early part of May, the referendum question could be called by the Governor as part of the General Election next November, thus saving the expense of a special election.

Respectfully,  
S/RODNEY S. QUINN  
Secretary of State

The Communication was read and ordered placed on file and sent up for concurrence.

On motion of Mrs. Mitchell of Vassalboro, the accompanying Bill, I.B. 2, (L. D. 1984) was referred to the Committee on Energy and Natural Resources ordered printed in the amount of 2,500 copies and sent up for concurrence.

#### Special Sentiment Calendar

In accordance with House Rule 56, the following items (Expressions of Legislative Sentiment) Recognizing,

Penny Moody, Wells High School, "most valuable player" and "best sportsman" in the State Girls' Class C basketball tournament, for the 2nd consecutive year; (H. P. 1921) by Mrs. Wentworth of Wells. (Cosponsor: Senator Hichens of York)

The Town of North Yarmouth, which is celebrating the Tricentennial Anniversary of its founding in the year 1680; (H. P. 1922) by Mr. Jackson of Yarmouth. (Cosponsor: Senator Huber of Yarmouth)

Sandra Hall, who is retiring from the Windham Rescue Unit after 6 years of dedicated service, (H. P. 1924) by Mr. Diamond of Windham.

Beverly Varney, who is retiring from the Windham Rescue Unit after 9 years of dedicated service, (H. P. 1925) by Mr. Diamond of Windham.

There being no objections, these expressions of Legislative Sentiment are considered passed.

#### House Reports of Committees

##### Leave to Withdraw

##### Later Today Assigned

Mr. LaPlante from the Committee on Local and County Government on Bill "An Act to Establish County Corrections' Improvement Fund" (H. P. 1761) (L. D. 1886) reporting "Leave to Withdraw"

Report was read.

On motion of Mrs. Prescott of Hampden, tabled pending acceptance of the Committee Report and later today assigned.

Mr. Davies from the Committee on Public Utilities on Bill "An Act to Authorize the Public Utilities Commission to Establish an Electrical Family Farm Rate" (H. P. 1652) (L.

D. 1761) reporting "Leave to Withdraw"

Report was read and accepted and sent up for concurrence.

#### Divided Report

Majority Report of the Committee on Agriculture reporting "Ought Not to Pass" on Bill "An Act Concerning Regulation of Milk by the Maine Milk Commission in Municipalities which Vote for Decontrol" (H. P. 1679) (L. D. 1788)

Report was signed by the following members:

Messrs. CARPENTER of Aroostook  
HICHENS of York

— of the Senate.

Messrs. MAHANY of Easton  
ROLLINS of Dixfield  
TORREY of Poland  
SHERBURNE of Dexter  
NELSON of New Sweden  
ROOPE of Presque Isle

Mrs. LOCKE of Sebec

Messrs. TOZIER of Unity  
MICHAEL of Auburn

— of the House.

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

Report was signed by the following member:  
Mr. WOOD of Sanford

— of the House.

Reports were Read.

The SPEAKER: The Chair recognizes the gentleman from Easton, Mr. Mahany.

Mr. MAHANY: Mr. Speaker, I move we accept the Majority "Ought Not to Pass" Report.

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

Mr. WOOD: Mr. Speaker, Ladies and Gentlemen of the House: When I was going to school, there was a Greek Myth that we learned about this certain individual that continually rolled this stone up a hill and as soon as it got to the top of the hill, it rolled down, but every day he continued to roll it up the hill knowing full well that the stone was going to roll down. That is sort of the way I feel today.

I have no illusions about the outcome but I am going to try to roll the stone up the hill anyway.

In the 1930's, when the Maine Milk Commission was established, there was no legislative history, so I called the sponsor, I found out that one of the sponsors was still living and I called him and asked him what the purpose of the bill was, and he said that initially it was aimed at those areas because there were some serious problems, but it was not the intention to put controls statewide and to go into the small towns where there were no problems, and that seems to be what happened. Most of the large cities fell into marketing order districts and there were 47 of them. If you go through the history, and I spent a day over in the Milk Commission office going through the history, you will find that these marketing orders developed pretty much around the large population centers of this state.

If you look at a map of the State of Maine today, you will find that there are many areas in the state, most of the geographic area of the state, is not within the confines of the Maine Milk Commission. We have many small towns, Newry, Byron and some of the smaller towns in Maine that simply were never regulated by the Maine Milk Commission, although if you went into those towns, you most likely would pay a very similar price to the price you would pay if you went into Portland or Bangor.

Interestingly enough, some of the towns that were put into the Milk Commission also were withdrawn. They held hearings in these towns, North Berwick is a prime example. When the Milk Commission was created, North Berwick was regulated, then in the 40's it was unregulated. This went on for years and years and in the 60's the last marketing order was put into

effect, marketing order 47. That was the last order until 1979, when we had two storeowners in the Town of Waterboro that petitioned the Maine Milk Commission to either regulate the whole state or deregulate the whole state.

These two people that petitioned withdrew their petitions after they presented them to the Maine Milk Commission, but the Maine Milk Commission still held hearings in York County on whether to regulate all of the towns in York County or not. They held hearings in Augusta; the outcome of those hearings was that there were seven towns in York County that had been unregulated since the 1930's, which, all of a sudden, were regulated. And if you will look at the hearing record, and it is a large record, it is four to five hundred pages, you will find very little justification for making that decision. Three of my towns were regulated; yet, in the hearing record there is no substantial mention of those three towns and why they should be regulated. So people in those towns were concerned. They felt that they had been satisfied with not being regulated, they never had been regulated since the law was put into effect, and they didn't see why the state should come in and all of a sudden regulate them.

They prevailed upon me to introduce this legislation. This legislation is an attempt not to unregulate milk process in Maine, it is an attempt to preserve those towns that are currently unregulated from becoming regulated unless a procedure is followed, and that procedure is, once the Maine Milk Commission determines that the prices in these towns should be regulated, then the towns would vote. If they voted not to be regulated, that is how they would continue to be.

It seems to me fair play. These towns chose not to be regulated and now the state, by one fiat, is coming in and simply saying, we are going to regulate you. They are making these towns attend hearings in August, sometimes at a great cost and sacrifice to the taxpayers, and it seems to me that there is no justification for regulating some of these small towns. If the Maine Milk Commission has to rely on whether Byron, Maine, with a population of a few hundred people, is regulated or not, then we are in serious trouble.

This is not an attempt to do away with the Maine Milk Commission. It is simply to set up a procedure whereby those towns that are currently unregulated will be regulated via this procedure, and I would urge you, knowing full well that I will go down in defeat, I would still urge you, if you feel strongly about the issue of whether these towns should be treated in a manner which is fair all around, I hope that you will vote for the Minority "Ought to Pass" Report and against the Majority "Ought Not to Pass" Report.

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

Mr. SHERBURNE: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Wood has made a good attempt at this, but it still doesn't make the bill any better as I see it.

This really is a bad bill, because, in the first place, there was some question of the constitutionality of it so we asked for an opinion on that. We were several weeks getting the opinion, so it was kind of a complicated subject, mainly due to the fact that there had been no trial cases by which to judge it.

In the opinion, it was said that it wasn't proved that this would be unconstitutional but the legislature should be warned that it could be such.

The biggest problem with the bill is the fact that it would be discriminatory. If we were to allow towns to vote on whether to be decontrolled or not and certain towns did vote for decontrol, those towns would have a financial advantage over the neighboring towns.

I would just like to read a little bit of the opinion that was presented to us. "Representative Sherburne: You have requested an opinion

from this office concerning the constitutionality of L. D. 1788. Legislative Document 1788 proposes to amend the statutes governing the Maine Milk Commission so that actions taken by the Commission to create new marketing areas or to expand existing ones would be subject to approval by popular vote in affected municipalities. L. D. 1788 raises a problem of possible discrimination between persons living in different areas of the state as well as the question of whether the Commission's orders can properly be submitted to local vote for their effectuation.

"While we conclude that L. D. 1788 does not violate the United States or Maine Constitutions, we should advise you that we consider this a very close question and our conclusion is, therefore, by no means free of doubt."

The last paragraph of this opinion I would like to read: "Because of the complexity of the issues involved, some of which are of factual nature, we cannot predict with certainty whether a court would determine that the enactment of L. D. 1788 would deprive Maine system of milk regulation and any rational basis so as to make any resultant discrimination impermissible."

"Furthermore, our answer must consider the general lack of authority in this area. The deference, which has generally been shown by course to local option schemes and the strong presumption of constitutionality traditionally accorded to legislative enactments, all of these factors constrain us to conclude that L. D. 1788 is not unconstitutional. The legislature should, however, be aware of the very tenuous nature of our conclusions and of the very real questions posed by L. D. 1788 in its present form."

"Indeed, in light of the doubts surrounding this issue, the legislature may wish to consider alternative methods of reaching its ends which may be more clearly acceptable from a constitutional standpoint."

Generally, the biggest issue in Milk Commission bills is the fact that some places in New Hampshire have an advantage of lower prices for their milk than do Maine consumers. This is true in certain parts of New Hampshire. That is mainly the part of New Hampshire that is closest to Maine, but I would like to compare prices in some other parts of New Hampshire to those in Maine. I would like to give you some prices from Shaw's store in Newington, New Hampshire. These prices are compared to the Shaw's store in Portland, Maine. The milk in both stores was from Hood Company. The one gallon of Hood whole milk in Newington, New Hampshire was \$1.89; in Portland it was \$1.92, which means that in Maine it was 3 cents higher. In the one-half gallon in New Hampshire, it was \$1.07; in Portland, Maine, it was 96 cents, or 11 cents cheaper in Portland, Maine than it was in Newington, New Hampshire. On the quarts it was 59 cents in New Hampshire and 49 cents in Maine, or 10 cents on a quart cheaper in Maine. In the gallons of Hood's Nu-form, low fat milk, in Newington it was \$2.05 a gallon and in Portland it was \$1.92. The one-half gallons in New Hampshire was \$1.05; in Maine it was 96 cents. In the quarts it was 59 cents in New Hampshire and 49 cents in Maine, 10 cents on a quart of milk lower price in Maine than in Newington, New Hampshire.

It seems to me that the people of Maine are buying their milk as cheap or cheaper than they are in New Hampshire, except for special areas. The fact that in the State of Maine we have the highest per capita consumption of milk means that the consumer isn't too unhappy with the price or else he figures it is the only or one of the best buys in the food line that there is.

Milk at \$2 a gallon is roughly 24 cents a pound. Maybe we should be pricing it by the pound because if you go into a store and walk down one aisle and up another looking at products at 24 cents a pound that you can take home and consume right from the package, with no

preparation whatsoever, I think you will find very few. Milk is in that class.

I would hope that you would go along with the motion of "ought not to pass" on this, because I think in Maine we still have a good commission, we have an industry that is stable and the people of Maine are still getting milk at a good buy.

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

Mr. STOVER: Mr. Speaker and Members of the House: I thought I would help Frank Wood roll that rock up the hill.

As I have told you before, I was a farmer for many years and I was around when the Maine Milk Commission was first formed and I have seen it operate. I am rather surprised that they thought this bill might be unconstitutional because it is discriminatory. I think the present law is discriminatory, especially against the small dealer.

If I should decide to go back into the milk business today, I am doubly being discriminated against because one of the things that I would be that I have less overhead and therefore I could sell my milk at a lower price, but according to the law as it is now, I can't do that. I have got to sell it at the same price as Hood and Oakhurst and the rest of them, which takes away a great deal of the advantage for me and also it hurts the consumer.

Personally, I can't see anything wrong with democracy. I have always been in favor of it, I still think it is the finest form of government yet devised, and all this bill wants to do is give the people in the areas affected a chance to vote on whether they want to be regulated or they don't want to be regulated, and I can't see a thing wrong with that.

This is a dealer bill. All this does is guarantee the milk dealers a profit and they are very much afraid that if this area is not regulated, then it could perhaps do something about arousing the thinking of the people in the areas that are regulated and therefore they might ask that something be done about the law as it is now.

As Mr. Sherburne says, and I am sure he isn't misleading us, they can buy milk as cheap in Maine as they can in New Hampshire where it isn't regulated, then what have they got to worry about.

I think we should pass this bill in its present form.

The SPEAKER: The Chair recognizes the gentleman from Poland, Mr. Torrey.

Mr. TORREY: Mr. Speaker, Ladies and Gentlemen of the House: I heartily support the comments and reports given by Representative Sherburne from Dexter. In my opinion, the Maine Milk Commission has been established and its prime responsibility is to try to guarantee a regulated and stable milk industry in the State of Maine. Any attempts by local municipalities or areas to come out from under decontrol by their own vote is just an attempt to splinter off the general regulations and to fragment the good work and the authority that the commission does have.

I hope you will support the Majority "Ought Not to Pass" Report.

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

Mr. WOOD: Mr. Speaker, Ladies and Gentlemen of the House: I do not want to prolong the debate, but I would like to clarify one thing. This would permit towns that are already controlled to come out from under. What I am saying is that for the past 30 to 35 years many towns in Maine have not been controlled. The system has worked and, as we have heard today, the Milk Commission has worked. These towns have not threatened that commission, and what I am saying is, this bill would simply perpetuate the status quo and say if those towns had not been regulated for 30 years and there was no problems with the Maine Milk Commission and we still had milk and we still

had a good price and the farmers and the dairies were happy, why can't we continue with that and why do we need to take over these new towns?

It is an attempt not to deregulate towns but simply say if a town is not currently regulated and chooses not to be regulated, then it will not be regulated.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Tuttle.

Mr. TUTTLE: Mr. Speaker, I wasn't planning on speaking on this because I thought Mr. Wood did a very good job, but after listening to some of the debate, I decided to stand up.

The bill, as Mr. Wood has said, suspends the effect of any new or increased area created by the commission since January 1, 1979, until the voters ratify the action as provided in the bill.

Essentially, Section 2953 of the existing law gives the commission authority to establish and change the minimum wholesale and retail prices for the sale of milk within the state. The commission, by definition, may designate natural marketing areas referred to as markets. Many of these exist today and the commission may vary a minimum price from market to market.

This bill will require a ratification by the voters in new or changed markets established by the commission. These citizens will have the opportunity for self-determination. They may determine whether they will be in the new market or become part of a change market. They will determine whether they want or need minimum milk pricing by the commission or perhaps change minimums, if that is the case.

I understand, as Mr. Sherburne has said, that an Attorney General's opinion has been issued on this bill whether by giving one group of voters the right to vote, as in this bill, we are denying all citizens in Maine equal protection. But something has to be said about those communities in York County who originally, in 1930, decided not to be members of the Maine Milk Commission and now, after so many years, are being told that they have to belong, I wonder myself about the fairness and the constitutionality of this.

I hope you will agree with my good friend Mr. Wood and hope that you will vote against the majority report.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Easton, Mr. Mahany, that the Majority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

74 having voted in the affirmative and 27 having voted in the negative, the motion did prevail.

Sent up for concurrence.

#### Divided Report

Majority Report of the Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-843) on Bill "An Act Relating to Agricultural Development" (H. P. 1719) (L. D. 1830)

Report was signed by the following members:

Messrs. CARPENTER of Aroostook  
HICHENS of York

— of the Senate.

Messrs. TOZIER of Unity  
MAHANY of Easton  
Mrs. LOCKE of Sebec  
Messrs. MICHAEL of Auburn  
WOOD of Sanford  
NELSON of New Sweden  
SHERBURNE of Dexter  
TORREY of Poland  
ROOPE of Presque Isle

— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following member:  
Mr. ROLLINS of Dixfield

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Easton, Mr. Mahany.

Mr. MAHANY: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" Report as amended by Committee Amendment "A".

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

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: I have approximately the same task that Mr. Wood had a few minutes ago—I am all alone on this bill—but this is a potentially more dangerous bill than the other one. It has been amended a number of times and it is a lot better bill than it was to start with but there are two things that I have against it, and that is power and money.

This bill, if we pass it, gives too much power to the Commissioner of Agriculture and it costs too much money.

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

Mr. MORTON: Mr. Speaker, I know that the original bill, L. D. 1830, carried a fiscal note. I note that the amendment does not carry a fiscal note and I would ask if under Rule 20 it should have a fiscal note?

The SPEAKER: The Chair would advise the gentleman from Farmington, Mr. Morton, that if the bill has a fiscal note, then the fiscal note requirement has been met.

Thereupon, on motion of Mr. Mahany of Easton, the Majority "Ought to Pass" Report was accepted and the Bill read once. Committee Amendment "A" (H-843) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

#### Divided Report Indefinitely Postponed

Majority Report of the Committee on Education reporting "Ought Not to Pass" on Bill "An Act to Exempt Church-sponsored Schools and Schools of Religious Charter from Approval of the Department of Educational and Cultural Services" (H. P. 1711) (L. D. 1817)

Report was signed by the following members:

Messrs. TROTZKY of Penobscot  
MINKOWSKY of Androscoggin  
Mrs. GILL of Cumberland  
— of the Senate.  
Mr. FENLASON of Danforth  
Mrs. BEAULIEU of Portland  
Messrs. ROLDE of York  
CONNOLLY of Portland  
DAVIS of Monmouth  
Mrs. GOWEN of Standish  
Mrs. LOCKE of Sebec

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" in New Draft (H. P. 1918) (L. D. 1980) on same Bill.

Report was signed by the following members:

Mr. BIRT of East Millinocket  
Mrs. LEWIS of Auburn  
Mr. LEIGHTON of Harrison

— of the House.

Reports were Read.

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

Mr. CONNOLLY: Mr. Speaker, I move acceptance of the Majority "Ought Not to Pass" Report and would speak to that motion.

The SPEAKER: The gentleman from Portland, Mr. Connolly, moves that the Majority "Ought Not to Pass" Report be accepted.

The gentleman may proceed.

Mr. CONNOLLY: Mr. Speaker and Members of the House: The bill that you have before you is now L. D. 1950. It is a redraft of the original bill that was put before us in committee some three or four weeks ago.

Before I give you an explanation of the differences between the new draft of the legislation and the original bill, I would like to make a few

comments.

The bill would have been out of committee much sooner than now were it not for the fact that many members of the committee were responsibly and legitimately trying to achieve a compromise.

Almost two weeks ago, there was a subcommittee that was appointed by the chairman of the Education Committee, who was ordered to work with the proponents of the bill with the assistance, the technical assistance, of the Department of Education to try to arrive at a compromise that would be acceptable if not to all the members of the committee, at least to a substantial majority. But as things worked out, and I think that ultimately it was in the cards, that compromise could never be achieved because of the fundamental issue that this bill represents. And the fundamental issue I would like to lay before you at this point, and I would like to use the quote from Reverend Frankland and the proponents from the Maine Association of Christian Schools, because they were the ones, although not exclusively, they were the ones that brought the issue before the legislature at this time.

As Reverend Frankland has said at our hearing and in work sessions before the committee time and time again, and I would read it so that I would make sure there is no mistake about it—"Because our schools are integral, inseparable parts of our church ministries, in approving our schools the Department of Education and Cultural Services is, in effect, approving our churches. To regulate our schools is to regulate our churches." The biblical quote that was used more often than any other was: "Render unto Caesar the things that are Caesar's and unto God the things that are God's."

Reverend Frankland and the proponents of this bill believe that they have a religious conviction and that they cannot compromise on that religious conviction. They say that so strong is their religious conviction that if this bill does not pass in this legislature at this time, they are willing to take the matter to the courts, and if the courts rule against them, they are prepared to go to jail.

At the public hearing at the Civic Center on February 14, between 2,000 and 3,000 people stood silently in a very impressive testimony to that statement, but a majority of the Education Committee, and hopefully a majority of this legislature, will disagree with that decision and hopefully this bill will be defeated today.

The authority of the state, both in statute and in regulation by the Department of Educational and Cultural Services, does not in any way infringe upon the right of people to practice their religious beliefs. This was the argument proponents of the bill brought before the committee, and this was the reason why they felt this legislation had to be passed.

Reverend Frankland, by his own self admission in testimony that he delivered before the Education Committee at the hearing, agreed that there was nothing now either in statute or in regulation that in any way infringed upon people to practice their religious beliefs through the educational process in Christian schools. But the argument that was advanced was advanced principally by a constitutional lawyer from the University of Texas that because the state has the authority to make laws and because the Department of Education has the right to issue regulations, the potential exists at some point in the future for something to be done either through statute or through regulation that would infringe upon individuals' rights to practice their religious beliefs freely. And they say that because that potential exists, we should, therefore, pass this legislation. But it is my opinion, and I believe it is the opinion of the majority of the committee, that that argument does not hold up, and although I am not a lawyer, I am told by legal experts that lawyers would be hard pressed to win a case with that argument were it brought before a court.

In my opinion and in the opinion of the opinion of many others, the state does not have a compelling interest to ensure a basic education for all its citizens, because that is essential to preserve the rights and liberties of everyone. The only time when that should be a matter of concern is when the state's responsibility or obligation comes into conflict with the First Amendment of the Constitution, the First Amendment being the one that guarantees the right to freely exercise your religious beliefs.

If you have the bill before you, I would ask you to turn to Page 3 of the bill, because of all the other things that are in the legislation, Page 3, Section 1603, is really the crux of the issue. If this bill were to pass, a church-sponsored school or a school of religious charter could send a letter to the Commissioner of the Department of Education stating that it chooses to be exempt from all approval in educational matters because of religious conviction. In the letter, it must also be stated, number one, that there would be certain basic curriculum that would be taught in the school, that there would be a school year of at least 180 days and that that school would observe all health, fire and safety laws. In Section 1603, number two, it deals with the issue of teacher certification and this is the one section of the bill where everything comes together, where the whole issue was put right before us. It deals with teacher certification and I would read it to you as it is written in the redraft of the bill.

"The teaching of curriculum in Subsection 1 by teachers who have a college degree or who possess certification by a nationally recognized private education association," but in no way does this section of the bill allow the state to have anything at all to do with the certification or the accreditation of those who would teach in the schools, and it seems to me that because the state does have a compelling interest to ensure that everyone receives a basic education, the state should have something to say about those who would teach in the schools, whether they be private Christian schools or public schools.

There are many things that certification does and does not do. The argument will be made by those who are in support of this bill that teacher certification in no way means that a child will receive a good education but it is, in effect, a trade barrier, a method for licensing those who would teach, and you can make a case for that, except that one of the things that teacher certification does do, it does assure that a minimum entry level standard for a job category will be provided. At least the person who will teach in the school will have certain minimum qualifications — minimum qualifications are what we are talking about, and this section of the bill is where the whole issue that is represented in this legislation is focused.

If the bill were to pass, any group of people, particularly any group of parents in the state, could start a school and say that because of their religious convictions that they would choose to become exempt from all regulation in their educational program. I think that is a very dangerous thing. It would make the ball game wide open and it would provide no guarantee to a child's right to receive a basic minimum education.

There are secondary issues that are represented in this bill that deal with such things as parental consent and standardized testing. I don't think it is necessary at this stage to dwell on those issues, but you should be aware that those are secondary issues that are represented in the bill.

The point that you should remember is that there is nothing now that the state or the State Department of Education does that infringes upon any individual or any group's right to practice their own religious beliefs. If there were, I believe that Reverend Frankland and the other people who are active in the Maine Association of Christian Schools would already



be in court. The issue would not be before the legislature.

But I think that this is part of a plan, a legitimate plan but part of a plan. Reverend Frankland has told us that the strategy was, number one, to negotiate. They have negotiated, they have dealt for the past year with the Department of Education. The Department of Education has bent over backwards. They have granted waivers to four schools that did not choose because of their religious convictions to seek certification or approval by the state. That step at the negotiation stage failed.

We are now in stage two of the strategy, which is to legislate, to put the matter before the legislature to try to enact a bill. Hopefully, that step will fail.

Then the third step, and I believe this is ultimately where the issue belongs, is to litigate, is to put the matter before the court. I believe that Reverend Frankland and the other proponents are sincere in their beliefs but that they first, in order to make their case as clean as possible, have to go through these other two stages. They had to negotiate with the department, they have to put the matter before the legislature, and then when it fails, they will be able to put the matter before the court in as clean a way as possible, and that is ultimately where the matter should be decided.

The Department of Education, and rightly so, throughout that process of negotiation, has not been willing to abdicate its responsibility to ensure that all kids in this state receive a basic education. The approval and certification requirements that the Department of Education now demands of people are very, very minimal, and I don't think that anyone that is active in the Christian school movement would deny that any of those schools have any problem at all meeting the demands that the state has of them.

I think this is a point that should be made, it has been made at the hearing and workshops several times, that the general quality of Christian education that now exists in the State of Maine is of top calibre. There has been some question raised privately by some people about particular teaching methods, such as programmed instruction that are employed in Christian schools, but as a general rule, there hasn't been anything said badly about the teaching that goes on or the education that has been received in the Christian schools.

It is important to remember that if you vote against this bill, you aren't voting against Christian education. You are simply saying that the matter should not be resolved before this legislature but should go ultimately to the court because it deals ultimately with the central issue, that being a constitutional question.

Mr. Speaker and members of the House, I believe I have spoken long enough on this matter. I just would like to make three final points. The bill is, as I have said, a constitutional issue and it should be addressed on this basis, and the place for that is in the courts. Secondly, there is no compelling reason nor has there been any demonstrated reason why a bill such as this should pass. And finally, in my opinion, in the long run passage of this bill would be very, very dangerous, a dangerous precedent for this legislature to take, not only for the state and its people but particularly for the children for whom the educational system is supposed to serve.

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

Mr. BIRT: Mr. Speaker, Ladies and Gentlemen of the House: I commend the gentleman from Portland, Representative Connolly, on an excellent presentation.

However, one of the faster growing movements in the field of education in this country today is the church-sponsored schools or the school of religious charter. These schools have come into being for several reasons, principally due to the parents desiring to

have their children brought up in a more religious or bible oriented atmosphere, or due to the feeling of many of these parents that the moral and social climate in the public schools of today does not satisfy them.

These schools have resulted in the need for passage in many states to establish standards under which these schools can and will operate.

I do agree with one comment that was made by the Representative from Portland, Mr. Connolly, that undoubtedly if this bill doesn't pass, it will end up in the courts and it is very possible that I would agree that this is where it should be. This is what has happened in many other states and I believe that probably it will ultimately go there and the courts will give some direction as to how this would go.

However, the legislation, which is the Minority Report of the Committee on Education, does what has been done and the redraft is a compromise of the original legislation to find what are the responsibilities of the state in the education of children and what responsibilities are and can be reserved for the parent, or, in this case, the church-sponsored school which the child attends.

This legislation generated more correspondence than any other legislation I have seen during my years in the legislature. Although the press attempted to indicate that the correspondence was, in their language, orchestrated, I do feel it was or is anymore orchestrated than any of the many other pieces of legislation which are now or have been before this body. I guess I might take as an example the one bill that is before us relative to taxing savings in savings banks. I think you have the same type of thing there, an attempt to sell the legislature on a particular position.

Though I did not attempt to answer this large amount of correspondence, I did read many of the letters. They were interesting, well written, some with beautiful handwriting, and expressed the thoughts of many parents of the desire to have their children attend schools where there were religious orientation. My feeling is that these parents have a legitimate right to the desire to have their children educated in schools of their choice and under conditions which they find acceptable.

This legislation would establish standards which these people find acceptable and the rejection of the "ought not to pass" report and then acceptance of the minority "ought to pass" report would establish standards whereby church-sponsored schools could operate satisfying the requirements which would be the state's responsibility and delegate in the schools responsibilities which are the concern of the schools and the parents.

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

Mr. PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I support the "ought not to pass" report on this bill.

This bill appears to be directly aimed at the erosion of one of the principal tenets of the state's affairs of governance and is on a collision course with the power and authority of the sovereign state of Maine.

What this bill will do is create an enclave beyond the jurisdiction of the state in the area of education. From time beginning, the sovereign has defended himself from encroachment of the authority over the well being of its citizens in many areas. Among these has been the power of taxation, the authority of marriage and the education of the youth and the future citizens. Any attempt to usurp the state in these areas in particular has been met with severe resistance.

In the matter of education, the State of Maine has set the standards. These are the minimum acceptable requirements. They are not a ceiling but a base minimum and are only limited by the extent of the available resources which lies in the power of taxation. Any effort by individual or organization, either public or

private, to exceed these standards are both encouraged and applauded by the state.

This bill proposes to exclude the state from any aspect of what goes inside the self-proclaimed jurisdiction. It does so on the grounds of church-state separation granted by the First Amendment to the Constitution.

I have no difficulty with the First Amendment and its provision for separation of church-state matters. But the states have delegated no authority via the U.S. Constitution for the education of its citizens and has reserved this function to themselves where it remains in our State Constitution. The State of Maine has reserved to itself the prerogatives to inspect, supervise and establish the basic educational requirements for all its citizens. It cannot nor must it contemplate sharing this responsibility in this matter with any individual or group of individuals who desire to exercise some self-interpretation of the educational needs of a specific segment of the population.

As was mentioned here by Mr. Connolly, the public hearing for this bill probably generated as much emotion as any heard in some time. Much rhetoric was put forth, and it was allowed that no attempt at confrontation with the state was being made, intended or desired. Yet, the point was made and made rather forcefully that failure of passage of this bill would result in countless hundreds being confined in jail for non-compliance with the law. If this is not confrontation with the state, I have no way of determining what confrontation really is or what it really means. If this demonstrates responsible citizenship in action, I am confused, and if this education process produces this type of responsibility in its citizens of the future, I seriously question its purpose in our society.

Since the opening of this session, I have gone out to my district with approximately 1,500 questionnaires. I have received over 10 percent returns, which is somewhat better than expectations for this effort. Of this number, nearly a 2-1 return have been opposed to the passage of this bill.

My district has six towns who tuition their students to high schools of choice. Many attend private schools and I am confident their returns are reflected in the totals I am working from.

I realize that several members of this body have received far more correspondence on this issue than I have, but what percentage of their total has been opposed to this measure?

It is clear that my district does not support passage of this bill and I shall vote for the "ought not to pass".

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

Mr. SILSBY: Mr. Speaker, Ladies and Gentlemen of the House: I rise in support of the Minority Report, L. D. 1980. Probably everyone in this House has been told at one time or another that we have too much government in our lives. It is certainly the human cry today to return to local control. When there is no apparent need to govern, when church schools are neither asking for nor taking anything from government, why should they be governed. If the Christian schools are too religious to be financially aided by the state, they are also too religious to be regulated by the state.

The State of Maine certainly has the right to control the quality of education, but it obviously cannot control religion. Therefore, should the state be in a position of controlling education when the education is religion? I submit that the state should not, other than carrying out its normal police power duties of protecting the people's health, fire and safety.

The Christian school movement is on the increase and, in my opinion, is to going away. I have no impression that the Christian school movement is any devious scheme to do away with public education, rather it is a deep rooted, philosophical feeling that people have

the right to educate their children with a religious foundation.

I have heard criticism of the bill, not on the floor this morning but at the hearing and other places, because it might allow cults of the Jim Jones, Mooney types to flourish. You know, when people are paying \$1,000 or \$2,000 a year in tuition at a Christian school, does it make any sense that the parent would allow such conduct to go on very long? Furthermore, the state requirements on teacher certification do not necessarily ensure teacher quality, as evidenced by the recent incident in Addison where the teacher ran off with his 12-year-old pupil.

The only serious opposition to this bill has come from the education bureaucracy. They obviously have a vested interest in the matter. I don't believe that we want the tail wagging the dog. If the Christian schools can legitimately govern themselves, we should let them do it and leave government out of it.

I certainly disagree with my good friend from Portland, Mr. Connolly, that this is part of a plan to get into litigation. In my area, we have a large Christian school and I was told by the people in that area that they don't necessarily follow Mr. Frankland's dictates and that furthermore they are not willing to go to jail over this principle. They would like to have it handled legislatively.

For those who fear that children's education will be placed in jeopardy by the passage of this legislation, let's put a sunset provision by amendment on the bill so it would automatically terminate after say five years unless the legislature sees enough merit to pass it again.

I hope you will join me in voting in favor of the new draft.

**THE SPEAKER:** The Chair recognizes the gentleman from Harrison, Mr. Leighton.

**MR. LEIGHTON:** Mr. Speaker, Ladies and Gentlemen of the House: In response to the comments by my good friend Representative Paradis, I would just say that when poll results come into conflict with First Amendment rights under the Constitution, poll results have to give way; also, that the State of Maine doesn't reserve any rights to itself that come in conflict with the United States Constitution.

There has sprung up across this land of ours in the last decade a great resurgence in fundamental Christian faith. More and more frequently we hear the term "born again Christian." With this has come the collateral development of Christian schools where education is considered one of the ministries of the church under a biblical mandate from God. Out of this situation there has risen a certain amount of conflict in litigation across the country between Christian schools and education authorities as to what degree of regulatory power resides with the state. Or, to put it another way, what should be rendered to Caesar and what should be rendered to God?

Court decisions are pretty well recognized that these schools are integral parts of the church and as such are protected by the exercise of their religion, by the free exercise clause of the First Amendment to the Constitution. The courts have ruled that state authorities do have compelling interests in Christian education but not in the area of philosophy, which is religion.

The courts have, in their decisions, constantly warned states against excessive entanglement with Christian schools so as to preserve the separation between church and state.

The right to religious freedom should be overridden only by compelling state interests that don't clash with religious values. Legislators have a responsibility to legislate against possible entanglement of church and state.

Let me quote from the Harvard Journal of Law and Public Policy. "The burdensome regulation of religious schools is generally not justified. A burden of free exercise is justified only when government has a compelling inter-

est in the program challenge and when it has used the least burdensome means to satisfy that interest. Courts have held that the state has some interest in reasonable regulation of the secular aspect of basic education in nonpublic schools. However, the Supreme Court, in *Yoder*, did not find that the state has a compelling interest in compulsory education after the 8th grade, so no compelling interest justifies burdensome regulation of the 9th through 12th grades of religious education.

"The *Whisner* court found that the state lacks any compelling interest in burdensome minimum standards for religious schools, while the *Hinton* decision found that government lacks any compelling interest in textbook approval, teacher certification or school accreditation requirements for religious schools. As for nonpublic schools, the state does not have any compelling interest in regulating their accreditation, textbooks, teacher qualifications or a minimum curriculum, except that it might have a compelling interest in the basic secular subjects of reading, writing, arithmetic and patriotism and ensuring compliance with reasonable safety and health standards applicable to public schools and businesses.

"Besides this interest in regulating secular aspects, the state does not have interest whatever in regulation of the religious aspects of nonpublic education, and even if the compelling interest in regulating nonpublic education were greater than this, the state does not employ the least burdensome means to ensure educational quality when it imposes intrusive regulation of religious schools."

"In summary, regulation of religious schools abridges free religious exercises of parents, students and churches if it burdens provisions of religious-centered instruction by accreditation requirement that compels compliance with intrusive standards to operate as a school and to satisfy the compulsory education law by a textbook approval requirement that forces use of objectionable text approved by state officials or by a teachers certification requirement that prevents securing instructors with a requisite religious-based education and disqualifies teachers with a requisite theological conviction.

"Regulation of religious schools also abridges free exercise that restrains provision of religious-centered education by a minimum curriculum standard that compels instruction in objectionable subjects or allocates excessive time away from religious instructions by intrusive periodic reports that demands disclosure of nonessential information or that consume excessive amounts of administrative time, or by minimum facility requirements that inflict great expense for nonessential structural surroundings.

"The discussion of the unjustified burden on free religious exercise from religious school regulation provides the basis for consideration of the governmental hostility to some religions from this burdensome regulation."

Also, the state records in the State of *Ohio v. Whisner* said "in the face of the record before us and in light of the expert testimony summarized in the case herein, it is difficult to imagine a state interest of sufficient magnitude to override the interest claiming protection under the free exercise clause and equally difficult to imagine a state interest sufficiently substantial to sanction abrogation of an appellant's liberty to direct the education of their children. We will not, therefore, attempt to conjure up such an interest in order to sustain an application of the minimum standards to these appellants."

There were, when this bill first came to our attention, various reactions. There was the Knee-jerk reaction of those who were opposed who said the Christian schools don't have these constitutional rights and their future is up to the educational bureaucracy. There were those on the other extreme who said that the state

has absolutely no compelling interest in Christian schools and, therefore, should keep their noses entirely out of it. There was a minority of the subcommittee, or a minority of the committee which made up the subcommittee, that admitted that there were compelling interests of the state, and we attempted, in this new draft, to spell out what the compelling interests of the State of Maine were in Christian education so that the Christian schools would be forever after free of any sort of government regulation.

The redraft of the bill admits compelling state interest in fire, safety and health. It admits that the state has an interest in the advanced notice of an intention to open a school. It admits that the state has a compelling interest in the orderly transfer of records. It admits that the state has a compelling interest in the provision of basic curriculum taught in the English language, consisting of reading, writing, spelling, grammar, mathematics, American history, civil government, including the privilege and the responsibility of citizenship and also Maine history and geography. The bill requires this kind of a curriculum to be taught, which, if my information is correct, is a more extensive curriculum than is required in the statute now.

The bill admits that the state has a compelling interest in the observance of a school year of at least 180 days and so calls for such. The redraft also recognizes a compelling interest of the state in (a) the competency of the teachers and (b) the provision of a good secular education for its students; and here comes the getting between a rock and a hard place, and I agree with Representative Connolly that this is where the conflict came. This is where the disagreement lies. The state, in effect the Department of Education and Cultural Services, has said that (a) competency of teachers and (b) provision of good secular education for students is best obtained through the certification of teachers' process, although they have admitted to me in committee hearings that there is no direct relationship between the certification process and the competency of teachers.

The bill admits that these two areas are difficult to address but says that the testing of students and the making available of test scores at the end of each year to the department addresses itself to the achievement of a good secular education than the status quo now does. It says that requiring teachers to have a degree or certification by an actually recognized private education association is an improvement upon the present statutes. Incidentally, only 10 states, including Maine, require certification of private school teachers in any way whatsoever.

The bill also provides that there would be no state or federal dollars available to the private schools.

In regard to the certification of teachers, when you tell people they have to take certain courses instead of testing them on basic knowledge, it seems to me that you make a pretty dangerous value judgment.

I think we have a good bill here. I don't think we need to ask Christian schools to spend a quarter of a million dollars in the courts in several years going in order for us to affirm their, what would appear to me to be, absolute constitutional rights.

I would urge that you vote no on the motion before us and, Mr. Speaker, I ask for a roll call.

**THE SPEAKER:** The Chair recognizes the gentleman from Enfield, Mr. Dudley.

**MR. DUDLEY:** Mr. Speaker, Ladies and Gentlemen of the House: I support the minority report for many reasons. I thought I would tell you that I support the minority report before I talk so long that you don't know where I stand.

First of all, let me tell you, in the town that I live we have a very good one of these schools. It is doing a good job and saving the taxpayers



a lot of money. They don't ask for any money from the taxpayers, it is run strictly by their own money.

Let me tell you, as I stand here, you can see that I have some age upon my bones and I am not afraid to try new endeavors. This may be a new endeavor today, but I am not afraid to try it. I say that people who sit in these seats later, in years to come, if these schools don't prove adequate, I am sure they will do something about it, but today in my area they are more than adequate and I want to support them. I want to see more of them.

I could go way back to the founding fathers of this state, they didn't have a Department of Education but they went on to be quite well educated people and I won't go into too many of them but there are many of them that I could recite, if I wanted to take up your time, that were well educated in this state before we even had a Department of Education.

It is quite well known by all of you people here how I feel about all of these departments, whether it be the Insurance Department, the Education Department or the Highway Department. Where I come from, we could get along without the whole of them, so I am not picking on any particular one. I am against anything that comes from these buildings next door, because I don't think they know any more about it than the people where I come from. I am sure they don't, and I am sure that these people are not asking for that much.

I certainly support wholeheartedly the minority report of this committee and I would like to see this endeavor tried. I have no fear whatsoever. Maybe if I had gone to one of these schools, I might have amounted to something myself. I would like to give the children of my area a little better chance. They do have it now and it is doing a good job, and I hope you allow them this amount and, bear in mind, don't be afraid to try something new. I am to the age now where most people my age are a little bit afraid to try something new. I would try something new everyday if I could.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: As a member of the Education Committee, I was the object of an intensive letter writing campaign on behalf of this bill in which every member of the committee received at least 700 or 800 letters. There is evidence that this campaign was deliberately and carefully orchestrated, but is perhaps beside the point. The people who wrote were obviously sincere, dedicated and well meaning. By the hundreds they came to the hearing at the Augusta Civic Center and showed by their polite, if intense, demeanor, that they were good citizens with a genuine interest in the education of their children.

I did not respond to the letters I received, many that were in favor of the so called Christian School Bill and the few, mostly from clergymen, who were opposed to it, so I would like to take the opportunity now to do so indirectly, and to that end I have composed a form letter setting forth my reasons for voting against the bill and addressing it in the abstract to one of the many proponents who urged me so earnestly to vote for L. D. 1817.

It goes as follows: "Dear Sir or Madam: Thank you for your letter urging my support of L. D. 1817. However, I must tell you that I cannot vote for it nor for the bill in redraft that is now L. D. 1980.

"I am pleased to learn how satisfied you are with the education your children are receiving at the Christian school they attend. My two youngest children have also attended a religious school for academic reasons rather than religious reasons, but which therefore, does make me sensitive to the shortcomings in our public school system, shortcomings that were advanced at the hearing as a reason for voting for L. D. 1817.

"We were told, if you remember, by a member of the State Board of Education, that the public schools needed competition and that by passing this bill we would be providing that competition. It struck me then, as I looked up at the large numbers in the audience at the Civic Center representing Christian schools from around the state, that lots of competition had already been provided.

"The first thing that a legislator usually asks himself about a proposed piece of legislation is, why is this bill necessary? I kept listening through the hearings and the subsequent work sessions for an appropriate answer whenever this question was asked. That is to say, I was looking for a specific example of incidents in which state rules and regulations had created difficulties for Christian schools. The closest I came was when there was some discussion of the fact that some bible colleges turn out graduates after only three years and our state rules on certification stipulate that a teacher must have graduated from a four-year college.

"Now, I was quite prepared to deal with that particular problem of certification and to help the Christian schools get around it. You see, I am the head of the subcommittee of the Education Committee that has been investigating teacher certification and I think changes can be and should be made in that direction. But then, at one of our work sessions, I heard Reverend Frankland say that the issue in this bill was 'not a question of certification, not a question of the competency of teachers but a question of the separation of church and state.'

"I know that you, too, in your letter, also referred to this controversy as a question of separation of church and state and that I should vote for the bill in order to allow you religious freedom. I must admit to being somewhat confused, for I have received letters from several church groups, such as the Maine Council of Churches, the United Church of Christ, and they are opposed to the bill as are a number of clergymen, some of them even within your own Baptist denomination. Their arguments seem to be that they don't see a church - state issue here at all and that they are proud that their schools live up to state standards or standards approved by the state.

"What it seems to me that we have here is a power struggle. I am being asked to use my authority as a representative of the people in my district to come down on one side or the other for the philosophical dispute that, in my opinion, would better be settled by the introduction of this legislation. I am afraid that I must take my stand with the State of Maine, particularly in the absence of any concrete examples of harm that have been done to the Christian schools by the present system that we have. Indeed, the very evidence of the large numbers that turned out in response to the Reverend Frankland are an indication of the health and success of the Christian school movement. I will not discuss such sophisticated fine points of the law as a fact that the passage of this bill, even as amended, may be a violation of the establishment clause of the First Amendment, because it gives you people a special advantage that is not being given to the secular private schools.

"I will merely repeat my belief that the State of Maine has a compelling interest in mandating standards of educational quality, whether you or I agree with those standards or not, and that the present redrafted bill, despite what its proponents say, does not recognize that compelling interest and in fact only recognizes state control in the matters of physical safety. When I am forced to choose, as I am in this matter, between the State of Maine, representing all of the people of the state, and a religious group, no matter how sincere or well intentioned I must opt for the State of Maine.

I realize that you will be disappointed by my response, but I want to assure you that failure of the passage of this bill will not force any

Christian schools to close and it is my responsibility to judge these matters according to my likes in accordance with the evidence that has been presented. Sincerely yours, Neal Rolde, State Representative, District 106, York-Kittery Point."

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

Mr. SOULAS: Mr. Speaker, Ladies and Gentlemen of the House: I rise today to speak in favor of L. D. 1980 in new draft.

During the public hearing and during the workshops that followed, some of the main objections of the bill were the accreditation for school curriculum and teachers, so I would like to read to you those parts of the bill that dealt primarily with the accreditation. These are parts of the redraft, Section 1604, Standardized Testing. Each exempt church-sponsored school or school of religious charter shall administer a nationally standardized test or a nationally standard equivalent measurement to all students regularly attending grades 1, 2, 3, 6 and 8. The test or measurement shall be selected by the particular exempt school administration and shall measure achievement in English, Grammar, Reading, Spelling and Mathematics as applicable. For the beginning of each school year, each exempt school shall submit to the Commissioner of Educational and Cultural Services an official report detailing the academic achievement of Grades 1, 2, 3, 6 and 8, students tested the previous school year, subject to parental consent and 1605 deals with the 11th grade. Now, they were considered not important by previous speakers. I think they are very important. It shows that they will be complying with standardized testing and high school competency testing and, in addition, the teaching of the foregoing curriculum by the teachers who have a college degree or who possess certification by a nationally recognized private education association. This, again was one of the objections that the Education Department had, but this redraft just about covers all the objections that the department was concerned with. However, even with all the changes and redraft, a majority of the committee didn't feel they should give this bill its seal of approval. Why? I don't know.

But let me tell you this, there are public schools in Maine that have abandoned as outmoded the practice of grading students numerically no or alphabetically. This view of learning in which there are grades for success or failure, or the so-called schools without failure, are presently operating in our state are run by our Department of Education. Oh yes, they are credited, they have certified teachers. Our tax dollars are taking care of that. The question that enters my mind is, what do these teachers do? They don't give examinations, they don't check test papers but, oh yes, they sure do take attendance. I don't know why we need certified teachers to take attendance.

The irony of the whole thing is that those students will eventually graduate. They won't know how to read or write but who cares? At least they were taught to do their thing. This so-called thing was taught to them by our own department. They were taught nothing, they were graduating knowing nothing and will offer nothing to our society. This, ladies and gentlemen, is the way our children are being taught in the school of no failures by our own school system. Through their teaching methods, they have actually eliminated the actual being or the soul of the individual. They are treated like a machine, one that doesn't feel and doesn't think. This was not God's intention.

At this point, I think you will see the main thrust of this bill. Christian schools are trying to make us believe in ourselves through God that we are individuals who possess a soul, who are able to make our own decisions and to feel a being not a machine and that it is natural to respect our elders, our teachers and all forms of authority, even if it means being reprimanded.

mandated at times. It is not natural for children not to be reprimanded and treated as human beings. Is this too much to ask? But the Department of Education says no, we want you to report to us your test course and you must be accredited. What they are actually saying is, do as I tell you but don't do as I do.

As you all know, I was educated in the public schools. My family have all attended and graduated from public schools. I am not attacking those people who teach in our schools, but I do think it is about time we look into our own Department of Education to see what is really happening within our walls. How can they demand standards from other schools when no such standards are demanded of them?

Take a good look at this bill lest we fail our children of the future without even giving them a chance to know the difference. I hope you will vote against the motion of "ought not to pass"

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

Mr. HOWE: Mr. Speaker and Members of the House: Before I comment on the bill, I would just like to caution my colleague from Harrison that he would do well not to quote those fellows down at Harvard. It will get him nowhere around here, I am sure.

Many of you know my daughter Erin, my 9 year old, she is a student for the third year now at a private religious school, run by a Christian school, albeit not the same branch of Christianity to which Reverend Frankland is a devotee, and her teachers went through the same teacher training that is now required by the state and the teachers in the public schools and the teachers at the Christian schools about which Reverend Frankland is concerned. And I remember that Reverend Frankland, back during his campaign for Governor, in a televised debate with his two opponents, referred to the public schools as being godless. I was pleased that one of his opponents, then Representative Palmer, took great exception to that term, and I want to assure you that my daughter's teachers, even though they have been some form of teacher training that meets the requirements of the state, are certainly not godless, nor do I think that most of the teachers in the public schools are. Although there is a great deal lacking in other respects, perhaps the teacher training, and I speak with some experience as a graduate of one of those programs, they are not turning out godless teachers. In fact, one does not have to go to a public institution of higher learning. There are many people teaching in our schools, both public and private, who have met the requirements, who went to private colleges, both religious and nonreligious.

I think Reverend Frankland has made something of a proverbial—and he, of course, is an expert in proverbs—proverbial mountain out of a molehill here. And while perhaps defeat of this bill will make him something of a martyr, that is certainly not a reason to support its passage.

As easy as it is, I think, for a group to call itself a religion or religious organization, I think we should exercise great caution before relinquishing any of our responsibility to safeguard the education of our children. And certainly if fire and safety and health pose a compelling reason for state intervention, certainly so does the education of our children.

Representative Silsby pointed out that these schools, although I don't agree that it is universally true, these schools generally don't ask anything from the state nor should the state require anything of them, but I would submit that that is a rather meaningless quid pro quo and that the state should continue to exercise its time-honored concern for some minimal standards in education.

One other point on the First Amendment, which I guess Reverend Frankland is now saying is the primary issue behind this bill. There are two parts to that portion of the First

Amendment dealing with religion and government. The only part that has been mentioned today deals with the free exercise clause which talks about government not interfering with the free exercise of religion. The other part of that portion of the First Amendment is the so-called establishment clause, and basically there, if the government does too much in furtherance of a religion or treats it differently in some cases from nonreligious groups, it then is furthering the cause of religion, and that is as much a violation of the First Amendment as is the exercise of religion, and I would suggest that if we now treat these private schools different than other private or public schools, we may then be infringing on the establishment clause of the First Amendment, and that has not been mentioned here today.

I, for all of these reasons, therefore, will oppose the bill today and hope that you will too.

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

Mr. SIMON: Mr. Speaker and Members of the House: I would like to amplify on a little what my colleague from South Portland, Mr. Howe, has mentioned concerning the fact that there are two freedom of religion clauses in the First Amendment. The First Amendment provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

Now, originally these two clauses weren't in conflict; originally, the understanding was that an "establishment of religion" was an official national church. In 1947, the "establishment" concept was broadened and applied against the states in *Everson v. Board of Education*. Now, whether we agree with that decision or not, a statute that we pass will not go into effect or remain in effect if it violates the Constitution as the United States Supreme Court has chosen to apply it.

These two clauses, as they have been construed today, can come into conflict. The question is, how can they come into conflict? Well, under the Supreme Court's decisions, a state may go so far toward protecting free exercise that it violates the establishment clause, for example, by giving direct financial subsidies to religious schools. And it may go so far toward protecting against an establishment of religion that it violates the free exercise clause, for example, by forbidding members of the clergy from holding public office.

Questions of constitutional propriety in this area are not technical, legal matters analogous to asking how many angles there are in a triangle. That is why I agree with the gentleman from Harrison, Mr. Leighton, and disagree with the gentleman from Portland, Mr. Connolly, and believe that we ought to confront the constitutional question head-on in this body before we vote for the bill. These questions are sensitive issues of social values and public policy, in which courts lay great weight on the testimony of people with practical expertise and experience, and on the informed judgment of legislative bodies.

In his quotation from the *Harvard Journal of Policy and Legislation*, or something—they publish quite a bit down there—Mr. Leighton referred to the Yoder Case, *Wisconsin v. Yoder*. Under the reasoning of that case—a case followed by later cases and cited by other proponents of this bill as well—the Supreme Court held that a religious exemption must be "vital" or "essential" to the free exercise of religion in order for it to avoid challenge as an "establishment of religion." In this case, the Supreme Court laid great stress on the severity of the burdens created by the compulsory high school attendance requirement as applied to the Amish people.

The question that I think we need to ask is, does the Maine statute in question "affirmatively compel (any parents or pupils) to perform acts undeniably at odds with fundamental tenets of their religious beliefs"? That is the

language of the Supreme Court in *Wisconsin v. Yoder*. It was under this criterion that the majority held the state compulsory education requirement unconstitutional as applied to Old Order Amish children who had already completed the 8th grade in the public schools.

In its majority opinion, the justices said: "The Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the establishment clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be on the protection of values promoted by the right of free exercise."

In his concurring opinion, Justice White makes the same point but uses the word "essential" rather than "vital." Thus, the question arises, is exemption from the Department of Education and Cultural Services supervision "vital" or "essential" to the First Amendment rights of Maine people? Have we been shown, practically or conceptually, that a religious school must be exempted from DECS supervision? How have they gotten along so far—and, indeed, prospered—if abolition of existing regulations is "vital" or "essential" to their existence of religious schools?

Under the Supreme Court's decision, if you find, on the basis of the evidence presented by the proponents and opponents of the bill, that the proposed exemption is "vital" or "essential" to the free exercise of religion of Maine elementary and secondary school pupils—and principally of their parents—then you should vote for the bill. In making this decision, you should bear in mind that the same or equivalent constitutional and factual arguments were presented before the Education Committee, which has considerable substantive knowledge in the area of its jurisdiction, and that committee voted 10 to 3 not to pass the bill.

Rightly or wrongly, the Supreme Court has upheld the constitutionality of Sunday closing laws in spite of the Court's acknowledgement that such laws "make the practice of (Orthodox Jewish merchants') religious beliefs more expensive."

Here, in the case we are contemplating, the felt need of certain religious school teachers to travel or contract out-of-state for their required methods courses may make the practice of their religious beliefs "more expensive," but not nearly as much so as closing a store two days a week rather than only one. And the state's interest in the secular education of its youth is far more compelling than the state interest in a uniform day of rest that the Court held to justify the hardships imposed by the Sunday closing laws.

The burden of going out-of-state to take education courses at a college or university of one's choice, or to contract with an out-of-state institution to provide teacher training in state, does not single out religious teachers as opposed to nonreligious teachers. Many of us have travelled across state lines to obtain parts of our education. For example, there are no medical schools in this state, and there is only one law school, and it is secular. Yet, there are differences, for example, in legal philosophy, that would lead a person of one faith to prefer Notre Dame Law School to the University of Maine Law School. If he or she prefers to study law at Notre Dame, would the uniform requirement of legal education for practicing attorneys deprive him or her of First Amendment rights? I would submit that it does not.

If we, the Legislature, find that there is not a "vital" or "essential" reason for exempting religious schools from the uniform requirements of the DECS, then the burden shifts, and we must ask ourselves, is the classification made between religious schools and nonreligious schools a violation of the establishment clause of the Constitution? If the Legislature finds, as Representatives Silsby and Dudley have argued, that an exemption of the nature embodied in this bill would be good on policy

grounds, that the Department does not always know what is right, that the free enterprise system or local control or some other alternative to DECS regulations would be preferable, then the Legislature is free to enact such an exemption for all schools. If the Legislature finds that an exemption of the nature embodied in this bill is not necessary to protect free exercise rights, but that it is nonetheless good educational policy or efficient administration policy or an act of grace or nonobligatory tolerance, then it may create the exemption, but why does it single out religious schools?

I would submit to you the reason why, and that is, the belief presented before the Education Committee in support of this bill, that religious schools don't need as much supervision, or don't need any supervision, because they are doing things God's way. There are flatly religious reasons for drawing the line between the two kinds of schools.

I quote from the testimony of Professor Stanmeyer: "superior performance by students in a technically substandard school is not really a paradox. It happens so often because these schools 'put first things first.' That is, they insist on discipline, so that there is a good atmosphere for learning; they dwell on the basic subjects, so the students are not distracted by a smorgasbord of extraneae; they drill and they require homework; they have a clear dress code and a clear moral code, so that the students focus their energies on their studies and not on the opposite sex; their teachers have spent their preparatory years learning their substantive field, and not dissipated their energies in learning 'methods' to teach contents still ungrasped; the teachers and parents are well-motivated even at financial sacrifice, 'to do the work of the Lord with his little ones.'"

Similarly, quoting Reverend Frankland in his testimony before the committee: "the average Christian school student or graduate typically far surpasses his public school counterpart in areas such as achievement, appearance, motivation, aspiration, attitude, behavior, etc. The same is true of faculty and staff. The reason," Men and Women of the House, "is that Christian school personnel believe that they are responsible to God and indebted to God."

Ladies and gentleman, I know that I am indebted to God, and I hope I am responsible to God; but I don't ask the State of Maine to exempt me from any of its laws on that account. I would tell you that if we pass this bill absent a showing of a "vital" or "essential" need for the exemption in order to protect other First Amendment rights, we will be putting our official stamp of approval on one philosophy of education as opposed to another. We will say, all of these other schools need DECS supervision; this type doesn't because it is religious. We will put our imprimatur on it, and, ladies and gentlemen, if the First Amendment means anything, it means that the state ought to stay out of the imprimatur business.

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

Mr. JALBERT: Mr. Speaker, I move that this bill, both reports and all accompanying papers be indefinitely postponed, and when the vote is taken, I move it be taken by the yeas and nays.

The SPEAKER: The gentleman from Lewiston, Mr. Jalbert, moves that this bill and all its accompanying papers be indefinitely postponed.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: We certainly have had a high level of discussion on a high plane this morning on this particular bill. I think it is an enjoyable experience. I do have a rather mundane, I guess, mechanical type of question to ask, though, of Mr. Leighton or anybody else who may care to answer this, and that deals with the bill on Page 3, Section 2, on teacher

certification. It says in there that the teaching of the curriculum in Subsection 1 by teachers who have a college degree or possess certification by a nationally recognized private education association. My question is this—does a college degree in this particular bill mean a four-year college degree? Can it mean a two-year college degree, a baccalaureate degree? The second part of the question is, by a nationally recognized education association. I realize that we can't name who the association is going to be, but are there nationally recognized private education associations who recognize less than four-year degrees?

The SPEAKER: The gentleman from Old Town, Mr. Pearson, has posed a question through the Chair to anyone who may care to respond.

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

Mrs. LEWIS: Mr. Speaker, in response to the gentleman from Old Town's question, he is correct; it is what he is assuming when he is asking the question, that it doesn't say it has to be a four-year school. But, of course, if you remember in the not too distant past, most of our teachers came from the Normal Schools, the present part of our university system were Normal Schools and they were not four-year schools; they were three year schools, and the graduates did not have baccalaureate degrees. I think most of us would agree that they turned out excellent teachers.

Also, the national organization would be a group of people who would understand the type of teachers that these schools are asking for. I think you would have to think of these schools as being a language. If you set up a school that was going to be taught, for example, in the Greek language or in the French language or in the Polish language, you would have to have teachers who were sound in those languages. Well, the Christian schools and the schools that we are referring to in this bill are schools that are taught primarily in the Christian language, so that the teachers have to have a very basic understanding and a basic belief in the Christian beliefs in order to properly teach their children. There are not very many schools who can turn out graduates, brilliant as they may be, but who truly understand the language that these schools have to use when they are teaching.

My main reason, I will say now, for being on the minority report of this bill is that I asked myself the question, and the question is—does the state have a compelling interest in spelling out the kind of education that is best for children? I don't think it has. I don't think the state really knows anymore about the best way to educate children than the parents of these children do. In fact, I think the parents probably are much more interested in their own children than the state could ever think of being.

We have a very bad habit, and I think it is getting worse, in thinking that the state knows more than we as individuals know, and the power of the state is really tremendous. We can live our lives without paying very much attention to it, and I will give you an example of something that happened just about two weeks ago. The Governor of our state issued a boycott on a company that our state does business with. Who would have dreamed that one person, single-handed, could issue such a statement. So, it shows, whether people agree or don't agree with the company that is boycotted, I think the fact that the state has such power is very very frightening. So when these people say it is not what is happening now, that the commissioner of the Education Department is very cooperative, no question, but the power of the state is there, and I think they are absolutely right in fearing what might happen.

I would urge you to allow these people freedom, the same First Amendment that has been spelled out here several times, also remember, does guarantee freedom to people. These

people, I feel, should be allowed to teach their children in the way that they see best, without any interference of any state department.

The SPEAKER: The Chair recognizes the gentleman from Danforth, Mr. Fencilason.

Mr. FENCILASON: Mr. Speaker, Ladies and Gentlemen of the House: Once again I will borrow from my good friend and colleague, Representative Norris, and say "very briefly."

As you all know, this bill has had great publicity. I assume you know that it has placed great pressure on members of the Education Committee and on legislators in general. I also had at least 800 letters and countless phone calls. I know that it was the result of a well-organized campaign in favor of the bill, and I know that there was great strategy behind it.

I, as a member of the Education Committee, voted with the majority "ought not to pass" and the motion on the floor at the moment, I believe, is to indefinitely postpone. I will also support that, of course.

I think right now we should consider this bill very calmly, very unemotionally and very objectively in order to find out just what this bill demands and advocates.

The Education Committee spent many long hours investigating all angles and facets of this bill. The large majority of us found that there was no attempt to prevent or control religious instruction, nor was there any attempt to keep people out of religious schools, to take people out of religious schools, and certainly there was no attempt to put anybody in jail unless they violated the statutes of the State of Maine. We have heard that quite a few times but it just doesn't have any basis.

Now, I would like to speak a little bit about the Department of Education and Cultural Services and their relationship with the Christian schools. As you probably know, we have quite a few Christian schools. I understand it is about 23 that are interested in this bill, that is 23 out of about 50, and various times they have had contact and conferences with the Commissioner of Education, and the representatives of the Christian schools have admitted repeatedly that the Commissioner of Education was very helpful and very cooperative in all his dealings with these schools. He certainly was not trying to run the schools out of business or to damage teaching of any kind in those schools.

In this state, we have had other parochial schools which have operated for many years and which have worked very well, and from many of these schools presently, we have had letters against this bill.

I want to just go over a little bit more one of the fears given by the proponents of this bill and that is concerning the Commissioner of Education—the fear was this—that while we have a fine Commissioner at present, somewhere in the vast future we might have one that would be no good and he would put the Christian schools out of business. I agree with these people. Commissioner Raynolds is a fine, competent, cooperative, understanding commissioner. I can't tell what is going to happen in the future, but I can tell you what happened for many years in the State of Maine when we had commissioners like Sawin Millett, like Bill Logan, and if you want to go back to that grand old man, Payson Smith. Were these people incompetent? Were they vicious? Is there a chance that we are going to elect people who are not qualified? The system for electing a Commissioner of Education now is that three members must be chosen by the State Board of Education, submitted to the Governor, who selects one from the three or, in some cases, he can reject those and ask for more. He picks one, then it has to go to the Joint Education Committee for approval and finally to the complete Senate of the State of Maine for approval. Now, with that procedure, would you believe that we are going to get an incompetent or a vicious commissioner of Education? It hardly seems possible.

I think that we should have faith in our students, faith in our teachers and faith in our Commissioner of Education. I think that all students are entitled to the protection of a minimum curriculum, and I think that the requirements of the Department of Education and Cultural Services are very mild but necessary. I think we really need them.

The opponents of this bill have protested several things, some of which they have backed off from, but they have protested any "interference" from the State Department of Education and Cultural Services. They, at one time, protested being controlled in the length of the school year. That has been withdrawn. They protested the certification of teachers, and it seems to me that teachers need to be certified.

If I may be permitted just a few seconds to digress, I know something about this. I started out as a chemical engineer, and I certainly didn't have any education courses. It so happened that after a while I became a teacher and I taught mathematics and I taught science, I taught physics and chemistry, subjects in which I was well qualified. I also started in and took many education courses. I assure you that I derived a lot of benefit from those education courses and that they were of great value to my progress as a teacher, principal and superintendent of schools.

To get back to the protests—I think I have a little bit which will sum it up fairly well. With all these protests, I would say to you that many years ago in merry old England, the venerable Bard of Avon had the Queen, in Hamlet, make a statement which covers this situation very concisely. With slight adaptation and rearrangement, the statement is this—"Me thinks these people do protest too much."

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

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: I think I would take a rather pragmatic approach to L. D. 1980. I have had the feeling for a long time that we have too much bureaucracy in our Department of Education, too much control out of Augusta and I, for one, am a firm believer in local control.

L. D. 1980 would remove church-sponsored schools from a measure of bureaucratic control, and I don't see that this necessarily is a bad thing. As a matter of fact, if L. D. 1980 is passed and the sky doesn't fall in and I, for one, don't think that it will, it might even lead to less control over all of our schools.

I urge you to vote against the motion for indefinite postponement.

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

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: Very, very briefly, I rise to state that I am going to vote against the indefinite postponement but not because I have any problem with the Department of Education and not because I have any serious problem with the public schools, but I, like many people who have spoken on both sides of this issue this morning, feel that this is a matter for the courts, for the Supreme Court. Therefore, I am going to vote for this bill. I hope it will pass and that will give the courts something to study, something to determine and give us the answer once and for all to this problem.

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. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, 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 Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: For the record, I intend to vote for this bill to put it into position for amendment, which I intend to offer on the

second reading, if possible.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Lewiston, Mr. Jalbert, that this bill and all its accompanying papers be indefinitely postponed.

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

Mr. DOW: Mr. Speaker, I would like to pair my vote with the gentleman from Lincoln, Mr. MacEachern. If Mr. MacEachern were here, he would be voting no and I would be voting yes.

#### ROLL CALL

YEA — Aloupis, Bachrach, Baker, Barry, Beaulieu, Benoit, Berry, Berube, Boudreau, Brannigan, Brenerman, Brodeur, Brown, A.; Brown, D.; Brown, K.C.; Call, Carter, D.; Chonko, Cloutier, Conary, Connolly, Cox, Damren, Davies, Davis, Dellert, Dexter, Doukas, Drinkwater, Dutremble, D.; Elias, Fenlason, Fillmore, Garsoe, Gillis, Gowen, Gwadosky, Hall, Hickey, Higgins, Howe, Huber, Hughes, Jackson, Jacques, E.; Jacques, P.; Jalbert, Joyce, Kane, Kany, Kelleher, Kiesman, LaPlante, Lizotte, Locke, Lowe, Lund, MacBride, Mahany, Masterton, Maxwell, McHenry, McKean, McMahon, McPherson, McSweeney, Mitchell, Morton, Nadeau, Nelson, A.; Nelson, M.; Nelson, N.; Paradis, E.; Paradis, P.; Paul, Payne, Peltier, Peterson, Post, Prescott, Reeves, P.; Rolde, Roope, Sewall, Sherburne, Simon, Stetson, Stover, Studley, Tarbell, Theriault, Tierney, Tozier, Tuttle, Vincent, Violette, Vose, Wentworth, Whittmore, Wood, Wyman.

NAY — Austin, Birt, Blodgett, Bordeaux, Bowden, Brown, K.L.; Bunker, Carrier, Carroll, Carter, F.; Churchill, Cunningham, Curtis, Diamond, Dudley, Fowlie, Gray, Hunter, Hutchings, Immonen, Lancaster, Leighton, Leonard, Lewis, Lougee, Marshall, Martin, A.; Masterman, Matthews, Michael, Norris, Pearson, Reeves, J.; Silsby, Small, Smith, Soulas, Sprowl, Stetson, Strout, Torrey, Twitchell.

ABSENT — Dutremble, L.; Gavett, Hanson, Hobbins, Laffin.

PAIRED — Dow, MacEachern;

Yes, 102, No, 42; Absent, 5; Paired 2.

The SPEAKER: One hundred and two having voted in the affirmative and forty-two in the negative, with five being absent and two paired, the motion does prevail.

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

Mr. CONNOLLY: Mr. Speaker, having voted on the prevailing side, I move consideration and hope you all vote against me.

Mr. Silsby of Ellsworth 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 pending question before the House is on the motion of the gentleman from Portland, Mr. Connolly, that the House reconsider its action whereby this bill was indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Austin, Birt, Bordeaux, Brown, K.L.; Bunker, Carrier, Carroll, Carter, F.; Churchill, Cunningham, Curtis, Diamond, Dudley, Fowlie, Gray, Hunter, Hutchings, Immonen, Lancaster, Leighton, Leonard, Lewis, Lougee, Marshall, Martin, A.; Masterman, Matthews, Michael, Norris, Pearson, Reeves, J.; Rollins, Silsby, Small, Smith, Soulas, Sprowl, Strout, Torrey, Twitchell.

NAY — Aloupis, Bachrach, Baker, Barry, Beaulieu, Benoit, Berry, Berube, Blodgett,

Boudreau, Bowden, Brannigan, Brenerman, Brodeur, Brown, A.; Brown, D.; Brown, K.C.; Call, Carter, D.; Chonko, Cloutier, Conary, Connolly, Cox, Damren, Davies, Davis, Dellert, Dexter, Doukas, Dow, Drinkwater, Dutremble, D.; Elias, Fenlason, Fillmore, Garsoe, Gillis, Gowen, Gwadosky, Hall, Hickey, Higgins, Howe, Huber, Hughes, Jackson, Jacques, E.; Jacques, P.; Jalbert, Joyce, Kane, Kany, Kelleher, Kiesman, LaPlante, Lizotte, Locke, Lowe, Lund, MacBride, Mahany, Masterton, Maxwell, McHenry, McKean, McMahon, McPherson, McSweeney, Mitchell, Morton, Nadeau, Nelson, A.; Nelson, M.; Nelson, N.; Paradis, E.; Paradis, P.; Paul, Payne, Peltier, Peterson, Post, Prescott, Reeves, P.; Rolde, Roope, Sewall, Sherburne, Simon, Stetson, Stover, Studley, Tarbell, Theriault, Tierney, Tozier, Tuttle, Vincent, Violette, Vose, Wentworth, Whittmore, Wood, Wyman.

ABSENT — Dutremble, L.; Gavett, Hanson, Hobbins, Laffin, MacEachern, The Speaker.

Yes, 40; No, 104; Absent, 7.

The SPEAKER: Forty having voted in the affirmative and one hundred and four in the negative with seven being absent, the motion does not prevail.

Sent up for concurrence.

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

On motion of Mrs. Berube of Lewiston, the following Joint Order: (H. P. 1928)

ORDERED, the Senate concurring, that the Joint Standing Committee on Audit and Program Review report out a bill to the House relating to periodic justification of departments and agencies of State Government under the Maine Sunset Law.

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

By unanimous consent, ordered sent forthwith to the Senate.

#### Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-845) on Bill "An Act to Declare the Right of the Public to Attend Judicial Proceedings" (H. P. 1728) (L. D. 1847)

Report was signed by the following members:

Mr. COLLINS of Knox  
Mrs. TRAFTON of Androscoggin  
— of the Senate.

Messrs. JOYCE of Portland

CARRIER of Westbrook

Mrs. SEWALL of Newcastle

Messrs. SILSBY of Ellsworth

HOBBINS of Saco

GRAY of Rockland

SIMON of Lewiston

HUGHES of Auburn

— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Mr. DEVOE of Penobscot  
— of the Senate.

Mr. STETSON of Wiscasset  
— of the House.

Reports were read.

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

Mr. HUGHES: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.

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

Mrs. KANY: Mr. Speaker and Members of the House: I have a couple of questions on the Majority "Ought to Pass" Report on this bill. One is that the accused right to a fair trial certainly is not interfered with at all under the bill, but I am concerned about victims, and if



victims, for certain reasons, could ever choose to have this particular proceeding and hearing be in private?

The SPEAKER: The gentlewoman from Waterville, Mrs. Kany, has posed a question through the Chair to any member who may care to answer.

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

Mr. SIMON: Mr. Speaker and Members of the House: This bill does not include probable cause hearings and, therefore, in the estimation of the members of the committee who considered the issue raised by the gentlelady from Waterville, Mrs. Kany, the question of victim simply would not arise as a result of this bill. In other words, we do not contemplate that a hearing at which a victim would be required to testify need be made public as a result of this bill. It was an issue we considered; we believe we have resolved it.

Thereupon, the Majority "Ought to Pass" Report was accepted and the bill read once. Committee Amendment "A" (H-825) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

#### Consent Calendar First Day

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

(S. P. 736) (L. D. 1915) Bill "An Act to Appropriate Funds to the Health Facilities Cost Review Board" (Emergency) Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-433)

(S. P. 695) (L. D. 1831) Bill "An Act to Expand the State's Industrial Development Promotion Program" Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-432)

No objections being noted, the above items were ordered to appear on the Consent Calendar of March 11 under listing of Second Day.

(H. P. 1648) (L. D. 1765) Bill "An Act to Increase the Limit on Compensation for Assistant District Attorneys in Prosecutorial District Number 7"—Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as Amended by Committee Amendment "A" (H-861)

On the objection of Mrs. Nelson of Portland, was removed from the Consent Calendar.

Thereupon, the Committee Report was accepted and the Bill read once. Committee Amendment "A" (H-861) was read by the Clerk.

Mrs. Nelson of Portland offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-866) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Men and Women of the House: First of all, let me state simply that it is not my intent to jeopardize the committee amendment.

I was denied introduction of this bill and, although I did indeed appeal to the council on the basis of it being an emergency, that, too, was denied. I then introduced this amendment with a different price tag, it is now much smaller, at the public hearing after I told the sponsors of the bill what I planned to do and they understood and I hope they still do, that in no way is this an attempt to hurt or jeopardize their just cause.

I now, in my final stage, am introducing this amendment here on the floor of the House—again, not to jeopardize their just cause, but because this is the last and only way that I can address this problem and hope for your sup-

port.

I have exhausted every avenue to allow for juvenile offenders to go to trial. There are no juvenile prosecutors. There is no juvenile prosecutor in the largest county and the largest court in the State of Maine.

I have tried to get volunteers to come to serve that purpose and I have spoken to the largest law firms in Cumberland County and they have said that they would be willing to volunteer their time to help prosecute juveniles. We cannot do that because of the law, Section 53-A. Now, people can volunteer to defend criminals but no one in the State of Maine, as a lawyer, can volunteer to help the state prosecute, and so I now come to you to present this bill for \$5,000 for a part-time juvenile prosecutor for Cumberland County.

The need for this, at this point, a part-time prosecutor to handle juveniles, becomes evident when reviewing the facts regarding juvenile crime in the State of Maine. Thirty percent of all arrests are of juveniles under the age of 18 and subject to the juvenile code. Thirty-six percent of all robberies; 51 percent of all burglaries; 46 percent of all arson cases; 49 percent of all thefts; 56 percent of all car thefts and 71 percent of vandalism are committed by juveniles on a statewide basis. Right now—actually there are more than this because this was a figure in 1978—650 petitions were filed in the Portland District Court in 1978 and these cases were not prosecuted because there was no juvenile prosecutor, and these are the most serious of all cases.

Frequently, these serious cases, where a trial is requested and the success of the District Attorney's Office in prosecuting these cases directly affects the likelihood of victims of juvenile offenders recovering the loss due to the crime.

The legislators, us, we, should be aware that they are responsible for having enacted that juvenile code which requires either the District Attorney or the Attorney General to represent the state in all juvenile proceedings, having placed the responsibility on those prosecutors to do the work the legislature should, indeed, give a lawyer to carry out the intent of their statute. At the present time, there is nobody at all available to handle these, over 650 cases, now pending.

There are five lawyers for 200,000 residents in Cumberland County; 29,561 criminal cases in 1978. There are 33 district courts in this state and 80 percent of the cases are all burglary, thefts, and caused by the use of drugs, whatever, are before the courts in Cumberland County.

Finally, let me state, quoting from an editorial in the Portland Press Herald dealing with this request, "Now the request for an additional assistant," and actually it is an assistant, "and state funding" which is the only way to get the money, through the state, "has brought the unanimous endorsement from police chiefs throughout the county because they face the problem regularly and often it is they who take heat from disgruntled citizens who complain that even when you catch them nothing happens."

If a person accused of a crime cannot afford a lawyer, one will be provided for him. The state, in a criminal case, is the people. It is the people who are the victims of crime and who pay for the rights of the accused. Those people should be represented by a lawyer, too. The county, Cumberland County, is trying to do a job and it needs help if juvenile crime is to get the attention it should have.

I urge you to vote for the passage of this amendment.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I move that this amendment be indefinitely postponed and would speak to my motion.

The SPEAKER: The gentleman from Old Town, Mr. Pearson, moves that House Amendment to Committee Amendment "A" be indefinitely postponed.

The gentleman may proceed.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Before the Appropriations Committee came the numerous representatives of Washington County and stood at the podium all at the same time, didn't take up too much room. They don't have a big delegation but they have got a big problem, so they submitted a bill to open an office in Calais, which is the largest populated area of Washington County, for that prosecutorial district, and it includes Washington and Hancock counties.

After they concluded their remarks, the gentlelady from Portland, who is the chairman of the Cumberland County delegation, said that she wanted to attach an amendment to it to also give Cumberland, the prosecutorial district down there, also a raise in the amount of money they needed. We reflected on it and we remembered that last year, when the various district attorneys around the state came in for a raise, we gave them a raise, we gave them more money, but in two cases we found it necessary, because of the caseload, to give them more than any other of the prosecutorial districts in the state, and one of them was the one that serves Cumberland County.

What I am saying to you is, we gave everybody a 10 percent increase last year, except for two districts, and we gave them 25 percent. Now they are back asking for more, and before we give them any more, I want to tell you what they did with the money that we gave them to increase. Instead of hiring new prosecutors to try the cases, the district attorney gave people raises. The district attorney in that particular prosecutorial district, until very recently, has not been involved in prosecuting juveniles himself, as they do in every other prosecutorial district in the state. He has now agreed to do that, and something very distressful for me to hear at least, was that the judges in that area also agreed to work on Wednesdays and Fridays. I just couldn't believe it when I heard it, that they weren't working on Wednesdays and Fridays. So, let's give the district attorney in that area a chance to prosecute some of the cases himself; let's give the people who live in the northern reaches of Washington County a chance to have an office and enforce the law in the largest town in their county and send this bill on its way.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: First of all, it was within the privilege and the right and the scope of the district attorney to do whatever he wished with the amount of money given to him. He chose to keep the five prosecutors that he had on staff. They were making at the time less than \$15,000 a year. We all know that a lawyer worth his weight, or salt or whatever, in private practice makes a great deal more. As a matter of fact, many private law firms in Cumberland County have rated those prosecutors, offered them more money, and although these men and women wanted to stay on doing their job protecting the state, they chose to go into private industry. This is the rationale given to me by the district attorney, and I believe him.

Second of all, I do not believe this is an either/or situation; I hope not. I hope that you are not going to pit that marvelous county in the south with that wonderful county in the north; that is not the issue at hand. The issue at hand is this—whether you accept the amendment or not, Washington County will get the \$10,000 that is deserved them. The point is, should the people in the largest area of the State of Maine have that right to have their rights protected? As victims, as members of the state, do they have that right to have that juvenile, who has burglarized their home,

broken into their cars, etc., go to trial? If that juvenile is innocent, wonderful, then he will be judged innocent, but if he is guilty as a victim and as a citizen of the state, do we not believe that they should go to trial and, indeed, have the punishment for the crime?

Right now in Cumberland County, there is restitution alternative program. It is funded with \$173,000 by the federal government. They are doing a magnificent job, but they can only work with juveniles who have already been adjudicated, already been to trial. Now, these juveniles, at this time, cannot even go to trial and, therefore, as a victim you cannot get any compensation or whatever. These kids, guilty or not guilty, are out on the streets. I just don't think that is fair.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: It is rather unusual that I get up here today and be in opposition to my good House chairman and ask you to accept an amendment to a bill that comes out of the Appropriations Committee, but I am going to do that today because I do think we have a big problem in southern Maine, Cumberland County, and I would admit that the people in Washington County have as big a problem, probably because of their size, but we have a like problem because of our caseload in the area of Portland.

I would like to say one thing in deference to Mr. Pearson, that the reason Mr. Berry, our District Attorney, is not being involved in the juvenile cases is simply because he is handling and has been handling in the past some other duties that he felt more important. I don't think that he has been slack in his duties and I don't think he has been avoiding the issue, I just think he has found it much more propitious to spend his time doing other things.

I, too, have an editorial that I would like to share a little bit with you. It is a different one than the gentlelady from Portland, Mrs. Nelson, shared with you, and I will just read part of it, different parts of it. It says, it is appalling that the Portland District Court has no prosecutor to handle juvenile crime. It is almost equally incredible to hear a district attorney announced that his office has ceased to handle one whole major category of crime. He says he simply does not have sufficient staff to cover all the cases in all the courts in his jurisdiction. The district attorney's office handled 25,000 cases in Portland District Court last year and 7,500 more in Bridgton and Brunswick courts. Berry's office does nothing that is not required of all district attorneys, but Berry's office does more of everything because it is in the state's largest city.

Juvenile crime is more than just a nuisance violation; it is a serious and often costly practice of victims in the cities and suburban communities in rural areas. Law enforcement people do their best to cope with it. It is not fair to them, to the victims or to the taxpayers generally to be denied prosecutorial services. And I think that is what is at issue here today, whether or not the people in District 2 are going to be afforded the grand total sum of \$5,000 to hire a part-time district attorney to handle juvenile cases. I think we need one and I think it is important, and whether or not we were granted 25 percent last year, while it ought to be some sort of a consideration, I don't think it ought to be the overriding one, because if the number of cases that we are handling has increased sufficiently more than that amount, then we have every likelihood in the world to ask for that money.

I don't think it is necessarily important what happened before, I think it is what is happening now and what will happen in the future if we don't obtain these funds.

So, I hope you would oppose the motion of the good gentleman from Old Town, Mr. Pearson, so that we might accept this amendment and

give the people in Cumberland County, in that particular prosecutorial district, the ability to hire someone to keep these kids honest and to keep them off the streets, if you will, if they, in fact, need to be. So, I would hope that you would vote against the motion.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: I just want to clear up one misimpression that you might have had as a result of the remarks of Representative Higgins, and that is that already the prosecutorial district that serves Cumberland County receives far and above any amount of money that any other district in the state receives, at least is one of the two. It receives a little over \$84,000 a year and in Washington County it is \$44,000, so there really is no comparison.

He says the caseload is heavier. It is recognized that it is heavier by giving them more money. Last year, when we gave everybody else a 10 percent raise, we gave them 25, recognizing that it was even getting heavier. At the time, it was towards the end of the session and I felt that we had made a commitment to the gentleman and the gentlelady from Washington County to take care of the problems they had in Calais, and this is what this is intended to do. And if there is, indeed, a problem in the Cumberland County prosecutorial district, let them come in with their own bill, ride on their own merits and not on Washington County.

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

Mr. MORTON: Mr. Speaker, I echo the sentiments of the gentleman from Old Town, a member of the Appropriations Committee. We discussed this very carefully, and I would only say, all I can find in the discussion, if the people of Prosecutorial District 2 are being denied prosecution of juveniles, let the judgment call on the part of the district attorney in that area. He decided to give the raises rather than increase his staff. I say, let's not reward the poor judgment of the district attorney in District 2.

The SPEAKER: The Chair recognizes the gentlewoman from Milbridge, Mrs. Curtis.

Mrs. CURTIS: Mr. Speaker and Members of the House: I rise to support the chairman of the Appropriations Committee. This is a Washington County bill. Amendment "B" is not, and I was wondering about the germaneness of it; I am not sure about that. There is Amendment "A" from the Appropriations Committee and that addresses Prosecutorial District 7 only, and that is what we should be concerned with. So I would hope that you would support the motion to indefinitely postpone because I don't want to take a chance that additional funds would kill the bill.

The SPEAKER: The pending question is on the motion of the gentleman from Old Town, Mr. Pearson, that House Amendment "A" to Committee Amendment "A" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

69 having voted in the affirmative and 26 having voted in the negative, the motion did prevail.

Thereupon, Committee Amendment "A" was adopted.

The Bill was assigned for second reading tomorrow.

(H. P. 1764) (L. D. 1896) Bill "An Act to Expand the Kinds of Projects Eligible for Financing under the Maine Guarantee Revenue Obligation Securities Act" Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-862)

(H. P. 1724) (L. D. 1828) Bill "An Act to Provide for the Re-registration of a Motor Vehicle when the Previous Registration has Expired for more than 30 Days"—Committee on Trans-

portation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-863)

No objections being noted, the above items were ordered to appear on the Consent Calendar of March 11, under listing of Second Day.

(Off Record Remarks)

On motion of Mrs. Bachrach of Brunswick, Recessed until four o'clock in the afternoon.

After Recess

4:00 P.M.

The House was called to order by the Speaker.

Consent Calendar

Second Day

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

(H. P. 1690) (L. D. 1800) Bill "An Act to Establish Visible Emissions Standards and to Adopt and Revise Certain Definitions under the Environmental Laws" (C. "A" H-846)

(H. P. 1766) (L. D. 1889) Bill "An Act Relating to the Reorganization of the Board of Trustees of the State Employees Group Accident and Sickness or Health Insurance Plan" (C. "A" H-850)

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

Passed to Be Engrossed

Amended Bills

RESOLVE, Appropriating Funds to Camden Community School, Inc. (H. P. 1645) (L. D. 1755) (C. "A" H-838)

Was 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.

Bill "An Act to Appropriate Funds for an Increase in Board Rates for Foster Parents and Clothing Allowances for Children under the Care or Custody of the Department of Human Services" (H. P. 1754) (L. D. 1881) (C. "A" H-837)

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

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

Mr. BRODEUR: Mr. Speaker and Members of the House: First, I would like to say that I strongly support the bill. The purpose of the bill is to help provide for the care of children, put them in trust to the state's care. It is necessary to provide a living environment, for example, other than the home where the child's health and safety is at risk.

I would hope, however, the leadership of our state and our communities and our churches would address similar needs of other children who are otherwise at risk, who may potentially end up in foster care, so that the children who live in families under the stresses of inadequate income, alcoholism, isolation and dissolution of these families. Although there are now in place services and programs to address some of these problems, some of those programs and services are severely threatened by possible cutbacks in federal funds. Where cost of living increases were hoped for and planned for for this fiscal year and the next, many things can be done to alleviate the stresses of these children at risk, families at risk, things such as removing the financial incentive for families to dissolve, increasing levels of support for these children at risk and also cooperating with the many volunteer efforts throughout the state.

Since the Appropriations Committee of the legislature is the one that oversees the financial matters which will affect these increases



or decreases of these programs in service, I would like to pose a question to the chairman of that committee. Is the Appropriations Committee going to work towards a solution to the severe problems of families and children at risk, first in the area of possible loss of funds and, secondly, in the area of preventative programs which help avoid both high social costs as our children and families in crisis face and the high financial cost that may come if we don't have a planned solution?

The SPEAKER: The gentleman from Auburn, Mr. Brodeur, has posed a question through the Chair to the gentleman from Old Town, Mr. Pearson, who may answer if he so desires, and the Chair recognizes that gentleman.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Brodeur has posed a question to me. He has consistently demonstrated, since he has been in the legislature, his concern for those who are less fortunate in the state, and I applaud him for that.

He started his remarks by saying that he favored this bill but had taken it off the Consent Calendar because he wanted to make some remarks about something else, of children that are at risk. When he takes it off the Consent Calendar, it puts the bill at risk, and I wish that he would have found some other vehicle to do that.

To answer his question, yes, the Appropriations Committee is concerned and is working within the financial parameters of what we have to deal with in trying to fund human services programs that he mentioned.

Thereupon, the Bill was passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

#### Orders of the Day

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

Bill, "An Act to Appropriate Money for the Maine Energy Resources Development Fund and to Permit the use of Those Funds for Demonstration Projects" (H. P. 1713) (L. D. 1819)

— In House, Minority "Ought to Pass" as Amended by Committee Amendment "A" (H-811) Report Accepted and the bill Passed to be Engrossed on March 4, 1980.

— In Senate, Majority "Ought Not to Pass" Report Accepted.

Tabled—March 6, 1980 by Mr. Blodgett of Waldoboro.

Pending—Further Consideration.

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

Mr. BLODGETT: Mr. Speaker, I move that this item be tabled for two legislative days.

Whereupon, Mr. Tarbell of Bangor requested a vote.

The SPEAKER: The pending question is on the motion of the gentleman from Waldoboro, Mr. Blodgett, that this matter be tabled pending further consideration and specially assigned for Wednesday, March 12. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Blodgett of Waldoboro requested a roll call vote.

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Waldoboro, Mr. Blodgett, that this matter be tabled pending further consideration and specially assigned for Wednesday, March 12. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Bachrach, Barry, Beaulieu, Benoit,

Berube, Birt, Blodgett, Brannigan, Breneman, Brodeur, Brown, K.C.; Carroll, Carter, D.; Chonko, Cloutier, Connolly, Cox, Curtis, Diamond, Dow, Dutremble, D.; Elias, Gray, Gwadosky, Hall, Hickey, Hobbins, Howe, Huber, Jacques, P.; Jalbert, Joyce, Kany, Kelleher, Lizotte, Locke, Lowe, MacEachern, Mahany, Martin, A.; Masterman, Masterton, McHenry, McKean, Michael, Mitchell, Nadeau, Nelson, M.; Nelson, N.; Norris, Paradis, P.; Paul, Pearson, Post, Prescott, Reeves, J.; Rolde, Sewall, Silsby, Simon, Theriault, Tierney, Tozier, Tuttle, Twitchell, Viollette, Vose, Wood, Wyman.

NAY — Aloupis, Austin, Berry, Bordeaux, Boudreau, Bowden, Brown, D.; Brown, K.L.; Call, Churchill, Cunningham, Damren, Davis, Dellert, Dexter, Drinkwater, Dudley, Fenlason, Fillmore, Garsoe, Gavett, Gillis, Higgins, Hunter, Hutchings, Jackson, Kiesman, Leighton, Lougee, Lund, MacBride, Marshall, Matthews, McPherson, Morton, Nelson, A.; Paradis, E.; Payne, Peterson, Rollins, Roope, Sherburne, Small, Smith, Stetson, Stover, Strout, Studley, Tarbell, Torrey, Wentworth.

ABSENT—Baker, Brown, A.; Bunker, Carrier, Carter, F.; Conary, Davies, Doukas, Dutremble, L.; Fowlie, Gowen, Hanson, Hughes, Immonen, Jacques, E.; Kane, Laffin, Lancaster, LaPlante, Leonard, Lewis, Maxwell, McMahon, McSweeney, Peltier, Reeves, P.; Soulas, Sprowl, Vincent, Whittemore, The Speaker.

Yes, 69; No, 51; Absent, 30.

The SPEAKER: Sixty-nine having voted in the affirmative and fifty-one in the negative, with thirty being absent, the motion does prevail.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, is the House in possession of L. D. 1964?

The SPEAKER: The Chair would answer in the affirmative, having been held at the request of the gentleman from Saco, Mr. Hobbins. It is Bill "An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine" (Emergency) (S. P. 770) (L. D. 1964), which was passed to be engrossed as amended by House Amendments "B" (H-844), "C" (H-847), "D" (H-848), and "E" (H-849) and Senate Amendment "A" (S-426) in the House on March 7, 1980.

Mrs. Post of Owl's Head moved that the House reconsider its action whereby the Bill was passed to be engrossed.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Owl's Head, Mrs. Post, that the House reconsider its action whereby the Bill was passed to be engrossed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

72 having voted in the affirmative and 18 having voted in the negative, the motion did prevail.

Mrs. Post of Owl's Head offered House Amendment "H" and moved its adoption.

House Amendment "H" (H-856) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: What this amendment does, it removes from the errors and inconsistency bill reference to a particular section of the law which we are dealing with under another bill which is presently before us dealing with a general revision of public property tax laws. We are dealing with it under another bill and this would present another inconsistency for us to deal with next year if we don't accept this particular amendment now.

Thereupon, House Amendment "H" was adopted.

The SPEAKER: The Chair recognizes the gentleman from New Sweden, Mr. Nelson.

Mr. NELSON: Mr. Speaker, I move we reconsider our action whereby House Amendment "E" was adopted.

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

Mr. WOOD: Mr. Speaker, I have a feeling that that is my amendment. I don't have it, but I hope we do not reconsider.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from New Sweden, Mr. Nelson, that the House reconsider its action whereby House Amendment "E" was adopted. All those in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

50 having voted in the affirmative and 45 having voted in the negative, the motion did prevail.

The SPEAKER: The Chair recognizes the gentleman from New Sweden, Mr. Nelson.

Mr. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: In many cases over the years, owners of dogs and other animals have been known to perform operations on animals to prevent them from bearing young. In other words, the animals were neutered. At the present time, a certificate must be obtained from a veterinarian to show that a dog has been neutered before the owner can obtain a license for the dog at the minimum fee. In some cases, dogs have been neutered by other than veterinarians. Perhaps four or five years ago, and in a case like this, the owners would have to pay the veterinarian a large price for the examination which, in my area would be \$7 just to show the dog had been neutered.

It is my opinion that an affidavit signed by the owner of the dog in the presence of the town clerk would be the proper way to handle the situation.

I move that House Amendment "E" be indefinitely postponed and hope you will go along with me.

The SPEAKER: The Chair recognizes the gentleman from Wells, Mrs. Wentworth.

Mrs. WENTWORTH: Mr. Speaker and Members of the House: If we start not accepting previously required certificates for our dogs who have been spayed or neutered, there is going to be a big problem in many towns and cities. Not only would that make a problem, but then they would start saying "accept a statement for a rabies shot" and if your child then is bitten, you have no proof and no way to know when that dog received his shot.

Any veterinarian, for a price of a certificate, will give you a copy. This would only apply to new dogs anyway, because all others would already have been indicated on their records.

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

Mr. WOOD: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would not indefinitely postpone this amendment.

The Errors and Inconsistency Bill is supposed to be just that, for errors and inconsistencies. The Committee on Agriculture discussed this issue last year, and I think when the errors and inconsistencies bill came out with this proposal in it, it was a substantive change to the law and therefore I eliminated it by my amendment. If we defeat this amendment, then we have this very substantial change back in the errors and inconsistency bill.

The Dog Licensing Act was just passed last year. I don't think there have been enough problems to warrant an amendment at this time. In the future, if we see a problem, we will always have another session to deal with it.

Finally, although I am not familiar with the techniques used by individuals to neuter their animals, I am not sure that I would approve of those techniques and I don't think we should either.

The SPEAKER: The Chair will order a vote.

The pending question is on the motion of the gentleman from New Sweden, Mr. Nelson, that House Amendment "E" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

45 having voted in the affirmative and 37 having voted in the negative, the motion did not prevail.

Thereupon, House Amendment "E" was adopted.

The Bill was passed to be engrossed as amended by House Amendments "B", "C", "D", "E", "H" and Senate Amendment "A" in non-concurrence and sent up for concurrence.

The following paper appearing on Supplement No. 2 was taken up out of order by unanimous consent.

On motion of Mrs. Post of Owl's Head, the following Joint Order: (H. P. 1934)

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation report out a bill to establish the municipal cost components for the unorganized territory for services to be rendered in fiscal year 1981.

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

The Chair laid before the House the following matter:

SENATE JOINT ORDER (S. P. 772) relative to the Joint Standing Committee on Audit and Program Review studying the operating and proposed expansion of the Office of Energy Resources, which was tabled earlier in the day pending passage in concurrence.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I wholeheartedly support this order. In fact, I can live with the amendment but I believe I could have lived with the original order.

I would just ask the question, what does the Office of Energy Resources do and what does it have to report to this legislature? What has it reported to the past legislature and what did it report to the one before that?

The Department was created in 1974 because of the apparent need that the government should be in the position, through an agency, to handle emergency situations dealing with fuel and the availability of it. When that office was originally created, it was to transfer principally fuel from one area of the state to another. For example, if they happened to have an abundance of fuel in Portland or Lewiston and there was a need for it in Aroostook County or Washington County, this particular agency was there to see if one company would be willing to transfer fuel to another.

But what else has it done and how productive has it been and how beneficial has it been to the people of Maine? I honestly don't know the answer to those questions.

I think the Office of Energy Resources is operating now under the reasonable position of trying to promote conservation in the state, and if there is one thing that we haven't promoted, it is conservation over in that department by the number of personnel that is apparently working there.

You know, I look at the fuel adjustment program that the feds have given to the State of Maine and to other states in this nation, and I question, what is it going to be like next year in terms of pumping dollars back into the hands of the citizens of Maine to try to defray their fuel costs? They may give us \$20 million next year, probably 15 more employees; they may give us \$30 million the following year and a number of employees, but here we are in this state, as well as every other state, faced with cutbacks in Title 20, which certainly affects us, the possibility of no more revenue sharing, which certainly is going to affect us, and the

proliferation of increased numbers of people over in the Department of Energy Resources.

I comment the author of this order and I think that we should seriously look at it, because I really would like to know, what are we getting for our money?

Granted, the federal government is putting in most of the dollars, but if I am getting a new lesson in finances, I guess those federal tax dollars come from all of us, whether we live in California or here in the State of Maine.

I just question, are we getting our just value for the dollars that are going into the Department of Energy Resources?

This government of ours is concerned about employees and what the benefits are, and I would hope that we would seriously look into the fact of should we have 47 employees down there? I don't really think we should, but if this order is going to give this House and the other body more information pertaining to what that office does, then I see no real reason why we shouldn't pass it.

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

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: It is, from my review of this order which I have just read for the first time, that it strikes singularly a peculiar precedent for legislative action, a precedent which I do not think, at first blush at least, can be done by legislative order.

If you will read the order carefully, you will see that it calls for the legislature to impose a freeze on hiring in a particular department, a department with which we have very little, if any, contact by way of funding. I know it has never been done, that being the responsibility for the executive branch as opposed to the legislative branch, but in that it may be the appropriate way to go, I would like to have someone table it pending the outcome of legal research on the subject.

Thereupon, on motion of Mr. Garsoe of Cumberland, tabled pending passage in concurrence and tomorrow assigned.

The Chair laid before the House the following matter:

Bill "An Act to Authorize a Bond Issue in the Amount of \$4,500,000 for Energy Conservation Improvements for Public School Buildings and the University of Maine." (S. P. 734) (L. D. 1913) which was tabled earlier in the day pending adoption of Senate Amendment "A" to Committee Amendment "A" (S-443).

Thereupon, Senate Amendment "A" to Committee Amendment "A" (S-433) was adopted in concurrence.

Committee Amendment "A" as amended by Senate Amendment "A" (S-429) thereto was adopted in concurrence.

The Bill was assigned for second reading tomorrow.

The Chair laid before the House the following matter:

Bill "An Act to Provide Broad Public Representation on the Board of Pesticides Control and to Improve the Level of Information Available to it and the Public" (H. P. 1891) (L. D. 1966) which was tabled earlier in the day pending further consideration. (Passed to be engrossed as amended by House Amendment "A" (H-829) in the House on March 4; In Senate, passed to be engrossed as amended by House Amendment "A" and Senate Amendment "B" (S-444) in non-concurrence).

Thereupon, the House voted to recede and concur.

The Chair laid before the House the following matter:

Bill "An Act to Permit the Department of Transportation to Acquire Railroad Operating Equipment" (S. P. 666) (L. D. 1720) which was tabled earlier in the day pending further consideration. (In House, passed to be Enacted. In

Senate, passed to be engrossed as amended by Committee Amendment "A" (S-411) as amended by Senate Amendment "B" (S-422) thereto and Senate Amendment "A" (S-422) in non-concurrence).

In the House, the House voted to recede and concur.

The Chair laid before the House the following matter:

Bill "An Act to Establish County Corrections' Improvement Fund" (H. P. 1761) (L. D. 1886) which was tabled earlier in the day pending acceptance of the "Leave to Withdraw" Report.

On motion of Mrs. Prescott of Hampden, tabled pending acceptance of the Committee Report and tomorrow assigned.

(Off Record Remarks)

On motion of Mr. Blodgett of Waldoboro, the House reconsidered its action of earlier in the day whereby I.B. 2, Bill "An Act to Prohibit the Generation of Electric Power by Means of Nuclear Fission," was referred to the Committee on Energy and Natural Resources in concurrence.

On further motion of the same gentleman, the Bill was referred to the Committee on Public Utilities, in non-concurrence and sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Tierney of Lisbon Falls, Recessed until the sound of the gong.

After Recess  
5:15 P.M.

The House was called to order by the Speaker.

The Chair laid before the House the following matter:

Bill "An Act to Amend Allocations from the Highway Fund for the Fiscal Years from July 1, 1979 to June 30, 1980 and from July 1, 1980 to June 30, 1981, Decrease the State Aid Bonus from 40% to 20%, and Revise Drivers' License and Examination Fees" (Emergency) (H. P. 1723) (L. D. 1827) which was tabled earlier in the day pending further consideration. (In House, the Bill and accompanying papers were recommitted to the Committee on Transportation; In Senate, passed to be engrossed as amended by Committee Amendment "A" (H-812) as amended by Senate Amendment "B" (S-434) thereto in non-concurrence).

On motion of Mr. Carroll of Limerick, the House voted to recede from its action whereby the Bill was recommitted to the Committee on Transportation.

Senate Amendment "A" to Committee Amendment "A" was read by the Clerk.

On motion of Mr. Carroll of Limerick, Senate Amendment "B" to Committee Amendment "A" was indefinitely postponed in non-concurrence.

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

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: We now have the bill pretty well cleaned up, ready for some more amendments.

Thereupon, under suspension of the rules, Mr. Morton of Farmington offered House Amendment "F" to Committee Amendment "A" and moved its adoption.

House Amendment "F" to Committee Amendment "A" (H-873) was read by the Clerk.

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

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: We have seen this highway funding situation go back and forth, receive all sorts of consideration, and it looks

to me like there is very little likelihood that any of the bills that I have seen so far, including the amendment that was just defeated from the Senate and which is going to be offered in case my amendment fails being adopted as the policy of this legislature.

The amendment I have here, which the Clerk had very kindly read the Statement of Fact on, and the Statement of Fact is accurate and does delineate what the amendment does, is much the same as the one that was offered by the gentleman from Cumberland last week. It does provide a 2 cent increase in the gas tax.

Many states are recognizing the problems in their highway departments and several of them have already enacted a gas tax increase, so the State of Maine will not be alone in this attitude.

Also, I would hasten to point out, as has been done many times, that out of \$13.1 million that it is anticipated this increase in the gas tax will raise that our good friends who are nonresidents and use our Maine highways will pay a relatively good size proportion.

I realize this amendment does not address matters beyond fiscal 1981; however, it does provide us a bridge to reach the next session of the legislature and it does begin to address the problem, because if the people adopt it, the money will be on-going at least in this amount.

Highway costs for fuel, for striping paint, for resurfacing materials, they are all going up and much faster than this increase in the gas tax.

You might be interested, as I would point out, that in the General Fund area our annual increases from '76 over '75 was over 13 percent; the next year it was over 14 percent; the next year was 13 percent; in 1979 it was down to 8½ percent. Those are relatively strong increases in the General Fund figure; whereas, in the Department of Transportation, the highway fund, the biggest increase was 4.6 percent for the three years '76, '77 and '78, and it was down to 1.6 last year, and the figures that I dug out the other day indicate that we are running about \$3 million short for the first seven months of this year as compared to last year—\$3 million less than last year. That is not the case with any other fund.

I think we have to realize this and realize that we are not actually paying as much taxes for gasoline as we did last year, and I am not sure that the people of Maine mind that but, by the same token, I am sure that they would also realize that it is not very tenable situation to support the Department of Transportation.

Furthermore, and I hope you don't lose sight of the fact that this bill is a balanced bill in that it does provide for some reduced allocations in the highway budget, and they are not down in the meat and bones so much. They are up there, there is a Motor Vehicle administration, a half a million bucks; not increasing the state police in the second year of the biennium; planning and service and administration in the transportation area for another half million; winter maintenance this year, half million. I think we can realize that despite the fact we had a pretty decent snow storm this last weekend, that cutting it this year is not going to be a problem. Some bond interest and bond retirement—I do hate to think in terms of cutting a half a million out of summer maintenance next summer, but there are a few things that are inevitable.

The point remains, this does address a problem. This is a responsible way to go; it does not in any way get at the money that is going back to the towns, that is all left intact with my amendment.

But the biggest thing about my amendment that is different is the fact that it does provide for a referendum. Now, I am the last guy in the world who wants referendums, but I also keep my ears open and I did hear the Governor say last Thursday afternoon, on the radio, and I know it was he who was talking, that he would not deprive the people of the opportunity of

voting on a gas tax in a referendum. I have checked with the good Speaker of the House, and he confirmed that that was the Governor's position.

I do think we do have that to look at and it does seem to me that it is about the only chance that we are going to have to get out of here with a reasonably responsible look at the highway funding situation.

I trust you will give this a good think and I hope that you will support this amendment.

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I now move we indefinitely postpone House Amendment "F" to Committee Amendment "A" and would request a roll call vote.

The SPEAKER: The gentleman from Limerick, Mr. Carroll, moves that House Amendment "F" to Committee Amendment "A" be indefinitely postponed.

The gentleman may proceed.

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: We talk about a bandaid approach; that is just exactly what this is. This is nothing but a little bandaid, so I move that we indefinitely postpone this and I hope you will join with me.

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

Mr. MORTON: Mr. Speaker, I would point out to the good gentleman from Limerick that if he wants to make it a larger bandaid, all he has got to do is increase the tax.

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 Limerick, Mr. Carroll, that House Amendment "F" to Committee Amendment "A" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Aloupis, Austin, Barry, Beaulieu, Benoit, Berry, Berube, Birt, Blodgett, Borda, Boudreau, Bowden, Brannigan, Breneman, Brodeur, Brown, D.; Brown, K.L.; Brown, K.C.; Call, Carroll, Chonko, Churchill, Cloutier, Conary, Connolly, Cox, Cunningham, Curtis, Davies, Davis, Diamond, Dutremble, D.; Elias, Fillmore, Gavett, Gwadosky, Hall, Hickey, Higgins, Hobbins, Huber, Hunter, Jackson, Jacques, P.; Jalbert, Joyce, Kane, Kany, Kelleher, Kiesman, Lancaster, Leighton, Lewis, Lizotte, Locke, Lowe, MacEachern, Mahany, Marshall, Masterton, McHenry, McKean, McPherson, McSweeney, Michael, Mitchell, Nadeau, Nelson, M.; Nelson, N.; Norris, Paradis, P.; Paul, Payne, Pearson, Peltier, Post, Prescott, Reeves, J.; Reeves, P.; Rolde, Sewall, Silsby, Simon, Small, Stover, Strout, Studley, Tarbell, Theriault, Tierney, Tozier, Tuttle, Twitchell, Violette, Wood, Wyman.

NAY — Bachrach, Carter, F.; Damren, Delert, Dexter, Dow, Drinkwater, Fenlason, Garsoe, Gillis, Howe, Hutchings, Lougee, Lund, MacBride, Masterman, Matthews, Morton, Nelson, A.; Paradis, E.; Peterson, Rollins, Roope, Sherburne, Smith, Stetson, Torrey, Vose, Wentworth.

ABSENT — Baker, Brown, A.; Bunker, Carrier, Carter, D.; Doukas, Dudley, Dutremble, L.; Fowle, Gowen, Gray, Hanson, Hughes, Immonen, Jacques, E.; Laffin, LaPlante, Leonard, Martin, A.; Maxwell, McMahon, Soulas, Sprowl, Vincent, Whittemore, The Speaker.

Yes, 96; No, 29; Absent, 25.

The SPEAKER: Ninety-six having voted in

the affirmative and twenty-nine in the negative, with twenty-five being absent, the motion does prevail.

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

House Amendment "E" to Committee Amendment "A" (H-868) was read by the Clerk.

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

Mrs. KANY: Mr. Speaker and Members of the House: I wish someone would please explain to me the difference between House Amendment "E" to Committee Amendment "A" and Senate Amendment "B" to Committee Amendment "A". I thought we had disposed of it, and I just read through the Statement of Facts and they look identical, and through the figures, I must have missed something or I am sure we wouldn't have indefinitely postponed the Senate Amendment and put on this blue amendment instead.

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

Mr. McKEAN: Mr. Speaker, Ladies and Gentlemen of the House: The Senate Amendment was an amendment that was agreed to by a great majority of the Committee on Transportation after we received your last message which involved the \$2 million. We had to go back and make up the \$2 million, which we did. We took it from those places where we didn't like to take it but had the funds from which we could take it without completely closing down any division within that particular department.

I think a lot of people misunderstand because they are looking only at the amendment and not Committee Amendment "A", which also has cuts in motor vehicle administration, state police, planning services, etc.

Now, the big difference between the House Amendment and that amendment which was put on in the Senate is, the Senate Amendment did not have the increase in the operators' fees, which it was supposed to have had in order to make the money come out, and after it was put on in the Senate, they found this out. What we had to do was to bring it back to the House, kill the Senate Amendment and put on the House Amendment, which brought the fees up, which was supposed to be included in the Senate Amendment but weren't. That is the difference in the two.

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

Mrs. KANY: Mr. Speaker and Members of the House: I suppose you could have put a House Amendment on that Senate Amendment. I still would say I think the basic difference is the color, but getting on to the substance of the amendment and the measure before us, I am concerned at where the cuts are. I believe that they are uneven, that the state and state agencies have not taken their fair share of the cuts.

I really do appreciate the hard work of the Transportation Committee, and I know that you are trying to put something forth to us that is acceptable to the legislature as a whole. But I don't think it is fair to make the communities, the municipalities of the state have to come up with property tax dollars to make up for these cuts to a much greater extent than we are cutting of our state agencies, such as the state police. It appears to me as if, from last year's highway allocations, that TRI—TRI, that great local control item, town road improvement—how many times I have heard that mouthed before this House, and I don't believe I have ever had the pleasure to say it myself until today—TRI. How many times I have heard Representative Carroll say that, and that has been cut, I believe, approximately 50 percent in 1980-81 from last year's allocation. State aid was cut something like 95 percent in 1979-80 and 19 percent in 1980-81, something like that. I think that the state police have only been cut about 4 percent and DOT administration only

about 3 percent in 1979-80. Please correct me if I am wrong. I just feel that the State agencies certainly should at least be taking those cuts that the municipalities are going to have to bear.

I wish someone would explain to me further just what these cuts will mean to our municipalities.

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

Mr. JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I have not seen this amendment before, and I find it very difficult for me to go along with this amendment in its entirety.

I can tell you this, I have spoken to a great many people in my community who have told me that they had known last November that we were going to be back here some 60 days later, and come back again for what amounts to about \$12, \$13 or \$14 million, they very well might not have supported the last bond issue.

I supported the last bond issue wholeheartedly. I am fully aware of the fact that we have a bridge that is partly condemned right in the heart of our community between Lewiston and Auburn and the position we would be in if we didn't have another bridge that we were fortunate enough to have the people vote for a few years ago.

I am certainly mindful of the work that the Taxation Committee, be they Democrats or Republicans, have done and performed because we are about in the same spot as they are in the Appropriations Room. The only difference is the locale. They are up here with their chestnut and we are downstairs with ours and ours will come up soon, I hope.

I can hardly see myself imposing more on the fees for licenses, a two-year license from \$5 to \$8, and the examination fee from \$5 to \$8, and there is another one on the examination test. I mean, this hits some people who can really not afford it and I think somewhere along the line—I know that sometimes some people say it is a cliché to use old people, it also hits the older people, it hits the poor people and it hits the middle-class people who pay for their youngsters to take the examination and get their licenses.

I have an idea, I would like to see this measure amended. I cannot, for reasons stated, and I don't want to take too much of the time of either the members of the House or the committee that has worked on this thing, but I would really like to see this item tabled until tomorrow to prepare an amendment that I think would probably be more palatable.

Frankly, we are hitting off at the general budget, the general fund budget, we are hitting there, the freeze is on there, but somewhere along the line, we ought to take a little look at that new building across the way from us. I truly would appreciate, for the purpose of having a discussion as to whether or not an amendment to this amendment, cutting out some of these fees, might have some effect or not, because in its present form, I don't think it is palatable, I don't think it is passable. The other thing might not be, but I think it would gain a little more support than this thing here.

I would appreciate it if someone would table this bill for one day.

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

Mr. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: I have a bit of a problem with this bill. On Page 5 it says, "reducing the state aid bonus from 40 percent to 30 percent will affect 250 municipalities which currently qualify for the 40 percent bonus." "The average impact," and this is a dandy, "\$2,700 per municipality; however, some towns will not be as adversely affected as others. One town may experience a \$5,000 reduction." I would like to know if any of the towns in my district are going to be cut \$5,000? They have a beautiful clause in there, "an average of \$2,700." I don't

like averages—I mean, it could be a \$5,000 cut for some towns in my district and I would like to find out if that is so.

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

Mr. GARSOE: Mr. Speaker, Ladies and Gentlemen of the House: I just want to inform the last three speakers that when you voted against the amendment offered by the gentleman from Farmington, you committed yourself to the fact that the difference in money is going to be made up on your local municipalities and your citizens through fees and other expenditures.

You are right, Representative Kany, this is not putting this bill in a very good condition, but I just want to point out to you, very respectfully that when you decided not to go the route of raising the money where it is identified and put into the purpose for which it was originally intended, you are committing yourselves, despite the remarks of the gentleman from Lime- rick, to a bandaid approach. That is just what it is and I suspect that it is now going to dawn on you that you are going to do a real injustice not only to the highway system of this state but to the very people you are here to represent.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Like many of you, I have problems with Committee Amendment "E". I spoke to the Speaker privately just a few moments ago, and I would like to put an amendment on this bill but, as I understand it, there is a limit to how many times you can amend something.

I object to the bill because—I said this in my caucus with my fellow Democrats and I would just as soon repeat it again here in the House—the only way that you are ever going to put a limit down here on employees or if even you are going to limit the cap on what the minimum amount of numbers are, it is for this House to do it and I again relate what Winston Churchill said in 1945, "that he didn't want to be Prime Minister of the British Empire to see the Empire dismantled."

I don't care who is sitting in what seat in government, the only way that we are going to reduce—we, you and I,—reduce the number of state employees is for us to do it. It is not going to come from down there and if it does, it is only going to be in a trickle, and I suspect if we are going to be dealing with a \$16 million deficit in the Transportation Department, then I think we should reflect it in cutting some personnel.

I agree with Mr. Jalbert, I would hope someone would table this until tomorrow and perhaps some other amendments can be offered. They may not satisfy anybody but it might give you and I another shot at offering some suggestions. The suggestions that have been offered are quite visible in terms of town road improvement money or winter maintenance or summer maintenance or what have you, but there is no real evidence in this House today, reflected on this amendment, just what the personnel reduction is, be it the state police and the influence that they have or the highway department and those big, powerful trucks that we have, you know, they can plow more snow than they could 20 years ago with better equipment. I think if we are going to be prudent in looking at the highway department, then we should look at the whole department.

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

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: I feel it would be inappropriate to table this piece of legislation prior to the vote on the pending amendment. The amendment which we have before us has been presented and is supported by the overwhelming majority of the Transportation Committee. They have worked long and hard on it, and I certainly feel that we should have a vote on it because it may, indeed have a majority of the

support in this House. If it does not, however, then obviously we do not have a budget and if the amendment was defeated at that point, I would be more than happy to table the bill for one day. I do hope that we proceed to at least vote on this amendment so that we do have a consensus and we find out where we are going in this very complicated and difficult problem.

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

Mr. JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to be stupid enough to take issue with my good friend from Lisbon Falls, who sits in the right-hand corner, because that has a little too much strength. When Mr. Tierney makes a remark that we ought to vote on this amendment and if it doesn't pass, then he would be delighted to table it for one day, I mean, what is he going to table if it doesn't pass? We haven't got anything. If you don't catch this now, I will tell you what you are going to do, you are going to have a highway budget. You are going to be in non-con between both branches and that is the hand we are playing in.

I can see my friend's pinochle game in the corner. I have been around a long time. There is only one difference between some of us and some of them—some of us are willing to go along with them, but very few of them are willing to come along with us.

I have been downstairs since one-thirty this afternoon battling my party's head off with the minority party in this House because I can see what is going to happen.

Go back to the record books where I was the only one who abstained two years ago from voting on the full appropriations bill and it quickly came back and I picked up what I was keeping on the back burner. Let's go back just a little while ago, the energy bill, when I went to the leaders and then went to the front office and suggested to him that if you wanted an energy bill, we would have a Committee of Conference. I think the gentleman from Lisbon Falls, Mr. Tierney, and the gentleman from Cumberland, Mr. Garsoe, can well remember when I got both of them together under the rotunda the next morning and said—now you have arrived at something, never mind you meeting in 228, we will meet here, we will argue for five hours and then we will wind up with nothing. Let's have a committee as a whole right here. We did and there wasn't a word of debate. In one hour and a half, we were on our way home.

I would like to see us do something. You can't pass this thing today. If you don't pass it today, you don't have a bill. I want this thing tabled. I am not pleading or begging, I don't beg from anybody, if I win, I win; if I lose, I lose, but how many times do I get up here to table any bills? I just want a shot at putting on an amendment and somebody else does, and I would like this thing tabled for that one day. If it is to be tabled for the one day, fine. If it is not going to be tabled, I will give a real shot at voting, because I am going to vote for indefinite postponement of the amendment and I don't want to do that.

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

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: Could the Speaker please clarify for the members of the House the role and difficulty of amending to the third degree? I understand that we have a House Amendment offered to the Committee Amendment and that it would be a violation of the rules to offer an amendment to the House Amendment to the Committee Amendment and, therefore, we must deal with the issue before us, leaving the Committee Amendment alone, before properly dealing with any further amendment?

The SPEAKER: The Chair would answer that that is correct. That was the reason why Senate Amendment "A" was killed, because to amend that would have been amending to the third degree, which is in violation of our rules.

Obviously, at this point, the amendment that



## ROLL CALL

has been offered funds the \$2 million that had been transferred to the General Fund. I suppose if you wish to kill this amendment and leave it intact, you would have the \$2 million from the General Fund back into the highway budget. That is the option which this House has, or it can be tabled after the amendment is defeated.

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

Mr. JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: As I read it, this actually is not an amendment, really, it is a corrected Senate Amendment?

The SPEAKER: The Chair would answer that both statements are correct.

Mr. JALBERT: Mr. Speaker, on that basis, then, we are both wrong. What are we acting on?

The SPEAKER: What we are acting on at the present time is the amendment offered by the gentleman from Limestone, Mr. McKean, which amends the original Committee Amendment "A", which has the new amendment and the corrected version of what was Senate Amendment "B".

Mr. JALBERT: Mr. Speaker, all right, fine. If then you agree with me, and you just said I was correct on both points, that this here is the Senate version that was copied and retreaded, then on that basis, why can't we take this thing, table it for one day, or why can't we even indefinitely postpone it and then come up with another amendment tomorrow morning?

The SPEAKER: The Chair would answer in the affirmative that both statements are again correct.

Mr. JALBERT: Mr. Speaker, I move that House Amendment "E" to Committee Amendment "A" be indefinitely postponed and when the vote is taken, I ask for the yeas and nays.

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

Mr. STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I guess I would have to say to the gentleman from Lewiston, Mr. Jalbert, before I could vote to indefinitely postpone this amendment, I have come to a point in time, I guess, where I would like to have some of the members of this House that oppose the proposed amendment tell us where some of the cuts might be made. Then maybe some of the committee members, at least I could myself, probably vote to indefinitely postpone House Amendment "E".

I think we have to come to a time now where we have to decide whether we want to move in the direction that the committee members made attempt to go or have no bill at all. I have come to the conclusion over the last week or ten days that I would be in favor of that approach.

Since a week ago today, when we were told to come up with another proposal, I haven't seen any of these people in this House come to us and tell us where we might be able to make some cuts. We have had work sessions. I think we have tried to do the best job that we could to make the best solutions to the problems.

I know that the gentlelady from Waterville, Mrs. Kany, has said that it is doing great harm to the municipalities. The percentages are not equal; however, I just don't see at this time how you are going to make any adjustments here, and cuts, when the committee has worked over two months to try to come out with a bill that will put us in the black, so to speak, through June of 1981, and if you try to cut administration, which the gentleman from Bangor, would like to do, where have you been the last two months. We have tried.

You know, we have 151 members in here trying to tell us how to do the job. We haven't seen any of them to try to give us some ideas. If they can give us some ideas here tonight, I could vote to indefinitely postpone House Amendment "E".

The SPEAKER: The Chair recognizes the

gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: In response to Representative Strout's remarks, I just wonder if he has been listening to the debate the last week and a half on this bill. We are at a point now where we are going to be voting on the amendment. I hope we do defeat it and then I think one or two of us, with the help of Mr. Strout, if he is willing to do it, can sit down tomorrow and give some recommendations on what we think cuts should be.

I have got just one question I want to ask Representative Strout. With all the adjustments that you have made concerning the highway transportation bill, what personnel accounts have you cut? What administration costs have you cut?

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, has posed a series of questions to anyone who may care to answer.

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

Mr. MCKEAN: Mr. Speaker, Ladies and Gentlemen of the House: Well, in motor vehicle administration we cut out \$456,000 in 1980-81, that is half a million; in planning and services we went \$200,000, which is a small account anyway; in administration we went \$300,000; in the bond retirement some more; highway and bridge improvement fund, some more; and there is no doubt in anybody's mind that when you make cuts like this, you are going to cut some personnel slots. Motor vehicle administration has come along and said around 20 slots they are going to lose. The state police have told us they may lose a few; how many, they didn't say at the present time. Anytime you cut any healthy amounts of budget from an account, you are going to cut some personnel or you are going to stop the hiring.

There are vacant positions within the department right now which play along between summer and winter maintenance, and you may have to hire some extra winter maintenance; you may not have to hire some extra for winter maintenance; you may not have to hire some for summer maintenance. So, by cutting the accounts, you in turn cut some of the hiring practices that they have. It boils down to just how much do we want to cut? Do we want to lay off enough people to put quite a group of them on the unemployment rolls?

The fear that I have in this whole thing that is happening both today and what has happened at the other end of the hall, the fear that I have is that we are irresponsible enough to go out of here and say to the people, we weren't good enough to come down here and come out with a highway budget, we just couldn't do it. To me, that is the reason those people sent us here, to take care of problems like this, so if we kill this thing either in this body or the other body, then we are admitting defeat to the very people who sent us up here and, to me, that is practically malfeasance of office.

If tabling this will get us a budget, then I say table it and let's get a budget, because I think we can do it. We are close now and I think we can do it, but let's get a budget. Let's not admit defeat.

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 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 Lewiston, Mr. Jalbert, that House Amendment "E" to Committee Amendment "A" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

YEA — Aloupis, Austin, Barry, Beaulieu, Berry, Berube, Birt, Blodgett, Bordeaux, Boudreau, Bowden, Brodeur, Brown, D.; Brown, K.L.; Carter, F.; Churchill, Conary, Cunningham, Curtis, Damren, Davis, Dexter, Diamond, Fillmore, Gavett, Hickey, Higgins, Huber, Jacques, P.; Kany, Kelleher, Klesman, Lancaster, Leighton, Lewis, Lizotte, Locke, Lougee, Lowe, MacBride, Mahany, Masterman, McPherson, Nelson, N.; Paradis, E.; Paul, Payne, Peltier, Peterson, Reeves, J.; Rollins, Roope, Sewall, Silsby, Simon, Small, Smith, Stetson, Stover, Studley, Tozier, Vose.

NAY — Bachrach, Brannigan, Brenerman, Brown, K.C.; Call, Carroll, Chonko, Cloutier, Connolly, Cox, Davies, Dellert, Dow, Drinkwater, Dutremble, D.; Elias, Fenlason, Garsoe, Gillis, Gray, Gwadosky, Hall, Hobbins, Howe, Hunter, Hutchings, Jackson, Joyce, Kane, Lund, MacEachern, Marshall, Masterton, Matthews, McHenry, McKean, McSweeney, Michael, Mitchell, Morton, Nadeau, Nelson, A.; Nelson, M.; Norris, Paradis, P.; Pearson, Post, Prescott, Reeves, P.; Rolde, Sherburne, Strout, Tarbell, Theriault, Tierney, Torrey, Tuttle, Twitchell, Violette, Wentworth, Wood, Wyman. The Speaker.

ABSENT — Baker, Brown, A.; Bunker, Carrier, Carter, D.; Doukas, Dudley, Dutremble, L.; Fowlie, Gowen, Hanson, Hughes, Immonen, Jacques, E.; Laffin, LaPlante, Leonard, Martin, A.; Maxwell, McMahon, Soulas, Sprowl, Vincent, Whitemore.

Yes, 63; No, 64; Absent, 24.

The SPEAKER: Sixty-three having voted in the affirmative and sixty-four in the negative, with twenty-four being absent, the motion does not prevail.

Thereupon, House Amendment "E" to Committee Amendment "A" was adopted.

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

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

By unanimous consent, ordered sent forthwith to the Senate.

On motion of Mr. Hickey of Augusta, adjourned until nine-thirty o'clock tomorrow morning.