

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Tenth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 3, 1980 to May 1, 1981

KJ PRINTING
AUGUSTA, MAINE

STATE OF MAINE
One Hundred and Tenth Legislature
First Regular Session
JOURNAL OF THE SENATE

February 12, 1981

Senate called to order by the President.

Prayer by the Reverend Truman Bray of the Penney Memorial Baptist Church in Augusta.

REVEREND BRAY: Let us pray. Almighty God, Creator of heaven and earth, we thank You that by Your mercy and grace we can come today and call You Father. We thank You for a new day, bright with sun high in the heavens, and bright with the promise of Your presence. We thank You for life, and health, and strength, blessings that are withheld from so many.

Grant in Your mercy today, to bless those who labor in this place. Grant them wisdom and guidance. Make the issues clear before them this day. Make them to govern with justice and mercy, understanding the needs and hurts of the least, as well as, the greatest.

We think of one whose birthday we celebrate this day, Abraham Lincoln. Grant that these folk may govern in the tradition of that justice and mercy. Give them strength, and vigor, and patience, in the tasks before them. And may they serve not only with an eye for their constituents, but with an eye upcast to Thee, their merciful and righteous Judge.

And so may we all labor this day with gladness and strength, in the name of the Father, of the Son, and of the Holy Ghost. Amen.

Reading of the Journal of yesterday.

Senator Collins of Knox was granted unanimous consent to address the Senate, Off the Record.

Senator Conley of Cumberland was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Collins of Knox, Recessed until the sound of the Bell.

Recess

After Recess

The Senate called to order by the President.

(Off Record Remarks)

**Papers from the House
Non-concurrent Matter**

Bill, "An Act Concerning Appointments to the Maine Veterans Home Board of Trustees." (S. P. 73) (L. D. 110)

In the Senate, February 6, 1981, Passed to be Engrossed as amended by Committee Amendment "A" (S-8)

Comes from the House, Recommended to the Committee on Aging, Retirement and Veterans, in non-concurrence.

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

Senator CONLEY: I move that the Senate Adhere.

The PRESIDENT: The Senator from Cumberland, Senator Conley, moves that the Senate Adhere.

Is this the pleasure of the Senate?
The Motion prevailed.

Joint Order

An Expression of Legislative Sentiment recognizing:

The Town of Jonesport which is preparing to celebrate its sesquicentennial in 1982. (H. P. 696)

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

House Papers

Bill, "An Act Making Appropriations from the General Fund for Teachers' Retirement and Eliminating Certain Programs Funded from the General Fund." (Emergency) (H. P. 616) (L. D. 708)

Bill, "An Act to Provide Compensation and Benefits Agreed to by the State and Council #74, American Federation of State, County and Municipal Employees for Employees in the Institutional Services Bargaining Unit." (Emergency) (H. P. 617) (L. D. 700)

Bill, "An Act Relating to the Salary of the Executive Secretary of the Workers' Compensation Commission." (H. P. 629) (L. D. 710)

Comes from the House, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Which were referred to the Committee on Appropriations and Financial Affairs and Ordered Printed, in concurrence.

Bill, "An Act to Establish a Certification Program for Building Energy Auditors in Maine." (H. P. 618) (L. D. 701)

Bill, "An Act to Specify the Exemptions which will Apply in Bankruptcy Cases." (H. P. 630) (L. D. 711)

Bill, "An Act to Provide for the Limitations of Liability in Regard to Certain Insurance Inspections." (H. P. 631) (L. D. 712)

Bill, "An Act Relating to the Licensing of Hearing Aid Dealers and Fitters." (H. P. 632) (L. D. 713)

Comes from the House, referred to the Committee on Business Legislation and Ordered Printed.

Which were referred to the Committee on Business Legislation and Ordered Printed, in concurrence.

Bill, "An Act to Change the Probationary Period for Teachers from 2 Years to 3 Years." (H. P. 633) (L. D. 714)

Comes from the House, referred to the Committee on Education and Ordered Printed.

Which was referred to the Committee on Education and Ordered Printed, in concurrence.

Bill, "An Act to Provide for a Solid Waste Management Subsidy Bonus for Municipalities and Counties Engaged in Resource Recovery." (H. P. 619) (L. D. 702)

Bill, "An Act to Permit Applicants for Waste Discharge Licenses and Air Emission Licenses to Request Hearings Thereon before the Board of Environmental Protection." (H. P. 634) (L. D. 715)

Comes from the House, referred to the Committee on Energy and Natural Resources and Ordered Printed.

Which were referred to the Committee on Energy and Natural Resources and Ordered Printed, in concurrence.

Bill, "An Act to Facilitate the Distribution of Child Custody Reports." (H. P. 620) (L. D. 703)

Bill, "An Act Relating to Rental Increases." (H. P. 635) (L. D. 725)

Bill, "An Act to Clarify the Domestic Violence Statutes." (H. P. 636) (L. D. 726)

Bill, "An Act Concerning the Suspension of a Drivers License for Operating a Motor Vehicle under the Influence of Alcohol or Refusing to Submit to a Blood or Breath Analysis." (H. P. 637) (L. D. 727)

Comes from the House, referred to the Committee on Judiciary and Ordered Printed.

Which were referred to the Committee on Judiciary and Ordered Printed, in concurrence.

Bill, "An Act to Amend the University of Maine Labor Relations Act to Restrict the Areas of Required Bargaining." (H. P. 621) (L. D. 704)

Bill, "An Act to Clarify and Make Consistent Appeal Procedures in the Employment Security Law." (H. P. 638) (L. D. 728)

Bill, "An Act to Prevent Frivolous Appeals

in Unemployment Compensation Cases." (H. P. 639) (L. D. 729)

Bill, "An Act to Strengthen and Clarify the Occupational Disease Law." (H. P. 640) (L. D. 730)

Comes from the House, referred to the Committee on Labor and Ordered Printed.

Which were referred to the Committee on Labor and Ordered Printed, in concurrence.

Bill, "An Act to Amend the Law to Provide a Lien for Sewer Rates for the Houlton Water Company." (H. P. 622) (L. D. 705)

Comes from the House, referred to the Committee on Public Utilities and Ordered Printed.

Which was referred to the Committee on Public Utilities and Ordered Printed, in concurrence.

Bill, "An Act to Exempt Used Machinery from the Sales Tax." (H. P. 623) (L. D. 706)

Bill, "An Act to Increase Eligibility Levels for the Elderly Householders Tax and Rent Refund Act." (H. P. 626) (L. D. 709)

Comes from the House, referred to the Committee on Taxation and Ordered Printed.

Which were referred to the Committee on Taxation and Ordered Printed, in concurrence.

Bill, "An Act Relating to the Acquisition of Land and Building for Development of Fish Piers." (Emergency) (H. P. 624) (L. D. 707)

Comes from the House, referred to the Committee on Transportation and Ordered Printed.

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

Communications

Committee on Health & Institutional Services
February 11, 1981

The Honorable Joseph Sewall
President of the Senate of Maine
State House

Augusta, Maine

Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 110th Maine Legislature, the Joint Standing Committee on Health and Institutional Services has had under consideration the nomination of Stephen L. Wessler of Litchfield as a consumer member of the Health Facilities Cost Review Board.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 3

Representatives 9

NAYS: Senators 0

Representatives 0

ABSENT: Senators 0

Representatives 1; Rep. Ketover

Twelve members of the Committee having voted in the affirmative and none in the negative it was the vote of the Committee that the nomination of Stephen Wessler as a member of the Health Facilities Cost Review Board be confirmed.

Sincerely,

S/Senator Barbara A. Gill, Chairman

S/Rep. Sandra K. Prescott, Chairman

Which was Read and Ordered Placed on File.

The PRESIDENT: The Joint Standing Committee on Health and Institutional Services has recommended that the nomination of Stephen L. Wessler be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Health and Institutional Services be overridden? In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 38 of the 110th Legislature, the vote will be taken by the yeas and nays. A vote of YES will be in favor of overriding the recommendation of the Committee. A vote of NO will be in favor of sustaining

the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.
The Secretary will call the Roll.

ROLL CALL

YEA — None

NAY — Ault, Brown, Bustin, Carpenter, Charette, Clark, Collins, Conley, Devoe, Dutremble, Emerson, Gill, Hichens, Huber, Kerry, McBreairty, Minkowsky, Najarian, O'Leary, Pierce, Pray, Redmond, Sewall, C.; Shute, Sutton, Teague, Trafton, Trotzky, Usher, Viollette, The President J. Sewall.

ABSENT — Perkins, Wood.

No Senators have voted in the affirmative and 31 Senators in the negative, with 2 Senators being absent and none being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of Stephen L. Wessler is confirmed.

Committee on Health & Institutional Services February 11, 1981

The Honorable Joseph Sewall
President of the Senate of Maine
State House
Augusta, Maine
Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 110th Maine Legislature, the Joint Standing Committee on Health and Institutional Services has had under consideration the nomination of Jean M. Larson of Houlton as a consumer member of the Health Facilities Cost Review Board. After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS:	Senators	3	
	Representatives		9
NAYS:	Senators	0	
	Representatives		0

ABSENT: Senators 0
Representatives 1 Rep. Ketover
Twelve members of the Committee having voted in the affirmative and none in the negative it was the vote of the Committee that the nomination of Jean M. Larson as a member of the Health Facilities Cost Review Board be confirmed.

Sincerely,
S/Senator Barbara A. Gill, Chairman
S/Rep. Sandra K. Prescott, Chairman

Which was Read and Ordered Placed on File.

The PRESIDENT: The Joint Standing Committee on Health and Institutional Services has recommended that the nomination of Jean M. Larson be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Health and Institutional Services be overridden?

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

Senator PIERCE: Mr. President, and Members of the Senate, I would just like to bring to the Senate's attention that some time ago, it was at least a year and probably two years ago, we created the Health Facilities Cost Review Board, with great expectations, and great fanfare, and hoopla. However, I cannot identify much that they've accomplished in that whole time. I would just wish the two new members well, since this organization seems to be in a constant state of reorganization. I hope with two new members, that perhaps in the not too distant future, we can actually see that they have accomplished something.

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

Senator PRAY: Mr. President, and Members of the Senate, as one of the original sponsors of that legislation, a few years ago, I would point out to the Senator from Kennebec, Senator Pierce, if this Body had not watered down the

original bill, so much, perhaps they would have accomplished something.

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

Senator CARPENTER: As the original sponsor of that measure, I would concur wholeheartedly with what the good Senator from Penobscot, Senator Pray just said. I think the powers that the Legislature gave that body were relatively limited, but I didn't want to get into a discussion of that this morning.

What I would like to say, is in regard to the consideration of Mrs. Larson as a member of the Health Facilities Cost Review Board, Mrs. Larson, as the calendar indicates, is from Houlton, is a constituent of mine, a very, very close friend of mine. I think she will be a very, very good member of the Board. I would just suggest to the good Senator from Kennebec, Senator Pierce, that the first time one of the hospitals in his district has to go, or chooses to go, before the Health Facilities Cost Review Board, and he has a disagreement with something that she has done, I suggest he go talk to her if he doesn't think that she will be an effective spokesperson, at least, for the side of hospital cost containment, an area where we're all obviously very concerned and have differing views as to which direction to go in. I hope this Senate this morning will give Mrs. Larson its unanimous approval. I think she will be an effective, outspoken, probably controversial, but, good member of this particular Board. Thank you.

The PRESIDENT: In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 38 of the 110th Legislature, the vote will be taken by the yeas and nays. A vote of YES will be in favor of overriding the recommendation of the Committee. A vote of NO will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?
The Doorkeepers will secure the Chamber.
The Secretary will call the Roll.

ROLL CALL

YEA — None

NAY — Ault, Brown, Bustin, Carpenter, Charette, Clark, Collins, Conley, Devoe, Dutremble, Emerson, Gill, Hichens, Huber, Kerry, McBreairty, Minkowsky, Najarian, O'Leary, Pierce, Pray, Redmond, Sewall, C.; Shute, Sutton, Teague, Trafton, Trotzky, Usher, Viollette, Wood, The President J. Sewall.

ABSENT — Perkins.

No Senators having voted in the affirmative and 32 Senators in the negative, and with 1 Senator being absent and none being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of Jean M. Larson is confirmed.

(Off Record Remarks)

Senate Chamber President's Office

February 11, 1981

Honorable James A. McBreairty
Honorable Donald M. Hall
Chairmen, Joint Standing
Committee on Energy and Natural Resources
State House
Augusta, Me 04333

Please be advised that Governor Joseph E. Brennan is nominating Richard B. Anderson of Portland to be Commissioner of the Department of Conservation.

Pursuant to Title 12 MRSA Section 5011 this nomination will require review by the Joint Standing Committee on Energy and Natural Resources and confirmation by the Senate.

Sincerely,
S/JOSEPH SEWALL
President of the Senate
S/JOHN L. MARTIN
Speaker of the House
(S. P. 296)

Which was Read and referred to the Committee on Energy and Natural Resources.

Sent down for concurrence.

Senate Papers

Senator NAJARIAN of Cumberland presented, Bill, "An Act to Appropriate Funds for the Expenses of the Capitol Planning Commission." (S. P. 293)

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

Sent down for concurrence.

Senator GILL of Cumberland (Cosponsors: Representative GWADOSKY of Fairfield, Representative MARTIN of Van Buren and Representative BRENERMAN of Portland) presented, Bill, "An Act to Require Health Insurance Policies to Expressly State Exclusions." (S. P. 289)

Senator CLARK of Cumberland presented, Bill, "An Act Amending the Electricians Licensing Statute." (S. P. 285)

Which were referred to the Committee on Business Legislation and Ordered Printed.

Sent down for concurrence.

Senator DEVOE of Penobscot presented, Resolve, Authorizing the Bureau of Public Lands to Convey the State's Interest in a Certain Parcel of Land in Dixmont." (S. P. 290)

Which was referred to the Committee on Energy and Natural Resources and Ordered Printed.

Sent down for concurrence.

Senator HICHENS of York (Cosponsor: Representative MacBRIDE of Presque Isle) presented, Bill, "An Act to Preserve Philanthropic and Charitable Gifts to Hospitals." (S. P. 295)

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

Sent down for concurrence.

Senator DEVOE of Penobscot presented, Bill, "An Act to Require a Copy of Presentence Report be Furnished to the Defense as Soon as it is Filed." (S. P. 291)

Senator SEWALL of Lincoln (Cosponsors: Representative TARBELL of Bangor, Representative HOBBS of Saco and Representative LUND of Augusta) presented, Bill, "An Act to Increase the Maximum Civil Penalties under the Maine Human Rights Act." (S. P. 288)

Which were referred to the Committee on Judiciary and Ordered Printed.

Sent down for concurrence.

Senator DUTREMBLE of York (Cosponsors: Senator SUTTON of Oxford, Representative FOSTER of Ellsworth and Representative BAKER of Portland) presented, Bill, "An Act to Amend the Workers' Compensation Law to Facilitate Ridesharing." (S. P. 286)

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

Sent down for concurrence.

Senator KERRY of York presented, Resolve, Authorizing Richard Potvin, or his Legal Representative, to Bring Civil Action Against the State of Maine and the Maine State Lottery Commission." (S. P. 292)

Senator HICHENS of York presented, Bill, "An Act to Prohibit the Sale of Kegs of Malt Liquor to Nonlicense Holders." (S. P. 294)

Which were referred to the Committee on Legal Affairs and Ordered Printed.

Sent down for concurrence.

Senator CLARK of Cumberland presented, Bill, "An Act Concerning the Use Tax on Used, Damaged or Returned Merchandise Donated to Charitable Organizations." (S. P. 287)

Which was referred to the Committee on Taxation and Ordered Printed.
Sent down for concurrence.

Senator Conley of Cumberland was granted unanimous consent to address the Senate, On the Record.

Senator CONLEY: Mr. President and Members of the Senate, I recall back years ago when I was in grammar school that today is the day of a former President's birthday, Abe Lincoln. If it hadn't have been that I had fallen in love with Thomas Jefferson some years before perhaps I would be a Republican today. The fact is that most people admired Abe Lincoln over the years and still do today.

I rise this morning not only to recognize that this is the birthday of Abraham Lincoln, but I also want to pay tribute to another great Republican who once served in this Body. He is former Senator Frank Whitehouse Anderson from Ellsworth, who is always aware of what is ticking down here in Augusta, irrespective of the fact that the majority of his party had supported him on this one big issue that came up year, after year.

I just publicly want to thank Senator Frank Whitehouse Anderson for this very, very beautiful picture that will be on display in my office, for any one who would like to take the opportunity to come forward and preview it.

In the caption over it it says: "A tragedy in Maine's Woods", and I hope that everyone will give some real serious thought about this subject, because the public hearing will be held next Tuesday and I am sure that you will all be there.

Committee Reports House

Leave to Withdraw

The Committee on Taxation on, Bill, "An Act to Permit Federal Income Tax Payments to be Deducted under the State Income Tax Law." (H. P. 255) (L. D. 295)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Enable Taxpayers to Donate a Portion of their State Income Tax Refund to Nongame Management Projects through a Tax Return Checkoff." (H. P. 240) (L. D. 275)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Ought to Pass — As Amended

The Committee on Taxation on, Bill, "An Act Relating to Appeals by Taxpayers from Municipal Assessment." (H. P. 81) (L. D. 120)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-12).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A".

Which Report was Read and Accepted, in concurrence, and the Bill Read Once. Committee Amendment "A" was Read and Adopted, in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Legal Affairs on, Resolve, Authorizing Arthur G. Powers to Sue the State of Maine. (H. P. 250) (L. D. 290)

Reported that the same Ought Not to Pass.

Signed:

SHUTE of Waldo
CHARETTE of Androscoggin
VIOLETTE of Aroostook

Representatives:

COX of Brewer
MCWEENEY of Old Orchard
PERRY of Mexico
STOVER of West Bath
SWAZEY of Bucksport
STUDLEY of Berwick
TREADWELL of Veazie
GWADOSKY of Pittsfield
SOULAS of Bangor

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Representative: DUDLEY of Enfield.

Comes from the House, the Majority Ought Not to Pass Report Read and Accepted.

Which Reports were Read.

The Majority Ought Not to Pass Report Accepted, in concurrence.

Senate

Leave to Withdraw

Senator SUTTON for the Committee on Labor on, Bill, "An Act to Increase the Exemption for Agricultural Employees under the Workers' Compensation Law." (S. P. 160) (L. D. 368)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

Ought to Pass

Senator TROTZKY for the Committee on Public Utilities on, Bill, "An Act to Amend the Charter of the Sanford Sewerage District." (S. P. 146) (L. D. 317)

Reported that the same Ought to Pass.

Which Report was Read and Accepted and the Bill Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Require Restitution by a Criminal Offender to his Victim and to Require Payment of Prosecution and Court Costs." (S. P. 87) (L. D. 184)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

DEVOE of Penobscot
CONLEY of Cumberland
KERRY of York

Representatives:

HOBBS of Saco
BENOIT of South Portland
REEVES of Newport
JOYCE of Portland
O'ROURKE of Camden
LUND of Augusta
SOULE of Westbrook
LIVESAY of Brunswick

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Representatives:

DRINKWATER of Belfast
CARRIER of Westbrook

Which Reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President and Ladies and Gentlemen of the Senate, this is a Bill that I submitted early in this session and I feel that it has a lot of merit. I would like to have the Senate give it some serious consideration today.

I know it is usual not to do anything to the Criminal Code, that was passed a few years ago. That is the number one lesson I have learned here, over the last 3 years, that shouldn't be disturbed above anything. As times change and the attitude of the people change, I think, the Legislature will have to accept some changes in the Criminal Code.

This Bill requires that a criminal, also make restitution for the cost of court and the cost of prosecution. I do not find this an undue hardship on anyone. I think that if a criminal does perform some criminal act, they should expect to reimburse the State, as well as, the victim of the crime.

Now the first consideration should be to the victim of the crime to make sure that the victim is reimbursed on restitution. The second thing, I feel we should have is restitution or reimbursement to the State for the cost of prosecution.

Now you might remember last fall of all the bond issues before the people of the State, the only one that did not pass was the Court Reconstruction Bond Issue. I think that that might indicate a lack of confidence by the people in our Judicial System here in the State.

At the present time there are some judges in the State that require restitution. In Kennebec, and Somerset Counties they have a pilot program going and they have collected nearly a half million dollars in restitution in the last 5 years. Waldo County, Lincoln County and Knox County restitution is being considered, but there are certain areas in the State that is not being considered. I think where it is working so well where it is being tried that this could very well be put on also, for the cost of court and cost of prosecution.

I hope the Senate would not Accept the Ought Not to Pass Report today, defeat that and Accept the Ought to Pass Report.

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

Senator DEVOE: Thank you, Mr. President. Mr. President, and Members of the Senate, I would like to explain briefly the thinking of the committee in consideration of this Bill.

First of all we did not sign the Report 11 to 2 based upon the conviction, or belief, that because this was an amendment to the Criminal Code, which we passed just a few years ago, we, therefore, could not tinker with it. That was not in the thinking of the Committee.

We do have, presently, an act on the books that was passed in 1977, just four years ago, dealing with this whole subject of restitution.

Now restitution means: paying back to the victim by the perpetrator of the crime that which the victim lost.

Now, the law which we passed four years ago, says: "It is the purpose of this Chapter to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender. Restitution by the offender can serve to reinforce the offender's sense of responsibility for the offense. To provide him the opportunity to pay this debt to society, and to his victim in a constructive manner, and to ease the burden of the victim as a result of the criminal conduct."

Now that is the present law. That is the law which this Legislature had a part in passing four years ago.

The Bill before us has several objectives. First of all the Bill would propose that restitution be required in each and every instance. So instead of the courts being able to encourage the use of restitution, it would be required to do it in each criminal case.

It also would take away judicial discretion. Now the Senator from Waldo, Senator Shute, was very nice to point out to members of this Body, that in certain areas of the State restitution is apparently being used, by judges, as a tool, as one of the many tools that they have, to try to rehabilitate the offender, and also, to make whole again or in some part, anyway, the victim.

We believe that that judicial discretion should be encouraged. We believe, and, I think, that I speak for every member of the committee who signed the Bill Ought Not to Pass, that by our refusing to pass this Bill we are leaving it open for judges to continue to use their judicial discretion.

I think, that we all realize that when defendants in a criminal case are found guilty that some of them maybe in a position so that they can adequately make restitution. I think, that in many instances the judges are requiring restitution in those cases. We do have to face the fact, however, that many criminal defendants do not now and will not in the future have the financial means, regrettable as it is, to make restitution. Yet this Bill would require restitution, in each and every case.

It, furthermore, would require an additional court hearing if, after restitution were imposed, in each case the defendant then came back into court and said: Judge, I have made a good faith effort to make restitution. I haven't been able to make full restitution. Will you excuse me from making any further restitution, based upon good faith efforts to date. So the Judge who is already over worked is going to have an additional cessation of restitution hearing you might call it.

I think for these reasons the members of the committee felt that the present policy of judicial discretion being used to require restitution in certain cases continue to be encouraged. For that reason, I urge the members of the Senate to Accept the Majority Ought Not to Pass Report. Thank you, very much, Mr. President.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Thank you, Mr. President. I rise as a cosponsor of this Bill to point out a couple of things that I have on my mind to my good colleagues in the Senate. There hasn't been anything that I have had anything to do with, so far this Session, that has created more discussion around my area than this particular Bill that I cosponsored. All the people that have come to me, there have been quite a few, have said, "For goodness sakes, at last, at last we're going to try and do something to help the victims of crimes. We are not going to be turning them all into the street again. We're not going to be putting them all out on parole again. We're not going to be discharging all their sentences without making them pay. At last, the people are going to get an opportunity to have some consideration.

I think that the fact that the judges all over the State are not using this situation now is one of the exact reasons that this Bill was put in, to require them to. I think the people have lost a lot of faith in the judges. I worry a little bit about saying such a thing in face of their education, their ability, their responsibility, their dignity, but, I think, a lot of people have lost faith in our Judicial System, somewhat. They feel that the whole system should be looked at, when the victims of crime seem to be the ones that suffer, and the people that perform the offenses are the ones that are protected and seem to get away with so much.

I do not believe for one second that the ability of a criminal to pay should have anything to do whatsoever with whether they should be required to make restitution. I don't think it should be taken into consideration one iota. What should happen is that when they are convicted of a crime, the loss to the victim, the cost of the state, should be computed and it should be their responsibility to make that restitution. I think, the word I want to underline is responsibility. If they are never, ever, able to do it, that doesn't both me one bit, as long as they carry the responsibility with them for making the restitution that they themselves brought upon themselves, that they be made to lay in the bed, that they chose for themselves.

So, it's not a very big step. We have a very formidable opposition, but, I think, it's very important, in fact when the vote is taken, Mr. President, I ask that it be taken by the Yeas and Nays.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from York, Senator Kerry.

Senator KERRY: Yes, Mr. President, to reflect a bit upon what the good Senator from Oxford has stated, with regards to the responsibility of the victim. As Senator Devoe, the honorable Senator from Penobscot, stated: that under current law under Title 17A, the primary purpose of the Restitution Bill is to recognize that when a person commits a crime against an individual, he also commits a crime primarily against society, because society has the responsibility for paying for the institutionalization and the reprisals, if you will, against the individual who committed the crime. I think, the thinking on the Committee was, and it was universal, that no one wanted to encourage any individual in this society to commit crimes, or to advocate that they should go irresponsible with regards to what they have done.

I think, it came to the fore before the Committee apparently clear to us, that little or no evidence was presented, that experience in the State, within the county system, or otherwise, or experience on other states, where this has been a cost-benefit program. We have found, through analyzing what has taken place in other states, and even within the county, where they are now rethinking the use of their current restitution program, that it may not be cost-beneficial. We have found, also, that this might require additional personnel within the Department of Mental Health and Corrections. It may also require additional personnel being added in other areas of state government, and the judiciary, to take control over the management of this particular program, if the restitution program became mandatory.

Aside from the fact that the Judiciary System now, and the judge specifically has discretion to exercise under the circumstances with each individual crime. He has a specific criteria and statute which requires that he take into account the financial status of the criminal who committed the crime. Secondly, he has also responsibility to look at the family of the criminal. Unfortunately, in many cases, and if you look at people who are involved in the Criminal Justice System, and specifically people who are in institutions, we find that many of them, number one, have a very low rate of employment. Secondly, many of them are on welfare which does cost money with regards to the taxpayers, and thirdly, we find that under the current exercise of the statute that we have today, that this precludes the State from picking up additional costs that aren't stated in this particular LD.

I think the Chairman of the Judiciary Committee reflected our thoughts well when he said, the current system does meet out justice equally and equitably without coddling criminals. I think today, because of the increase in violence in society and the increase of crime, that many of us want to take effective steps with regards to inhibiting criminals from taking advantages of victims.

But in this case here, I think, that we're going to have double jeopardy. We're going to cost the taxpayers more money without being able to give proper restitution to the victim. I think when we look at this seriously, and look at the cost-benefit factor, that it will cost the State more money, it will not assist the victim any more than can currently be conducted under present state statute. They have the adequate protections, every protection that is involved in this current LD can be exercised today by a court of law.

Secondly, I think that when you look at the Bill as it stands, it will then create more administrative bureaucracy, a greater headache, and will prove to be more of a detriment to the exercise of the judicial system, rather than a positive step.

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

Senator MINKOWSKY: Thank you very much, Mr. President. Mr. President, and Mem-

bers of the Senate, I listened very closely to the remarks made by the Chairman of the Judiciary Committee, and if I understood what his evaluation if he articulated correctly. The present statutory law, he also pretty much defined to me an existing weakness in the Judiciary System of the State of Maine, that part of the State is implementing this particular law, and the other part is not, which basically proves to me that this would be a glaring example of the weakness in our court system. I think what the Chairman articulated also was that was Legislative Intent when the law was revised a few years ago.

The point that came out quite clear earlier, was in this particular Bill, each and every instance, restitution would be required by this particular document. That may be so, and I think justifiably so, but I often wondered sometimes, is not the court nor the court-appointed attorneys required to get paid by the offender on each and every case. If it is good enough on each and every case for us to mandate restitution, and these people who have been offended, regardless of their means, are not going to get reimbursed, then why is it that we mandate the person who is guilty of a crime, a criminal defendant, the courts are reimbursed and the attorneys are reimbursed. It seems like a one-sided avenue on this particular thing. I think it only shows to be the proliferation, if you want to talk about the bureaucratic system, in the court system, and basically to heck with the people who have been injured.

I think that this is a bill that really sets an example to the court that the Legislative Intent is and what it should be, and it should be administered squarely and justly, which apparently they have not done since the new law went into effect.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate, I know everyone is in a hurry to get to dinner, so I'll be brief on this. There is a couple of things I'd like to address in it. First of all, I favor a dedicated revenue, and to me, that's what this Bill is, dedicated revenue. Those that are using the court systems should pay for it. Those that use the highway systems should pay for it. So, that's the way that I look at this Bill, primarily.

The good Senator from Penobscot, Senator Devoe, mentioned that this did require restitution regardless. I think that was only in the philosophy of the Bill, if you look under Section 1325D, some of the criteria for restitution, under Paragraph 1C, the financial ability of the offender may, these are requirements that financial ability of the offender to pay reimbursement should be considered. Now that doesn't indicate to me that it's a bound requirement that restitution or reimbursement be made, but it is a requirement that the judge consider this.

Now we've heard a lot of talk here today about cost, cost of this program, the cost of court. Well, if you'll look in your budget book, you'll find that over the next biennium, the judiciary is asking \$24 million to run their department. Now that's quite a lot of money to me, \$24 million. So you pick up a million here and a million there, and it all adds up.

I hope the Senate would go along with the Ought to Pass Report on this Bill, and try to put some of the cost of imprisonment, the cost of containing people, back onto those who put the cost on society. The taxpayers in this State have got enough cost on them already. I think that if we're going to have people in jail, down at prison, making money, and the State is paying for their family while they're down there, if they're making money, they're out on a Work Release Program, some of that money ought to be going back to the state to pay for their cost of confinement and the cost of their prosecution.

The PRESIDENT: The Chair recognizes the

Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and Members of the Senate, I suppose a few years ago when the Judiciary Committee had ten lawyers serving on it, I might be a little bit skeptical of a bill such as this coming down to the Senate or the other Body. The Judiciary Committee today, I believe, has four attorneys, at the most, serving on that committee, which means that nine other people on it are ordinary lay people, sat back and observed the hearing and also had a very lengthy work session dealing with that Bill. I'll say in all honesty that this is a very emotional issue, that restitution sounds great. Really, everybody wants to get out and get the criminal, make him pay for what he's done. That sounds great in theory, but in all honesty, it's an impossible, an impossible scheme to work.

We know that the United States Supreme Court has mandated that those who cannot afford attorney, an attorney must be furnished with an attorney of his choice or her choice, to represent them in court. The reason for that is because they don't have any money.

We know that the vast majority of people who go to prison, are the poor and the indigent. The reason that most of them are out stealing or whatever, is because of the fact that they're trying to make their livelihood in a manner that is not a normal manner. But that's a fact, crimes have existed since the beginning of time.

If anyone thinks that this Bill is a catch-all and is going to make a great change in society in Maine with respect to the criminal, they're just wishful thinking.

Two sections in the Bill, court costs, imprisonment costs. A man who can't afford to raise his family, and is out on the streets at night robbing or doing whatever he has to, to take care of his family, certainly is not going to be one in a position who's going to be able to pay court costs, pay for the three years or five years that he spends in prison.

I mean, I commend the Senator from Oxford and the other good Senator for their attempt, to what they see as a very, very serious problem. We have a Restitution Bill in the statutes now. I think the court is making an attempt to enforce what we've passed, only two years ago, I believe. I just think that this Bill and obviously the other nine, or at least seven lay people on the Committee on Judiciary thought this Bill would not achieve anything. So again, I would urge the Senate to Accept the Majority Ought Not to Pass Report.

The PRESIDENT: Is the Senate ready for the question?

A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The pending question before the Senate is Acceptance of the Majority Ought Not to Pass Report of the Committee.

A Yes vote will be in favor of Accepting the Ought Not to Pass Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Brown, Bustin, Carpenter, Charette, Clark, Collins, Conley, Devoe, Dutremble, Huber, Kerry, McBairty, Najarian, Pierce, Pray, Sewall, C.: Trafton, Trotzky, Usher, Viollette, Wood.

NAY — Ault, Emerson, Gill, Hichens, Minkowsky, Redmond, Shute, Sutton, Teague.

ABSENT — O'Leary, Perkins.

A Roll Call was had.

21 Senators having voted in the affirmative

and 9 Senators in the negative with 2 Senators being absent, the motion to Accept the Majority Ought Not to Pass Report does prevail.

Second Readers

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

House

Bill, "An Act to Require Legislative Confirmation of State Housing Authority Commissioners." (H. P. 44) (L. D. 50)

Bill, "An Act to Increase the Deer Registration Fee." (H. P. 173) (L. D. 194)

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

House — As Amended

Bill, "An Act to Dissolve the Howland Water and Sewer District." (H. P. 43) (L. D. 49)

Bill, "An Act to Clarify and Make Corrections in the Personnel Laws." (H. P. 223) (L. D. 260)

Bill, "An Act to Establish a Sign on the Maine Turnpike for York Beach Region." (H. P. 123) (L. D. 155)

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

Senate — As Amended

Bill, "An Act to Lower Certain Distance Restrictions on Enlargement of Cemeteries and Burying Grounds." (S. P. 41) (L. D. 42)

Which was Read a Second Time and Passed to be Engrossed, as amended.

Sent down for concurrence.

Enactor

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

Emergency

Resolve, Concerning the Authority of the Attorney General to Seek Adjudication of the Nature and Scope of Cutting Rights Claimed by Private Parties on Public Land of the State of Maine. (H. P. 697) (L. D. 731)

This being an emergency measure and having received the affirmative votes of 25 votes of the Senate with No Senators voting in the negative, was Finally Passed and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The President laid before the Senate the First Tabled and specially assigned matter:

SENATE REPORTS—from the Committee on Education—Bill, "An Act Providing for a Period of Silence in Public Schools." (S. P. 70) (L. D. 107) Majority Report—Ought to Pass in New Draft Under Same Title (S. P. 272) (L. D. 699); Minority Report—Ought Not to Pass.

Tabled—February 10, 1981 by Senator Collins of Knox.

Pending—Acceptance of Either Report.

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

Senator COLLINS: Mr. President, I talked this morning on the telephone with the sponsor of this bill, our colleague the Senator from Hancock, Senator Perkins. He is still in Blue Hill Hospital, making some progress, and hopes very much that he will be here next week to debate this.

On Motion by Senator Pierce of Kennebec, Retabled for 2 Legislative Days.

The President laid before the Senate the Second Tabled and specially assigned matter:

Bill, "An Act to Provide for Licensing of Dog Groomers and Grooming Shops." (H. P. 590) (L. D. 668)

Tabled—February 11, 1981 by Senator Collins of Knox.

Pending—Reference.

On Motion by Senator Clark of Cumberland, referred to the Committee on Business Legislation and Ordered Printed, in non-concur-

rence.

Sent down for concurrence.

The President laid before the Senate the Third Tabled and specially assigned matter:

Bill, "An Act to Provide for the Use of Flashing White Lights on Ambulances." (H. P. 45) (L. D. 51)

Tabled—February 11, 1981 by Senator Conley of Cumberland.

Pending—Enactment.

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

Senator Bustin of Kennebec was granted unanimous consent to address the Senate, Off the Record.

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

Senator PIERCE: Mr. President, I move that the Senate Stand Adjourned until 12:30 p.m., and when we do we do so in memory of this country's greatest President, Abraham Lincoln.

The PRESIDENT: The Chair would advise the Senate that it is not quite right to continue debating Adjournment, Recess, and Tabling Motions.

On motion by Senator Conley of Cumberland, Adjourned until 12:30 p.m. tomorrow afternoon.