

# 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

April 1, 1981

Senate called to order by the President.

Prayer by Father Armand Bill of Saint Bridget's Church in North Vassalboro.

FATHER BILL: Let us pray. Almighty God, our Father, You have charged us with the task of building on this earth our home, where all the nations dwell in unity, liberty, and justice. We pray for strength and purpose to make offices in every branch of government accountable to all the people, fulfilling roles of service and responsibility, that they may seek justice and protect the weak, and lead us in constructing institutions for our peace and mutual aid.

We pray also for the recovery of our President of the United States, and also his associates, who were seriously wounded. We ask this through Christ, our Lord.

Reading of the Journal of yesterday.

(Off Record Remarks)

**Papers from the House**  
**Joint Orders**

Expressions of Legislative Sentiment recognizing:

Annette Stevens, of North Berwick, who was named outstanding "Energy Woman of the Year". (H. P. 1299)

Elizabeth Essency, of Brownville Junction, who has been chosen Brownville's Outstanding Citizen of the Year. (H. P. 1300)

The Maine Division of the American Cancer Society, Dr. John Zerner, Edward Miller, Karen Truempter and the Department of Human Services for their participation in making DES Awareness Week and the DES Program the success that it is. (H. P. 1301)

Come from the House, Read and Passed.  
Which were Read and Passed, in concurrence.

**House Papers**

Bill, "An Act to Require Certain State Mandated Programs be Funded by the Municipality Involved." (H. P. 1285) (L. D. 1499)

Reference to the Committee on Appropriations and Financial Affairs suggested.

Comes from the House, referred to the Committee on Local and County Government and Ordered Printed.

Which was referred to the Committee on Local and County Government and Ordered Printed, in concurrence.

Bill, "An Act Establishing a Procedure under the Education Statutes for Withdrawal of a Municipality from within Vocational Region I." (H. P. 1268) (L. D. 1495)

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 Relating to Fish and Game Licenses as Issued by Licensing Agents." (H. P. 1269) (L. D. 1496)

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

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

Bill, "An Act Relating to Bail Commissioners." (H. P. 1271) (L. D. 1486)

Bill, "An Act to Establish an Arson Reporting Immunity Act." (H. P. 1272) (L. D. 1487)

Come 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 Making Certain Changes in the Law on Boilers and Pressure Vessels." (H. P. 1273) (L. D. 1488)

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

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

Bill, "An Act Relating to the Sale of Alcohol-ic Beverages on Vessels." (H. P. 1274) (L. D. 1489)

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

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

Bill, "An Act to Increase the Revenue Generated by Power Companies Exporting Electricity." (H. P. 1275) (L. D. 1490)

Reference to the Committee on Public Utilities suggested.

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

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

Bill, "An Act to Clarify Administration of Appropriations Provided to the Maine Human Services Council." (Emergency) (H. P. 1276) (L. D. 1491)

Bill, "An Act to Establish an Efficiency Award Program and a Suggestion Solicitation Program for State Employees." (H. P. 1277) (L. D. 1492)

Bill, "An Act to Amend the Maine Administrative Procedure Act." (H. P. 1278) (L. D. 1493)

Come from the House, referred to the Committee on State Government and Ordered Printed.

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

Bill, "An Act Promoting Alcoholism Prevention, Education, Treatment and Research." (H. P. 1270) (L. D. 1485)

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

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

(Off Record Remarks)

**Senate Papers**

Senator CLARK of Cumberland presented, Bill, "An Act to Amend the Maine Nonprofit Corporation Act." (S. P. 542)

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

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

Sent down for concurrence.

Senator McBREAIRTY of Aroostook (Co-sponsors: Representative MacBRIDE of Presque Isle and Representative LISNIK of Presque Isle) presented, RESOLVE, to Reimburse John W. Churchill of Presque Isle for Property Loss Suffered by John W. Churchill Because of Acts by a Ward of the State. (S. P. 453)

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

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

Sent down for concurrence.

**Committee Reports**  
**House**

The following Ought Not to Pass report shall be placed in the Legislative files without further action pursuant to Rule 22 of the Joint Rules:

Bill, "An Act Concerning Sales Tax on Vehicles Purchased in Foreign Jurisdictions." (H.

P. 900) (L. D. 1178)

**Leave to Withdraw**

The Committee on Taxation on, Bill, "An Act to Enable Taxpayers to Support Nongame Management Projects by Donating a Portion of their State Income Tax Refund through a Tax Return Checkoff." (H. P. 660) (L. D. 764)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted, in concurrence.

**Bill Reported pursuant to Joint Order**  
(H. P. 1284)

The Committee on Taxation, on Bill "An Act to Establish the Cost of the Maine Forestry District in Fiscal Year 1981-1982." (Emergency) (H. P. 1303) (L. D. 1500)

Reports that the same be referred to the Committee on Taxation for Public Hearing — pursuant to Joint Order (H. P. 1284).

Comes from the House, the Report Read and Accepted and the Bill referred to the Committee on Taxation.

Which Report was Read and Accepted and the Bill referred to the Committee on Taxation, in concurrence.

**Ought to Pass**

The Committee on Appropriations and Financial Affairs on, Bill, "An Act to Require State Bond Issues to Include all Interest Involved." (H. P. 195) (L. D. 242)

Reported that the same Ought to Pass.  
Comes from the House, the Bill Passed to be Engrossed.

Which Report was Read.  
The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Huber.

Senator HUBER: Mr. President, Members of the Senate, I've been asked to briefly explain this Bill, which, although short, I think is an important measure, both for the education of the voters of this State and the Legislature.

The Bill would require that an estimate of the interest costs involved with a bond issue be included with the referendum question, and be included with the Bill.

In a time of volatile insurance rates, I'm sure this estimate would have to state also the assumptions used to arrive at the estimate. Right now, I believe the interest payments included in our budget, both in debt service and in debt service included in cost of education, is in the neighborhood of \$50 million per year.

This is a very significant cost in our budget. It is a cost which, I think, the voter should be made aware of in voting for bond issues with varying duration and varying rates of return in some cases.

I think the Bill, although brief, is an important measure and would be educational and informative to people voting on the bond issues.

Which Report was Accepted, in concurrence.  
The Bill Read Once and Tomorrow Assigned for Second Reading.

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Concerning Foreign Trade Zones." (H. P. 789) (L. D. 943)

Reported that the same Ought to Pass.

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

The Committee on Appropriations and Financial Affairs on, Bill, "An Act to Allocate Moneys for the Administrative Expenses of the State Lottery Commission for the Fiscal Years Ending June 30, 1982 and June 30, 1983." (Emergency) (H. P. 339) (L. D. 387)

Reported that the same Ought to Pass.

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

The Committee on Judiciary on, Bill, "An Act to Authorize Joint Custody Orders as Part of Divorce Judgments." (H. P. 844) (L. D.

1010)

Reported that the same Ought to Pass.  
Comes from the House, the Bill Passed to be Engrossed.

The Committee on Judiciary on, Bill, "An Act to Update and Revise the Validation of Defects Act." (H. P. 876) (L. D. 1045)

Reported that the same Ought to Pass.  
Comes from the House, the Bill Passed to be Engrossed.

The Committee on Public Utilities on, Bill, "An Act to Authorize in Proceedings before the Public Utilities Commission the Appearance by an Officer or Employee of a Corporation or Partnership." (H. P. 528) (L. D. 594)

Reported that the same Ought to Pass.  
Comes from the House, the Bill Passed to be Engrossed.

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

#### Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on,

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)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-140).

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

The Committee on Appropriations and Financial Affairs on,

Bill, "An Act to Allocate Moneys for the Administrative Expenses of the Bureau of Alcoholic Beverages, Department of Finance and Administration and the State Liquor Commission for the Fiscal Years Ending June 30, 1982 and June 30, 1983." (Emergency) (H. P. 340) (L. D. 388)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-146).

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

The Committee on Health and Institutional Services on,

Bill, "An Act to Create an Environmental Health Program." (Emergency) (H. P. 804) (L. D. 914)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-134).

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

The Committee on Local and County Government on,

Bill, "An Act Concerning the Posting of the Agenda for Meetings of County Commissioners." (H. P. 433) (L. D. 480)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-143).

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

The Committee on Local and County Government on,

Bill, "An Act to Enable Municipal Governments to Set Speed Limits within Their own Jurisdictions." (H. P. 383) (L. D. 426)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-144).

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

Which Reports were Read and Accepted, in concurrence, and the Bills Read Once. Com-

mittee Amendments "A" were Read and Adopted, in concurrence, and the Bills, as amended, Tomorrow Assigned for Second Reading.

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

#### Paper From The House Non-concurrent Matter

Bill, "An Act to Provide a One-time Property Tax Exemption for Disabled Veterans, World War I Veterans and Persons Claiming from World War I Veterans." (Emergency) (H. P. 1289) (L. D. 1483)

In the Senate, March 30, 1981, Passed to be Engrossed, in concurrence.

Comes from the House, Passed to be Engrossed as amended by House Amendment "A" (H-159), in non-concurrence.

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

Senator CONLEY: Mr. President, I wonder if I may pose a question to a member of the Taxation Committee to explain what House Amendment 159 does.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair.

The Chair recognizes the Senator from Somerset, Senator Teague.

Senator TEAGUE: Mr. President, in answer to the good Senator from Cumberland, the only thing House Amendment "A" does is clarify the amendment, so it just relates to World War I Veterans and Disabled Veterans, and also puts the cost of \$36,000 to the State.

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

Senator COLLINS: Mr. President, is the order to Recede and Concur in order?

The PRESIDENT: The Chair would answer in the affirmative.

Senator COLLINS: I so move.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate Recede and Concur with the House.

Is this the pleasure of the Senate?

The motion prevailed.

Sent forthwith to the Engrossing Department.

#### Divided Report

The Majority of the Committee on Judiciary on,

Bill, "An Act to Authorize Payment of Over-time Rate for Certain Court Appearances of Municipal Law Enforcement Officers." (H. P. 521) (L. D. 587)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

DEVOE of Penobscot  
CONLEY of Cumberland  
KERRY of York

Representatives:

LIVESAY of Brunswick  
LUND of Augusta  
O'ROURKE of Camden  
DRINKWATER of Belfast  
REEVES of Newport

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as amended by Committee Amendment "A" (H-131).

Signed:

Representatives:

HOBBINS of Saco  
SOULE of Westport  
CARRIER of Westbrook  
JOYCE of Portland

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

Which Reports were Read.

The Majority Ought Not to Pass Report of the Committee was Accepted, in non-concurrence.

Sent down for concurrence.

#### Divided Report

Eleven Members of the Committee on Labor on, Bill, An Act Relating to the Per Diem and Case Assignments for the State Board of Arbitration and Conciliation. (H. P. 280) (L. D. 310)

Reported in Report "A" that the same Ought to Pass as amended by Committee Amendment "A" (H-135).

Signed:

Sensors:

SEWALL of Lincoln  
SUTTON of Oxford  
DUTREMBLE of York

Representatives:

BEAULIEU of Portland  
TUTTLE of Sanford  
MARTIN of Brunswick  
FOSTER of Ellsworth  
LAVERRIERE of Biddeford  
HAYDEN of Durham  
BAKER of Portland  
McHENRY of Madawaska

One member of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass as amended by Committee Amendment "B" (H-136).

Signed:

Representative:

LEIGHTON of Harrison

One member of the same Committee on the same subject matter reported in Report "C" that the same Ought Not to Pass.

Signed:

Representative:

LEWIS of Auburn

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

Which Reports were Read.

On motion by Senator Sewall of Lincoln, the Ought to Pass, as amended, Report "A" of the Committee was Accepted, in concurrence. The Bill Read Once. Committee Amendment "A" Read and Adopted, in concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

#### Divided Report

The Majority of the Committee on State Government on, RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require that for Certain Counties, a Specific Percentage of the Population be Included in a Separate Senate District. (H. P. 608) (L. D. 685)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

AULT of Kennebec  
GILL of Cumberland  
VIOLETTE of Aroostook

Representatives:

KANY of Waterville  
DILLENBACK of Cumberland  
MASTERTON of Cape Elizabeth  
SMALL of Bath

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

Signed:

Representatives:

WEBSTER of Farmington  
McGOWAN of Pittsfield  
DIAMOND of Bangor  
PARADIS of Augusta  
LISNIK of Presque Isle  
BELL of Paris

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

Which Reports were Read.

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

Sensor AULT: I move Acceptance of the Majority Ought Not to Pass Report.

The PRESIDENT: The Senator from Kenne-

bec, Senator Ault, moves that the Senate Accept the Majority Ought Not to Pass Report of the Committee, in non-concurrence.

Is this the pleasure of the Senate?

It is a vote.

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

Senator O'LEARY: Mr. President, I would move Reconsideration.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, now moves the Senate Reconsider its action whereby it Accepted the Majority Ought Not to Pass Report of the Committee.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Kennebec, Senator Ault.

Senator AULT: I request a Division on Reconsideration, and would speak briefly.

The PRESIDENT: The Senator has the floor.

Senator AULT: Mr. President, Members of the Senate, the hammer was quicker than I thought it was going to be, too, but I was prepared to speak on the Bill. Thank you, Mr. President.

This piece of legislation proposes, the Statement of Fact tells what the Bill does, very simply. As you probably don't have it in front of you, I'll read it to you.

The Bill requires that "if a county has a population falling between 75 percent and 105 percent of the mean population for Senate seats", in other words, if we figure a Senate seat is about 30,000 people, that means the population of a county would be 22,500 to 31,500.

"If that county is divided in the apportionment of the State into Senate seats, it shall be divided so that residents of the county constitute at least 51 percent of the population of one Senate seat." The idea being that every county would have a shot at a Senate seat. I understand this would affect three counties in the State, being Franklin, Sagadahoc, and Lincoln.

The Majority of the Committee voted against, this is a Constitutional Amendment, by the way, the Majority of the Committee voted against it because we believed that regular apportionment would be able to take care of the problem when we do it in 1983.

So I'd urge you to vote against Reconsideration and go along with the Majority Ought Not to Pass Report.

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

Senator O'LEARY: On the motion to Reconsider, I would ask for a Roll Call.

Mr. President, Franklin County, I think, has around 27,000 people. I represent approximately one half. The good Senator from Somerset, Senator Redmond, represents the other half. As I was campaigning throughout my district for this last election, I heard it over and over again very clearly, that the people were disappointed where they had such a population, that they could not have a Senator that was from their own county.

I know that, through gerrymandering, we can manipulate Senate seats and such. I think under this Constitutional Amendment, that would not be available to those who will do the reapportionment.

I thought there were more than the Senator from Hancock, Senator Perkins, and the Senator from Lincoln, Senator Sewall, and the Senator from Somerset, Senator Redmond, and I, that were involved in this, but I was thinking that the Senator from Knox, Senator Collins, may possibly have his seat taken from him through this Bill, but that's not the intent.

The intent, Mr. President, is to give these larger counties the representation that they desire, so therefore, I would ask for a Roll Call.

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

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate, the Committee on State Government felt that this Bill, this Constitutional Amendment would, quite frankly, be ineffectual. In a letter from the Attorney General to Representative Webster, who is a sponsor of this Bill, and I read from the text of this letter: "The apparent purpose of this Bill is to guarantee that the residents of certain smaller counties constitute the majority of the electorate of at least one Senate District. We conclude that Enactment of LD 685 would not violate the United States Constitution. We do, however, perceive two problems which may occur in the application of this provision to future reapportionment.

First, depending upon the State's population and its distribution at the time required for reapportionment, it might prove mathematically impossible to implement the provisions of LD 685 for all the affected counties without violating the requirements of the equal protection clause of the United States Constitution. In such cases, the State Constitution would have to yield to the Federal Constitution.

A second, and more minor problem, is to establish, in terms of precedence, the relationships among the various apportionment requirements of the Maine Constitution, including the provisions that LD 685. If it is mathematically impossible to arrive at a plan implementing LD 685, which also accords with the requirements of the United States Constitution, the Legislature or court must put aside the provisions of the Bill to the extent necessary to formulate a constitutional plan.

Thus, while the amendment proposed by LD 685 is not unconstitutional, situations could arise in which the amendment could not be fully affected because it would lead to an unconstitutional result. In order to prevent such problems, it may be advisable to indicate in the Bill whether its provisions or the already existing rules are to take precedence, if a specific conflict should arise.

This Bill places, in my opinion, still more restrictions upon the activities of the Reapportionment Commission, whose duties are already overly complex and overly regulated. The Commission's attempt to comply with the spirit of this Bill would only add to further confusion. Quite frankly, I do not see where it could be implemented.

It would have been much more appropriate that the intent of this Constitutional Amendment should have been placed within the guidelines, in its proper order, as they exist within the Constitution now.

I would hope that you would not vote in favor of Reconsideration on this motion, and let's Accept the Majority Ought Not to Pass Report. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The pending question before the Senate is the motion by the Senator from Oxford, Senator O'Leary, that the Senate Reconsider its action whereby it Accepted the Majority Ought Not to Pass Report of the Committee on LD 685.

A Yes vote will be in favor of Reconsideration.

A No vote will be opposed.

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

#### ROLL CALL

YEA—Carpenter, Collins, Conley, Dutremble, Kerry, O'Leary, Redmond, Shute, Trafton, Usher, Wood.

NAY—Ault, Brown, Bustin, Charette, Clark, Devoe, Emerson, Gill, Hichens, Huber, McBreairey, Minkowsky, Najarian, Perkins, Pray, Sewall, C.; Sutton, Teague, Trotzky, Vio-

lette.

ABSENT—Pierce.

A Roll Call was had.

11 Senators having voted in the affirmative and 20 Senators in the negative, with 1 Senator being absent, the motion to Reconsider does not prevail.

Sent down for concurrence.

#### Senate

##### Leave to Withdraw

Senator PIERCE for the Committee on Election Laws on, Bill, "An Act Pertaining to Ballot Inspections and Recounts in Municipal Elections." (S. P. 157) (L. D. 365)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

##### Ought to Pass — As Amended

Senator DUTREMBLE for the Committee on Labor on, Bill, "An Act to Require Disclosure of Reserves by Workers' Compensation Insurers." (S. P. 343) (L. D. 987)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-85).

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

Senator SHUTE for the Committee on Legal Affairs on, Bill, "An Act to Revise the Public Drinking Law." (S. P. 66) (L. D. 93)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-84).

Which Report was Read and Accepted.

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

Senator CONLEY: Mr. President, and Members of the Senate, this is probably one of the many bills that we're going to have before us dealing with drinking in public. I'm aware of the fact that we have several of them presently before the Judiciary Committee. I've been sort of keeping my eyes open, knowing that there were other bills in other committees, primarily the Committee on Legal Affairs.

I just happened to take a close glance at the Committee Amendment, which is now the Bill. Under Section 2003-Ad., the definition of a public place seems to me to be an extremely vague definition of public place. I'll read it for those of you that don't have the Bill before you.

It says public place means "Any area that is used or held out for use by the public, whether or not owned or operated by the public, or private interest."

Now that would almost appear to me, that if I decided to have a little wing-ding at my home some Saturday evening, and invited you all over, that might be in violation of drinking in a public place.

I think, and I'm not trying to find fault, I'm sure that I'd like to see, in fact, to make sure that everybody clearly understands my position, I want to see public drinking back on the statutes. I don't know why we just don't revert back to what the law was several years ago. It seems to me that now, trying to define what a public place is, the last few years, we've run into all kinds of obstacles.

In reading this particular amendment, I think some clarification has to be made. Even on the Committee on Judiciary one day, we had a hearing most recently on a public drinking bill that was being proposed. As I like to recall it, in questioning one of the people who was testifying on behalf of the bill, a strong supporter, we have a place in Portland that is the bastion of Republicanism. They're not a licensed premise. It's one of those, bring your own bottles and have a good time. It's run very, very nicely. It's a beautiful place. Even I have been

invited to speak there.

The problem is, that under this law, they would be in violation of State Statutes. I think you can just go on, and on, and on to all kinds of little things that could pop up. I know in Aroostook County that there is some golf courses, at least one in particular, that's always been mentioned, that they have the 19th hole. It's not a licensed establishment. People go just to enjoy themselves and have a good time. No problems. But the fact of the matter, we are setting a statute here that would prohibit them from doing such.

I think there are just all kinds of problems. We, as politicians, always love to have a little bean supper somewhere around our neighborhood. We can't afford to hire a bartender to come in, or a licensed establishment to come in to a little bean supper and be serving drinks. So, a lot of us bring our own, pass it around to everybody. We have a nice time, no problems. Under this law, we'd be in violation of State Statutes.

Before this Bill gets too far down the road, I honestly think that we should have somebody, some legal expert, take a very hard look at the definition that's here, with respect to a public place. If people want to live with that, as it's defined, I personally think it is very, very vague. It's going to create more problems than I think we're trying to solve. I just wanted to make the Members of this Senate aware of what's presently in this amendment.

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

Senator SHUTE: I think the second page of the Bill, page 2 in the second section under Crime, I think that that would set the good Senator's mind at ease a little bit if we went through that. This section says, "a person is guilty of public drinking if he drinks liquor in any public place knowing that he is not licensed or privileged to do so, unless," and if the good Senator had us down to his house, "he has been given permission to do so by the owner or authorized agent." So I would suspect that if the good Senator has us down to his house and we had a few drinks, that he would give us permission to have those drinks, he would be the agent or owner of that property.

The Legal Affairs Committee had several avenues to pursue here, and one was that the first time that a person was caught for public drinking that he would get a warning, and if he did not stop immediately then it would be a Class E Crime. The other thing was that you would first issue a summons as a Civil Offense and then possibly if the person did not stop then you could arrest them under a section such as this as a Class E Crime.

Over the years it doesn't seem as though we have done much to improve the public drinking problem. I think that you have to start somewhere and this is a start. Possibly this Bill needs some more work done on it and some sections changed, but the Committee looked it over and the attorneys looked it over and they did not see any problems with it.

We tried to take care of the open container section by saying that if a container did have a cap, or a cover, or a stopper on it, that you would not be in violation of this section. So if you were coming home from a party and you had half a bottle of liquor and you had a cap on it, you were alright, you would not be picked up for that.

Of course, we did not make it an emergency bill.

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

Senator BUSTIN: I do not want the good Senator from Cumberland, Senator Conley, to be standing alone on this issue. I do have some concerns about the Bill as it stands.

I do understand what the problem is, I think that it needs to be addressed, I understand in Florida they do have a law against public drinking in public bathing areas. Perhaps that

is one thing that should be addressed.

One of the things that really bothers me is that not only the private place, but also the fact that somebody has to make some kind of a subjective decision as to whether the party at my house is being boisterous. Who makes that decision? I would assume that that is up to the local police to make that decision. I am not sure that I want to entrust how boisterous my party is going to be to the local police. I think that the Bill does need some work.

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

Senator VIOLETTE: Thank you, Mr. President, Ladies and Gentlemen of the Senate, I do not mean to belabor this discussion on this Bill, but as it is now this Bill has nothing to do with affecting anyone who is unduly boisterous, this is already an offense under the statutes.

This Statement of Fact is simply saying that you couldn't have a party at your home. It is already an offense as it is under this statute. This Bill does not affect that at all.

I have been very concerned about public drinking from the opposite standpoint of this Bill. Over the years I have always been opposed to making public drinking a criminal offense. I was involved in the last session of the Legislature, and the Legislature prior to that, in defeating bills that would have made public drinking a criminal offense, reclassifying it as a Class E Crime.

I do not consider the public place, the definition of a public place to be any problem whatsoever, I am very concerned about bottle clubs and the myriad number of other places where people drink. All the Bill says is that as long as there is permission given by a private owner for people to drink on his property, as long as they are not disorderly, or out of order, which is another offense, or as long as it is in the municipality and the public officials have given their right for people to drink there that it is not an offense.

I do understand the real need for this problem in other areas of the State, it is for that reason that I finally decided to support one of these bills, and I think that this Bill is good in its present form, and that it should be acceptable. Thank you.

The Bill Read Once. Committee Amendment "A" (S-84) Read and Adopted. The Bill, as amended, Tomorrow Assigned for Second Reading.

### Second Readers

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

#### House

Bill, "An Act to Repeal the Provision Concerning Waiver of an Employee's Rights under the Occupational Disease Law." (H. P. 566) (L. D. 642)

Bill, "An Act to Exempt the Elderly from Beano Licensing and License Fees." (H. P. 852) (L. D. 1015)

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

### House — As Amended

Bill, "An Act to Amend the Purposes for Special Marine Resources Licenses to Include Educational Institutions." (H. P. 799) (L. D. 953)

Bill, "An Act to Allow Registers of Probate to Aid Persons Using Probate Courts." (H. P. 429) (L. D. 476)

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

Bill, "An Act to Give the Maine Association of Retirees Proper Representation on the Board of Trustees for the Maine State Retirement System." (H. P. 369) (L. D. 407)

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

Sent down for concurrence.

### Senate

Bill, "An Act to Place a Maximum Limit on the Inflation Adjustment under the Workers' Compensation Act." (S. P. 281) (L. D. 789)

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

Sent down for concurrence.

### Senate — As Amended

Bill, "An Act Concerning Health Insurance Plan under the State Retirement System." (S. P. 300) (L. D. 844)

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

Sent down for concurrence.

### Enactors

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

AN ACT to Repeal the Law Providing Reimbursement for Travel Involved in Criminal Cases. (S. P. 240) (L. D. 695)

AN ACT Concerning the Interest Charge on Outstanding County Taxes. (H. P. 471) (L. D. 524)

AN ACT Concerning Retirement and Benefits for State Employees Returning to Work After Attaining the Age of 60. (S. P. 299) (L. D. 843)

AN ACT to Provide for a Transition before the Attorney General takes Office. (H. P. 607) (L. D. 684)

AN ACT to Clarify and Make Consistent Appeal Procedures in the Employment Security Law. (H. P. 638) (L. D. 728)

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

### Emergency

AN ACT to Require Primary Suppliers to Report Deliveries of Petroleum Products to the Office of Energy Resources. (H. P. 659) (L. D. 762)

This being an emergency measure and having received the affirmative votes of 29 members of the Senate, with No Senators having voted in the negative, was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

### Emergency

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Lincoln County for the Year 1981. (H. P. 1213) (L. D. 1381)

This being an emergency measure and having received the affirmative votes of 29 members of the Senate, with No Senators having voted 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 Unfinished Business

March 31, 1981

The following matter, in the consideration of which the Senate was engaged at the time of adjournment yesterday, has preference in the Orders of the Day and continues with such preference until disposed of as provided by Rule 25.

The PRESIDENT: The Chair would direct the Senate's attention to an item of Unfinished Business:

Bill, "An Act to Establish a Kennebec River Future Commission." (H. P. 1141) (L. D. 1285)

Tabled—Earlier in the Day by Senator COLLINS of Knox.

Pending—Consideration.

On motion by Senator COLLINS of Knox, Retabled until later in today's Session.

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

Bill, "An Act Further Amending the Plan-

ning and Zoning Statute." (S. P. 183) (L. D. 461)

Tabled—March 30, 1981 by Senator COLLINS of Knox.

Pending—Passage to be Engrossed.

On motion by Senator COLLINS of Knox, Retabled for 2 Legislative Days.

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

RESOLVE, Authorizing Jeanette Hodgdon, Administratrix of the Estate of Kenneth R. Hodgdon, to Maintain a Civil Action Against the State of Maine. (S. P. 227) (L. D. 614)

Tabled — March 30, 1981 by Senator Collins of Knox.

Pending — Passage to be Engrossed.

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

Senator COLLINS: Mr. President, we have debated this matter on 2 previous occasions. I would like to support fully the recommendations that were given to us by the Senator from Penobscot, Senator Emerson. He outlined the history of our Tort Claims Act, and explained in some detail the dangers of the precedent on this type of case.

I hate very much to disagree with my colleague, the Senator from Lincoln, Senator Sewall, because she was one of the strong supporters of the Tort Claims Act when the Judiciary Committee spent several weeks on this important landmark in Maine Legal History back in 1977, along with the Senator from Penobscot, Senator Devoe, and other members of that committee. We started even before the Session of the 108th began to study what had become a very eminent problem because of a court decision. Then Governor Longley had requested the attorney general to prepare materials for our consideration, and we met with all types of representatives from municipalities, the insurance industry, and others who would have a very vital concern with this problem.

The theory of our Tort Claims Act is number one, that we reestablish governmental immunity as the basic State policy. The second part of the law is that we carve out certain well defined exceptions to that policy. The general idea of the exceptions was to give us a list of cases that were insurable. This was terribly important especially to the smaller communities.

We had the specter for example of a small town of 425 people in Michigan being wiped out financially when one of their uninsured school buses crashed, killing a number of children. The law suits were into the millions, and the recoveries were in the nature of 3 or 4 million dollars, worth more than the total assessed evaluation of that town.

The difficulty of obtaining insurance was made known to us and it was important that we define exactly what we were going to permit to be a liability, so that the insurance companies could assess exposure and establish rates. They did this.

The Tort Claims Act has been working out quite well. I am told this, not only by the Maine Municipal Association, which monitors all the suits in the State against towns and cities, but also by representatives of the insurance industry.

Now the particular area that we are dealing with here, is in the list of examples which starts out saying a governmental entity, this is not just the State of Maine, this is your town, the town of Newcastle, the town of Boothbay Harbor, or the city of Portland. "A Governmental Entity shall not be liable for any claim which results from." Then there is a list a, b, c, d, and so on, and down the list comes this item: "any defect in any highway, townway, sidewalk, parking area, causeway, and so on."

Now there is an old saying in the law that hard cases make bad law. This is a hard case, there is a lot of blood, there is a lot of sympathy, there is a lot of circumstances that make any human being very sympathetic to the people

concerned. The problem is that when we establish something like this we establish a precedent. When we establish a precedent the next person in that position wants the same right and privilege. That may not be in a deep pocket situation like the State of Maine, you say, Oh the State of Maine has plenty of money why not help these folks? It may be in the town of Newcastle where the tax rate on the home of the Senator from Lincoln has to be raised by 300 percent to meet a judgement, because it is an uninsurable defect that causes the accident.

So we have here a very, very serious precedent to address, not one to be decided simply on the basis of who is a good lobbyist, who deserves sympathy, who has suffered a very, very great damage in their family.

Now if we are going to pass legislation like this, it becomes important to decide how we are going to fund it. If we are going to become an insurer in the governmental area for all of the problems in the state, and all our municipalities, we are going to need millions, and millions of dollars to fund that liability. It is not going to be good fiscal management for this Legislature to pass anything like this without setting apart some contingency reserve fund, because when you have a case like this and it goes to a jury, sympathy becomes the big factor. Sympathy is a very powerful emotion and I am glad that we have it, but where we sit in management positions for the State, we have to decide whether we are going to throw out the history of governmental immunity and go to universal governmental insurance for everything, or whether we are going to stay where we were and where we decided that we should be back in the 108th Legislature.

I would urge you to think about this carefully and to vote against the passage of this particular Legislation.

The PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator SEWALL: Thank you, Mr. President. Members of the Senate, I think the major question here is whether we're talking about the highway design, or the failure to repair the road that was already there. That's what I think the difference is in this question. I don't think that we're attacking highway design, which is what would perhaps open the floodgates to litigation on this section.

Let me review with you what this Bill actually does. LD 614 is a resolve which authorizes Mrs. Jeanette Hodgdon of Wiscasset to maintain a lawsuit against the State of Maine.

In my district, Route 197, a state highway, and Route 127, a state aid highway, intersect in the town of Dresden. As anyone who has driven through the intersection knows, it is extremely dangerous. A driver driving northbound on Route 197 and changing to Route 127 westbound would think he or she had the right of way. At the same time, a second driver traveling southbound on Route 197 would think that he or she had the right of way. To make matters worse, the drivers could not see each other until it was too late to avoid an accident.

Here's what makes the case unique. As documents of the Department of Transportation will show, the citizens of my district have been complaining about this intersection since the late 1960's. Each time an accident occurred at the intersection, another citizen would write, but nothing would be done to remedy the problem.

It was only a matter of time before someone would be killed, and the inevitable happened on June 30, 1978. It was 10:15 in the morning, the road was dry and the weather was clear. Kenneth Hodgdon was driving his motorcycle on Route 197 southbound. Eileen Alvarado, a young nurse from Augusta, was driving northbound on Route 197 preparing to turn on to Route 127 westbound. By the time they saw each other it was too late. Kenneth Hodgdon was killed instantly upon impact.

Immediately following this accident, the citi-

zens of my district circulated a petition requesting the DOT to change the intersection. More than 1,000 people signed a petition which was submitted to the department less than two weeks after the accident. After negotiations with the town of Dresden, the intersection was finally repaired at the state's expense.

Although the problem of the intersection has been solved, the accident that brought the solution to that problem has had a drastic impact on Mrs. Hodgdon's life. No one can return her husband to her, but something can be done about the financial impact the accident has had on her life. Her husband was her principal source of support. He was a University of Maine graduate who had been working his way to becoming a marine biologist for the Department of Marine Resources. To make matters worse, Mrs. Hodgdon has not been able to find steady employment since the accident.

In these circumstances, where the state obviously played some role, not necessarily in the design, but in failure to repair the intersection, the state should waive sovereign immunity. The jury will be considering the responsibility of the other driver, and the town of Dresden in any event, and it seems only fair to the other parties and to the jury that the state be considered on an equal footing. It may be that the jury will decide that nothing should be awarded, but they should at least have the opportunity to consider the whole story, and to assign the responsibility as they see it, without the state escaping its responsibilities through sovereign immunity.

If the state is permitted to get out of this case, it may be unfair to the Town of Dresden. Because of a quirk in the law and the unique circumstances of this case, the Town of Dresden may be responsible for the entire judgment. Unfortunately, it's not possible to address this problem through general legislation at this time. But right now the citizens of the Town of Dresden are faced with the possibility that they may bear the full responsibility of the state's negligence. This resolve corrects the potential inequity.

Some concern has been expressed about the effect this resolve may have on the highway budget. There are some who would urge you to vote against the resolve for the sole purpose of protecting the highway budget. However, the resolve makes it clear that any money recovered against the state will come from the general fund and not the highway fund.

In addition, you should know that the Department of Transportation did not appear in opposition to the resolve at the public hearing before the Committee on Legal Affairs. The only opponent to the bill was a representative from the Governor's Office, who announced to the committee that the Governor opposed all legislative resolves waiving sovereign immunity on a philosophical basis. In fact, no one presented the committee with any reason why the state should not be held responsible for Kenneth Hodgdon's death.

Concern has also been expressed that this resolve will open the floodgates for frivolous lawsuits against the Department of Transportation or the State. This resolve does nothing of the kind. It is limited to this very unique case. In addition, the resolve has a limit of \$300,000 in damages which may be recovered against the state. This is the same limit that appears in the Maine Tort Claims Act, as well as the limit which may be recovered against the Town of Dresden in this case. This resolve merely places the state on the same footing as the Town of Dresden.

Finally, I would like to commend the Committee on Legal Affairs for the careful review which it gave this resolve. The committee formed a subcommittee of four members who took time from their busy schedules to go to the site of the accident to determine just how dangerous this intersection was. After their visit, those members reported to the committee that



indeed the facts were as I have given them to you, and that this resolve should be given a favorable report. After a work session attended by an attorney from the Department of Transportation, the committee voted unanimously that L. D. 614 Ought to Pass. I hope you will support the committee and vote in favor of L. D. 614.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, I have only one minor disagreement with the factual situation presented by the Senator from Lincoln. The Bill, very clearly says, the intersection is the junction of highways whose design posed a serious danger, and so on. It's the design posing the danger. That is the real crux of this action. The Legislature, if it passes this Bill, is going to be saying to the jury, this design posed the danger that caused the accident.

I've never seen, in the seven years I've been here, a resolve that so clearly prejudiced the case to the jury. It makes findings that are way beyond the authority of this Legislature. This Legislature is not a jury. It is not a court. Four of its members went to look at the place. A completely one-sided presentation. You didn't have the benefit of witnesses and cross examination at all.

When this Legislature decides to be a court, and to say that certain facts are so, it is trespassing on the role of the Judicial Department of our government. I have to criticize this particular Resolve, basically, in its construction, as well as in the theory that it tries to develop.

There's a sympathetic argument in saying, well the government didn't respond to our request. That, I submit to you, is a political problem. If the citizens aren't getting what they want, they need to elect different selectmen and legislators and governors and the people that have the power to change those things.

In my city, there are at least five intersections that are poorly designed. We'd like to cure every one of them. The cost of curing every one of those intersections is tremendous. We can't do it all at once. A lot of those design problems have been there for 50 to 100 years. We're just one by one, catching up with them and changing them over.

So, we're really asking that the judgment of governmental people, some of them elected, some of them appointed, some of them employees, be placed on the line, and that the State and its taxpayers become the insurers of all the problems that may happen on our highways.

I submit to you once more, that this is a terribly dangerous precedent. I wish very much that I could be helping the people concerned rather than opposing their position. There are other ways to help people who are in trouble. This is not the way to open this doctrine of governmental immunity to this type of suit.

I hope you will vote No.

The PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator SEWALL: Thank you, Mr. President. Members of the Senate, if there are such grave concerns with this Bill, and it isn't the case of allowing Mrs. Hodgdon to sue the State for failure to repair, but rather for highway design, I think it would be fine if we had an amendment to this Bill to make it say exactly what it is. If it's poorly written, I am certainly amenable to rewriting the Bill.

I just wish that some of these people with all these facts and figures had showed up at the hearing, or spoken with the committee about this, so that we could write it so that it came out properly. It's always a surprise to hear all these arguments when we get to this point in the legislation. I would hope perhaps we could repair it.

The PRESIDENT: The Chair recognizes the

Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, and Ladies and Gentlemen of the Senate, the reason the Legal Affairs Committee reported this Bill out Ought to Pass is, we felt the Highway Department was quite negligent in their not making repairs to that road in Dresden.

The only thing that we got from the Executive Department concerning this Bill was, we had a person come before the committee and say: "You have a number of bills coming to your committee this year. We're making a general blanket statement that the State is not very well off financially, so therefore, we don't think these bills should pass." Now that's not a very big reason to not pass a bill, because the State can't afford to be sued, regardless of the merits of the bill.

As far as the Highway Department, they didn't even bother to show up at the hearing. We had another resolve, \$3 million, they didn't even bother to show up at that hearing. I guess it saves time and it's a lot easier for them to give their information to different people around the Senate Chamber here and have them defend it on the floor. Maybe that does save a lot of time. I think it might not save time in debate here, but it might save them a little effort.

I think if they do have information, from now on, that the committee ought to have, they ought to be at the public hearing and present it, and not wait until, say, we'll come in at a work session, and sneak around the backdoor and come in and we have another public hearing all over again.

We did have a committee go down and look at this road, as we stated. They felt it was very dangerous. If the good Senator from Knox, Senator Collins, doesn't think the committee should make any judgment in these things, I think we are acting and we have to act something like a grand jury in these cases. How can you make a judgment if you only hear one side of the case, or the facts on one side of a resolve coming into the Legislature?

As far as the payment, I think the payment should come out of the Highway Department, not the General Fund.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the Passage of L. D. 614 to be Engrossed, please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

12 Senators having voted in the affirmative, and 15 Senators having voted in the negative, L. D. 614 Failed of Passage to be Engrossed.

Sent down for concurrence.

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

Bill, "An Act to Regulate Interest Rates on Life Insurance Policy Loans." (S. P. 153) (L. D. 361)

Tabled—March 31, 1981 by Senator Collins of Knox

Pending—Passage to be Engrossed

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 move that this Bill and all its accompanying papers be Indefinitely Postponed and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator DEVOE: Thank you, Mr. President. I regard this as an anti-consumer bill. Item number one, it is greatly going to increase the borrowing cost to future life insurance policy owners that are held long enough to accumulate a cash value.

Usually, I think, in the business community, lending interest rates have some relation to the risk that a lender takes when he loans money to a debtor. We have a unique situation here. The

only other similar kind of situation is when you borrow money from a bank and you use money that is in a savings account of yours as collateral, which the bank already has. I know I've done that, and I'm sure a lot of the rest of us have done that. We find that the usual rate of interest charged by a savings bank is about 2 percent over what the going rate of interest is at the time that they're paying on passbook savings.

This Bill calls for a rate of interest, that if it were in effect today, would go from about 7.5 percent to about 14 percent, because that's what the current rate of interest of the Moody's Bond Index happens to be.

I understand that about 24 states have this bill, which is part of a model law, and which is being heavily lobbied by the life insurance industry, in fact, I understand they've hired two extra lobbyists to work this particular Bill, in addition to somebody who is representing a large Maine-based insurance company. I acknowledge that as their right and privilege.

I would like to have somebody address this Bill and tell me how they are going to explain to future policy owners, five or ten years down the road, who suddenly realize that their policy is one of these variable rate of interest policies that will let them borrow on their cash value, but they'll have to pay whatever the Moody's Bond Index happens to be at that time. I'm interested in what the explanation is going to be to a policy owner.

It will be mentioned that companies will still be able to offer policies that will have an 8 percent rate of interest guaranteed in it. That looks like there's a perfect option there for the customer to decide on.

Just keep in mind that a company can, by administrative rules and regulations, do things that will inhibit agents from selling policies that have an 8 percent guaranteed rate of interest. One example is, that they might decide it would be more appropriate to have a lower commission, if an agent sold a policy with an 8 percent rate of interest guaranteed in it. They might also say that these policies don't qualify for the contest which we're sponsoring which will be a free trip to Puerto Rico, or Bermuda, or Hawaii, or someplace for life insurance conventions. These are usually sales incentives, and I'm sure that they spur individual life insurance agents on to sell the products which their company is offering. I think that's something you should keep in mind. It may be more of an illusory option than a real option.

I ask you, place yourself in the shoes of a life insurance agent. You have these two kinds of policies. You know that the company pays a smaller commission if you sell a policy with just an 8 percent rate of interest guaranteed in it for borrowing. You know they pay a lower rate of interest. You may have to sell twice as many of those policies to qualify for your free trip to Puerto Rico, or Bermuda, or Hawaii. I ask you, which policy are you more likely going to be pushing?

Human nature being what it is, probably it is more likely to assume that your life insurance agents are going to be pushing the variable rate of interest, because they get a bigger commission, and they get a better chance at winning one of these sales incentives. These are some of the concerns that I have about the Bill. Thank you, Mr. President.

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

Senator SUTTON: Mr. President, Men and Women of the Senate, it seems that the good Senator, giant killer, from Penobscot, is at it again.

I would start out by reminding the Senate that this is a unanimous committee report. I guess that this is the day to put the Chairmen of Committee, especially if they have had unanimous reports and worked their committees and fulfilled all their obligations to have to defend them all against the whims of someone



who takes a quick look at a situation and decides that it is not in the interest of his constituents. I guess that that is what the process is all about, so I will just as briefly as possible tell you where we are coming from.

This was a unanimous report. We listened to hours of testimony on this. We had hours in work sessions on this. I see a few quizzical looks on why I said that this was a unanimous report. The Committee decided unanimously that we would endorse the variable rate interest policy. The only difference in the two committee reports is whether we use the Moody Index as our standard or two points less than the Moody Index as our standard.

The good Senator from Penobscot, Senator Devoe, said that this is an anti-consumer bill. Well, that has to be in the eyes of the beholder, because I am here to tell you that this is a pro-consumer bill, from the word go. The problems that we have had with the rapidly changing interest market has brought to the attention those people who have big insurance policies with big cash value, it was brought to their attention that their at a 4 to 8 percent loan value on their policy, that they could take it from the insurance company and reinvest it at higher rates. It is true and it is being done and being done on a large scale.

The small policyholders are not doing this. Maine is full of small policyholders. The average policy in Maine is someplace between 6 and 9 thousand dollars. They are not doing this.

The loan value of insurance policies, by a lot of us has always been thought to be a place of last resort for money. We have banks of all sorts that are used under normal loaning conditions. The insurance borrowing has always been thought of as a policy of last resort. Those of us who buy insurance for protection would do most anything before we would borrow against our insurance policy.

So what has happened is that all of the people with the big policies with the big cash values are borrowing at the low rates and reinvesting at the high rates. The result with the insurance company is it is definitely affecting their cost of insurance and the dividends on insurance. So they have asked to have the opportunity of putting on a variable rate.

As the Senator said, it is optional, they will also offer fixed rates, as well as variable rates. I do not think that the insurance agent who is going to have to make his livelihood is not going to do what he thinks is best for his client and/or what he can do best at, and again I think that you have to decide yourself whether you think that insurance companies are going to put so much pressure on the insurance agent that he is not going to respond properly.

What is going to happen to our consumers in the State of Maine, is that either their dividends are going to go down or the price of their policies are going to go up.

This will not effect anyone with existing policies, only future policies.

So I would not belabor this any longer, I could go into a lot more detail and would be very happy to, under the Moody's just last few months when the insurance went up to 21 percent, at that time, had an insurance policy holder had a variable rate he could have borrowed at about 12 percent. That is the prime rate that the hugest insurance company would be, the return that they would be getting on their investment. That is why the Moody's was picked. It is a readily obtainable figure, it is still a premium if a fellow needs to borrow. I would certainly urge you to kill this motion to Indefinitely Postpone this Bill, and accept the unanimous report from our committee, which is to allow variable rates, and to do it based on the Moody Index. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: I request a Roll Call.

The PRESIDENT: 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, one-fifth having arisen a Roll Call is ordered.

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Mr. President, Members of the Senate, I would add a very brief postscript to the remarks of the very good gentleman from Oxford, Senator Sutton, who responded to the challenge from the good gentleman from Penobscot, Senator Devoe.

There is a need to defeat the motion to Indefinitely Postpone this measure, because the law currently pertaining to Life Insurance Policy Loans which is contained in Title 24A, M.R.S.A. subsection 2510 needs some clarification. Policy loans may clearly be made at any fixed rate of interest currently. Policy loan provisions establishing the maximum loan interest rate while reserving the right to loan money at a lower fixed rate of interest have also been deemed to be in compliance, currently, with Section 2510 by an opinion of the Attorney General.

Loan provisions of this type are currently very common in policies. It is the opinion of the Committee on Business Legislation that there is also a strong legal argument that variable interest rate loans, that is, loans in which the interest rate may vary after the making of the loan, are also permitted under the present Maine Statute.

This argument or slight need for clarification rests on the proposition that if you state that a loan interest rate will vary and state how it will vary, that you have a specified rate of interest. Although this is obviously arguable either way, there is an ambiguity in the present statute which leads the Committee on Business Legislation to further endorse that which is contained in LD 361, as amended, by Committee Amendment "B".

I would hope that we would all join in defeating the pending motion.

The PRESIDENT: The pending motion before the Senate is the motion by the Senator from Penobscot, Senator Devoe, that LD 361 and all of its accompanying papers, be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Devoe, Perkins.

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

A Roll Call was had.

2 Senators having voted in the affirmative and 30 Senators in the negative, with No Senators being absent, the motion to Indefinitely Postpone L. D. 361 does not prevail.

The Bill was Passed to be Engrossed, as amended.

Sent down for concurrence.

The President laid before the Senate the fourth Tabled and specially assigned matter: Bill, "An Act Changing the Name of the Department of Manpower Affairs and Clarifying the Term of its Commissioner." (H. P. 291) (L. D. 335)

Tabled—March 31, 1981 by Senator Pierce of Kennebec.

Pending—Consideration.

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

Senator AULT: Mr. President and Members of the Senate, this is the Bill that would change the Department of Manpower Affairs to the Department of Labor and Industry, and also made the term of the commissioner coterminous with the Governor.

The House, as I told you the other day, amended it in the other Body, amended it and took out "and Industry" and made it the Department of Labor. The problem that we had was that there already existed a Bureau of Labor. So I propose to amend the House Amendment to correct the error.

Mr. President, I move that we Recede from the action whereby the Bill was Indefinitely Postponed.

On motion by the Senator from Kennebec, Senator Ault, the Senate voted to Recede from its action whereby it Indefinitely Postponed L. D. 335.

On motion by Senator Ault of Kennebec, the Senate Accepted the Majority Ought to Pass Report of the Committee. The Bill Read Once. House Amendment "A" (H-139) was Read.

The PRESIDENT: The Senator has the floor.

Senator AULT: I now present Senate Amendment "A" to House Amendment "A" and move its adoption.

The PRESIDENT: The Senator from Kennebec, Senator Ault, now offers Senate Amendment "A" to House Amendment "A" and moves its adoption.

Senate Amendment "A" (S-86) Read and Adopted. House Amendment "A", as amended, by Senate Amendment "A" Adopted, in non-concurrence.

On motion by Senator Ault of Kennebec, Under Suspension of the Rules, the Bills, as amended, Read a Second Time. The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

The PRESIDENT: The Chair laid before the Senate Bill, "An Act to Establish a Kennebec River Future Commission" (H. P. 1141) (L. D. 1285), Tabled earlier in today's session, by Senator Collins of Knox, pending Consideration.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. Mr. President, I move the Senate Adhere.

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

Senator AULT: Mr. President, this Bill came out of committee unanimous Ought to Pass. I was one that supported it. We debated it at great length the other day. I'm not sure I want to move to Adhere, so I'd like to make a few comments.

We debated it at great length the other day. It was sent down to the other Body in non-concurrence. It was amended down there, to take out the word "land". At the same time, the amendment, also, took off the appropriation, and took out any compensations of members of the commission. It left in the acceptance of funds from any agency in the United States, private foundation, etc., etc.

I'd like to pose a question to any strong proponent of the legislation. Who's going to disburse any money that is accepted and where's it going to go?

The PRESIDENT: The Senator from Kennebec, Senator Ault, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: I'm not sure that I can answer the question in total, but I would assume, and I always hate to use that word, I would assume that the commission members would then disburse the money. I'm not sure that that's a legal thing or not. I would just assume that.

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

Senator TROTZKY: Mr. President, I move the Senate Recede and Concur with the House.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, moves that the Senate Recede and Concur with the House.

The Chair will order a Division.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. It is with some trepidation that I rise a second time today, but I will be very brief in my comments. I would just remind the Senators that if this Bill passes, what was taken off by the last amendment can easily go back on in the next Session or two years from now. Not only might we end up with making recommendations about the river flowage, but the land, maybe even the air quality.

I just ask any proponent who wants to speak on this matter, is stripping off the Fiscal Note candid and straightforward, or not?

The first Fiscal Note was \$15,000, then they cut that by two-thirds to \$5,000, then they cut it out altogether. It makes you wonder if some private foundation isn't already standing in the wings, waiting to give their money.

I would ask a proponent whether or not the staff of the State Planning Office, as it presently is structured, is equipped with personnel and money to give prompt executive assistance to this, over thirty member, Kennebec River Commission?

Finally, I'd pose the question, which perhaps may be answered by the Senator from Penobscot when he rises to speak on this matter, why can't a Kennebec River Conservation Association be incorporated as a private, non-corporate organization? That could qualify under the Internal Revenue Code to receive funds from a corporation, or from a foundation. Why can't that voluntary group do the same thing that we're now called upon to pass to put into the statutes? Thank you very much, Mr. President.

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

Senator TROTZKY: Mr. President, Members of the Senate, this is a good Bill, but there appears to be a conspiracy against this Bill. The Senator from Somerset, Senator Redmond, was concerned about possibly un-American activities arising from this Bill. The Senator from Penobscot, Senator Devoe, complained about the Bill. The Bill went down to the House of Representatives. They took out the word "land".

Really, this is a public awareness bill. It's a bill where communities up and down the Penobscot River can get together through representatives to this Commission to look at competing uses for the Kennebec River.

The PRESIDENT: The Senator was referring to the Penobscot. The Chair just wanted to make sure that we were in the right watershed.

Senator TROTZKY: I'm sorry. There have been statements made that this Bill would institute regulations, it institutes no regulations. There were statements made that industrial developers would have to submit to the Commission, it doesn't say that in the Bill.

We tend to take for granted the water resources that we have in the State of Maine. We look around the country and see what's happening with the droughts that are occurring. We just take for granted what we have here in Maine, especially the major river systems such as the Kennebec, Penobscot, and Androscoggin.

This Bill was initiated by a legislator from along the Kennebec River corridor. I feel that, with competing uses such as hydroelectric development, there's a great deal of pressure for hydroelectric development. There are also fisheries that are concerned.

I think it's a good Bill. All the arguments that

are made against it, I don't really feel are valid to the Bill, if one reads the Bill.

It was a unanimous report by the Committee on State Government.

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

Senator AULT: Mr. President, and Members of the Senate, I do agree with Senator Trotzky, and I did in the first place when we supported this legislation, because the Kennebec was cleaned up early and I wanted to plan for its future. I certainly have problems, when they take the appropriation off and they're not going to reimburse nor compensate the members, do you really think any members are going to voluntarily serve?

I'd like to pose another question, if I could, to anyone on the Appropriations Committee, and ask, did the State Planning Office ask for any more money this year, or are they able to serve the Commission as the legislation asks them to do so?

The PRESIDENT: The Senator from Kennebec has posed a question through the Chair.

The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, in answer to the Senator's question, the appropriation requested by the Planning Office was in the normal inflationary spiral and there were no monies included, or additional monies, for expansion of that office.

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

Senator GILL: Mr. President, I think, in response to whether people that would be asked to serve on this Commission, would serve on it without any compensation. I think everyone in this Body serves, in some capacity, in some group, because they have a real interest in it. They don't get compensation for it.

I think that the Kennebec River has been cleaned up. The committee heard much testimony on this. It was all unanimously in favor of this Commission, from a planning point-of-view, because there are so many different types of things that are going on on the river now.

It's just an order to get a group of people together who are representative of all areas of the river, up and down, to sit down and be aware of what is contemplated for planning, and to just kind of pull it all together.

I think people would serve voluntarily. I don't think that they need compensation right now. It was indicated that there was a chance that later on they may be, after they're organized, they may go after some funding of some sort, through some private areas. If they find, indeed, that they do need personnel to staff this, I think that they can use that funding where they can develop it outside, in the private sector.

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

Senator AULT: Mr. President, Members of the Senate, I don't want to Adhere, and I don't want to Recede and Concur. I hope that you will defeat the motion to Recede and Concur, and then I shall move to Insist and Ask for a Committee of Conference.

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

Senator BUSTIN: Mr. President, and Members of the Senate, I just want to answer the Senator from Kennebec's question, Senator Ault, on if there are any people who are willing to serve without compensation. I have had at least one who says to me, categorically, "I want to serve, and I do not need compensation."

The PRESIDENT: Is the Senate ready for the question?

The Senator recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Mr. President, I request when the vote is taken, that it's taken by the yeas and nays.

The PRESIDENT: 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 the motion by the Senator from Penobscot, Senator Trotzky, that the Senate Recede and Concur with the House.

A Yes vote will be in favor of Receding and Concurring.

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, Conley, Dutremble, Gill, Kerry, Najarian, Pray, Trafton, Trotzky, Violette, Wood.

NAY—Ault, Collins, Devoe, Emerson, Huber, McBrearty, Minkowsky, O'Leary, Perkins, Pierce, Redmond, Shute, Sutton, Teague, Usher, The President, J. Sewall.

ABSENT—Hichens, Sewall, C.

A Roll Call was had.

15 Senators having voted in the affirmative and 16 Senators in the negative, with 2 Senators being absent, the motion to Recede and Concur does not prevail.

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

Senator AULT: I move we Insist and Ask for a Committee of Conference.

The PRESIDENT: The Senator from Kennebec, Senator Ault, moves that the Senate Insist and Ask for a Committee of Conference with the House.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Kennebec, Senator Ault.

Senator AULT: I request a Roll Call.

The PRESIDENT: 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 the motion by the Senator from Kennebec, Senator Ault, that the Senate Insist and Request a Committee of Conference with the House.

A Yes vote will be in favor of Insisting.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA—Ault, Brown, Carpenter, Charette, Clark, Conley, Dutremble, Gill, Huber, Kerry, Najarian, O'Leary, Pierce, Pray, Sewall, C.; Sutton, Trafton, Trotzky, Violette, Wood.

NAY—Bustin, Collins, Devoe, Emerson, McBrearty, Minkowsky, Perkins, Redmond, Shute, Teague, Usher.

ABSENT—Hichens.

Senator Devoe of Penobscot was granted unanimous permission to change his vote from Nay to Yea.

A Roll Call was had.

21 Senators having voted in the affirmative and 10 Senators in the negative, with 1 Senator being absent, the motion to Insist and Request a Committee of Conference with the House does prevail.

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

#### Enactor

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

**Emergency**

AN ACT to Provide a One-time Property Tax Exemption for Disabled Veterans, World War I Veterans and Persons Claiming from World War I Veterans. (Emergency) (H. P. 1289) (L. D. 1483)

This being an emergency measure and having received the affirmative votes of 30 Members of the Senate, with No Senators voting in the negative, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

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

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On motion by Senator Pierce of Kennebec, Adjourned until 10 o'clock tomorrow morning.