

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 7, 1981
Senate called to order by the President.

Prayer by the Reverend Harry C. Snyder of the First Baptist Church in Waterville.

REVEREND SNYDER: Let us pray. Almighty God, our Father, we thank Thee for the gift of sleep for renewed energy, and for the birth of a new day filled with the light of Thy Son. We thank Thee for making the heavens, the earth, and all who dwell therein, and for seeing that Thy creation was good. We thank Thee for the State of Maine, for her rugged seacoast, majestic mountains, graceful fields, her lakes and ponds, and rivers and streams, and for her people. We thank Thee for the opportunities, privileges, and responsibilities of these State Senators. We thank Thee for the openness and sensitivity of Senators to send questionnaires to their constituencies to discern their will on issues.

May each Senator, this morning, send by prayer a questionnaire also to Thee, to discern Thy will on the same issues. May each heart and mind be open to the answer to this prayer, by the fresh blowing of Thy spirit.

While we are citizens of Maine, we are called to be citizens of the colony of heaven, in Maine. While each of us is elected a Senator, each is adopted as a son or daughter of Thine. May Thy kingdom come, may Thy will be done in the Senate Hall in Augusta, Maine, as it is in heaven. Through Him who humbled himself, and became obedient unto death, and was raised to newness of life, that by faith in Him, we might have life and life more abundantly. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

**Papers From The House
Non-concurrent Matter**

Bill, "An Act Further Amending the Planning and Zoning Statute." (S. P. 183) (L. D. 461)
In the Senate, April 3, 1981, Passed to be Engrossed as amended by Senate Amendment "A" (S-94).

Comes from the House, Bill and Papers Indefinitely Postponed, in non-concurrence.

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

Senator COLLINS: I move the Senate Insist.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate Insist. Is this the pleasure of the Senate?

The motion prevailed.

Non-concurrent Matter

Bill, "An Act Concerning the Use of Force to Protect Property." (H. P. 143) (L. D. 169)

In the Senate, April 2, 1981, Majority Ought Not to Pass Report Read and Accepted, in non-concurrence.

Comes from the House, Passed to be Engrossed as amended by Committee Amendment "A" (H-145) as amended by House Amendment "B" (H-174) Thereto, in non-concurrence.

The PRESIDENT: 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 Senator from Penobscot, Senator Devoe, now moves that the Senate Adhere.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: I move the Senate Recede and Concur with the House.

The PRESIDENT: The Senator from York,

Senator Hichens, moves that the Senate Recede and Concur with the House.

The Chair will order a Division.

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: 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 Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate, as the Bill came back from the House, the House Amendment "B" seems to me, has toned the Bill down to a great degree. I don't see any reason now not to support this legislation. As you read the amendment, it pertains to Class B and C crimes. This should make the Bill a lot more palatable to everybody in here.

We've heard a lot of talk in here about shooting some kid stealing a pumpkin and that stuff. As I would understand this amendment now, that wouldn't be the case. This would pertain to burglary in the night time, and aggravated criminal mischief, and crimes that would have a value of over \$1000.

I would urge the Senate to support the Bill now.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, I have a lot of respect for my good friend, the good Senator from Waldo, Senator Shute, but I, for one, don't think that this Bill is a bit better. I think it's a lot worse than it was when it was in here the other day.

I would say the merit of this Bill now kind of depends on the price of pumpkins. If the price of pumpkins ever goes up high enough, or if somebody happens to have a particularly valuable pumpkin that some kid, or myself, or somebody happens to be running away with, they could be shot.

In all seriousness, what they have done with this Bill now, I'm very disappointed in the amendment, because they put a price tag on somebody's life. I asked the question in here the other day, as to what piece of property in your garage was valuable enough that you kill somebody over it. I never got an answer to that question. Maybe the backers of this amendment are trying to answer me, in a way, in saying that they have property that's in their garage that's worth a human life. I don't think it is.

I think that the Portland Press, last Friday, maybe outlined the parameters of this Bill very adequately when they published, on the front page, the story of our debate in here about this Bill, as well as the story of the young man, who I heard this morning, was charged with aggravated criminal mischief in Portland who was shot by the homeowner. The story pointed out that the homeowner was perfectly within his rights.

I woke up this morning to WPOR radio, to the voice of one of my beloved colleagues in the other Chamber. If I could have bottled the energy that he was expending, discussing this particular issue, we could have solved the energy crisis as well as the deadly force problem.

If we would spend that kind of energy, explaining to our people back home what their rights are now, we wouldn't need this kind of bad legislation. That's exactly what this is, and you all know it.

I looked at this Bill last week. It was bad then, because it would allow, at that point, you

to kill somebody, to kill somebody. I wish we'd put those words in the statute, rather than talking about the deadly force. That's what this is all about.

Now the Bill says you've got to be stealing something. Picture, if you will, especially after last week with the wife of the gentleman in Portland said it was purely a reflex action. Picture, if you will, as the burglar is going down the road, carrying whatever under his arm, and the homeowner draws a bead on him. He's got to decide who's going to make the appraisal. Maybe I think it's worth \$900, maybe I think it's worth \$1100, but the thief only thinks it's worth \$900.

Now come on, this isn't good legislation. We're admitting that the Judicial System isn't working. Everyone in this Chamber that spoke on this Bill last week, on either side, admitted that the judicial system, and behind the judicial system, the political system, is not working. This is the worst way I can think of to try to solve it. It's Wyatt Earp legislation. It's bad legislation. If we really believe, and I agree with you wholeheartedly, that the system is not working well, then let's do something about it, but let's not do this.

I would urge you to vote "no" on the pending motion. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The pending question before the Senate is the motion by the Senator from York, Senator Hichens, that the Senate Recede and Concur with the House.

A Yes vote will be in favor of the motion to Recede and Concur.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Ault, Dutremble, Hichens, Minkowsky, Perkins, Shute, Teague.

NAY — Brown, Bustin, Carpenter, Charette, Clark, Collins, Conley, Devoe, Emerson, Gill, Huber, Kerry, McBreairey, Najarian, O'Leary, Pierce, Pray, Redmond, Sewall, C.; Sutton, Trafton, Trotzky, Usher, Violette, Wood.

ABSENT — None.

A Roll Call was had.

7 Senators having voted in the affirmative and 25 Senators in the negative, with No Senators being absent, the motion to Recede and Concur does not prevail.

Is it the pleasure of the Senate to Adhere?

It is a vote.

(Off Record Remarks)

Non-concurrent 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)

In the Senate, April 1, 1981, Failed of Passage to be Engrossed.

Comes from the House, Passed to be engrossed, in non-concurrence.

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

Senator COLLINS: I move the Senate Adhere.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate Adhere.

The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator SEWALL: Mr. President, I move the Senate Recede and Concur. When the vote is taken, I request 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 Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, I think we thoroughly debated this the other day, it concerns a suit against the State, with a theory of recovery that is above and beyond the Tort Claims Act.

I hope very much that you will Adhere to the former position and vote "No" on the motion to Recede and Concur.

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

Senator SEWALL: Mr. President, Members of the Senate, I was concerned when I thought that maybe we were setting a legal precedent, by voting for this Bill. Senator Collins has argued that this legislation will serve as a precedent for others suing the State as a result of highway accidents. How does this Resolve, which does not amend our public laws, and which is limited to the specific facts of this case, provide any legal precedent for anyone other than Mrs. Hodgdon to sue the State of Maine?

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

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate, just to briefly go over this, this is one of those few instances where the Committee on Legal Affairs has reported out a resolve, this type of resolve, unanimous Ought to Pass. This is the first of these this year that the Committee has reported out unanimous Ought to Pass. All the others have been given Leave to Withdraw, Ought Not to Pass, or in one instance, only two members voted the bill out of committee.

The mechanism exists. This is not something new, it's not something that's circumventing the law. This mechanism exists. It's clearly in the statutes, it's not amending the law. It's not a change in the law. This is, the Committee felt that there was reason enough here, that there are extenuating circumstances to allow this case to go to court. For that reason, and that reason alone, we put aside the funding of the Highway Department, all the other problems that have been brought up here, which are irrelevant to this matter. The fact is that this procedure exists. The Committee felt, after reviewing this matter, on innumerable occasions, that the opportunity ought to be granted for this case to go to the court. That is all.

I would hope that you would vote against the motion of the Senator from Knox, Senator Collins. Thank you.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Lincoln, Senator Sewall, that the Senate Recede and Concur.

A Yes vote will be in favor of the motion to Recede and Concur.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Ault, Charette, Clark, Dutremble, Gill, Kerry, McBreaity, Najarian, Perkins, Pierce, Sewall, C.; Shute, Sutton, Usher, Violette.

NAY — Brown, Bustin, Carpenter, Collins, Conley, Devoe, Emerson, Hichens, Huber, Minkowsky, O'Leary, Pray, Teague, Trafton, Trotzky, Wood.

ABSENT — Redmond.

A Roll Call was had.

15 Senators having voted in the affirmative and 16 Senators in the negative, with 1 Senator being absent, the motion to Recede and Concur does not prevail.

Is it the pleasure of the Senate to Adhere?

It is a vote.

Joint Orders

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation report out a bill to the House to amend the tax law

providing a one-time property tax exemption for disabled veterans, World War I veterans and persons claiming from World War I veterans. (H. P. 1321)

Comes from the House, Read and Passed.

Which was Read and Passed, in concurrence.

Expressions of Legislative Sentiment recognizing:

The Town of Stockholm, on the centennial celebration of that town's founding to be held July 4-12, 1981. (H. P. 1317)

Mark Hansen, from Sanford High School, 1981 State Class A Wrestling Champ in the 132-pound class, coached by Richard Faulkner. (H. P. 1320)

Comes from the House, Read and Passed.

Which were Read and Passed, in concurrence.

Joint Resolution

A Joint Resolution in Memoriam: Where the Legislature has learned with deep regret of the death of Robert L. Taylor of Canton, first selectman of the town for seven terms. (H. P. 1318)

Comes from the House, Read and Adopted.

Which was Read and Adopted, in concurrence.

House Paper

Bill, "An Act to Prohibit the Importing of Certain Species of Live Fish and to Establish Penalties for such Importation." (H. P. 1310) (L. D. 1518)

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.

Communication

Capitol Planning Commission

To Governor Joseph E. Brennan and Members of the One Hundred and Tenth Legislature:

Dear Governor and Legislators:

I am happy to transmit this report to you from the Capitol Planning Commission as required every two years under Title 5, Sections 297-307 M.R.S.A. There are nine of us who serve without compensation on the Commission. We serve because we believe in the need to improve and maintain our attractive Capitol Complex in Augusta, an area encompassing approximately 160 acres around the State House. Two of us live in the Complex, three in the Augusta area and four must travel distances to attend our meetings from other parts of the State.

We need your help to carry out a program aimed at making the State Capitol Complex a historic, cultural and attractively landscaped area as well as an efficient center for state governance and administration.

During the past six years, older homes have been converted into businesses along Sewall Street for example. Some of these changes have been good and some not. This trend will continue in this area and in other parts of the Complex.

Without a plan, we cannot hope to give guidance to future growth in the Complex. Without technical assistance we cannot develop an appropriate liaison with state leaders, residents of the Complex and Augusta City officials. We also cannot update and administer our Rules and Regulations that are used to guide development in the Complex.

The short report that follows sets forth the various legislative mandates the Capitol Planning Commission must follow, the goals it has set and its requests to the State Legislature. We ask for your support. An Appendix contains a list of public and private development in the Complex since 1976.

Thank you.

Respectfully submitted
/S/ANNE McI. GARDINER
Chairperson

Which was Read and with accompanying Report, Ordered Placed on File.

Orders

Expressions of Legislative Sentiment recognizing:

The Brunswick Naval Air Station, recipient of the Secretary of the Navy's Environmental Protection Award for environmental safeguards against oil spills, groundwater pollution and noise pollution. (S. P. 554) presented by Senator CLARK of Cumberland (Cosponsors: Representative MARTIN of Brunswick and Representative LIVESAY of Brunswick).

William Slupski of Brunswick, a sixth-grader from St. John's School, who won his school's competition in the 33rd annual Maine Sunday Telegram spelling bee. (S. P. 555) presented by Senator CLARK of Cumberland (Cosponsors: Representative MARTIN of Brunswick and Representative LIVESAY of Brunswick).

Which were Read and Passed.

Sent down for concurrence.

Committee Reports House

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

Bill, "An Act Concerning Pregnancy Testing of Livestock by Artificial Breeders." (H. P. 242) (L. D. 276) (Representative McCOLLISTER of Canton — Abstained).

Bill, "An Act to Establish the Maine Family Protection Act." (H. P. 806) (L. D. 966)

Bill, "An Act to Modify the Contingent Account Requirement for Counties." (H. P. 853) (L. D. 1016)

Bill, "An Act to Establish Uniform Salaries for all Sheriffs." (H. P. 670) (L. D. 774)

Bill, "An Act to Improve Integrity of the Voting Process in Town Meetings and Elections." (H. P. 470) (L. D. 521)

Bill, "An Act to Reallocate Certain Seed Lobster Fund Moneys to Specific Research and Development Programs, as Directed by the Lobster Advisory Council." (H. P. 289) (L. D. 325) (Representative CONNERS of Franklin — Abstained).

Bill, "An Act Concerning the Taking of Marine Worms in Clam Flats." (H. P. 768) (L. D. 904)

Bill, "An Act to Assure that Navigation Channels are Kept Free of Fishing Traps." (H. P. 984) (L. D. 1172)

Bill, "An Act to Limit the Use of Wooden Pot Buoys in the Coastal Waters of Maine." (H. P. 288) (L. D. 324)

Bill, "An Act Concerning the Reporting of Welfare Fraud." (H. P. 960) (L. D. 1151)

Bill, "An Act to Increase the Penalties for Drug Trafficking." (H. P. 914) (L. D. 1080)

Bill, "An Act to Prohibit Welfare Fraud." (H. P. 913) (L. D. 1079)

Bill, "An Act to Provide a Mandatory Fine for Illegal Possession of or Attempt to Purchase Intoxicating Liquor." (H. P. 874) (L. D. 1043)

Bill, "An Act Concerning Motor Vehicles Used in Crimes." (H. P. 819) (L. D. 973)

Bill, "An Act Relating to Limited Access to Adoption Records." (H. P. 797) (L. D. 951)

Leave to Withdraw

The Committee on Agriculture on, Bill, "An Act to Further Free Enterprise." (H. P. 592) (L. D. 670)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Agriculture on, Bill, "An Act to Prohibit Certain Uses of Herbicide." (H. P. 972) (L. D. 1160)

Reported that the same be granted Leave to

Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Business Legislation on, Bill, "An Act to Require that Insurance Coverage for Outpatient Community Mental Health Services be Provided in Group Health Care Policies and Contracts." (H. P. 790) (L. D. 944)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Education on, Bill, "An Act to Create an Interscholastic Athletic Board." (H. P. 549) (L. D. 625)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Health and Institutional Services on, Bill, "An Act to Amend the Hospital Inspection Law." (H. P. 492) (L. D. 544)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act Concerning Appellate Review of Certain Criminal Sentences." (H. P. 961) (L. D. 1152)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Labor on, Bill, "An Act to Allow a 30-Day Deductible Provision in Workers' Compensation Insurance Coverage." (H. P. 564) (L. D. 640)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Local and County Government on, Bill, "An Act to Exempt Certain Services Provided Counties from Bid Requirements." (H. P. 752) (L. D. 889)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Marine Resources on, Bill, "An Act to Increase Funding of the Maine Lobster Advisory Council." (H. P. 111) (L. D. 144)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

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

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on State Government on, Bill, "An Act Concerning Registers of Eligibility for Positions under the State Classified Service." (H. P. 610) (L. D. 687)

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 Exempt State and Federal Retirement Pensions from State Income Tax on the First \$10,000." (H. P. 930) (L. D. 1101)

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 Provide a Tax Credit for the Purchase and Use of Studded Snow Tires." (H. P. 1137) (L. D. 1354)

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 Provide Deductions under the State Individual Income Tax for Necessities." (H. P. 1159) (L. D. 1380)

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.

The Committee on State Government on, Bill, "An Act to Provide for an Increase in Legislators' Salaries." (H. P. 952) (L. D. 1128)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read.

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

Senator AULT: Mr. President, Members of the Senate, this Bill proposed to double legislative salaries. We granted the sponsor Leave to Withdraw. I'd just like to point out to you that there is a more attractive bill still in State Government Committee that has had a public hearing, that in essence, does give legislators a pay increase and it proposes to shorten the session from 100 days to 80 days and from 50 days to 40 days.

I now move Acceptance of the Leave to Withdraw Report on this Bill.

The PRESIDENT: The Senator from Kennebec, Senator Ault, now moves that the Senate Accept the Leave to Withdraw Report of the Committee on LD 1128.

Is this the pleasure of the Senate?

It is a vote.

Ought to Pass — As Amended

The Committee on Energy and Natural Resources on, Bill, "An Act to Include Energy and Economic Considerations in Assessing Proposals before the Land Use Regulation Commission, the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife and to Provide for Energy and Economic Review of Certain State Standards." (H. P. 596) (L. D. 673)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-166).

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

The Committee on Labor on, Bill, "An Act to Implement Certain Cost Savings while the State's Unemployment Compensation Fund Remains in Debt." (H. P. 845) (L. D. 1011)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-169).

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

The Committee on Public Utilities on, 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)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-168).

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

The Committee on Agriculture on, Bill, "An Act to Exempt Guide Dogs from Registration Fee Requirements During the Raising Period

in Foster Homes." (H. P. 266) (L. D. 329)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-163).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" (H-173). Thereto.

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

Senate

Ought to Pass — As Amended

Senator TEAGUE for the Committee on Aging, Retirement and Veterans on, Bill, "An Act to Clarify the Application of Military Service Credits to Retirement Benefits for Employees of Local Districts under the Maine State Retirement System." (S. P. 274) (L. D. 783)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-99).

Senator HUBER for the Committee on Appropriations and Financial Affairs on, Bill, "An Act to Appropriate Funds for the Expenses of the Capital Planning Commission." (S. P. 293) (L. D. 819)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-103).

Senator BUSTIN for the Committee on Health and Institutional Services on, Bill, "An Act Relating to the Costs of Transporting Persons to Hospitals for the Mentally Ill." (S. P. 310) (L. D. 866)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-102).

Which Reports were Read and Accepted and the Bills Read Once. Committee Amendments "A" were Read and Adopted and the Bills, as amended, Tomorrow Assigned for Second Reading.

Senator AULT for the Committee on Local and County Government on, Bill, "An Act to Permit the City of Bangor to Increase the Number of Members on the Bangor School Commission." (S. P. 366) (L. D. 1085)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-101).

Which Report was Read.

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

Senator CONLEY: Mr. President, I would like to pose a question through the Chair, if I may, to any member of the Local and County Government or even possibly members of the State Government Committees, I would question as to whether or not this Legislation does not subvert the intent of the Home-rule Legislation, and if not, this should be taken care of by the citizens of Bangor?

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

The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, not being an attorney, but having the assistance of an attorney to draw this amendment, we felt that there was no conflict. If there is, why I am sure that the good Senator from Cumberland, we would be happy to have him table it and we will make any corrections that he feels is necessary.

On motion by Senator Conley of Cumberland, Tabled for 1 Legislative Day, pending Accep-

tance of the Committee Report.

Second Readers

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

House

Bill, "An Act Relating to Furloughs for Inmates of County Jails." (H. P. 872) (L. D. 1041)

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

Sent down for concurrence.

House — As Amended

Bill, "An Act to Permit the Town of Orono to Withdraw from the Group Life Insurance Plan under the Maine State Retirement System." (Emergency) (H. P. 540) (L. D. 618)

Bill, "An Act to Establish a Maine Guarantee Authority Reserve Fund." (Emergency) (H. P. 944) (L. D. 1120)

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

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

Senate

Bill, "An Act Concerning Cases which may be Heard in the District Court for the Division of Western Arrostook." (S. P. 380) (L. D. 1138)

Bill, "An Act Concerning the Election Days in which Courts must Close." (S. P. 381) (L. D. 1139)

Bill, "An Act to Amend the Workers' Compensation Laws to Facilitate Ridesharing." (S. P. 286) (L. D. 812)

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

Sent down for concurrence.

Bill, "An Act to Repeal the Prohibition Against Transfer of Birth Control Prescriptions between Pharmacies." (S. P. 391) (L. D. 1149)

Which was Read a Second Time.

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

Senator MINKOWSKY: Mr. President, Members of the Senate, in reading over this brief Bill two things come to mind, and I think should be clarified by the members of the Health and Institutional Services Committee.

We realize the problems that are materializing today with the birth control prescriptions insofar as cancer being one of the major causes of some of these particular ailments, I think is a safe word to use, but I think basically we should try to evaluate and analyze exactly why we should transfer these refillable prescriptions between drug stores. I have asked several questions about this this morning and I have not had no constructive answer given forth.

Secondly, it falls in the same area as depressants, or stimulants. If these particular drugs at the present time, require only one pharmacy to address that prescription, why does the oral contraceptive drugs placed in that particular same category? I think that if we can clarify those 2 particular issues, I would be much more satisfied, to know exactly if this is in the interest of the people of the State of Maine.

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

Senator GILL: Mr. President, to answer Senator Minkowsky's question, I was not personally around when it was placed in that category. It doesn't belong in that category. This is a category whereby physicians will write one prescription, and usually it is for one time, for a depressant or for a stimulant, usually those are not prescriptions that can be renewed, unless a new prescription is written.

The Birth Control Pill, the prescriptions does not allow at this point for anyone to go to another pharmacy, say it happened to be in another town, to say I would like my prescription filled. They can not call over the phone like they can many other prescriptions and have a prescrip-

tion refilled. You have to go back to your original pharmacy to have that done.

There does not seem to be a need, there does not seem to be the abuse that people thought was necessary. At one point they felt they wanted to put it into this category. Through the years it has proven it has not been an abusive situation and I doubt if they are using it, and you should be able to transfer between drug stores.

Which was Passed to be Engrossed.

Sent down for concurrence.

Senate — As Amended

Bill, "An Act to Abolish the Position of County Treasurer in Penobscot County and Replace it with a Full Time Finance Officer." (S. P. 43) (L. D. 44)

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 Provisions Concerning Waiver of an Employee's Rights under the Occupational Disease Law. (H. P. 566) (L. D. 642)

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

An Act to Remove Certain Time Restrictions Exempting Tax on Sales, Storage or Use of Certain Food Products for Human Consumption. (S. P. 105) (L. D. 235)

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

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

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

Senator DEVOE: Thank you, Mr. President. Mr. President and Members of the Senate, first of all I would like to move that this Bill be Indefinitely Postponed, and I would like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator DEVOE: Thank you, Mr. President. Members of the Senate, last week I think that all of us received a 2 page letter from the Maine Association of Registers of Probate and for those of you who are fortunate enough to have retained your copy, and still have it on your desks, I would like to ask you to review once again the material that is in that letter.

The letter lists seven basic reasons why this is not a good Bill. I think one of the problems that existed at the time that the Probate Code was passed, was a misapprehension on the part of many people that probate all of a sudden was going to be turned into a do it yourself type of thing, where all you had to do is fill the blanks a la Norman Dacey's books on probate. People were going to be able to go in and represent themselves.

Unfortunately, probate is not a simple matter even with the new code having been passed. If this Bill should pass, you really have to call the registers office, the Probate Law Office, because this is just a foot in the door for legal advice to be called upon to be given by the register of probate.

Now the amendment very nicely covers informal applications for Allowance of Will, which is the beginning step in an Estate. It also covers Sworn Statements, which is the final proceeding in an estate. What the Bill fails to address is, the myriad of different things that a personal representative has to do in the handling of an estate, once he/she has been appointed. This Bill does not address that.

It is really an illusion if any of you are voting for this Bill, thinking that probate and handling of estates is going to be easier because a person

can go in and get some help from the register and get appointed as personal representative, your badly mistaken.

There are a number of different things that a personal representative has to do once he is appointed personal representative. For example, you have to make an application for an employer identification number to the Internal Revenue Service, so that you will be able to file an Income Tax Return for the estate. How many lay people know that? Maybe some registers of probate know it, but they are not going to be called upon to give that advice. The personal representative has to begin to take steps to marshal the assets of the estate. The personal representative has to make sure that notice is given to creditors of his appointment. The personal representative has a certain time period in which he must act in order to take action on claims that may be filed against an estate.

Once this Bill were to pass you are going to have a situation where personal representatives come back in at every step of the estate proceeding and say to the register, well, you helped me get appointed, so therefore, you have got to help me now. I submit to you, members of this Senate, that that is going to be the normal human tendency, of people who were given assistance at the outset of an estate proceeding, they are going to continue to expect this assistance step, after step, after step of the way.

Next year there may be a request, if this Bill were to pass, that the register of probate given advice in filling out of Inheritance Tax Returns.

This is a serious matter, this is just the first step of imposing unwanted duties on the part of the registers of probate.

I would like to quote a portion of paragraph 4 of the letter that you got. "This proposed Bill definitely appears to be contrary to the ethical standards of our present legal system. Judges are not allowed to work on behalf of the proponents of a given case, if in turn, they will be exercising their judicial authority on that particular case. Similarly the registers do not want and should not have the authority to aid in the drafting of documents on which they will be making certain determinations at a future time.

Men and Women of the Senate, I urge you not to set a dangerous precedent under this case and please vote for the motion to Indefinitely Postpone this Bill. Thank you, Mr. President.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Kerry.

Senator KERRY: Yes, Mr. President, Ladies and Gentlemen of the Senate, in all due respect to the good Senator from Penobscot, and I do share some of the concerns that he has indicated to you, and has been deliberated very thoroughly during the judiciary hearing and work session on this Bill.

I think that most of the concerns that were brought up, and they are well founded in many cases and they are hypotheses or probabilities that could happen. I do think that often times we could play upon the concerns of the citizenry that are not informed as to what their rights are with regards to this proceeding.

I think that it has been quite clear from the proponents of this Legislation that this deals primarily with information that would be provided on a voluntary basis and as the good Senator from Cumberland, pointed out in the last debate on this issue that most of the information is basically straight forward, of a very simple nature, but yet it can be somewhat confusing for an individual.

Secondly, I do not believe that this is in any way, shape or manner, practicing law. Several people from the other Body have indicated to us, who supported this Bill in the Judiciary Committee that many of the concerns, the Liability Insurance, and some of the concerns relating to the problem of people practicing law

or setting a dangerous precedent for future activity is not well founded.

I would say that this is merely a provision of a first step of having the members of our government providing to the citizenry easy access to information that would only assist them in providing the services much needed by these people. Thank you.

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

Senator CONLEY: Mr. President and Members of the Senate, I spoke to the Senate Chairman the other day about this Bill after we debated it, and I implied that it certainly is not going to be the biggest fish that we are going to fry during this session.

Certainly I do not think that we should get carried away with ourselves, in a sense, to think that we are going to get bum legal advice from the people working in the probate offices.

First of all, if you read the Bill, the Bill is solely and strictly enabling legislation. It states that if you want some type of assistance, you may ask the register to assist you in filling out simple forms, such as if you want to have your name changed. I am sure that most of us are familiar with many of the situations that one must have to go through when they go through the probate court. All it says is, that the register of probate, may assist you, if they do not want to assist you, they do not have to. It is as simple as that.

Why should you and I and John Doe out on the street have to be compelled, require legal services, and go to a heavy expenditure to fill out some form, as I clearly stated here on the floor the other day, I showed around, if you might have a problem.

Certainly the register helps attorneys, there is no question about that. Why shouldn't they be able to assist the ordinary lay person who may be seeking just a little advice so that they do not have to go through some legal firm and have to pay an exorbitant cost.

That is all that this legislation is, extremely, enabling legislation very very simple, nothing more to it than that. I would be the last one to support legislation if I thought that it was going to create a very serious problem for our citizens in the State. It is enabling legislation, allows you to obtain assistance from the register of probate, if they so desire to help you. Only if they wish to help you, nothing more and nothing less.

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

Senator COLLINS: Mr. President, the previous speaker, the Senator from Cumberland, Senator Conley, has undoubtedly been in the probate courts of our State many hundred times, as I have. I am sure that he knows a great deal about papers and the legal issues that are involved, on all of these occasions.

I am speaking at the moment not for lawyers, because I know that that would be futile, we are a very unpopular minority and I know that the Legislature would lose no opportunity to shoot us down.

I think that someone who knows something about this someone who knows something about it, ought to at least relate what this really amounts to. If you go to a doctor's office, and there is a nurse, and a secretary-bookkeeper, and a doctor available, you come in with a bandage to be changed, perhaps, and a wound to be looked at, and you are satisfied with the services of the secretary to do that, then you have a comparable situation with what we are asking our registers of probate to do here. If you had the services of the nurse, at least, you would have a person who was trained to some degree in medicine who could perhaps could make some judgment as to whether the wound was healing properly or whether it ought to have ointment X or Y applied for the next stage in the healing process.

The thing that our good friend from Cumberland overlooks is that a register of probate has

to run for reelection. If a register develops the reputation that he/she will not help people, then along will come someone who says, Well I'll help you, I'll see that you get all your papers done for free. It is very simple. The person who is offering the Santa Claus service will be the one who gets elected, next time.

The pressure that goes with running for public office, will pretty much force registers of probate to do the best that they can helping people to fill out papers.

In my county I have worked through the years with probably, at least, 30 registers of probate, in several counties of the State, by and large they have been very capable people, very devoted to their work, most of them have had a high school education, at the top a few have had business school and 1 or 2 college. By and large they are people who have come up through the ranks with legal services work in law offices and then gone into the public sector as register of probate.

The register of probate in my county is an intelligent person about average in perception and in devotion to her duties, and she writes me this letter, that I want to read a couple of portions from. It says, "I would like to express my strong opposition to the above captioned Bill. If this Bill is passed the probate court would be put into the position of practicing law. I also feel that it is unfair to put this responsibility on the various members of the court. May it be noted that the personnel of the probate court are not lawyers and as a whole do not study the law. We handle the paper work as it comes to us, but to prepare it is another matter.

If an error should occur, it concerns me, that we could be sued or worse. With all of the problems of learning the new Uniform Probate Code, it doesn't seem logical to require us to do work for which we may not have the education and background."

I hope that you will seriously consider the points in this letter, because there is great concern in all of the counties regarding this change.

I have a similar letter from a judge of probate, explaining that the financial exposure to court personnel because of some alleged assistance creates substantial legal questions. The work load will be enormously increased and the various county governments are hard pressed now to meet their obligations.

This is a popular sort of thing I recognize, it reminds me a bit of the Small Claims Court, but with a very great difference. The people can fill out their own forms and take them into the probate court, there is no prohibition about that. They can fill out their own forms, but when we say to the secretaries, the clerks, the registers, people and be assured that it will not only be the register that gets badgered for service, that they shall help people fill out various forms. We are putting another clerical load upon our personnel and they are really not qualified to do it. I think it would be a grave mistake.

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

Senator CONLEY: Mr. President, about the only thing that I could agree with this morning with the remarks made by the good Senator from Knox, Senator Collins, is that the Senator from Cumberland doesn't know a great deal about the probate courts, and no I have not been in the probate courts, but I'll tell you this Legislation was drafted by a Probate Judge who submitted it to the Legislature by a member of the other body. I do not know anything about the probate system, but I certainly think that I can rely upon the expertise of a Judge of Probate, and I would just suggest that if you look at the amendment, which is the Bill, which says, and what we are primarily concerned with, it says, "a register may aid in drafting applications, in informal proceedings petitions, or other sworn statements relating to the closing of the decedents estate which have

not been contested prior to closing, application of change of name, and petition for guardians for minors.

No register nor any employee of the probate court, may charge fees or accept anything of value for assisting in the drafting of any documents that are to be used or filed in the court, of which he is register or an employee."

Now I am not surprised that the two learned attorneys of this Chamber, they very skillfully made this Bill, very simple enabling bill, a Supreme Court Case. If there was a consumer bill to fly through these Chambers in the last 2 sessions, this is a consumer bill. It will allow anyone just to ask a register of probate to assist them in filing one of the forms that I have made mention to. Nothing more or less.

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

Senator DEVOE: Mr. President, I have a couple of questions for the Senator from Cumberland, or anyone else who intends to support this Bill. Can they tell us what is the liability of the register if inaccurate advice is given?

Secondly, I would appreciate it if the Senator from Cumberland, or any other one in this Chamber, who intends to vote for this Bill, could look at the provisions of Title 4, section 807, which is captioned "Persons not admitted, forbidden to practice law, unless duly admitted to the bar of this State, no person shall practice law or any branch thereof, or hold himself out to practice law or any branch thereof, within the State, or before any court therein. This law is on the books today. This amendment, the original Bill, which I understand the husband of the sponsor of the Bill prepared, either didn't know of this provision in the statutes, or chose to ignore it. I prefer to believe the second possibility is what happened. They chose to ignore it, hoping maybe that nobody would bring it up. It's a legitimate point.

Would any supporter of this Bill address squarely the issue of what does the consumer do, if he or she should happen to get inaccurate advice from a register of probate? Would they propose that that person had the right to sue the register of probate for inaccurate advice? If the Senator from Knox, or the Senator from Penobscot, gives inaccurate legal advice, we can be sued for it. We carry malpractice insurance. Virtually every attorney in the State carries malpractice insurance for just such an eventuality.

If this is going to be one of the ace consumer bills of this Session, as the Senator from Cumberland, has implied, then maybe we ought to put a sentence in the Bill that the register of probate may not be sued for inaccurate advice. At least that tells the register that he or she doesn't have to worry.

I've been in several registries of probate around the State. By and large, I find that the registers are extremely capable and extremely helpful people. The quality of the registers of probate is not always even. In fact, I'm advised that they have had an occasional problem or two in the Cumberland Registry of Probate, from time to time in past years, where the register was fighting with the judge, or the register was fighting with the deputy register.

I wish, Mr. President, that somebody would address these two questions, of whether they would propose to repeal portions of Title 4, Section 807 concerning unauthorized practice of law, point number one. Point number two, if you're going to have an ace consumer bill, then be right up front about it, and tell people whether they will or will not have the right to sue a register of probate in the event that a mistake is inadvertently made, in giving advice.

Don't let the supporters of this Bill kid you, Members of the Senate, that this is a simple innocuous little Bill. It isn't. We're talking about the passage of title to real estate. We're talking about accurate treatment of assets which a person has accumulated over a lifetime. We're talking about the rights of adopted children.

We're talking about the rights of natural born children.

One of the members of this Body sent me a note a few minutes ago and said this is something like a do-it-yourself appendectomy. I don't mean to be facetious, but we are talking about the transfer of title of life savings, to widows, to minor children, to adult children, to adopted children. We are talking about compliance with Maine Inheritance Tax Laws, Federal Estate Tax Laws. We are talking about payments to creditors. We are talking about priorities. The issues are extremely important in this Bill. Would somebody please answer these two questions about the liability of registers, and about Title 4, Section 807? Thank you, Mr. President.

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

Senator CONLEY: Mr. President, I can only attempt to respond to the very able gentleman from the City of Bangor, the good Senator Devoe, with respect to the liability insurance. First of all, because most of the proceedings with which this Bill deals with are informal, they are not final in any judicial sense. Any person who does not like what happens in an informal proceeding can start a formal proceeding and have the entire matter done again. Because the registers are authorized to advise primarily on these informal matters, there is very little likelihood that any one would be damaged by inaccurate advice. If there are no damages, there is no need for liability insurance.

I would also call the attention of the Senate, I can not respond to the second question asked by the good Senator from Penobscot. If you'll read also the first section of the Bill, it clearly states that, "except as otherwise provided in this section, a register may not draft or aid in drafting any documents or paper which he is, by law, required to record in full or in part, under the penalty of not more than \$100, to be recovered by any complaint in a civil action for his benefit, or by indictment, for the benefit of the county."

I only state that I can not believe after the hearing that we had on this Bill, to see the force that is being mounted to defeat this Bill in its last stages. I thought collective bargaining yesterday was a big issue. I thought there was a lot of, perhaps, philosophical differences with respect to that Bill. This Bill is enabling legislation simply and clearly, enabling legislation, nothing more, nothing less, than the filling out of forms.

The good Senator from Penobscot, has praised the registers across the State for being knowledgeable assisting. Assisting whom? Attorneys? Why can't they assist a lay person to fill out one of these forms that we're talking about, and not be the same responsible individual? Why is it all of a sudden we raise a cloud of liability, and law suits? This is the biggest cloud that's being passed over this Senate today, and I advise the Members of this Body to shrink from that. It is simply enabling legislation, and as I have stated over, and over, and over again.

Let's remember, I am not well-trained as an attorney, or the hours that they've gone through in the years of practicing to become an attorney, but I do have one thing and that's common sense. That's what this Bill is.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Kennebec, Senator Ault.

Senator AULT: I'd like to pose a question to Senator Conley or anyone else that may want to answer. Is this something we really should be debating in this Body, or because of what the Senate did do yesterday, with the Collective Bargaining Bill, is it something that rather should be subjected to collective bargaining?

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Mr. President, 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 Penobscot, Senator Devoe, that L. D. 476 be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement of L. D. 476.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Collins, Devoe, Emerson, Gill, Hichens, McBreairey, Minkowsky, Perkins, Sewall, C.; Shute, Sutton, Trotzky.

NAY — Ault, Brown, Bustin, Carpenter, Charette, Clark, Conley, Dutremble, Huber, Kerry, Najarian, O'Leary, Pierce, Pray, Redmond, Teague, Trafton, Usher, Violette, Wood.

ABSENT — None.

A Roll Call was had.

12 Senators having voted in the affirmative and 20 Senators in the negative, with no Senators being absent, the motion to Indefinitely Postpone does not prevail.

Which was Passed to be Enacted, 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 Election Laws — Bill, "An Act Relating to Political Fundraising by State Employees." (S. P. 258) (L. D. 740) MAJORITY REPORT OUGHT TO PASS; MINORITY REPORT OUGHT NOT TO PASS.

Tabled — April 3, 1981 by Senator Collins of Knox.

Pending — Acceptance of Either Report.

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:

Bill, "An Act Relating to the Maine Comprehensive Land Use Guidance Plan." (S. P. 262) (L. D. 744)

Tabled—April 7, 1981 by Senator COLLINS of Knox.

Pending—Motion of Senator TROTZKY of Penobscot to Indefinitely Postpone Bill and Papers.

On motion by Senator COLLINS of Knox, Retabled for 1 Legislative Day.

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