

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

**OF THE**

***One Hundred and Tenth  
Legislature***

**OF THE**

**STATE OF MAINE**

***Volume II***

**FIRST REGULAR SESSION**

**MAY 4, 1981 to JUNE 19, 1981**

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

May 7, 1981

Senate called to order by the President.

Prayer by the Reverend Richard E. Wrentzel of the East Auburn Baptist Church.

REVEREND WRENTZEL: Let us pray. O'God, I thank You so much for the privilege that we can begin this Legislative Session by acknowledging our dependence upon You. We realize that without You we can accomplish absolutely nothing. We thank You that You are interested in the affairs of man, for You have established government, and You have instructed us to pray for those in authority over us.

Therefore, O'God, I pray for each Senator in this Chamber this morning. We pray, O'God, that they may sense Your presence. We pray, Lord, that You would grant to them wisdom, and showing them that which is right, and then giving them the courage to stand for that which is right, regardless of the cost. We pray, Lord, that we may realize that we're not only responsible to our fellow men, but that someday we must stand in Your presence and give an account for the deeds done in the body, whether they be good or bad.

We thank You so much this morning for Your love for us, in sending into this world your only begotten Son, the Lord Jesus Christ, who shed his blood upon the cross, that we might be forgiven of sin, by placing our faith and trust in You.

So, God, again, we commit unto You these Senators today. We pray again, that they will sense Your presence during this Session, and will give You the praise for it is in the name of our blessed Lord and Savior, Jesus Christ, that we pray. Amen.

Reading of the Journal of yesterday.

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

Bill, "An Act Providing Collective Bargaining Rights to Legislative Employees." (H.P. 323) (L.D. 384)

In the Senate, May 1, 1981, Passed to be Engrossed as amended by Committee Amendment "B" (H-252), in non-concurrence.

Comes from the House, Passed to be Engrossed as amended by House Amendment "A" (H-303), 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 York, Senator Dutremble.

Senator DUTREMBLE: I move we Recede and Concur, and request a Roll Call, please.

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

A Roll Call has been requested.

On motion by Senator Collins of Knox, Tabled until later in today's session, pending the motion of the Senator from York, Senator Dutremble.

**Order**

An Expression of Legislative Sentiment recognizing:

those senior high school students, who are recipients of the DAR Good Citizenship Award, selected by faculty and fellow seniors, for excellence in leadership, service, dependability and patriotism. (S.P. 593)

presented by Senator PIERCE of Kennebec (Cosponsors: Senator AULT of Kennebec, Senator GILL of Cumberland and Senator TEAGUE of Somerset).

Which was Read and Passed.  
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 to Pay School Subsidies on a Sliding Percentage Scale." (H.P. 654) (L.D. 757)

**Leave to Withdraw**

The Committee on Election Laws on, Bill, "An Act Concerning Registration and Enrollment of Voters." (H.P. 657) (L.D. 760)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Transportation on, Bill, "An Act Concerning Registration of Motorcycles which are Returned to the Seller because of Defect." (H.P. 441) (L.D. 488)

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.

**(Off Record Remarks)**

**Ought to Pass**

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Androscoggin County for the Year 1981. (Emergency) (H.P. 1358) (L.D. 1540)

Reported pursuant to Joint Order (H.P. 264) that the same Ought to Pass.

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

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

**Ought to Pass in New Draft**

The Committee on Agriculture on, Bill, "An Act Relating to Frozen Dessert Products." (H.P. 588) (L.D. 666)

Reported that the same Ought to Pass, in New Draft, under Same Title. (H.P. 1427) (L.D. 1578)

Comes from the House, the Bill in New Draft Passed to be Engrossed.

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

**Divided Report**

The Majority of the Committee on Labor on, Bill, "An Act to Permit Persons 15 Years of Age and Older to Work Until 10 P.M." (H.P. 877) (L.D. 1046)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-286).

Signed:

Sensors:

SEWALL of Lincoln

SUTTON of Oxford

DUTREMBLE of York

Representatives:

BEAULIEU of Portland

LEWIS of Auburn

TUTTLE of Sanford

FOSTER of Ellsworth

MARTIN of Brunswick

HAYDEN of Durham

LAVERRIERE of Biddeford

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representatives:

McHENRY of Madawaska

BAKER of Portland  
Comes from the House, Passed to be Engrossed as amended by House Amendment "A" (H-288).

Which Reports were Read.

The Majority Ought to Pass, as amended, Report of the Committee Accepted, in concurrence. The Bill Read Once. Committee Amendment "A" Read and Adopted, in non-concurrence. House Amendment "A" Read and Adopted, in concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

**Divided Report**

The Majority of the Committee on Health and Institutional Services on, Bill, "An Act Creating the Maine Clean Indoor Air Act." (H.P. 347) (L.D. 395)

Reported that the same Ought to Pass, as amended, by Committee Amendment "A" (H-297).

Signed:

Sensors:

GILL of Cumberland

BUSTIN of Kennebec

HICHENS of York

Representatives:

PRESCOTT of Hampden

BRODEUR of Auburn

BOYCE of Auburn

KETOVER of Portland

RICHARD of Madison

HOLLOWAY of Edgecomb

RANDALL of East Machias

MacBRIDE of Presque Isle

MANNING of Portland

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representative:

McCOLLISTER of Canton

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" (H-297).

Which Reports were Read.

The Majority Ought to Pass Report of the Committee Accepted, in concurrence, and the Bill Read Once. Committee Amendment "A" Read and Adopted, in concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

**Senate**

**Leave to Withdraw**

Senator DEVOE for the Committee on Judiciary on, Bill, "An Act to Provide Equal Access to Justice for Small Business." (S.P. 467) (L.D. 1323)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

**Divided Report**

The Majority of the Committee on Labor on, Bill, "An Act to Further Exempt Certain Benevolent Organizations from the Employment Security Law." (S.P. 253) (L.D. 722)

Reported that the same Ought to Pass.

Signed:

Sensors:

SEWALL of Lincoln

SUTTON of Oxford

DUTREMBLE of York

Representatives:

BEAULIEU of Portland

MARTIN of Brunswick

TUTTLE of Sanford

BAKER of Portland

McHENRY of Madawaska

HAYDEN of Durham

LAVERRIERE of Biddeford

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

**Representatives:**

LEWIS of Auburn  
FOSTER of Ellsworth

Which Reports were Read.

The Majority Ought to Pass Report of the Committee Accepted, and the Bill Read Once and Tomorrow Assigned for Second Reading.

**Divided Report**

The Majority of the Committee on Judiciary on, Bill, "An Act to Include the Term "Sexual or Affectional Orientation" in the Maine Human Rights Act." (S.P. 331) (L.D. 961)

Reported that the same Ought Not to Pass.

Signed:

Senator:

DEVOE of Penobscot

Representatives:

REEVES of Newport  
DRINKWATER of Belfast  
O'ROURKE of Camden  
JOYCE of Portland  
LIVESAY of Brunswick  
CARRIER of Westbrook

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

Signed:

Sensors:

CONLEY of Cumberland  
KERRY of York

Representatives:

BENOIT of South Portland  
LUND of Augusta  
HOBBINS of Saco  
SOULE of Westport

Which Reports were Read.

On motion by Senator Collins of Knox, Tabled for 1 Legislative Day, pending Acceptance of Either Committee Report.

**Divided Report**

The Majority of the Committee on Judiciary on, Bill, "An Act to Curtail the Practice of Plea Bargaining." (S. P. 515) (L. D. 1437)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

DEVOE of Penobscot  
KERRY of York

Representatives:

HOBBINS of Saco  
REEVES of Newport  
DRINKWATER of Belfast  
SOULE of Westport  
LIVESAY of Brunswick  
BENOIT of South Portland  
LUND of Augusta  
O'ROURKE of Camden

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

Signed:

Senator:

CONLEY of Cumberland

Representatives:

CARRIER of Westbrook  
JOYCE of Portland

Which Reports were Read.

On motion by Senator Collins of Knox, Tabled until later in today's session, pending Acceptance of Either Committee Report.

**Second Readers**

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

**House**

Bill, "An Act to Authorize the Refunding or Crediting of Fuel Taxes Paid on Worthless Accounts."

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

**House — As Amended**

Bill, "An Act to Amend the Provisions for Election as Voter Member of a County Charter Commission." (H. P. 767) (L. D. 903)

Bill, "An Act to Provide for the Termination

of Cable Television Permits Issued Prior to July 1, 1965 without Fixed Termination Dates." (H. P. 236) (L. D. 250)

Bill, "An Act to Assist Homeowners in Peak Power Conservation." (H.P. 1131) (L.D. 1348)

Bill, "An Act to Establish Restrictive Covenants for Property Affected by Hazardous Waste." (H.P. 976) (L.D. 1164)

Bill, "An Act to Provide Free Fishing Licenses to Mentally Retarded and Chronically Mentally Ill Persons." (H.P. 840) (L.D. 1006)

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

Bill, "An Act Concerning Appointed Chief Administrative Officers of Local Districts under the Maine State Retirement Laws." (H.P. 418) (L.D. 465)

Which was Read a Second Time.

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

Senator PIERCE: Mr. President, I present Senate Amendment "A" under filing number S-178 and move its adoption.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, offers Senate Amendment "A" to LD 465 and moves its adoption.

Senate Amendment "A" (S-178) Read and Adopted.

The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

**Senate — As Amended**

Bill, "An Act to Require that Industry Wide Taxes be Levied only after Referendum Approval of the Persons who would be Required to Pay the Tax." (S.P. 397) (L.D. 1190)

Bill, "An Act to Provide for Identifying Natural, Nonimitation Food Products Sold in the State." (S. P. 485) (L. D. 1387)

Bill, "An Act to Increase the Compensation Paid to Judges and Justices." (S.P. 382) (L.D. 1140)

Bill, "An Act Withdrawing School Administrative District No. 62 from Participation in Vocational Region No. 10." (S.P. 259) (L.D. 741)

Bill, "An Act to Ensure that the Provision for the Arbitration of Classification and Allocation Determinations in State Employee Collective Bargaining Agreements in not Inconsistent with the Personnel Law." (S.P. 402) (L.D. 1194)

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

Sent down for concurrence.

Bill, "An Act to Provide Loans for Family Farms." (S.P. 470) (L.D. 1326)

Which was Read a Second Time.

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

Senator PIERCE: I present Senate Amendment "A" under filing number S-179 and move its adoption.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, offers Senate Amendment "A" to LD 1326 and moves its adoption.

Senate Amendment "A" (S-179) Read.

On motion by Senator Conley of Cumberland, Tabled until later in today's session, pending Adoption of Senate Amendment "A".

**Enactors**

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

AN ACT Relating to Burial Expenses for Veterans. (H.P. 1104) (L.D. 1309)

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Enactment.

AN ACT to Raise Survivors' Benefits in the Maine State Retirement System. (S.P. 464) (L.D. 1320)

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

Senator HUBER: Mr. President, I move that LD 1320 be placed on the Special Appropriations Table.

The PRESIDENT: The Senator from Cumberland, Senator Huber, now moves that LD 1320 be placed on the Special Appropriations Table, pending Enactment.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Somerset, Senator Teague.

Senator TEAGUE: I don't believe that LD 1320, An Act to Raise Survivors' Benefits in the Maine State Retirement System, belongs on the Special Appropriations Table. There is no money involved on this.

The PRESIDENT: The Chair would advise the Senator that his debate is out of order. The motion to Table is not debatable.

On motion by Senator Huber of Cumberland, placed on the Special appropriations Table, pending Enactment.

AN ACT to Amend the Spruce Budworm Suppression Laws. (H.P. 1334) (L.D. 1530)

AN ACT to Clarify that the Contract Bar Rule does not Apply to Unit Clarification Proceedings under the State Employee Labor Relations Act. (H.P. 1253) (L.D. 1477)

AN ACT to Clarify the Duties of the Register of Deeds. (H.P. 766) (L.D. 936)

AN ACT to Require that Services Performed by Chiropractors be Offered as Optional Coverage under all Group Health Insurance Policies and Group Health Care Contracts. (S.P. 329) (L.D. 959)

AN ACT to Increase the Minimum Base Salary for Executive, Administrative or Professional Employees. (H.P. 430) (L.D. 477)

AN ACT to Increase the Number of Signatures Required to Initiate Rule-making Proceedings under the Maine Administrative Procedure Act. (S.P. 522) (L.D. 1452)

AN ACT to Establish an Agricultural Exemption from Workers' Compensation for Certain Wood Lot Operations. (H.P. 937) (L.D. 1107)

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 Amend the Maine Consumer Credit Code to Increase the Availability of First Mortgage Residential Loan Funds. (H.P. 719) (L.D. 851)

This being an emergency measure and having received the affirmative votes of 31 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.

On motion by Senator Collins of Knox, the Senate voted to take from the Table:

Bill, "An Act Providing Collective Bargaining Rights to Legislative Employees. (H. P. 323) (L. D. 384), Tabled earlier in today's session by the Senator from Knox, Senator Collins, pending the motion by the Senator from York, Senator Dutremble, that the Senate Recede and Concur with the House.

The PRESIDENT: 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, this Bill pertaining to Collective Bargaining for Legislative Employees has been amended in the other Body. The motion to Recede and Concur would Adopt an amendment which waters

down the coverage of the original Bill to a point where it is almost insignificant. According to the note on the amendment, it would relate to what we might call seasonal employees.

I think we're all aware that, in our Legislative System, that many of our seasonal employees are short-term employees, or part-time employees, are selected, partly at least on a partisan basis. Through the years we have worked out accommodations of how this should be done. People are interested in these jobs because of their nature. I submit that there has been no problem that really requires collective bargaining.

I would also submit that, under the separation of Powers Doctrine of the Constitution, that we would need much more than this Bill would provide, if we were actually to set up collective bargaining for such a small group of people. We would need separate grievance, and appeal tribunals from those that now exist in the Executive Department of the government.

So, I think we would be creating a great ado, a great expense, a great deal of a mechanism without a real need for it. I hope you will vote against the motion to Recede and Concur, and that we can then get about killing the bill.

The PRESIDENT: Is the Senate ready for the question?

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

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

A No vote will be opposed.

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

#### ROLL CALL

YEA — Bustin, Carpenter, Charette, Clark, Conley, Dutremble, Kerry, Minkowsky, Najarian, O'Leary, Pray, Trafton, Usher, Violette, Wood.

NAY — Ault, Brown, Collins, Devoe, Emerson, Gill, Hichens, Huber, McBairty, Perkins, Pierce, Redmond, Sewall, C.; Shute, Sutton, Teague, Trotzky.

ABSENT — None.

A Roll Call was had.

15 Senators having voted in the affirmative and 17 Senators in the negative, with No Senators being absent, the motion to Recede and Concur does not prevail.

Is it now the pleasure of the Senate to Adhere?

It is a vote.

Senator Hichens of York was granted unanimous consent to address the Senate, On the Record.

Senator HICHENS: Thank you, Mr. President.

May is the month of birthdays where the Senate is concerned.

With many senators and staff celebrating I have learned.

Yesterday we honored one, as you all here well know.

And today we send best wishes to one in the same row.

This young man joined our number for the first time this year.

Coming from the other branch, where he did good thing we hear.

His name is not a strange one in Legislative halls.

For his father served a few years back and answered the roll call.

On many vital issues and went from here to be a

A Superior Court Judge up in the county.

And we know that from his father many things this lad has learned.

For to watch his voting record we see many bills he's spurned.

While others he has spoken for in voice quite firm and clear.

He gives no mistaken attitude or just why he

is here.

On the Legal Affairs Committee and state government.

He voices his opinions, does not try to circumvent.

The issues, but stands for the things that he feels are the best.

For those county folk he represents — and faces every test.

With resolute attention — this lad is going far.

Along the path of politics in the footsteps of his pa.

He's the baby of the Senate — and behind the ears still wet.

So let's wish a Happy Birthday to Senator Violette.

#### Orders of the Day

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

Bill, "An Act Relating to the Used Car Information Act." (H. P. 718) (L. D. 850)

Tabled—May 5, 1981 by Senator COLLINS of Knox.

Pending—Enactment.

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 Gerald Pelletier to Bring Civil Action Against the State of Maine. (H. P. 286) (L. D. 333)

Tabled—May 5, 1981 by Senator COLLINS of Knox.

Pending—Final Passage.

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

Senator COLLINS: Mr. President, I ask for a Roll Call on this item. I hope that the Senate will think carefully and vote No on the Enactment.

I'm not going to repeat the arguments that we've heard, but I want to come back to one point. This is not a partisan issue. I'm speaking as the Senator from Knox. I'm speaking out of my experience in my profession, and out of the experience of this Legislature in drafting the Tort Claims Act of the State of Maine.

I think all of us, if we are asked, in any neutral forum, whether we believe in equality, equal opportunity, equal justice for every Maine citizen, I think we'll say yes automatically. Then, we come to the question of whether we shall treat one applicant for permission to sue differently than another. We go to the facts situation to see whether we can discriminate one case from the other justify a no answer one time and a yes answer another time.

We remember a case that arose in Lincoln County. A year before the event, there had been a complaint that something ought to be remedied. It hadn't been done. This case comes out of Aroostook County. There had been a complaint a year before that something in the highway ought to be remedied, and it wasn't done.

In each case, there is an accident, with severe injury. There's a great deal of sympathy for the people that are concerned. In one case, we voted no. I submit that in this case, we have to vote no, as well.

Again, I point out that our immunity laws apply not only to the State, but to all of its subdivisions. Suppose that next summer, in the Town of Van Buren, there is a sign that is erroneous. People are badly injured. There are three requests for suits for \$3.5 million each, against the Town of Van Buren. We are asked to waive sovereign immunity for the Town of Van Buren. How are we going to vote? How is the Senator that comes from that town going to vote? When he sees the exposure for which his town has no insurance, where the money would have to come out of the taxpayers of his town. He looks at the principle involved, how can he find a distinction to justify his conscience? If

he votes yes today, must he not vote yes in that case?

Last week, in debate, the Senator from Aroostook, Senator Violette, said this is not an amendment of the Tort Claims Act. He's right. It's not an amendment. It's a waiver. It's a waiver that we're being asked for. If we waive in one situation, and the next situation has exactly the same principles of law, then must we not again waive? In effect, do we not, therefore, as a matter of conscience, and as a matter of principle, amend our Tort Claims Act? If we do that, are we not exposing every one of our governmental units, in this State, to a tremendous liability?

There are other ways of meeting the need for human sympathy. We have catastrophic illness provisions in our law. We have provisions for the aid of people who are indigent, or medically indigent. There are other ways of meeting human needs already in our framework of government. We are not saying, you have absolutely no place to go.

We need to come back to this question of principle. How can we waive for one and deny for another, when the situation is basically the same? The Tort Claims Act is very clear. There is a precise list of what is waived and what is not waived. The static highway sign and the highway design, neither of these are waived under that statute.

I ask you to think carefully about the principle involved, and to vote no.

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

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate, I don't want to take up a great deal of time this morning. Would the Secretary please read the Committee Report?

The Report was Read.

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate, I think I've reviewed for you, on previous occasions, basically the responsibility of the Committee on Legal Affairs places when it addresses the area of removing the immunity of the State.

The Committee has previously addressed some nine bills this year, with respect to resolves asking that the State's immunity be withdrawn for specific reasons. In only two instances this year, has the Committee felt that the State had indeed been negligent or that at least the opportunity to prove this ought to be shown in court.

One was the question dealing with the Hodgdon case, the Senator from Lincoln, Senator Sewall's Bill. That was a question of design. I think basically we've already gone over this. This is not a question of design. This is indeed, as the Senator from Knox has said, somewhat a question of signing.

I disagree with the Senator's rationale that this is establishing a moral, or a philosophical precedent. The Committee reviews each of these cases individually. We have had signing, joint resolutions dealing with signing in the past. We have had others this Session. We will have others in the future. Each of these cases will be looked on for its own merits. If the Committee feels that there are extenuating circumstances, which merit that the Bill be reported out, then it will be reported out. If not, as in another case this year, one dealing with signing down in South Portland on the Turnpike, the Committee felt that there were extenuating circumstances, that the case not be reported out unanimously, unless it was reported out Ought Not to Pass unanimously.

I'm not playing on the sympathy of the Senate here today. I have not referred at all to the injuries of this man, what's going to happen to this man in the future, what this accident meant to him. I've only reviewed and referred to the specifics. The fact of the matter is that in 1979 some vehicles hit that span. It was lowered to a height below the posted height on the bridge of 14 foot 2 inches. It was lowered to a

height lower than the legal height of 14 feet.

We're not talking about something here that happened yesterday, or last month. We're talking about something that happened over a year and a half later. The State knew that that bridge, and the signing on that bridge, was in error more than a year after the fact. It's the responsibility of the State to warn people when there is something that has occurred. The people of this State trust us. It's our responsibility to warn them, that this bridge is no longer 14 foot 2 inches. We simply ought to put up another sign that says, "Pass at Your Own Risk".

I maintain, and I think the Committee feels, after having heard the attorney for the Department of Transportation who appeared before the Committee on two occasions, attorneys for the defendant on two other occasions, having reviewed this matter in some five or six work sessions, feeling that this does not establish a precedent, whatever morally or philosophically, it isn't in the past, I don't believe it's going to do so in the future.

I think this Legislature should continue to deal with these matters in the way that it always has, to look at each one individually. I think this is what the Committee has done. I think it has lived up to the responsibility in this area. I think it's going to continue to do so.

I hope today that the Senate will vote to report this Bill out and give this gentleman his day in court. I would hope that you would disagree with the gentleman from Knox, Senator Collins. Thank you very much.

The PRESIDENT: Is the Senate ready for the question?

A Roll Call has been requested.

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

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

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

The pending question before the Senate is Final Passage of L. D. 333.

A Yes vote will be in favor of Final Passage.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Carpenter, Charette, Clark, Dutremble, Kerry, McBreairey, Najarian, O'Leary, Pray, Shute, Trafton, Usher, Violette, Wood.

NAY — Ault, Brown, Bustin, Collins, Conley, Devoe, Emerson, Gill, Hichens, Huber, Minowsky, Perkins, Pierce, Redmond, Sewall, C.; Sutton, Teague, Trotzky.

ABSENT — None.

A Roll Call was had.

14 Senators having voted in the affirmative and 18 Senators in the negative, with No Senators being absent, L. D. 333 Fails of Final Passage.

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

Senator COLLINS: Mr. President, I move Reconsideration.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Knox, Senator Collins, that the Senate Reconsider its action whereby this Resolve Failed of Final Passage.

Will all those Senators in favor of Reconsideration, please say "Yes."

Will all those Senators opposed, please say "No."

A Viva Voce Vote being had, the motion to Reconsider does not prevail.

Sent down for concurrence.

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

HOUSE REPORTS — from the Committee on Health and Institutional Services — Bill,

"An Act to Remove Private Babysitting Arrangements from the Jurisdiction of the Department of Human Services." (H. P. 796) (L. D. 950) REPORT "A" OUGHT TO PASS as Amended by Committee Amendment "A" (H-272); REPORT "B" OUGHT NOT TO PASS; REPORT "C" OUGHT TO PASS.

Tabled — May 6, 1981 by Senator CONLEY of Cumberlandland

Pending — Motion of Senator GILL of Cumberlandland to Accept Report "A".

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

Senator BUSTIN: I move Indefinite Postponement of this Bill and all its accompanying papers.

The PRESIDENT: The Senator from Kennebec, Senator Bustin, moves that the Senate Indefinitely Postpone L. D. 950.

The Chair recognizes the Senator from Cumberlandland, Senator Gill.

Senator GILL: I would ask the Senate to vote against that motion of Indefinite Postponement.

Through the summer recess of the Legislature, a group of parents brought before some of the Legislators a problem that they saw within the Licensing Division of the Department of Human Services, and rules and regulations that were promulgated for day-care services. There was a series of hearings heard throughout the summer, which did reduce those particular rules and regulations.

That group of parents, joined by further parents, brought before this Legislature a piece of legislation this Session, which would exempt the State's interference in private arrangements between parents, and providers of babysitting or day-care services, from harassment by the State.

A couple of these parents have written to me and have testified at the hearing. One of them wrote, and I'm going to read it, because I think it just explains exactly where they're coming from. It said: "when the State is picking up the tab for babysitting services or day-care, it should have some say where the child is being cared for, because that which the State subsidizes, that it should control. However, in cases where private citizens come to an understanding and an agreement regarding the care of their own children, and where they themselves pay for these services, then the State has no right to interfere, dictate, meddle, or harass."

The only exception to this statement would be, of course, in the case of child abuse or provable harm. I repeat, provable harm, now some theoretical hodgepodge of what might happen to a child if the strong hand of the Department of Human Services were not there to exercise control.

The parents that are really concerned that are making these arrangements between themselves and these private operators are concerned that the State not interfere, and the taxpayers' money should not be spent, to finance a state agency that is providing an unneeded service. They questioned whether the State, in fact, has the right to interfere in family matters involving private contractual arrangements.

A Bill was brought before the Committee in the Legislature, the Health and Institutional Committee. The committee did work long and laboriously on this particular Bill. The original Bill that was brought before us just said, the State should not interfere and should not be involved in these private arrangements. Members of the Health and Institutional Committee felt that there were instances that we had to protect. That was in the areas of fire, health, and safety.

We did work within the Committee to arrange that those were in a Bill. We have a draft which is the amendment. It is now the Bill, H-272. What it does, is it provides for health, fire, and safety. It insures that the water, is quality water, or pure water, and it's tested water. It

allows the Department to investigate complaints upon any provider. What it does, it removes any rules and regulatory power from the Department. It puts those particular things in statutes so that those people that are going to enter into these private arrangements know just what they have to do to comply.

At the point of compliance on health, fire, and safety, then they just have to notify the Department that they indeed will be registered as a babysitter, or a day-care provider.

The majority of the Committee felt that this was the way we should handle it. There are estimated over 400 women out there in the State of Maine who are providing services, who are operating now illegally, because of the licensing of the Department, the licensing provisions that the Department has promulgated. It seems that if we register these people, if they knew up front what the minimal requirements were for them, that they would register and we would know who they are and where they are.

I would ask for the Senate to vote against the motion which is Indefinite Postponement.

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

Senator BUSTIN: Mr. President and Members of the Senate: It's a little early for me to debate my good friend and fellow Senator, Senator Gill from Cumberland, but I think the issue is a very important one. It's how we regulate the taking care of the children of our society, here in Maine.

We have had votes here on the bass, the bear, the moose, and I understand the bear is coming up again. We spent lots and lots of time on that. I hope the Members of this Body will give adequate and careful consideration to this particular issue. I hope that we care more about the children in the State of Maine than we do about the creatures of the woods, the streams, and the air.

I'm no expert on those creatures. I prefer to have the Fish and Wildlife Department make their own determination about how to control those. I, also, prefer to have the Human Services Department make their own regulations about how to regulate how we take care of children, because they're in the business of being there out in the field all the time. They know what's happening. They can change the rules and regulations as you go along. When you're making laws to control that, then you have to wait a certain amount of time. You might miss a lot of things that you should be taking care of during that time that you're trying to make the laws.

I regret that our Committee did not work enough to submit a unanimous Report to this Body. We tried very hard to. The Bill that came in was to take off any licensing. It's a little interesting to me that a few years ago, we felt that it was important enough to put in a babysitting bill, so that the State could license the babysitters. Now all of a sudden, a few years later, we're trying to take that licensing out. I really don't understand the thinking on that.

In light of compromising in that Committee, I suggested to both sides that they come in with a registration bill. To clear the air, a registration bill really means that what that babysitter is doing is self certifying that she has completed certain requirements of the Department in order to get that certification sent back to her in the mail. Registration is not licensing. The Department does not go into the home and does not check to see what's in there and what isn't in there. All the Department has before them are pieces of paper that tell them whether the fire inspection has been done, whether the water is correct, whether the tuberculin test has been taken. They don't go in and inspect. The only thing they can do that is if there is a complaint.

I'm not against registration. I had tried to come to a compromise on that. The Department came with a very strict registration bill that the parties could not accept. The babysit-

ters came with their registration bill, which we could not accept. I came in with a compromise registration bill, which the Committee, in my estimation, did not give adequate consideration to.

We moved the motion on the three reports. After those three reports were moved and Representative Randall decided that he was going to put in an amendment, the Committee never saw that amendment. It was never presented to us. We never had a chance to debate it. We never had a chance to clean it up. I consider that amendment, and the amendment that has been submitted in the unmentionable Body, both not to be adequate because we haven't looked at the good drafting part of it.

There are many things that are wrong in that particular draft, one of which is that it says that the babysitters can not take care of unrelated children. Does that mean that the babysitter can't take care of those children who are not related to her, or who are not related to their brothers and sisters? Does that mean then that a babysitter can only babysit one child from one family? My understanding from listening to the debate in the Committee is that that's exactly what they want to be able to do, that when a mother has a, for instance, a two year old that she's taking care of and that mother becomes pregnant and is going to have another baby and wants that baby taken care of by that same babysitter, she wants to be able to do that.

Under the licensing rules, you can only have three children under two that you can take care of. When you're licensing, because it's rules and regulations, you can grant a waiver. If the babysitter, the two year old is going to reach two in a couple of months and the infant is going to have to be taken care of, then I suspect that the Department would look at that particular case and waive that requirement so that the caretaker could then be taking care of four, or five. I've forgotten the numbers. I think there are four preschoolers that she can take care of.

There is a waiver. If you put it in law as this registration bill was put in, then you wouldn't have any choices on that.

I would like to see this Committee go back and work on a good registration bill. That will have to be in another session. That isn't for this session. I would hope that everybody who has considered this question carefully, would vote for the Indefinite Postponement of this Bill, so that we can take it up again and really come up with a good registration bill.

The good Senator from Cumberland is correct. We do need to get those babysitters out from the underground. We do need to know who's babysitting our children. It is important that we know what's being done to them. I'm one of 16 children. I can tell you for a fact, you can get lost in 16, as you can get lost in 12. Those babysitters are taking care of those children for up to 10 hours a day. They need that kind of individual attention. Please give good consideration to this Bill.

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

Senator HICHENS: I, too, am on the Health and Institutional Services Committee. I, too, was on the Health and Institutional Services Committee, 8 years ago, when the nursery people, and the day-care center people came in and were raising the roof because of the regulations that they were put under by the Department of Human Services, which was the Health and Welfare Department at that time.

They said, that we can't do this, we can't do that. We do not have time to show any love or compassion for the children because we are so busy trying to live up to regulations.

So the Legislature took those powers away from the Human Services Department, and set up stringent rules, so to speak. Then the Department has worked along with them down through the years, until this last summer it was brought to our attention, as the good Senator

from Cumberland, has stated, that even these people have gone beyond the basic needs of a day-care center. And that is to tend to the specific needs of the child concerned.

I was not brought up in a family of 16 children, but I did help my wife raise 7 children. We share the responsibilities, in an indirect way for 22 grandchildren. So I know what it is to have children around. I have always said, that if I could get along with people my own age, as well as I can with youngsters I would do very fine in this world, because I love youngsters, and apparently youngsters love me.

I think that this is the basic issue, that we are facing today, is whether or not we are going to have rules and regulations, or whether we are just going to have centers where these children can get the love that the parents feel that they should get, regardless of all the regulations which they have to face. Which these day-care centers, for some reason or other, are fighting for at this time.

The good Senator from Kennebec, said that we should have come out with a unanimous report. As you see by the report, we came out with 3 reports, so I do not think that we ever would have gotten to a unanimous report.

Concerning the amendment that she said that Representative Randall presented, it was discussed. The good Senator just wasn't there at that time. She, like the rest of us, has other commitments, and she doesn't sit in on all of the work sessions, as I have trouble doing. I did happen to be there the day that this amendment was discussed and it had a good discussion.

I hope that you will vote along with the good Senator from Cumberland, along with me in voting against this request that we unanimously defeat this Bill.

#### (Senate at Ease)

The Senate called to order by the President.

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

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate: I'm not on the Health and Institutional Services, but I do want to follow the good advice of the Senator of Kennebec, Senator Bustin, to get involved in something that is more important than the fishery industry, or the hunting and fishing in the State, I think the children and the family unit probably is more important.

I think one of the important things, as far as I'm concerned, as far as my family is concerned, is the State stay out of my family business. I will run the family as long as I am paying the bill, and if the State wants to pay for the babysitting, the State can get into the family business, but as long as I am paying for the babysitting, and I'm paying for the family, the State can stay out of my family business.

Now, I don't see any reason why I'm not intelligent enough to make the decision on who is going to take care of my children, who is going to take care of my grandchildren, or whatever. I don't think I need anyone in the State of Maine to tell me where that child is going, who is going to take care of that child, and where I should take that child to find a babysitter.

If I am satisfied with what the babysitter is providing, the State of Maine, or the United States, has nothing to say about it as far as I'm concerned. This is a private family matter, and the State ought to stay out of it.

So, I would hope that you would go along with the Committee Amendment "A", which seems to, at least, regulate to some degree the department, as far as getting into family situations. But, if the time comes that I need State assistance, then I think that the State ought to have some regulations, but, until I do, I'd like to have the State stay out of my affairs.

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

Senator NAJARIAN: Mr. President and Members of the Senate: I attended some hearings in the Portland area on the Department of Human Services Day-care Regulations this summer, and the overwhelming number of parents who were there and day-care operators, private day-care operators, supported the Department.

I don't know why this Legislature feels it has to respond to every vocal extremist minority that comes in here making a fuss about State regulations. Then we always feel we have to rewrite our statutes because of that.

The people at that hearing expressed an appreciation that the Department had standards. They come into this State; they don't know anything, but it's comforting to them to know that the place where they're going to put their children does meet certain safety standards, as fire, water, drink, sanitation, and also that the providers, there's adequate number of providers for the number of children.

We are not talking about babysitting. The good gentleman from Waldo County, Senator Shute, is free to put his children with any person he wants. It's when you have an accumulation of children. For example, if you have six children under 2 years old, and only one adult and one 14 year old, if there is a fire, how in the world are two people going to get out six infants. That can happen. That's the reason we have the regulations. There're there for the safety and the protection of those children.

I hope that you will Indefinitely Postpone this legislation. It's not thoroughly thought out. It does not provide adequate safety for the children of this State, and we're all going to be sorry once there's a big fire.

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

Senator SHUTE: Mr. President and Members of the Senate: Maybe I didn't get my message across.

It doesn't matter to me whether there are other children being taken care of by the same babysitter that I have my children taken care of or not. You may call these extremist groups or on the other end of the spectrum, you may call them socialist groups.

I think that somewhere along the line, it's time that the parents and the people that are paying the bills in the State of Maine, had something to say about what was happening with their family.

I don't need anyone in Augusta to tell me what to do with my family, who is going to take care of my children, what the requirements are in that home or a next door neighbor that's taking care of my children. I know what the ability is of the babysitter that would be taking care of my children. I take the time to find out. I don't take my children out and dump them here or there. I put my children with someone I know, someone I trust, someone I know what their family status is.

So, I don't think that the State of Maine ought to be getting into where I put my children as long as I am paying for it. If the State is going to pay for it, the State can make the regulations, but, when I pay for it, the State can stay out of my business.

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

Senator BUSTIN: Mr. President and Members of the Senate: I think the good Senator Shute has brought up some very good points. He's right. We don't need to regulate him. He is going to check out what's happening. We don't legislate for those people who can follow the laws anyway or whether there is a law or not, they are going to choose to do the right thing. What we legislate for, to my mind, is those people who would choose not to do the right thing, or are not aware that they should be doing the right thing, or can be called to task for it if they were unaware of it, or if they did it voluntarily.

That's why I don't want this to pass, because

we do have licensing that does take care of those people who aren't going to look to the babysitter, and aren't going to check out that home, and don't really care whether there are 33 infants in that home that one provider is taking care of, or whether there are two, or three or five.

I am sure that Senator Shute would not put his children in a home that had 33 infants. The problem is that there are many people out there who feel they don't have those kinds of choices and have to take the cheapest thing available. I hate to put this on this kind of a basis, but the more children you can take in, the more money you can take in, and if you can't take care of them, all you have to do is strap them into the highchair, or keep them in a crib, or put them in a playpen, and that's fine.

I feel sorry for those people who have to choose that because of the economics of the situation, because I choose not to regulate the babysitting industry.

More, and more, and more women are going to work. We're going to have more of this problem, not less of it. So, we're going to find ourselves wanting to regulate more. I appreciate their concern that they don't want the regulation, but what would happen if we didn't have to take driver's licenses. I know how to drive a car; nobody has to tell me how to drive a car. Common sense tells me. If there are no rules, if I haven't passed a test, if I haven't studied for it, or been trained for it, then I'm going to do all kinds of things wrong, and I'm going to wreak a lot of havoc. That's why you need licensing.

My good seatmate here, Senator Hichens, makes the point that he and his wife took care of 7 children. That's the whole point, he and his wife took care of 7 children. This is allowing a day-care provided to take care of 12 alone, 10 hours a day. That's the whole point.

When the vote is taken, I request a Roll Call.

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

Senator GILL: Mr. President, I find with great interest that the good Senator from Cumberland, Senator Najarian, would talk about a group of people as being extremist minority.

Just a little while ago, we had a bill that was put in by one individual. I think each of us represent a constituency, whether it be one person, or whether it be 5,000 people. I think that when people have an issue that they would like brought before a Body, the Legislative Body. I think their prerogative is to contact their Representative and present that legislation, that way.

I'd just like to correct. When the Committee worked, as I said, long and laborously, and, I mean, long, long, long on this particular issue, and we did try to dissolve it. A vote was asked to be taken. A vote was taken. Those people who chose to vote against the bill that was presented, did so. The other people who wanted to see something happen, looked over an amendment before the Committee, and we decided that we would sign that jacket on amending the Bill that was before us. We did that, and as customary, people who usually vote out a bill ought not to pass and sign a jacket, don't want to be involved in a subcommittee working on a report, or an amendment. The people who did work on that subcommittee took the amendment we had discussed many times, which we call "the Izzy Davis Amendment" and added to it because of the one concern about how many children one person could take care of.

What we did was we added an additional person, or a set of hands in there, if there were 12 children, and six of those were under school age. So, that left 2 people taking care of 12 children if six were under school age. You can say, well, maybe those six all would be two year olds or under. Are we going to regulate whether one day-care provider can take care of infants, 18 months olds, 3 year olds, or what? I think that we have tried to write in this the pro-

vision that they would be taken care of safely, and I feel we have.

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

Senator CONLEY: Mr. President, I find it somewhat ironic that the Senate is more interested in the State regulating alcohol, than it is regulating children.

It seems to me that we're not talking about babysitting, we're talking about day-care.

I was listening to the good Senator from York, Senator Hichens. I find it somewhat interesting talking about 22 grandchildren and 7 children being brought up. The difference is that bringing up 7 children, they're not all born together. Thank God. I can always say that having a family of 12, I always thank God there was that year, or year and a half period of time that my wife was given the opportunity of regaining some fresh air, so to speak, to come to the top.

The fact is though that there was a span period between those children and the adjustment was made. When you have 10 or 12 children, and I've got to the stage in life now where I take one of my grandchildren to the day-care center a couple of times a week in the morning, and almost stumble over the 20 or 30 children running around because they are all the same size, for the most part, maybe vary six months or a year, but it seems to me that the children are the most important things that we have. We should make darn sure that proper supervision, and guidelines, and regulations are there, that nothing will happen to harm them.

We regulate, under the Department of Education, private schools who don't receive State money. We establish what the education policy is going to be in this State. Those schools have to abide by that policy. There's nothing wrong by allowing the Department of Human Services to establish what guidelines, and regulations, shall be followed for the protection of children.

I went to one of those day-care center meetings last year down in Portland, along with the good Senators, from Cumberland, Senator, Gill, and Senator Najarian, and there was overwhelming response from the parents and from private day-care operators, as well as those receiving funds from both the State and the Federal government, to adopt those regulations. And, I'll have to admit, the first regulations they came out with, some of them were a little far fetched, but they corrected them. They've changed them, and they made them acceptable to everyone.

I personally feel that the Bill, it's obvious the committee itself is in a quandry. They come out A, B, and C reports. I'm sure if you locked them all up in a room by themselves, they'd have come out with enough reports to fill the alphabet.

If we really care, and we want to make sure that these children are protected, then I think we should leave the Department to follow through on what they've been doing. Then, I would urge the Senate to vote against, to support the pending motion to Indefinitely Postpone this Bill.

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

Senator HICHENS: Mr. President, not to prolong this discussion, but I don't know how many of you are fortunate enough to see a two-hour program on television on Tuesday night regarding abandoned children, and how they are being handled through state government.

This family of five, which were abandoned, each youngster was put into a separate home, and one of the ladies of the home, as she took the youngster in, said, good, this will bring me in another \$40 and give me \$200 a month, instead of the \$160 I'm collecting now.

I think that is one of the issues, which was brought out by the good Senator from Kennebec, that a lot of people are interested in the money they're making and not in the children that they are taking care of.

The state had to find homes for these abandoned children. But, in this bill, we are having parents choose the places they want their kids to go to. I think that any concerned parent is going to be sure that the babysitter and the babysitter's quarters are going to be advisable and what they want, before they ever leave the youngster there.

I'm not bragging on the point, but God had a hand in my family, because we had planned more or less to have four youngsters by the time we had our fifth anniversary, but we had a set of twins, and so by the time my wife and I celebrated our fifth anniversary, we had five children under school age. So, we know what it is to have a handful of youngsters at one time, which you really have to babysit. My wife babysits up to 9 or 10 grandchildren at a time, not as often as she'd like to, because I won't allow it. If those conditions are alright for a grandmother, I don't know why they are not alright for a very responsible babysitter.

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

Senator GILL: I request that when the vote is taken, it be taken by a Roll Call.

The PRESIDENT: The Roll Call has previously been requested.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Mr. President and Members of the Senate: I apologize for speaking again on this Bill, but I can't resist it. I did see that program Tuesday night. It was a heartrendering program. What it really zeroed in on was the insensitivity of the top bureaucrat. It, also, one of the things that Senator Hichens didn't bring up, was that it also zeroed in on the sensitivity and the compassion of the advocate for those children that was hired by the Department. I think that's significant.

The other significant thing is that that didn't happen in our State. It happened in another state. I don't know why he brought it up.

A couple of other points I would like to clear up. This Bill was brought, because, as I understand it, there were approximately four or five parents and day-care providers, and I would call them babysitters, babysitting a small amount of children who didn't like the fact that the Department called them on some of the rules and regulations. Yes, rules and regulations have to be flexible and they have to change. They change because people advocate for the change. That's our system. It's a good system.

They had the hearings in the summer, as you heard. They changed the rules and regulations from 19 pages to 6. 19 to 6. I think that's a fair amount of compromise. They came up with some good rules and regulations. Maybe they do need to be changed. The place to change them is to advocate again to the Department.

What I see this Bill as doing, they won their point. They got the rules and regulations changed. Now they're turning the knife. Well, I really don't think that's the way to legislate.

I appreciate the good Senator from Cumberland, Senator Gill, for clearing up the question of whether we dealt with that amendment in our Committee. I still feel that it would have been common courtesy on any committee to bring back an amendment, especially in a committee that has worked that hard on trying to come up with a compromise and give those people who had signed one report a chance to change their minds. We didn't have that. We didn't have a chance to draft that bill, so that it came out good, a good tight bill, to be voted on before you. I'm sorry for that and move the question.

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

Senator SHUTE: Mr. President and Ladies and Gentlemen of the Senate: As I understand Committee Amendment "A", it does put in some fairly stiff regulations. I wonder what this Senate wants for regulations, or what the

people in the State want for regulations.

You have to have tuberculosis tests for the people running that school, or day-care center, or home that's going to have two, or three, four kids in it. You have to have a test for the water. You have to have a fire inspection test. You can't be convicted of any child abuse, or child molesting, or whatever. I wonder how many regulations the Department wants to put on, or how many regulations the people in the State want on homes in the State. What other regulations can you put on? I suppose you can put on some if there was 19 pages of regulations, and they cut them down to 6. They could probably cut down to three.

The PRESIDENT: The Chair is reluctant to interrupt debate in this matter, but inadvertently missed the motion of the Senator from Kennebec, Senator Bustin, who Moved the Question. That is not debatable and the Chair realizes the good Senator from Waldo, Senator Shute, is not debating that issue. In order for the previous question, it must be the vote of the majority that the question be moved.

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Just a few moments ago, I'd like to debate whether we should move the question. Is that debatable?

The PRESIDENT: That is not debatable.

Senator SHUTE: Thank you.

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

Senator CONLEY: Is the motion of moving the question, is that debatable as to why it should not be moved at this time?

The PRESIDENT: The Chair would advise the good Senator, that in the Senate the question is not debatable.

Is it the pleasure of the Senate that the previous question be put?

The Chair recognizes the Senator from Kennebec, Senator Pierce.

Senator PIERCE: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the previous question, please rise in their places to be counted.

The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Just a point of order. I have the impression that some of us didn't know what we were voting on.

The PRESIDENT: The question is whether the previous question shall be put.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: To clear up the issue, I request permission to Withdraw my motion.

The PRESIDENT: The Senator from Kennebec, Senator Bustin, requests Leave of the Senate to Withdraw her motion that the previous question be put.

Is it the pleasure of the Senate to grant this Leave?

It is a vote.

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 Bustin, that the Senate Indefinitely Postpone L. D. 950.

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 — Bustin, Carpenter, Charette, Clark,

Conley, Dutremble, Kerry, Najarian, Trafton, Wood.

NAY — Ault, Brown, Collins, Devoe, Emerson, Gill, Hichens, Huber, McBreairey, Minikowsky, Perkins, Pierce, Pray, Redmond, Sewall, C.; Shute, Sutton, Teague, Trotzky, Usher, Violette.

ABSENT — O'Leary.

A Roll Call was had.

10 Senators having voted in the affirmative and 21 Senators in the negative, with 1 Senator being absent, the motion to Indefinitely Postpone L. D. 950 does not prevail.

Report "A" of the Committee Accepted in concurrence and the Bill Read Once. Committee Amendment "A" Read. House Amendment "A" Read and Adopted, in concurrence Committee Amendment "A", as amended, by House Amendment "A" Adopted in concurrence. The Bill, 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 House Paper

Bill, "An Act to Amend the Definition of State Employee under the State Employees Labor Relations Act." (H. P. 1431) (L. D. 1582)

Comes 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.

There being no objections all items previously acted upon were sent forthwith.

On motion by Senator Pierce of Kennebec, Recessed until 4:30 o'clock this afternoon.

#### Recess

#### After Recess

The Senate called to order by the President.

#### Orders of the Day

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

SENATE REPORTS—from the Committee on Fisheries and Wildlife—Bill, "An Act to Prohibit Hunting of Bear with Bait." (S. P. 64) (L. D. 91) Majority Report Ought Not to Pass; Minority Report Ought to Pass.

Tabled—May 6, 1981 by Senator COLLINS of Knox.

Pending—Acceptance of Either Report.

On motion by Senator Collins of Knox, Retabled until later in today's session.

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

HOUSE REPORTS—from the Committee on State Government—"RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide Counties, which have Adopted a Charter, with Home Rule Authority Regarding the Office of Sheriff." (H. P. 357) (L. D. 405) — Majority Report Ought to Pass as Amended by Committee Amendment "A" (H-260); Minority Report Ought Not to Pass.

Tabled—May 6, 1981 by Senator AULT of Kennebec.

Pending—Motion by Senator AULT of Kennebec to Accept Minority Report.

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

Senator GILL: Mr. President and Members of the Senate: I would ask you to vote against that motion to Accept the Ought Not to Pass Report and vote for the Ought to Pass Report.

This particular Bill would give any county who has adopted a Home-rule Charter to provide in its charter the method for selecting a sheriff, or a register of probate. Cumberland County is one county that has been working on a charter revision. They have been meeting on

a regular basis, the Charter Revision Committee, and they indeed have looked into the problem and whether they should be electing, or whether they should be appointing these department heads.

I think this would give the prerogative to each county to decide upon themselves how they would like to have this handled. It is a local control issue, if you will. It brings it closer to the area. It's county-wide. The county would decide on how it wanted to handle it.

I would ask you to vote against the motion.

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

Senator AULT: Mr. President and Members of the Senate, I would point out that Committee Amendment "A" under filing number 260 is now the Bill. What the Bill proposes to do, is take the election of the sheriff and the register of probate away from the people, as far as I'm concerned. When the people think that government is too far away from them now, for us to take two more elective offices away, is not in the best interests of the people of the State of Maine.

I would hope that you would support the Minority Ought Not to Pass Report.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the motion by the Senator from Kennebec, Senator Ault, that the Senate Accept the Minority Ought Not to Pass Report of the Committee, please rise in their places to be counted.

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

13 Senators having voted in the affirmative, and 11 Senators having voted in the negative, the motion to Accept the Minority Ought Not to Pass Report of the Committee in non-concurrence does prevail.

Sent down for concurrence.

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

Bill, "An Act to Regulate Entrance Fees Charged by Mobile Home Parks." (H. P. 779) (L. D. 924)

Tabled—May 6, 1981 by Senator PRAY of Penobscot

Pending—Passage to be Engrossed.

On motion by Senator Conley of Cumberland, Retabled for 1 Legislative Day.

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

#### Papers from the House Joint Orders

Expressions of Legislative Sentiment recognizing:

Ann Catherine Bonis of Millinocket, valedictorian of Stearns High School, class of 1981. (H. P. 1428)

Sarah McGowan of Millinocket, co-salutatorian of Stearns High School, class of 1981. (H. P. 1429)

Susan Janes of Millinocket, co-salutatorian of Stearns High School, class of 1981. (H. P. 1430)

Donna Small, daughter of Mr. and Mrs. Donald Small of Poland, who was an award winner in the Elementary Education Ecology Poem and Poster Program. (H. P. 1432)

the citizens of Stratton and Eustis for their dedication and long standing commitment to establish a sawmill in their community. (H. P. 1433)

Laura Gowan, President of the National Scoliosis Foundation, for her tireless efforts in educating the public about scoliosis and other spinal abnormalities. (H. P. 1434)

David M. Nadeau, Jean F. Moroney, Catherine A. Chabot, Julie A. McCallum, Elaine B. Theriault, Robert P.; DeRoche, Lonnie Michaud, Brain D. Belanger, Cecile R. Cote and Kim A. Horr, who were chosen the top 10 stu-

dents in Sanford High Schools' 1981 graduation class. (H. P. 1436)

the Presque Isle High School Shipmates Playhouse cast, winners of the 1981 State Drama Festival. (H. P. 1437)

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

#### Joint Resolution

A Joint Resolution in Memoriam:

Whereas, the Legislature has learned with deep regret of the death of Joseph Adler, a prominent Sanford citizen and newspaperman known for his many charitable works. (H. P. 1438)

Comes from the House, Read and Adopted. Which was Read and Adopted, in 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 to Tax Gas Guzzlers." (H. P. 1220) (L. D. 1444)

Bill, "An Act to Prorate the Excise Tax on Automobiles and Other Vehicles." (H. P. 690) (L. D. 804)

#### Leave to Withdraw

The Committee on Business Legislation on, Bill, "An Act to Establish a Third-party Prescription Program Act." (H. P. 901) (L. D. 1068)

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 Concerning the Payment of Taxes on Watercraft in the Municipality where the Boat is Located." (H. P. 1099) (L. D. 1294)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Fisheries and Wildlife on, Bill, "An Act Restricting a Section of the Union River in Ellsworth to Fly Fishing Only." (H. P. 842) (L. D. 1008)

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 to Assure the Rights of Mentally Retarded Persons to Family Style Living Units." (H. P. 1366) (L. D. 1551)

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.

#### Senate

##### Leave to Withdraw

Senator TROTZKY for the Committee on Education on, Bill, "An Act Repealing Formulas for Adjusting Below and Above Average Per Pupil Operating Costs used in Computing the State-local Allocation." (S. P. 59) (L. D. 85)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

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

#### House

##### Divided Report

The Majority of the Committee on State Government on, Bill, "An Act Relating to the Public Utilities Commission Officials' and Em-

ployees' Compensation." (H. P. 577) (L. D. 657)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H. 317).

Signed:

Sensors:

AULT of Kennebec  
GILL of Cumberland  
VIOLETTE of Aroostook

Representatives:

KANY of Waterville  
BELL of Paris  
DIAMOND of Bangor  
MASTERTON of Cape Elizabeth  
McGOWAN of Pittsfield  
LISNIK of Presque Isle  
SMALL of Bath  
DILLENBACK of Cumberland  
PARADIS of Augusta

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representative:

WEBSTER of Farmington

Comes from the House, the Bill and accompanying papers, Indefinitely Postponed.

Which Reports were Read.

The Majority Ought to Pass, as amended, Report of the Committee Accepted in non-concurrence, and the Bill Read Once. Committee Amendment "A" Read and Adopted. The Bill, as amended, Tomorrow Assigned for Second Reading.

#### Divided Report

The Majority of the Committee on Fisheries and Wildlife on, Bill, "An Act to Abolish the Trapping of Bear." (H. P. 553) (L. D. 629)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

REDMOND of Somerset  
USHER of Cumberland

Representatives:

MacEACHERN of Lincoln  
CLARK of Millinocket  
CONNERS of Franklin  
JACQUES of Waterville  
PAUL of Sanford  
DAMREN of Belgrade  
SMITH of Island Falls  
ERWIN of Rumford  
PETERSON of Caribou  
GILLIS of Calais

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

Signed:

Sensor:

HICHENS of York

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

Which Reports were Read.

On motion by Senator Collins of Knox, Tabled until later in today's session, pending Acceptance of Either Committee Report.

#### Senate

##### Divided Report

The Majority of the Committee on Health and Institutional Services on, Bill, "An Act to Permit the Use of the Drug Dimethyl sulfoxide for Human Consumption." (S. P. 389) (L. D. 1147)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

GILL of Cumberland  
HICHENS of York  
BUSTIN of Kennebec

Representatives:

RICHARD of Madison  
PRESCOTT of Hampden  
BRODEUR of Auburn  
KETOVER of Portland  
MANNING of Portland

MacBRIDE of Presque Isle  
BOYCE of Auburn  
HOLLOWAY of Edgecomb  
RANDALL of East Machias

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

Signed:

Representative:

McCOLLISTER of Canton

Which Reports were Read.

The Majority Ought Not to Pass Report of the Committee Accepted.

Sent down for concurrence.

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

#### Committee Reports

##### Senate

##### Ought to Pass

Senator AULT for the Committee on State Government on, Bill, "An Act to Authorize Revenue Bond Financing for the Agricultural and Fishing Industries." (S. P. 403) (L. D. 1208)

Reported that the same Ought to Pass.

Which Report was Read and Accepted.

The Bill Read Once. Under Suspension of the Rules, the Bill given its Second Reading, and Passed to be Engrossed.

Sent down for concurrence.

#### Ought to Pass — As Amended

Senator VIOLETTE for the Committee on State Government on, Bill, "An Act to Amend the Definition of Home Improvement Note Set Forth in the Maine Housing Authorities Act." (S. P. 481) (L. D. 1364)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S. 180).

Which Report was Read and Accepted.

The Bill Read Once. Committee Amendment "A" Read and Adopted. Under Suspension of the Rules, the Bill given its Second Reading and the Bill, as amended, Passed to be Engrossed.

Sent down for concurrence.

#### Orders of the Day

The President laid before the Senate:

SENATE REPORTS—from the Committee on Judiciary—Bill, "An Act to Curtail the Practice of Plea Bargaining." (S. P. 515) (L. D. 1437) MAJORITY REPORT Ought Not to Pass; MINORITY REPORT Ought to Pass.

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

Pending—Acceptance of Either Report.

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

Senator WOOD: Mr. President and Members of the Senate, I rise in opposition to the pending motion, the Ought Not to Pass Report. I make a motion that we Accept the Minority Ought to Pass Report, if there's no motion on the floor.

Mr. President and Members of the Senate, I would urge you to Accept the Minority Ought to Pass Report. I am a sponsor of this Bill, and put it in response to a growing concern by my constituents, and I'm sure your constituents, too, that they have over the rising crime and the apparent inability of our criminal justice system to respond to this increase.

The newspaper daily confronts our sensibilities with ever increasing reports of vandalism, rape, murder, and all other sorts of crimes. Yet, those institutions in which we have placed responsibility in to handle this problem, mainly our courts, are held in low regard by our constituents.

One only has to look at the last referendum on the court facilities to see this low regard. The failure of that referendum is proof positive that the citizens are dissatisfied with the courts. Isn't it a sad commentary that the only avenue open to our voters to express their dis-

pleasure with the courts was the defeat of this worthwhile program? Are we, as Legislators, any more responsive or responsible to the problems of our courts?

I remember many constituents telling me that they were upset with the lenient treatment that criminals are receiving in our courts. My sort of patent response was, oh, that's the courts' problems. We simply pass the laws, and they enforce them. Is that an adequate response to this problem?

This Bill can attempt to make a more adequate response, in that it finally addresses the problem of plea bargaining. What is a plea bargain? Quite simply, it is the process of negotiations in which the prosecutor offers the defendant certain concessions in exchange for a guilty plea. Haven't we all been frustrated when we read of someone being arrested for a serious crime, and later learn that that person has been found guilty of a far lesser crime? Where is the justice in that system? Where is the justice for the victim that sees the accused treated lightly? Where is the deterrent to crime when criminals know they simply have to cop a plea? Where is the sentencing power of the judge when the sentence is agreed on not in a court room, but in a D. A.'s office? Where is the incentive for the police, when they see case after case plea bargained out of existence? Where is the incentive for the prosecutor, when he knows in all likelihood that the case will be bargained?

You might say that plea bargaining isn't really much of a problem in this State. It happens in other states, to a much larger extent than Maine. I will give you a rather shocking statistic. In the County of York, a county that I try to represent, 96 percent of the cases are plea bargained. Only 4 percent of the cases go to court, in any pure form. Is that justice? I think not.

When I presented the Bill to the Committee on Judiciary, I shared with them some of my reasons for putting the Bill in. I would like to share those reasons with you today. First, I think plea bargaining is a danger to society's need for protection. Critics of plea bargaining have asserted that since the prosecutor must give up something in return for the defendant's agreement to plead guilty, the frequent result of plea bargaining, if the defendants are not dealt with as severely as might otherwise be the case. Thus, plea bargaining results in leniency that reduces the deterrent impact of our laws.

The plea negotiation system also endangers society's interest in protection by making the correctional paths of rehabilitation more difficult. Insofar as a plea bargain menaces the sentencing discretion of the court, it may encourage, or require imposition of sentences inconsistent with correction goals.

Furthermore, plea bargain is a danger to our court administration. Plea bargaining often occurs simultaneously with the processing of the case for the formal steps of proceedings. When a bargain is arrived at, the case is simply pulled out from wherever it happens to be. Unfortunately, critics of plea bargaining assert the bargain is often entered into at the last moment. The result of this is the court is denied any kind of scheduling opportunity, and other cases can not be scheduled at that time, thus creating chaos in our court system.

Thirdly, plea bargaining is a danger to defendant's rights. Under some circumstances, plea negotiation raises the dangers that innocent persons will be convicted of criminal offenses. Underlying many plea negotiations is the understanding or threat that if the defendant goes to trial and is convicted, he will be dealt more harshly than he would if he had pleaded guilty. An innocent defendant might be persuaded that the harsher sentence he must face if he is unable to prove his innocence, at a trial, means that it is in his best interests to

plead guilty, despite his innocence.

If these persons have a realistic chance of being acquitted at trial, plea negotiation system that encourages them to forfeit their rights to trial endangers their right to an accurate and fair determination of guilt or innocence. Offenders despite their guilt, have a right to access to leniency on the same basis as other defendants. Yet critics of the plea bargaining negotiation process argue that it tends to distribute unevenly and inappropriately among offenders the ability to get a deal that provides lenient disposition.

The plea bargaining process may place a premium on experience as a defendant. Those defendants that are the professional criminals know how to use the system. They know how to bargain. Unfortunately, to the less professional criminal, that person that might truly be innocent, he is placed at a distinct disadvantage in the plea bargaining system.

There is also a danger to our very constitution by plea bargaining. Plea bargaining nullifies constitutional guarantees for substantial numbers of criminal defendants. The conflict between administrative economy and constitutional values is intense. The Constitution should take a primary role over our need for an efficient court system.

Finally, in plea bargaining, there is a danger to the very trial system, the trial system that is the basis for our Judicial System. The adversary system is also crucial in determining guilt, although the action of the police and prosecutor in proceeding against a particular defendant generally reflects their decision that he is in fact guilty of a crime. Their law enforcement roles may occasionally distort their judgment.

In any case, the reasons for their decisions are substantially obscured from the public view. The adversary system forces both the State and the accused to present their evidence and arguments in a neutral forum, the courtroom. By using plea bargaining, you null and void that neutral process, and thus, discredit our trial system.

I also pointed out to the Committee that I am not alone in my opposition to plea bargaining. The President's Committee on law enforcement and the administration of justice calls for the total elimination of plea bargaining. I would point out that this Commission was made up of lawyers, judges, law enforcement people, and they came to the conclusion that plea bargaining should be eliminated.

I would also point out that the State of Alaska in 1975 totally eliminated plea bargaining. I have here a study of that State's experience. I think you will find it quite rewarding reading. They have found that their system works much better. In fact, since they have done away with plea bargaining, there has not been one penny more spent as a result of doing away with plea bargaining in their court systems.

I think it is time for Maine to follow the suit of Alaska. I will close my remarks by quoting the opponent, the only opponent of this Bill, to show up at the hearing. It was the D. A. from the County of Kennebec. He related a story to the Committee that I found very interesting. He related a case they had in court, were going to proceed to take it to court. He told the Committee that they had no case against this individual. The police had made many mistakes. They simply did not have any evidence to try this person. They thought that they could get his lawyer to bite. I use the word he uses, to "bite." They called the lawyer, and sure enough, that lawyer bit. He said, we didn't get this guy, he's out on parole, but we got all his friends in jail.

At first I laughed when he gave that testimony because it proved my point, of what plea bargaining to our system. Then I winced to think that an officer of the court would be so callous in the way he treated the defendant, to think that he could get his lawyer to bite on a

deal when they didn't have any evidence to back up that bite.

Is this justice? If you agree that we should continue to put out the bite, then vote against this Bill. If you think it's time to remove justice from the marketplace, and put it back in the courtroom where it belongs, I would urge you to support the Ought to Pass Report.

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

Senator DEVOE: Thank you very much, Mr. President. Mr. President and Members of the Senate: I thank the good Senator from York, Senator Wood, for his comments. I do agree with his definition and an explanation of what plea bargaining is. I would like to mention three or four things before we vote on this.

First of all, what the Senator is proposing in his Bill, is that once a charge has been made by the prosecutor, that it may never, thereafter, be amended. Now I ask you, if we analogize between going into court and coming into the Legislature, how many bills would we ever be able to pass, if, once we presented those bills, we were never able to amend them? If we analogize what the Senator is proposing to do in the court system, that would be the way we'd have to function here as Legislators. Once we drafted a bill and had it printed up, we'd never be able to amend it, because in effect, that is what a prosecutor is doing when he plea bargains.

Very often, when a charge has initially been made by a prosecutor, it develops through further investigation that maybe some of the elements of proof that a prosecutor, by our rules of evidence, and by our case log developed over the last 160 years, has to meet certain tests before an offense can be proven in court. A prosecutor may realize this after he has made his original charge. The fact nevertheless remains that there has been a violation of law. It may not be the particular provision of Criminal Law that the prosecutor initially charged him on, there may be some other lesser offense provided in our statute, which can be proven. So the prosecutor has an option of either going forward with a lesser offense and getting justice done, which is to have the defendant either serve some time, if time is involved, or to pay a fine. That is accomplishing some justice. It may not be the pure justice that the Senator from York is saying that he wishes we could have in every case, but it is justice, that is the defendant admits that he has violated a law, and he pays a fine, and perhaps even serves some time.

The Senator presented some statistics from York County, that 96 percent of the cases were plea bargained, and apparently the other 4 percent resulted in jury trials in the York Superior Court, and perhaps the district courts that are located in York County. I ask all of you to think of your own county system. If these statistics were present in Penobscot County, were present in Androscoggin, York, Aroostook, Washington, every county in the State, where would our superior court systems be if those other 96 percent of the cases were tried in superior court, because you couldn't plea bargain?

Let's assume that the other 96 percent of the cases are scheduled for trial. We then have a federal law which was enacted in the last two or three years by Congress, after a study of the criminal court system by the Congressional and Judiciary Committees, called, the Speedy Trial Act. We have to think about the Speedy Trial Act, because, as the federal law is presently written, it says that under the U.S. Constitution, a criminal defendant has a right to a speedy trial. I believe that the federal law says every criminal defendant must be given an opportunity for a jury trial within 6 months of the time that he is charged.

I ask you, knowing your own superior court system as you do, and applying the set of statistics that the Senator from York just quoted five minutes ago, what would your county superior

court system be if it had to try 100 percent of the criminal cases that were brought by the D.A., and had to do it within 6 months? Can you imagine the number of prosecutors you'd have to have? Can you imagine the number of courtrooms that you'd have to have? Finally, can you imagine the number of judges you'd have to have? They would be working almost around the clock, 24 hours a day to process these criminal cases.

Let's assume that the court system became so clogged that trials couldn't be held within 6 months of the time that a person was charged. The Speedy Trial Act, as it was passed by Congress recently, then gives defense council a chance to come into court and ask that the charges against his client be dismissed, because he hasn't been given a speedy trial.

The Senator from York said, and cited a variety of reasons why there is lack of public confidence in the judicial system today. I don't happen to agree with all of those reasons that he cited. I ask you, what will the public perception be of criminals, as they walk down the steps of your local superior court, thumbing their nose at the prosecutor, thumbing their nose at the police and saying, Ha ha, I got you? Your system wasn't able to give me a speedy trial in 6 months. That, whether you like it or not, is going to be a consequence, if you should vote to Accept the Minority Ought to Pass Report on this Bill. Is justice going to be served then?

I just ask you practically speaking. Can prosecutors function without having the right to negotiate, and to accomplish some payment, accomplish the exaction of some payment of fine, some serving of time by a defendant? Could you function as a Legislator, if once you presented a bill, that bill could never be amended? That's what the Senator is asking you to do. He's not asking that the Legislature forbid amendments to bills once they're printed, but he's saying it's good enough for the courts. He's saying that justice is not being served today.

I ask you, justice would be put in a straight-jacket, if this Bill were passed. It so happens that prosecutors frequently discover facts after they have preferred charges against people, that lead them to believe, under our rules of evidence, under our rules of statutory law, under our rules of case law, that we have, that they cannot, perhaps, prove a case as charged, but they can prove a lesser case and still get a fine and still get some time served by this defendant.

For these reasons, Mr. President, I plead with Members of this Senate, Accept the Majority Ought Not to Pass Report. Mr. President, when the vote is taken, I ask that it be taken by the Yeas and Nays.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from York, Senator Wood.

Senator WOOD: Mr. President and Members of the Senate: I would like to respond briefly to the comments of the good Senator from Penobscot, Senator Devoe. I'm not a legal person. I never realized that the Legislative Process was similar to the Judicial Process. It seems that they are two distinct processes, one involved with the collective judgement of us in governmental issues, the other involved in the determination of guilt and innocence. I think the analogy is somewhat unfair.

Secondly, the good Senator assumes that if plea bargaining is not available as an option, that all of these defendants will ask for a jury trial. The case of Alaska, and this is a state that has outlawed plea bargaining. I think it's important to look at a state that has outlawed plea bargaining. What happened there, was that you had the same number of guilty pleas. The people realized that they were guilty in the first place. Without the option of the plea bargain, they said, wait a minute, I don't want to

proceed any more. I'll plead guilty to the higher charge. I'm guilty. So the courts were not inundated. So, unless the good Senator can show me where the people of Maine are different than the people of Alaska, I do not think our courts will be overcrowded.

What has happened in Alaska, interestingly enough, is that they find that the cases are much better prepared by the prosecutor, the police are much more diligent, and justice is better served. By continuing to allow plea bargaining, we are only encouraging our prosecutors to be less than diligent, and our police officers to be less than diligent. I don't think that is justice.

I realize that there is going to be a price tag attached to this Bill. In my limited time in the Legislature, I've learned two things. When all else fails, call it unconstitutional, or attach a price tag. So far the Bill has been called unconstitutional, and I think I've beat them on argument. Now we're going to have a price tag. I would argue that if we're going to have a price tag, and if that's the price of justice, I'm willing to pay it.

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

Senator CONLEY: Mr. President and Members of the Senate: I agree with the remarks made by the good Senator from York, Senator Wood. I look at results of plea bargaining perhaps another way. I think we have a double standard of justice in this State. For an example, let's say that some very well-to-do person was arrested driving under the influence, and is brought into Cumberland County Superior Court to be tried for O.U.I. Our system, and I don't condemn it, but I think that there is sort of a family affect in the court system. Prosecutors are dealing with the same policemen. Right down the line, I don't like to call it incest, but there is a very strange bond that comes about, because of the familiarity of those individuals that are involved.

Take that fellow who's charged with O.U.I., who may very well, under the blood test, under the implied consent law, has come on with enough, 1.0, with respect to his blood, and under the law, is prima facie that he's guilty of operating under the influence, he's going to have a jury trial. There's nothing to stop that district attorney getting together with that defendant's attorney and saying, I'll accept a plea to a lesser charge, rather than go and take the court's time up for a trial.

This can happen on numerous things. I think what we want is we want equal justice for everyone in this State. I think doing away with plea bargaining does help bring that about. There are other things, other problems within the Judicial System. We all know that the grand jury system in this country is the worse type of system going. We're not getting into that today.

I honestly believe that this Bill will bring about one, more efficient police work, two, that the prosecuting attorney will have his facts to go to the jury with, and within the trial itself, and third, it will bring equality into the dispensing of justice. That's why I signed this Bill. I think the good Senator from York, Senator Wood, is correct in his presentation, along with the Representative from Kennebunk, Representative Murphy.

Both of these gentlemen made an outstanding presentation before the Joint Standing Committee on Judiciary. I think this Bill should be carefully looked at, because I think it makes a lot of sense.

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

Senator KERRY: Mr. President and Ladies and Gentlemen of the Senate, I would like to stand and speak in support of the Ought Not to Pass Report, which I signed. I signed this Report with not a little deliberation. I shared many of the concerns that both the sponsors of this Bill, Senator Wood, and Senator Conley

had with regard to the problems in our Judicial System.

I have always been concerned about mandatory sentencing. In fact, in most cases in recent memory, I have always voted against mandatory sentencing. Primarily because it takes away the discretion within our Judicial System, which is a dynamic system, a system that evolves according to the laws in our society, and with greater knowledge of both the defendant and the law as it is to serve society as a whole.

I don't agree with all the information of the Judicial System. I've seen it work. I've seen it work improperly. I've seen it work properly. I believe what we are doing here is sentencing in a mandatory manner our total Judicial System to not to do justice, but injustice to everyone.

We have over 200,000 cases, I believe, filed in the State of Maine every year. Albeit, the lawyers may plea bargain, the judges may not have time to handle the cases. We have read reports here, members of the Judiciary Committee, of which I serve, have indicated to you that we need more judges. We are overworking our judges today. We can not meet the cases on the dockets today in county superior courts, or district courts.

What we have to do is address reality. We have to use common sense with regards to this issue. I would say that Senator Wood has probably done one of the finest research efforts probably ever conducted in the Senate on an issue. He's worked very diligently, he's brought in some very cogent arguments from Alaska and other states, of which, by the way, many people in our Judicial System are very much aware of, prosecuting attorneys, people in the law enforcement, defense attorneys, the judges themselves.

I would say overwhelmingly that they would not agree with the conclusions that Senator Wood has drawn. I think Senator Devoe has indicated to you that there will be increased costs. I, for one, am not ready to pay the price for the many citizens, the elderly citizens if you will, the people in our society that are going to have to pay for this, in terms of trying to adjudicate justice in an equal manner. I don't believe it's going to happen.

What's going to happen is, people are not going to be tried at all. Under the Sixth Amendment, they are going to have to have a speedy trial. As Senator Wood said, the professional criminals are going to know how to use this system. The lawyers are going to know how to use this system to get the people off the hook, if they are a defense attorney.

We will not be able to pay the price, economically, socially, or in any way, shape or manner, legislatively, certainly not judiciously.

I would submit that most trial attorneys, even the attorney who was prosecuting that case that Senator Wood alluded to earlier, they don't want to use unscrupulous measures to convict someone. I think Senator Wood failed to point out a very significant point during that hearing and that presentation. What the district attorney said was that person and the several persons that were involved in that alleged crime, had a long history of criminal activity. They did not, as Senator Conley has pointed out, have the absolute facts to prosecute on the case that was presented to them from the law enforcement officers. They knew that at least they had a good chance that they could get the person on a lesser charge. That was clear and convincing to them that the evidence presented was that the people would plead guilty to a lesser charge.

If this Bill was passed, those people would have gone scot-free, gone out and committed more crimes. Is that justice? I don't believe so. I don't believe it serves the law enforcement agencies well. I don't believe it serves the Judicial System well. I don't believe it serves an overburdened, understaffed, underpaid Judi-

cial System properly.

I think it's very significant that we look at this from the point of view of a common sensical approach to justice. What may apply in Alaska certainly may not apply here in Maine. I would say that all of the factors that were presented here today will be best viewed, if you look at your current court system with a very close eye, and realize that if we enact this, we are going to cause chaos in our Judicial System.

Even under the name of something in terms of justice, or proper principles, we are going to inflict upon the current system of justice one of the greatest injustices ever created. I would say that the people of this State, if they realized the results of this Bill, and the Enactment of this Legislation, that you will see a great hue and cry. They will say please, do not do this. We want to put criminals in jail. They go into jail now and they're not being plea bargained out. They're going to jury trials. Those persons that go to jury trials, they are convicted in most cases. The ones that can be represented to the court, with a bona fide case, airtight, if you will, by the district attorneys, believe me, they're trying to do it to the best of their ability.

I would say I will, for one, say that in this case, I will give to the members of the Bar, to the legal profession. This is not a lawyer's Bill, this is a peoples' Bill in many ways, that we can not afford to change and uproot our system of justice on the basis of this particular bill.

I would support the Ought Not to Pass Report.

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

Senator CONLEY: Mr. President, I don't know what ever happened to the old saying in this country that one was innocent until proven guilty, but under Senator Kerry's dispensing of justice, I guess, if they are not guilty of "A" then we will drum up something to threaten them with "A" and convict them on "C", or "D".

Now the case is that too many people are getting away because police are not doing their jobs, and when they do do their jobs, the prosecuting attorney is generally plea bargaining with the attorney, not the defendant with the attorney, who is being paid to do a job to get his client out on the street. That's the dispensement of justice that is going on.

I say, that if we get a guy for breaking, entering, and larceny in your home, don't use deadly force, use the State's Prison in Thomaston, and not allow that district attorney, and that attorney representing that client, to plea bargain to reduce the charge and put him out on the pavement. That is what the people in this country are yelling about, the dispensement of justice equally.

When I hear this rubbish that is being tossed around here today I am shocked. We know what is going on in the court system, with respect to plea bargaining.

I suggest that you Adopt this Minority Report, and we the full Senate is in Session give it another go-around and listen to the arguments that can be made, because to me it does make common sense.

When the police arrest somebody on a charge, that they are glued in and that they are stuck with that charge, and they present that case before the prosecutor and make sure that that indictment comes out in that manner. That when it goes before the jury in a trial that that is what he is being charged on and that that report and the evidence is put together. That we do not threaten people with something that is a fantasy in their own minds, and try to convince someone that we have got the goods on you, when they do not have the goods on you. That is only the fair aspect of it.

One is innocent, until proven guilty and we should not be bringing charges against people that do not hold water.

We want the dispensing of justice, for every one and we don't want people who are caught red handed to be able to have their attorney come around and do a little bargaining with the prosecutor, and say look I'll have him plead guilty if you reduce the charge and we'll put him over in the county for 30 days, when he should be on the road to Thomaston, and probably doing two or three years.

That is the dispensing of justice on an equal basis. That is what I think that we want.

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

Senator KERRY: Mr. President, Ladies and Gentlemen of the Senate: I would just reply briefly to the Senator Conley's comments. I would say number one, when people were charged inappropriately and they pleaded guilty to a lesser charge, I do not think that there is one person in this room, or any person in this State, that would plead guilty to something that they did not do.

Why then do we have only four percent of the people, going to jury trials? The reason being is, as Senator Conley has stated himself by his own admission, if it was a drummed up charge, that you were not guilty of, you would find that 96 percent jury trials, and only 4 percent pleading. The case is true all of these people who plea bargain to the lesser position know that they are guilty and they are finally convicted of their charge. They pay their fines, they go to jail, they end up in Thomaston, they end up in the Mens Correctional Center. We all know that they do.

No one in their right mind will allow an attorney, for prosecutor or defense put them in jail, or say that I have done something wrong.

In fact, most of the people get off scot-free. I would indicate that many of these people who get as far as going to court, to be tried and go through a plea bargaining process, I would have to submit, that many of these people have probably committed crimes, and I think that they have committed them in the past and this has been the factual data that was presented, to us in Committee, that by the time they get to court it is usually after four or five times of being in contact with the law.

This is the presumption of guilt, this is just realistic if you look at the crime statistics, and the recidivism rates. I would say that there is one thing that has to prevail here today, and this is reason, common sense, and what the cost of this is going to be to the State of Maine, and to our county systems of government.

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

Senator WOOD: Mr. President and Members of the Senate, I would only like to clarify a few points that have been brought up. One is that the argument that people who are not guilty, will certain plea innocent. Studies have shown that in those cases, where the person went to trial and was found guilty, that the punishments meted out are much greater than the punishments meted out to someone who plea bargained guilty. So the incentive there is to plea bargain, even though you might be innocent through fear of what might ultimately happen, if you go to trial.

Secondly, this Bill has absolutely nothing to do with mandatory sentencing. In fact, it allows more discretion in sentencing, in that it removes the sentencing function from the plea bargain process and puts it in the hands of the judge, where it rightfully belongs.

I would also point out that in the case of Alaska, most of the prosecutors, the judges, and the attorneys of that state were appalled when the decision was made to band plea bargaining. So they are not unlike the members of the legal profession in our State.

If you went to Alaska now you would find that the vast majority of judges, prosecutors and attorneys are very comfortable with that system, and find it much better than the previous system.

I would also ask the question, and it was interesting that it was not put at the district attorney, he implied that these people were guilty, I do not know how he made that assumption, since guilt is determined at trial, but he implied that they were guilty because they had a record, they had been to court three or four times. How many times had they been plea bargained? Already. How many times had they gone to court and plea bargained down? I would point out that if they had gone to court in the first place and were found guilty, they would not have been out there committing those crimes.

No they probably went to court and plea bargained. And were released and in this instance, this person was released, but his friends were locked up, as if that is some kind of justice to the victim.

Now, Senator Kerry is concerned about the constituents of Maine, not willing to pay the price. Well, I do not want to get extremely emotional about this issue, but I would argue that the victims, the elderly that are harassed, and vandalized, and mistreated, would be very willing to pay this price for justice.

What is the price tag, the price tag on this Bill is one-half million dollars projected. Half a million dollars. The attorney general's office, says that this half a million dollars is sort of like jello at this point, because this is not too accurate, and they determine that after a year or two, of no plea bargaining that the rate will go down drastically because the defendants, and the prosecutors, and the police, and the courts, and the lawyers, will know that there is no more plea bargaining, and if they are guilty they might as well own up to it early, in the case.

It is a half million dollars, if it is that and I would point out in Alaska, it did not cost one more penny. If it is a half million dollars are you going to tell your constituents that you bargained away their justice for a half million dollars?

The PRESIDENT: Is the Senate ready for the question?

A Roll Call has been requested.

Under the Constitution in order for the Chair to order a Roll Call it requires the 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 York, Senator Wood, that the Senate Accept the Minority Ought to Pass Report of the Committee.

A Yes vote will be in favor of Accepting the Minority Ought to Pass Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Brown, Bustin, Charette, Clark, Conley, Najarian, Wood.

NAY — Ault, Collins, Devoe, Emerson, Gill, Hichens, Huber, Kerry, McBreairey, Minkowsky, O'Leary, Perkins, Redmond, Sewall, C.: Shute, Sutton, Teague, Trafton, Trotzky, Usher.

ABSENT — Carpenter, Dutremble, Pierce, Pray, Violette.

A Roll Call was had.

7 Senators having voted in the affirmative, and 20 Senators in the negative, with 5 Senators being absent the motion to Accept the Ought to Pass Report, does not prevail.

The Majority Ought Not to Pass Report of the Committee Accepted.

Sent down for concurrence.

The President laid before the Senate:

Bill, "An Act to Provide Loans for Family Farms. (S. P. 470) (L. D. 1326)

Tabled—Earlier in the Day by Senator CONLEY of Cumberland.

Pending—Adoption of Senate Amendment "A" (S-179)

Senate Amendment "A" Adopted.

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

Senator EMERSON: I move the Indefinite Postponement of this Bill and all its accompanying papers, and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator EMERSON: Mr. President and Ladies and Gentlemen, for many years I have been part of the agricultural community, as a farmer, and other positions, and if I thought for a minute that there was any need of this Bill, I would certainly be for it, because these are the people that I relate to, and sympathize with. I do not believe that there is any need for the Bill.

Already we have enough lending institutions to provide any qualified person with financing to farm, to buy a farm, to buy farm property, to buy farm equipment, for production loans. There are within the State in the agricultural communities, the Production Credit Associations, Land Bank Associations, whose sole purpose is to make agricultural loans, and some local banks make loans to farmers. If borrowers can not obtain financing from these sources there is a Farmers Home Association.

It is my experience that the Farmers Home Administration will finance any qualified person for the production of food and fiber, and even finance some who are not qualified.

Many, many farm families have been able to establish a successful and carry on a successful farm enterprise through agriculture loans from the Farm Home Administration. Many, many other families, operators, have been financed way beyond their ability to repay. The Farm Home has had a record of financing many submarginal operations. This Farm Home Administration, which is partially supported by tax dollars, must take a tremendous loss some time, for these submarginal operations.

Also, it's been my experience that I have had several cases where people have started to farm, been able to get into farming without any investment on their own part at all, through F.H.A.

It seems to me, if we pass this particular piece of Legislation, we will be looking to make loans to people who can't even obtain an F.H.A. loan. I believe this would be trying to finance the worst possible loan.

I can't believe the State needs to get into this operation, this program. I don't believe that the State can afford to get into this program. Therefore, I would hope you would go along with Indefinite Postponement.

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

Senator CONLEY: Mr. President, my memory is beginning to fail me, but I wonder if the good Secretary of the Senate would give the Reading of the Committee Report.

The Reports were Read.

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

Senator MINKOWSKY: Mr. President and Members of the Senate: As I am reasearching this Bill this afternoon, I came across what I consider some compelling arguments against the acceptance of this particular piece of legislation. It's really clarified my thinking that this was a similar bill that the sponsor introduced two years ago, which was ultimately killed.

Some of the reasons I'd like to project to you this afternoon are the following.

In Section 305, under Eligibility, it goes on to say that if the person meets the criteria as outlined, in number one through five, he or she can qualify for programs offered presently through the Farmers Home Administration and other institutions.

Another concern was this Bill places the State of Maine between the lenders and the borrowers, which tends to break down the necessity, or necessary communication for good credit relationships. We've had our experience relative to good credit relationships.

Banks are less likely to follow up and advise lenders of the state guaranteed loans, which was another thing I found which concerned me. You all recall very vividly, that I was part and parcel to it a few years ago, Freddie the Free-loader, known as Freddie Vahlsing and his fiasco with the potato or the suger beet industry in the State of Maine, which ultimately the taxpayers picked up. This involved the Maine Guarantee Authority in an area where it was never intended to be. I'd just like to bring that analogy up with Freddie, just as reinforcement why this is not good legislation.

If you look in Section 304, the membership of the Advisory Council, really lacks people with financial backgrounds. I call your attention to the makeup of that particular board, one dairy farmer, one farmer engaged in growing horticultural products, one poultry farmer, one public representative, and one agricultural economist. Now tell me if these people are qualified to make this type of a decision.

Another concern rests with the, which exposed the State of Maine to unlimited amounts of loan guarantees. That has always frightened me, for we are dealing with this type of a situation. It tends to lessen loan application commitments because of guarantee aspects. I think the good Senator from Penobscot, Senator Emerson, clarified that particular point exceptionally well.

Even though, although several states have similar programs, which have met only limited success according to my findings, the vast majority of them do not.

Another thing that was not clarified in this particular document was, if it had a Fiscal Note. If you look on page 3 of the Bill, where it says staff services, it says the commissioner shall provide the council with necessary staff, office space, administrative services. I've been under the impression that the Department has been in financial straits, financial disaster. Where are they going to find the funds to provide this type of staff? Where are they going to find the funds to meet the criteria of \$40 per day of necessary expenses for actual attendance of meetings for the five members of the council?

These are points, I believe, that should have been addressed, that have not. If this Bill had been in effect the past ten or fifteen years, could you visualize the problem the State, as well as the federal government, would be facing at the present time, with the poultry industry, in concerning their outstanding debts?

I would sincerely hope the Senate would Adopt the Indefinite Postponement action of this particular document.

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

Senator WOOD: Mr. President and Members of the Senate: I would like to talk about this Bill briefly. The good Senator from Androscoggin is incorrect in that this Bill has been here about three times, not just once before. In fact, in Greek mythology, there is Sisyphus. Sisyphus is one of those people that continually rolls a rock up a hill. When it gets to the top, he falls and the rock falls down. He proceeds to roll the rock back up the hill.

I sort of feel like Sisyphus today. I have sponsored this Bill from its inception. At some point in my life, if I live as long as Ralph Lovell, maybe I will see this Bill to its final fruition.

Why did I sponsor the Bill? A few years ago, this Legislature in its wisdom created a food and farmland study commission, that was to report back to the Legislature on the agriculture community as a whole, and some of the ways the State could encourage agriculture. I was fortunate, or unfortunate, enough to be a

member of that Commission. We held hearings all over the State of Maine, from the southern part of the State, to the blueberry barons, to Aroostook County. Time and time again, we heard the complaint that there should be a mechanism available at the State level to meet the needs of those small farmers who are having problems finding adequate financial resources.

We also should have a mechanism to encourage the banking community to become better involved and more actively involved in agriculture. If you travel to any mid-western city, and go to their bank, you will find an agricultural loan officer with a great deal of expertise in agriculture. There is only one such person in Maine, it's Joe Williams, who was the former Commissioner of Agriculture, who helped me on this Bill and encouraged me on my way. I think that Joe Williams is making a significant impact on the agriculture community, but he certainly can't do it alone.

This Bill had two parts to it. One, to encourage the small farmers, not large poultry producers, not large dairy farms, not large potato farms, but those small farms, to give them some kind of economic help. Secondly, and much more importantly, to encourage the banking community, not mandate the banking community, but encourage the banking community to make it in their best interests to involve themselves in agriculture activity.

This Bill has been introduced several times. It's met with defeat several times. I'm prepared, if it meets defeat again, to introduce it again, because I think the bill merits some attention. I think at the hearing we heard from several people, that felt it was important for the State now to have some kind of capacity to help small farmers. We are undergoing many changes in Washington. We're not fully aware of what all those changes will bring. One thing we are sure, is that there will be many changes in Farmer's Home. The day will come very soon when small farmers will be shut out of Farmer's Home.

In fact, when we met on this Bill several years ago, Seth Bradstreet, who was then the head of Farmer's Home, I'm not sure if he still is, was a firm supporter of this Bill. He said there were people that they could not help that should be helped. Maybe this Bill could help them.

I offer the Bill again this year, because I think it has merited further discussion.

You have on your desks a letter today from the Maine Farm Bureau Association. I'm well aware of their opposition to the Bill. I can sympathize with many of their concerns. We have tried to address their concerns in this Bill.

I would point out an interesting tale. Senator Hichens can confirm this. I was speaking to the York County Farm Bureau. They asked me down there. I was wondering if it was to literally roast me, since I have not always supported their bills. I got up to speak and I started explaining this Farm Loan Program. I was amazed to find in the room a lot of people who were saying, that's a great idea. How come that isn't through? That's a wonderful idea. I'm glad someone in Augusta is concerned about this Farm Loan Program. Why hasn't the Legislature passed it?

I guess I was too much of a gentleman that night to tell them one of the reasons it hadn't been passed, is because the State Farm Bureau was opposed to it. Yet, these people, who called themselves the York County Farm Bureau, and were full fledged members of the Farm Bureau, were much in favor of it.

I would argue that maybe the Farm Bureau did not speak for all its members, just as the Democratic Party does not speak for all its members, or the Republican Party does not speak for all its members.

Senator Minkowsky has raised some issues. I would like to go through them. First, he says that this Bill has been in other states with very

little impact. I don't know what states he looked at. I looked at Minnesota. They've had the program, I think, it's since 1976. They've not had one default on any loans. They have seen a marked increase in farming activity. They have seen a marked increase in banking community activity in that farming community.

I think that meets the criteria that I want to meet. I haven't done a complete analysis of all the states, but I know in one state it's working wonderfully.

Senator Minkowsky said, this really doesn't have any financial expertise on this board that's going to act on these loans. I would point out that first of all, before the person can even be considered for the loan, he has to go to a bank and get the bank to approve the loan. That's where the financial expertise comes in. I think the banks are going to look very closely at these loans and use their expertise. I don't think they're going to willy-nilly loan everyone in the State money to go into farming.

Furthermore, when I originally put the Bill in, I had someone from the financial institutions on the Board. Lo and behold, Farm Bureau came before the hearing and said, we hope that you don't keep that banking person on the Board. That's a conflict of interest. We don't want the banking community involved at this level of it. So to accommodate the Farm Bureau, I removed that financial person.

Today, they want the financial person back on the Board. I'm very willing to add that financial person, but I think there could be a conflict of interest. I think we had good reasons to put it off.

There have been some arguments that there is no need for this program. I know a number of farmers that need the program. I'll give you an example. If you wanted to go out and buy some land and plant 10 acres of strawberries, on 2 acres of strawberries sometimes you can yield \$8,000. That's not a lot of money. That's not a big, big production thing. Farmer's Home is not going to get too excited about that. You could make yourself and your wife a substantial living, a good living. They could benefit from this program.

There are a number of other people that would like to get back into farming, or in farming, and would like to expand that could benefit from this program. What would they have to do? The State simply isn't going to have the Treasurer of the State sitting over there and on Fridays he'll write checks out to farmers. The process is very complicated. They have to go to the bank, meet all of the obligations that the bank wants to put on it. I think bankers tend to be fairly conservative. I'm very trustworthy of my banker. He was my opponent one time and he lost, but I still trust his judgement.

They have to go there first. After they've met all of the bank's criteria, they then come to the State and are reviewed at the State level by a board made up of farmers. Why do we want this board? We want this board so that they can make sure that this person has some farming experience, has some kind of idea of the market he's working with, some kind of idea of the work involved, so that they can be convinced that he's going to succeed, he or she is going to succeed at farming.

I think that is important. What is lacking in Farmer's Home, is they do not make sure the persons are going to succeed. We put in this stop gap measure. After they've met all these criteria, then they are guaranteed a loan. They still have to pay the same interest rate that everyone else is. The loan is guaranteed up to 95 percent. They still have to come up with that 5 percent so they have a commitment. I think it's in the best interests of that bank to make sure that that loan isn't defaulted, because they have some.

Let's say if it was defaulted, if worst happens. The State has an interest in that land. I don't know about land prices in your area, but I

would say it's a nice nest egg to know that you have some land.

I've heard this story about terrible Freddie. I have no love for the Vahlsing fiasco. I think there is some merit to this program. I've thought it for the past six years. If it's not passed now, I will think it again and again, if I have the opportunity to be re-elected.

So I would urge you to consider seriously this matter before you vote.

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

Senator DEVOE: Thank you very much, Mr. President and Members of the Senate. Just a few comments, and I will be brief. I'm thankful that we didn't pass this Bill when it was first presented by the sponsor several years ago. If we had, there's a good chance that, given the thinking that is laid out in this bill, lots of the poultry farms and the new projects that have been built in the last several years would all be under these M.G.A. guaranteed loans. That's great for our State's credit rating.

This Bill proposes that we make a decision on whether to loan something that is marginally rated, at best, to be in part subject to the decision of a council. A council is going to advise the Commissioner of Agriculture. Nobody on there with any financial expertise, necessarily, dairy farmer, horticulturist, a public representative, whatever that means.

We're talking about money, we're talking about hard-headed financial decisions that are going to be made. What expertise does this five member council have? How long does a person have to be a resident of this State? The Bill, as it was originally put in, and apparently plea bargained out in Committee, was that somebody could show that he was going to become a resident of this State. Thank goodness plea bargaining did work in Committee, and at least got that clause yanked out of the Bill.

I ask you, you move up here from Massachusetts, Vermont, Missouri, wherever you want to. You're going to grow cotton in Maine, maybe from Arkansas. You move into the town. You go down to register to vote. The next day you sign an application, you say, I'm a resident. Maybe you also stop in at the town clerk's office and you make an application for a driver's license or something like that, so you can have two indicia of your being a resident of this State.

You're here six months. You strike it up very nicely with people who are on the Council. Or you know somebody who knows somebody who's on the Council, so your application is favorably approved.

The Bill says you've got to have less than \$50,000 net worth before you can even be considered. With what little I know of farming operations today, unless you're going to be a gentleman farmer and independently wealthy, you've got to have dough, and you've got to have almost an endless amount of dough to make a farming operation work.

Here again, you're talking about something that perhaps is only going to be marginally successful. How long is a person going to have to have been a resident of this State, before he becomes potentially entitled to having all citizens of this State subsidize his farming operation, because that's what we're talking about today.

We're talking about the full faith in credit of this State, backing M.G.A. guaranteed loans. Imagine what the business of the M.G.A. is going to become like, if they have 500 or 1000 family farm loan applications, each one of which, I assume, has to be processed, individually investigated, individually voted on. What impact is that going to have on the operations day to day of the M.G.A.? What's going to happen to our State's bond credit rating? Our interest rate, that we have to pay, that all citizens of this State have to pay. We're all paying, through our State appropriation every two years on bond issues. The higher the rate of interest is, then the more it costs every citizen of

this State to pay his taxes, to pay that interest rate.

Mention of the word Freddie Vahlsing is not a red herring. It is an absolute potential evil in this Bill. I don't think that a decision on whether to make a high risk loan should in any way be dependent on a council of the people, with no professed financial expertise, in the statute, to address their duties. Sure it may be a great idea. A decision on whether or not to loan money on a high risk venture, ought to be based on something more certain, more positive than that. Thank you very much, Mr. President.

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

Senator MINKOWSKY: When the vote is taken, I ask for a Roll Call.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from York, Senator Wood.

Senator WOOD: Mr. President and Members of the Senate, I would like to clarify, if I could, a couple of points that have been made. There seems to be an undue concern with this advisory committee. If the Senator is correct in his terminology in that we plea bargained this Bill, if he thinks there is merit, I'll be willing to plea bargain some more and plea bargain that advisory council out of the way, if that's a big problem.

I would point out that before they go to this council, before anyone can get a loan, they have to go to the bank, to that financial institution and meet all of the requirements that anyone else getting a loan would have to meet. Maybe we don't have any faith in our banking community. I certainly do. I think our banking community would use good judgement.

I would point out the reason, the reason that we put the advisory board in, was more to benefit those farmers, so that the person going into farming would be able to talk with fellow farmers about some of the problems of farming. That board could determine whether this person was really a resident of the State, really committed to farming in Maine, had the capabilities and the knowledge necessary to farming, not financial questions, questions to do with farming. Whether that person had done a market study, whether that person was assured of some kind of success rate. That was the reason. That was to be their judgement on the applicant, not a financial judgement.

The financial judgement properly belongs to the bank. I think that's the reason that mechanism was put in.

In fact, when the Bill was first introduced, the then Treasurer of the State, Jerry Spears, came to me and said, I have some real concerns about this in terms of credit rating. I'm wondering if I can work with you and plea bargain, if you want to use that term, so that we can come with a vehicle that I feel more comfortable with relative to the credit rating of the State. I said I would be very glad to work with you. I worked with then Commissioner of Agriculture, the Treasurer of the State of Maine, the head of the M.G.A., and Seth Bradstreet. We came up with this vehicle that seemed to satisfy the then Treasurer, that this was an appropriate response to a problem that would not put the credit rating at risk.

We talked about this as somehow impacting on Freddie Vahlsing and the poultry industry. I would point out the \$50,000 limit. We did this very consciously, because there are people out there, and although we might think the operation is marginal, although it does not turn a tremendous profit in terms of thousands and thousands of dollars, that they have just as much right to return to farming, to become interested and active in farming, than those that have the \$100,000 and \$200,000 necessary.

If we're going to reverse the national trend we see with our farm land disappearing, the one way of doing it is to help those small farm-

ers get started. I can assure you that there are ways of with only 10 acres of land, and a lot of hard work, that you can turn a profit. In this day and age, you need a little assistance. That's all we're offering.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Brown.

Senator BROWN: Mr. President, I'd like to pose a question if I can to someone that might be able to answer it. Does not F.M.H.A. and S.B.A.R. already guarantee this kind of venture? I have thought that those two organizations already offered a guarantee for this kind of venture.

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

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President and Members of the Senate: In reference to the good Senator from Washington, Senator Brown, that was the first point I brought out in my concerns against this particular Bill. I stated, which is based on eligibility, those are only for the person who meets the criteria outlined in number one through five, he or she can qualify for programs offered presently through F.M.H.A. and other financial institutions.

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

Senator WOOD: I, too, would like to respond to that question. I can only postulate since the Maine Food and Farmland Study Commission, which held hearings all over the State, and talked to farmers, real live farmers, and those farmers told us that they were having problems, and that they wanted this vehicle. They're the ones tilling the soil. I trust their judgment. I would further point out that Seth Bradstreet, who was the head of Farmer's Home, thought that there were people that were falling through the cracks. They could not qualify, could not receive money.

I would further speculate that we are seeing some massive changes in Washington. If anyone today can predict that all the programs to aid farmers are going to continue, then maybe we don't need this Legislation. Maybe we can let those few people by the wayside.

I don't have a crystal ball. What I'm hearing, is that those programs are not going to continue.

The PRESIDENT: Is the Senate ready for the question?

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 Emerson, that L. D. 1326 and its accompanying papers be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement of L. D. 1326.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Ault, Brown, Charette, Collins, Devoe, Emerson, Gill, Huber, McBairty, Minkowsky, Perkins, Redmond, Sewall, C.; Sutton, Teague, Trotzky.

NAY — Bustin, Clark, Conley, Hichens, Kerry, Najarian, O'Leary, Shute, Trafton, Usher, Wood.

ABSENT — Carpenter, Dutremble, Pierce, Pray, Violette.

A Roll Call was had.

16 Senators having voted in the affirmative and 11 Senators in the negative, with 5 Senators being absent, the motion to Indefinitely Post-

pone L. D. 1326 does prevail.

The Chair recognizes the Senator from Penobscot, Senator Emerson.

Senator EMERSON: Mr. President, I move we Reconsider this action.

The PRESIDENT: The pending question is the motion by the Senator from Penobscot, Senator Emerson, that the Senate Reconsider its action whereby it voted to Indefinitely Postpone L. D. 1326.

Will all those Senators in favor of Reconsideration, please say "Yes".

Will all those Senators opposed, please say "No".

A Viva Voce Vote being had, the motion to Reconsider does not prevail.

Sent down for concurrence.

#### (Off Record Remarks)

The President laid before the Senate, Bill, "An Act to Prevent Hunting of Bear with Bait." (S. P. 64) (L. D. 91) Tabled earlier in today's session, by Senator Collins of Knox, pending Acceptance of Either Committee Report.

On motion by Senator Collins of Knox, retabled for 1 Legislative Day.

The President laid before the Senate, Bill, "An Act to Abolish the Trapping of Bear." (H. P. 553) (L. D. 629) Tabled earlier in today's session by Senator Collins of Knox, pending Acceptance of Either Committee Report.

On motion by Senator Collins of Knox, retabled for 1 Legislative Day.

On motion by Senator Collins of Knox, Adjourned until 12:30 o'clock tomorrow afternoon.