

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

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STATE OF MAINE

One Hundred and Tenth Legislature

First Regular Session

JOURNAL OF THE SENATE

May 11, 1981

Senate called to order by the President.

Prayer by Pastor Donald N. Jones of the First Baptist Church of Livermore Falls.

PASTOR JONES: President Sewall, and Members of the Senate, it's a pleasure to be here this morning.

Let us pray. As we begin a new week in this Chamber, we pray for Your divine guidance, O God. There are bills that will come before us that will call for decisive action. Help each Member of this Body to understand the issues, and to act accordingly, always keeping in mind the best interest of the people they serve.

Honor and glory belongs to You, our Father. We give thanks to You, not alone, for the freedom we enjoy, but for the opportunity to serve our State. To that end, may this day be productive, as we accomplish the tasks before us. In Christ's name we pray. Amen.

Reading of the Journal of yesterday.

Papers from the House Joint Orders

Expressions of Legislative Sentiment recognizing:

Marilyn Burton, language arts teacher, Southern Aroostook Community School District, who has been awarded the 1981 Honor Medal of the Maine Teachers Association. (H.P. 1442)

Norm Palmer of Bangor, who is retiring after 25 years of coaching and dedication to the youth of the greater Bangor area. (H.P. 1444)

Come from the House, Read and Passed.

Which were Read and Passed, in concurrence.

Communication Senate Chamber President's Office

May 8, 1981

Honorable Charlotte Z. Sewall
Honorable Edith S. Beaulieu
Chairmen, Joint Standing
Committee on Labor
State House
Augusta, Me

Please be advised that Governor Joseph E. Brennan is nominating Harold G. Loring of Portland for reappointment as the Labor Representative on the Maine Employment Security Commission.

Pursuant to MRSA, Title 26, Section 1081, this nomination will require review by the Joint Standing Committee on Labor and confirmation by the Senate.

Sincerely,
S/JOSEPH SEWALL
President of the Senate
S/JOHN L. MARTIN
Speaker of the House
(S.P. 595)

Which was Read and referred to the Committee on Labor.

Sent down for concurrence.

Committee Reports House

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

Bill, "An Act to Repeal the Confidentiality Provisions of the Real Estate Transfer Tax Law." (H.P. 675) (L.D. 779)

Bill, "An Act to Amend the Motor Vehicle Excise Tax Law to Provide for Certain Reimbursements." (H.P. 1025) (L.D. 1235)

Bill, "An Act to Conform the Existing Sales Tax Exemption for 750 Kilowatts of Electricity to Patterns of Usage." (H.P. 1239) (L.D. 1464)

Leave to Withdraw

The Committee on Aging, Retirement and Veterans on, Bill, "An Act Concerning Cost-of-Living Increase for Retirees under that State Retirement System." (H.P. 771) (L.D. 916)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on State Government on, Bill, "An Act Creating a Division of Records Management Services within the Department of Finance and Administration." (H. P. 1367) (L. D. 1552)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Business Legislation on, Bill, "An Act Creating a Priority Concerning Certain Claims of the Maine Insurance Guaranty Association." (H. P. 916) (L. D. 1082)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Labor on, Bill, "An Act to Provide for the Protection of the Pension Rights of Injured Maine Workers." (H. P. 1146) (L. D. 1368)

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

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 Relating to Bear Hunting." (H.P. 1037) (L.D. 1256)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Business Legislation on, Bill, "An Act to Reduce the Cost of Workers' Compensation Rates to Maine Employers." (H.P. 1188) (L.D. 1412)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Energy and Natural Resources on, Bill, "An Act to Establish an Environmental Licensing Fund in Order to Expedite the Processing of Applications Filed with the Department of Environmental Protection." (H.P. 1364) (L.D. 1549)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Energy and Natural Resources on, Bill, "An Act to Create the Nuclear Activity Consent Law." (H.P. 1121) (L.D. 1338)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Energy and Natural Resources on, Bill, "An Act to Restrict Importation of Hazardous and Radioactive Waste." (H.P. 1315) (L.D. 1519)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Energy and Natural Resources on, Bill, "An Act to Permit Applicants for Waste Discharge Licenses and Air Emission Licenses to Request Hearings Thereon

Before the Board of Environmental Protection." (H. P. 634) (L. D. 715)

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 Prohibit Housing Discrimination Against Families with Children." (H.P. 1233) (L.D. 1458)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on, Bill, "An Act to Eliminate the Disincentive for Aid to Families with Dependent Children Recipients to Find Employment." (H.P. 947) (L.D. 1123)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-306).

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

The Committee on Business Legislation on, Bill, "An Act to Increase Certain Fees under the Funeral Directors and Embalmers Law." (H.P. 999) (L.D. 1197)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-314).

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

The Committee on Energy and Natural Resources on, Bill, "An Act to Amend an Existing Law Pertaining to Conversion of Seasonal Residences in Shoreland Areas." (H.P. 946) (L.D. 1122)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-320).

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

The Committee on Health and Institutional Services on, Bill, "An Act Concerning Review of Fees for Providers under the Medical Assistance Program." (H. P. 1009) (L. D. 1205)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-322).

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

The Committee on Public Utilities on, Bill, "An Act to Amend the Waldoboro Sewer District Charter." (H.P. 235) (L.D. 271)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-311).

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

The Committee on Public Utilities on, Bill, "An Act to Amend the Charters of the Mars Hill Utility District and the Rumford Water District." (H.P. 1041) (L.D. 1260)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-310).

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

The Committee on Taxation on, RESOLVE, Reimbursing the Town of Madison under the Maine Tree Growth Tax Law. (H.P. 1386) (L.D. 1563)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-318).

Comes from the House, the Resolve Passed to be Engrossed as amended by Committee

Amendment "A".

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

Ought to Pass in New Draft

The Committee on Fisheries and Wildlife on, Bill, "An Act to Clarify the Inland Fisheries and Wildlife Laws of Maine." (H.P. 15) (L.D. 9)

Reported that the same Ought to Pass in New Draft under the Same Title (H.P. 1423) (L.D. 1577)

Comes from the House, the Bill, in New Draft, Passed to be Engrossed as amended by House Amendment "A" (H-312) and House Amendment "B" (H-340).

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

(Off Record Remarks)

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

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

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

Recess**After Recess**

The Senate called to order by the President.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act Relating to Bail Commissioners." (H.P. 1271) (L.D. 1486)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-338).

Signed:
Senators:

CONLEY of Cumberland
KERRY of York

Representatives:

HOBBINS of Saco
LIVESAY of Brunswick
BENOIT of South Portland
JOYCE of Portland
SOULE of Westport

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

Signed:
Senator:

DEVOE of Penobscot

Representatives:

CARRIER of Westbrook
LUND of Augusta
REEVES of Newport
O'ROURKE of Camden
DRINKWATER of Belfast

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

Which Reports were Read.

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

Senator DEVOE: Thank you, Mr. President. Mr. President, I move that the Senate Accept the Minority Ought Not to Pass Report and would speak briefly to my motion.

The PRESIDENT: The Senator has the floor.

Senator DEVOE: Thank you, Mr. President. Members of the Senate, this Bill deals with the

right of arrested persons to have the services of a bail commissioner once they have been brought to jail. The Bill would propose to give indigent accused persons the right to sign a sworn statement that they are indigent, and therefore, they would then be excused from paying the bail commissioner. He would be paid out of the funds of the district court, assuming that the district court the following day, would agree with his representation, that he is, in fact, indigent.

The Minority on the Committee felt that the bail commissioner system, even though it may have problems in isolated parts of the State, was still working fairly well. If a person is in difficulty, he ought to be able to call a friend and get either a \$10 or \$15 advance from a friend if he didn't have any money on him, so that he could pay the bail commissioner.

At the present time, if a person is brought to jail before 8 o'clock in the evening, in other words, in the daylight hours, and he doesn't have any money on him, he has to be bailed out, he can call a bail commissioner and pay a \$10 fee. The bail commissioner fills out a form, files it with the district court the next morning, and the person appears to answer the complaint the next day. If he is brought into jail after 8 o'clock in the evening, the bail commissioner's fee is \$15.

I think the Minority of the Committee felt that if a person has enough money so that he's out and gets into some trouble, that he ought to be able to pay the \$10 or \$15 fee to the bail commissioner, so that he can be released on personal recognizance, and appear on his own written assurance to the bail commissioner the next morning in court. Thank you very much, Mr. President.

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

Senator CONLEY: Mr. President and Members of the Senate, those who say that the bail system is working very well apparently don't visit our county jails, or our detention lock-ups throughout the State. There are many people who are held in lock-ups on weekends. For example, I'll use the County of Cumberland, they are detained at say, Brunswick, or Bridgton, and because of the lack of a fee of \$15, to pay a bail commissioner, are generally transported, particularly if it's a weekend situation, are transported from the Town of Brunswick to the Cumberland County Jail, and are held there. Say it happened on a Friday night, they're detained Friday, Saturday, Sunday, Monday, and then transported back to Brunswick Tuesday to appear in court. That would be the first day of the week that the Brunswick Court would be in session.

We have the City of Portland, where we have the district courts five days a week. If someone is arrested on a Friday night, they are generally detained, because of the fact that they have either the lack of property, or the lack of a \$15 fee, are detained in the lock-up until Monday morning, or they're brought next door to the Cumberland County Jail and detained there from Friday, Saturday, Sunday, and brought to court Monday morning.

What we're talking about primarily are insignificant violations of petty crime. Someone, for example, who may have had a little bit too much to drink and got in a little affray, someone who may have crossed the street, or yelled at a policeman, some sarcasm. Those of us who are familiar, and as a former one who was a bail commissioner, I can assure you that many people do not have that \$15.

The fact of the matter is, it's only when one proves to be indigent, that the bail commissioner would be reimbursed by the county.

Let's take, for example, how much it costs the county to transport indigents from Brunswick, Maine to the City of Portland. One, they have to feed them and house them for the four days. The transportation back and forth to Brunswick, because the individual would

appear in the Brunswick District Court. It would be much easier to have the bail commissioner release that person on personal recognizance, because no one's going to move or leave the State, people who were born and raised and bred here, because of the fact that they don't have \$15 or the fact that they're going to have to appear in court for some minor misdemeanor. If we're talking felonies, we're talking something entirely different. One has to post reliable surety, and generally that surety, is someone who owns property. Generally, that bail comes into the area of \$2500 to \$5000, whatever the case would be.

If we used operating under the influence as an example, where the fine is \$250, an indigent generally can't come up with \$250 cash bail. Generally that's what the cost of the fine is. Again, I use, as an example, that no one is going to move out of the State, run away from the State, because they're allegedly, allegedly, and I always have to use that word, allegedly, going to be found guilty of operating under the influence and fined \$250. A person would show up, I would say, 999 times out of 1000, but because of the lack or the misfortune of being poor, one is incarcerated and held in jail until the court date.

I think we have a code in this country that says "one is presumed innocent until proven guilty." What we're talking primarily here in this Bill is minor misdemeanors that do not require a surety bond placed on an individual. If somebody's committed a felony, the bail commissioner would automatically establish a bail that would be enough, and someone would have to take the risk of pledging that surety, guaranteeing that individual's appearance in court.

We're talking primarily of people who have been charged with misdemeanors. It's costing the county far more in excess to detain that individual, whether it's one night, or whether it's four days, or three days, than it would be to allow the bail commissioner to put that individual out on personal recognizance, and if proven to be indigent, then the county would pay for the fee of \$15 to have that individual released. \$15 in the evening. If it was in the day time, again, I can cite Portland as an example, they're detained in the Portland City lock-up, or in the county lock-up. They can be brought right over to the court house any time during the day. I can guarantee you that that judge, whoever it is, whoever she or he is, would release that person or personal recognizance.

There's really no reason why this Bill shouldn't be accepted. I would ask that the Senate defeat the pending motion.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from York, Senator Kerry.

Senator KERRY: Mr. President and Ladies and Gentlemen of the Senate, I'll speak very briefly on this issue. I, when this Bill was first presented before the Judiciary Committee, was in opposition to it, primarily because of the requirement within the Bill to require the bail commissioners to meet personally with the alleged person who committed the crime. This was amended out of the Bill.

What it came down to was the fact that the bail commissioners that appeared before our Committee said that in most cases, that they do in cooperation with the authorities at the lock-up, do determine, and with the courts, do determine if a person is or is not indigent. They have some very strict, if you will, informal guidelines by which they act upon to see if a person is indigent.

The second compelling argument that I have seen here is the fact that to hold a person in jail overnight for an alleged crime, just because of lack of money, seems to me to be a great injustice to the individual, just because of their lack of resources. This seemed to develop a two tiered system of justice. If you had the money, you could get out. If you didn't, that seemed to

me to be unjust.

More importantly, I think it costs the State, the taxpayers, or the county taxpayers more money to keep the person in jail. For public accommodations of any kind in this State, it costs at a minimum of \$15 a night it seems, for anyone to stay anywhere. My understanding from the information presented before the Committee is that it would cost anywhere from \$25 to \$30 a night to keep a person in jail.

I would say the two reasons that I feel that are most compelling for us is number one, it is an injustice to a person who does not have funds. If they had the money, they would be cut. They would be coming back, as Senator Conley has indicated. Secondly, it will cost the State taxpayers through the county, or whatever means that are necessary, more money in the first place.

I would recommend that we also defeat the motion. Thank you.

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 Penobscot, Senator Devoe, 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.

11 Senators having voted in the affirmative, and 16 Senators having voted in the negative, the motion to Accept the Minority Ought Not to Pass Report of the Committee does not prevail.

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, in non-concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Local and County Government on, Bill, "An Act to Provide a Referendum to Abolish County Government and Authorize Reassignment of its Functions and Duties to Appropriate State and Municipal Departments and Agencies." (H. P. 1040) (L. D. 1259)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

PERKINS of Hancock
AULT of Kennebec

Representatives:

RIDLEY of Shapleigh
STOVER of West Bath
PARADIS of Old Town
McHENRY of Madawaska
CURTIS of Waldoboro
ARMSTRONG of Wilton

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

Signed:

Sensor:

CHARETTE of Androscoggin

Representatives:

LaPLANTE of Sabattus
WENTWORTH of Wells
SWAZEY of Bucksport
ROBERTS of Buxton

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

Which Reports were Read.

On motion by Senator Collins of Knox, Tabled for 2 Legislative Days, pending Acceptance of Either Committee Report.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Permit the Publication of the Names of Juveniles in Connection with Arrests and Court Appearances." (H. P. 742) (L. D. 880)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

CONLEY of Cumberland
KERRY of York

Representatives:

HOBBS of Saco
JOYCE of Portland
LUND of Augusta
SOULE of Westport
LIVESAY of Brunswick
BENOIT of South Portland

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as amended by Committee Amendment "A" (H-300).

Signed:

Sensor:

DEVOE of Penobscot

Representatives:

DRINKWATER of Belfast
REEVES of Newport
CARRIER of Westbrook
O'ROURKE of Camden

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" (H-300).

Which Reports were Read.

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

Sensor DEVOE: Mr. President, I move that the Senate Accept the Minority Ought to Pass Report and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Sensor DEVOE: Thank you, Mr. President.

Members of the Senate: This Bill is one of several dealing with the subject of juveniles, and punishment of juveniles. It deals particularly with the publication of names of juveniles in connection with arrests and court appearances. Throughout the State in recent years, there has been an outcry by various members of the public, that they do not know who the juveniles are who are being charged with certain offenses.

At the present time, we have a juvenile code that provides that anyone, a juvenile charged with a Class A, B, or C offense, under the Criminal Code, will have his case handled in open court. However, it provides that Class D offenses and Class E offenses will be private, and that the names will not be released to the public, except on court order.

This Bill basically gives a juvenile what you might call, one bite of the apple, on a Class D offense. It provides that the first time that he is charged with a Class D offense and found to have committed a Class D offense, his offense will not be open to the public. The proceedings will be private.

However, it provides that the second time a juvenile is charged with a Class D offense, that the proceedings will be open to the public and that publicity may be given him just as if he were an adult.

The Minority of the Committee felt that this was a reasonable compromise. It's giving a message to juveniles that society expects them to do a little better job at living up to their obligations under the law. It recognizes the fact that every juvenile may make a mistake. It says that if that mistake is the commission, or being charged with the commission of a Class D offense, then the first time around, it will be treated in private. The second time around, if he makes that mistake a second time, he will be subject to having the court proceedings open to the public.

For that reason, I move that the Senate Accept the Minority Ought to Pass Report.

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

Sensor CONLEY: Mr. President, as a junior member on the Joint Standing Committee on Judiciary, I would state that a lot of the junior Members on that Committee, overwhelmingly, signed the Majority Ought Not to Pass Report. The feeling is that they recognize, very strongly, that juveniles are exactly that. They're juveniles.

That one, past Legislatures Adopted the Juvenile Code not too long ago. In fact, I heard argued and debated, time and time again, in the Session, that the Juvenile Code really hadn't had an opportunity to go to work yet. We have a Bill before us today, which I feel is an erosion of that document.

I know that the mood in this country is to bring everyone to jail, or everyone to court. Publicize what atrocities have been committed.

I think what we are talking here, in this particular Bill, is we're talking what is considered a misdemeanor, a Class D crime, and now encompassing it with, what we look at as very hard felonies, Classes A, B, and C crimes, and we want to take these juveniles and have the public invited to the court appearance of these youths.

I, in no way, support youngsters who have problems, but I think they are problems to us as members of the Legislature, they are problems to society as a whole, and they have long been, generally, problems to their parents. Many of them quit school. Many of them are hanging around on street corners, because of the fact that some of the laws we have in the State prohibit the opportunity for them to have jobs. So, they're hanging out on street corners, and they are in trouble.

I think that once we start publicizing the names of 13, or 14, or 15 year old kids, into the newspapers, we almost make them some sort of a standout in the community of being the tough guy of the neighborhood. That's one category. There are other categories where there are some decent kids who are going to make one, two, or possibly three mistakes in life, and I don't believe that brandishing their name on the public record in an open court does them any good, nor will it do society any good. I would, therefore, move, Mr. President, that this Bill and all its accompanying papers be Indefinitely Postponed.

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

Sensor SUTTON: Mr. President, Ladies and Gentlemen of the Senate, last Session we debated a similar bill to this. The only difference, as I recall, was that we were going to require that the parents come in for counseling, but it was similar in other regards.

We passed that bill, and the Governor vetoed it. I said then, and I say now, we've got to stop messing around with juveniles. They're turning into criminals because we coddle them when they're juveniles.

We are not talking about atrocities, we're talking about the attitude that juveniles get about our whole court system that they can get away with anything. We're not talking about putting their name in the paper the first time they do something. We're talking about the second time. My goodness, there's little enough to start showing them that society is going to demand some respect and some maturity from them. As long as we don't, we're not going to grow them up into responsible adults. It's not much of a step, but we've got to start taking some steps, and I urge that we do it now.

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

Sensor DEVOE: Thank you, Mr. President. Mr. President, while we are considering this matter, I would like to bring to the attention of members of the Senate some of the offenses that are categorized as Class D offenses. So you will have some realization of just what kind of crimes we are talking about: Acquiring drugs by deception is a Class D offense, turning in a false alarm is a Class D offense, assault, criminal mischief, criminal threatening, criminal trespass, failure to disperse, (the kind of offense that they in Old Orchard Beach have been plagued with in recent years), false public alarm or report, trafficking in knives, negotiating worthless instruments, and Scheduled W, X, Y, and Z drugs are among the categories.

We have some 40 or 50 crimes that are categorized as Class D.

Now, these are the kind of offenses we are talking about in this Bill, and keep in mind we are saying, when we pass this Bill, the first time around, any Class D offense the juvenile will have his matter treated in private, but the second time around society, as the Senator from Oxford, Senator Sutton, just said, society expects a little different standard of behavior. That's all we're saying in this Bill. Thank you, Mr. President.

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

Senator KERRY: Yes, Mr. President, Ladies and Gentleman of the Senate. I can well appreciate the concerns of the good Senators from Oxford and Penobscot with regards to the rise, the virtual surge, in juvenile crime in the State of Maine.

Having been the son of a police chief and lived, if you will, with the strict discipline that is uncumbent I surmise upon the son of a law officer, I find that crime by juveniles is often a very difficult subject to address.

Certainly, when I was a youth growing up, I was very fortunate, and I'm sure many other people in this Body were very fortunate, to have the guiding hand of strong parents and solid families, by which to keep us in line. If not, I am sure myself and my other five brothers and sisters might have ended up in juvenile institutions or other such places.

In deliberating upon this Bill in the Judiciary Committee, many of the members had very compelling arguments with regards to publishing or making public the names of the juveniles. I don't really think they were wanting to do that. What they want to do is resolve the problem of juvenile crime. We have over 50,000 cases of juvenile, alleged, crimes in the State of Maine each year. That is a significant number and it must be addressed.

I think from the presentation of the information before our Committee, as well as, many of the documents that we read in the papers each day, that we find that the problem, the cause of the problem, is what we are trying to get after.

I think that this particular solution is inappropriate. It is not going after the cause. Why do I think that? I called the court system. I called the people who are involved with the police departments and county law enforcement officials, people that I respect in my Legislative District and throughout the State. What they told me was, this particular solution will not get at those persons who are committing the grievous crimes that Senator Devoe had indicated to you.

Currently, the judge has the discretion to say to a young juvenile, you have committed a serious offense, therefore, because of your history; because of your background; because in my judgment with regards to your future development, I feel that this should be publicized. The public should be made aware of it. You should be punished, not only personally by going to some institution, but society would be better served by knowing about you and the embarrassment your family, which is a trade off that all parents must face when their children get in trouble.

I heartily concur with Senator Devoe, and the good Senator from Oxford, Senator Sutton, with regards to publicizing those type of juveniles, and, it's done today.

I think it would not well serve the State of Maine, nor the parents of the children, nor even the juveniles themselves, if we do what the police chiefs that I talked to indicated. What we are going to do if we say publicize the name of the child or the juvenile who commits maybe, as Senator Conley said, criminal mischief, affray, or if he does something else, what he is going to do is go back to his friends and say look, I am now at the top of the heap, they put my name in the paper. This is what happens.

I think, very significantly, that it is common knowledge that the children, or juveniles from families who normally do not commit crimes, once their names go in the paper, they are embarrassed, yes, they do see a certain amount of deterrent but they are not the people that this Bill will get at.

Today we meet that problem with the discretion of the courts and the people involved with the criminal justice system of today.

I think that we have to have a solid hard look at the long term effects of passing public policy in this area, and I recall when Governor Brennan vetoed the message last year that it was a very punitive approach to this Bill. I think that attitude prevails today. It will not get at the problems, it will merely satisfy the frustration on the part of the people of the State. It will not solve their problem, in fact, I think, it will add to it. Therefore, I would support the defeat of this motion. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: I request a Roll Call.

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

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

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

The pending question before the Senate is the motion by the Senator from Cumberland, Senator Conley, that the Senate Indefinitely Postpone L. D. 880.

A Yes vote will be in favor of the Indefinite Postponement of L. D. 880.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Brown, Bustin, Clark, Conley, Duttremble, Kerry, Minkowsky, Najarian, O'Leary, Pray, Usher, Violette.

NAY — Ault, Carpenter, Charette, Collins, Devoe, Emerson, Gill, Hichens, Huber, McBreairey, Pierce, Redmond, Shute, Sutton, Teague, Trafton, Trotzky, Wood.

ABSENT — Perkins, Sewall, C.

A Roll Call was had.

12 Senators having voted in the affirmative and 18 Senators in the negative, with 2 Senators being absent, the motion to Indefinitely Postpone L. D. 880 does not prevail.

The Minority Ought to Pass, as amended, 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.

Divided Report

Seven Members of the Committee on Labor on, Bill, "An Act to Provide for an Offset for Holiday Pay under the Employment Security Law." (H. P. 879) (L. D. 1048)

Reported in Report "A" that the same Ought Not to Pass.

Signed:

Senators:

DUTREMBLE of York

Representatives:

BEAULIEU of Portland

McHENRY of Madawaska

BAKER of Portland

MARTIN of Brunswick

HAYDEN of Durham

LAVERRIERE of Biddeford

Five Members of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass.

Signed:

Senators:

SUTTON of Oxford
SEWALL of Lincoln

Representatives:

FOSTER of Ellsworth

LEWIS of Auburn

DAMREN of Belgrade

One Member of the same Committee on the same subject matter reported in Report "C" that the same Ought to Pass as amended by Committee Amendment "A" (H-313).

Signed:

Representative:

TUTTLE of Sanford

Comes from the House. Report "B" Read and Accepted and the Bill Passed to be Engrossed as amended by House Amendment "A" (H-343).

Which Reports were Read.

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

Senate

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 Provide a State Income Tax Credit for Installation of Renewable Energy Systems." (S. P. 283) (L. D. 791)

Bill, "An Act to Decrease the Tax on Harness Racing Licensees." (S. P. 415) (L. D. 1219)

Bill, "An Act to Provide Tax Incentives for Alternate Energy Sources." (S. P. 490) (L. D. 1391)

Bill, "An Act to Expand the Jobs and Investment Income Tax Credit." (S. P. 558) (L. D. 1529)

Bill, "An Act Concerning Local Voting on School Budgets." (S. P. 408) (L. D. 1211)

Leave to Withdraw

Senator AULT for the Committee on State Government on, Bill, "An Act Concerning Legislative Services." (S. P. 446) (L. D. 1284)

Reported that the same be granted Leave to Withdraw.

Senator AULT for the Committee on State Government on, Bill, "An Act to Provide a Resident State Trooper for the Town of Carra-bassett Valley." (S. P. 406) (L. D. 1213)

Reported that the same be granted Leave to Withdraw.

Which Reports were Read and Accepted.

Sent down for concurrence.

Ought to Pass — As Amended

Senator AULT for the Committee on State Government on, Bill, "An Act to Increase the Bonding Limit on Maine State Housing Authority Bonds Secured by the Housing Reserve Fund." (S. P. 418) (L. D. 1241)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-187).

Senator O'LEARY for the Committee on Transportation on, Bill, "An Act to Promote Tourism by Providing Directional Signs for Publicity Bureau Offices." (S. P. 352) (L. D. 995)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-186).

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

Divided Report

The Majority of the Committee on Legal Affairs on, Bill, "An Act to Permit the Sale of Dessert Wine at Retail Stores." (S. P. 199) (L. D. 563)

Reported that the same Ought Not to Pass.

Signed:

Senators:

SHUTE of Waldo

VIOLETTE of Aroostook

CHARETTE of Androscoggin
Representatives:
COX of Brewer
TREADWELL of Veazie
STOVER of West Bath
PERRY of Mexico
GWADOSKY of Fairfield
SWAZEY of Bucksport
McSWEENEY of Old Orchard Beach
DUDLEY of Enfield

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as amended by Committee Amendment "A" (S-185).

Signed:

Representatives:

SOULAS of Bangor
STUDLEY of Berwick

Which Reports were Read.

On motion by Senator Shute of Waldo, the Majority Ought Not to Pass Report of the Committee Accepted.

Sent down for concurrence.

Second Readers

The Committee on Bills in the second reading reported the following:

House

Bill, "An Act to Facilitate the Leasing of Existing Subsidized Housing Units." (H. P. 809) (L. D. 970)

Which was Read a Second Time.

On motion by Senator Collins of Knox, Tabled for 1 Legislative Day, pending Passage to be Engrossed.

Bill, "An Act to Provide Reciprocal Fees and Charges for Trucks from other States." (Emergency) (H. P. 1439) (L. D. 1581)

Which was Read a Second Time.

On motion by Senator Collins of Knox, Tabled for 1 Legislative Day, pending Passage to be Engrossed.

RESOLVE, Reimbursing Certain Municipalities on Account of Taxes Lost Due to Lands being Classified under the Tree Growth Tax Law. (Emergency) (H. P. 1387) (L. D. 1564)

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Somerset County for the year 1981. (Emergency) (H. P. 1435) (L. D. 1580)

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

House — As Amended

Bill, "An Act to Protect Privacy in Divorce and Child Custody Actions." (H. P. 864) (L. D. 1025)

Bill, "An Act to Require Alcoholism Treatment Benefits in Health Insurance Policies." (H. P. 591) (L. D. 669)

Bill, "An Act to Provide for Municipal Development of Energy Resources." (H. P. 1150) (L. D. 1398)

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

Senate

Bill, "An Act to Adopt Revised Standards for Access by the Handicapped to Certain Buildings." (S. P. 495) (L. D. 1395)

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

Sent down for concurrence.

Bill, "An Act to Prohibit Hunting of Bear with Bait." (S. P. 64) (L. D. 91)

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

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: L. D. 91?

The PRESIDENT: The Chair would advise the Senator that this Bill was recently Passed to be Engrossed.

Senator REDMOND: I move Reconsideration.

The PRESIDENT: The Senator from Somerset, Senator Redmond, now moves that the Senate Reconsider its action whereby L. D. 91 was Passed to be Engrossed.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Somerset, Senator Redmond, that the Senate Reconsider its action whereby L. D. 91 was Passed to be Engrossed, please rise in their places to be counted.

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

12 Senators having voted in the affirmative, and 15 Senators having voted in the negative, the motion to Reconsider does not prevail.

The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: I would ask for a Roll Call.

The PRESIDENT: The Chair would advise the Senator that the vote has been announced. A Roll Call is not in order.

Senator REDMOND: Mr. President, would it be proper that I move that the Bill and all its accompanying papers be Indefinitely Postponed?

The PRESIDENT: The Chair would advise the good Senator that the Bill is no longer before the Body. It has gone on its way.

Sent down for concurrence.

Senate — As Amended

Bill, "An Act Requiring Energy Efficiency in Buildings Financed with Public Funds." (S. P. 480) (L. D. 1363)

Which was Read a Second Time.

On motion by Senator Collins of Knox, Tabled for 1 Legislative Day, pending Passage to be Engrossed.

Bill, "An Act to Amend the Maine Consumer Credit Code with Respect to Consumer Credit Sales." (S. P. 276) (L. D. 785)

Bill "An Act to Reorganize Certain Chapters of the Maine Criminal Code." (S. P. 280) (L. D. 811)

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

Sent down for concurrence.

Enactors

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

AN ACT to Make Changes in the Kennebec Water District Charter. (S. P. 207) (L. D. 572)

AN ACT to Provide a One Month Grace Period for Expired Motor Vehicle Registrations. (S. P. 356) (L. D. 1031)

AN ACT to Repeal the Double Affirmation Rule under the Employment Security Law. (H. P. 411) (L. D. 450)

AN ACT to Change Reimbursement to a Municipality for General Assistance Costs. (H. P. 701) (L. D. 826)

AN ACT Relating to Injured State Workers. (H. P. 765) (L. D. 902)

AN ACT to Limit Liability Regarding Donations to Food Banks. (H. P. 1010) (L. D. 1206)

AN ACT to Enable Continuation of the Highway Safety Defensive Driver Program through an Increase in Student Registration Fees. (H. P. 1353) (L. D. 1539)

AN ACT to Regulate the Taking of Mahogany Quahogs. (H. P. 17) (L. D. 11)

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

AN ACT Promoting the Availability of Health Care Services. (S. P. 303) (L. D. 847)

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

Senator BUSTIN: I move that L. D. 847 be In-

definitely Postponed and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator BUSTIN: Thank you, Mr. President. Mr. President and Members of the Senate: Commissioner Petit and other representatives of the Department have consistently stated that they have not sought to use any authority which they have been given to limit the licensing or registration of health professionals, solely by reason of their number or type. In fact, they have repeatedly stated that they do not believe that they had such authority, do not seek such authority, and indeed, have never contemplated such action.

Thus, they would have no reason to object to any provision of law which would forbid them to use any authority they now have, or might be given in the future, to limit the licensing, or registration of health professionals in such a manner.

The language proposed by the sponsors of L. D. 847, on the other hand, is far too broad. In part, because of the definition of the term "license" contained in the Administrative Procedures Act is expansive, and extends its meaning to include participating in any program administered by the Department. Such language would provide those who wish to challenge almost any action taken by the Department, with a basis for doing so.

While that fact alone should be of concern to us, the language which has been proposed has other deleterious effects of which you should be aware. For example, the National Governor's Association has requested that states be given the latitude to contract with only those providers of services whose services are of high quality, or reasonably priced, to care for Medicaid beneficiaries.

President Reagan has agreed that such powers are essential to the effective management of the Medicaid Program, and pledged his support for corresponding changes in the Federal Statutes.

The supporters of L. D. 847 have conceded that they would interpret the current language as effectively presenting the use of such lock in provisions in the Maine Medicaid Program. They have also conceded that they would interpret the current language to prevent the Department from altering its payment schedules to encourage the location of physicians and other health care professionals in medically underserved areas.

Again, the National Governor's Association has requested and the President has agreed, to provide the flexibility for states to make such changes. I suspect that many of you would not have anticipated that L. D. 847, as currently proposed, might have such far reaching effects. I would submit to you that it is impossible to anticipate just how far reaching the effects of such a statute might be, and that if it is enacted in its present form, we will encounter many other problems which we will regret having created.

The language I offer as an amendment would make it clear that the Department would not be able to use any authority it now has, or which we might delegate to it in the future, to license, or register physicians, or other health professionals to limit their number or type solely because there appears to be a sufficient supply in a given area. It would also make it clear that the Department would not be prevented from taking other actions which are necessary for the effective administration of the programs it manages.

Consequently, it should be acceptable to supporters of L. D. 847, as well as to those who oppose it on the grounds that it is too vague and prone to abuse in its present form.

Mr. President, I have not offered that amendment. Instead I make the motion for the Indefinite Postponement and all its accompanying papers. I request a Division.

The PRESIDENT: A Division has been re-

quested.

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Mr. President, I would ask the Senate to vote against that pending motion, when the time comes.

It's interesting to me, that when this Bill was presented in the Health and Institutional Committee, that the Department came in, not, well in an even opposition actually. All through the previous debate, we've heard that this Legislation is not needed, because the Department doesn't intend to do any of the things that I stated before in my testimony.

I find it hard to believe that, you know, they're fighting so hard now if they really don't intend to do something. I maintain that natives of this State of Maine should have the same right to return to this State to practice a health care occupation or profession as did their forbears. There have been states that have put in, because of planning, and people don't like to talk about planning, but it comes right back to that. The State health planners have devised reporting data. They intend to use it at some point in time.

All this piece of legislation will do is insure that our health professionals will be able to come back here and practice, without any discrimination about where they practice, or without any ceiling on what specialty they practice, and what part of the State.

I think that the health professionals of the State of Maine have as much right to come back and practice here as, and have the same rights of practice, as do our lawyers, as do our accountants, as do plumbers, carpenters, or any other skilled workers and professionals. I think that we do need this law on the books, to just ensure that everyone has the right to come back.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate: I'd just reiterate what was stated in the debate the other day. This Bill does not do what the physicians think it does. It encompasses other health professionals, which could be to their detriment. It does not talk about limiting physicians in the sense of decreasing. It just talks about limiting their number, affecting their number, which could also mean anything that would cause an increase in doctors in a certain area.

I think it's interesting that health planning has been promoted by the medical and the hospital community. I always thought primarily as a way to delay meaningful regulation of that industry. Now, when the health planners begin to get some insight into medical financing, now they're starting to criticize all health planning.

I would just say that the Department does not have any authority to limit the location or number of physicians, or any other health professional in this State. The only way they can do that is with legislative approval. The only two mechanisms we currently have for doing that are the Certificate of Need Act and the Medical School Compact. Any amendment to either of those Acts require legislative approval.

I think that this is a paranoia being manifested here. We are creating problems for other health professionals without helping the concerns of the physician's community. I hope you support the Indefinite Postponement of the Bill.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: I request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative

vote of at least one-fifth of those Senators present and voting.

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

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

The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Mr. President, I think we're getting ready to pass a very bad precedent. I'd just like to before this vote is taken, remind you, if you'll think back when the good Senator Bustin's remarks, the remarks she gave you rare all the good reasons why we need this bill. I think it would be very dangerous to our whole medical profession if we don't send the word out loud and clear that we're not going to start pushing towards socialized medicine in Maine.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Bustin, that the Senate Indefinitely Postpone L. D. 847.

A Yes vote will be in favor of the Indefinite Postponement of L. D. 847.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

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

NAY — Ault, Brown, Clark, Collins, Devoe, Emerson, Gill, Hichens, Huber, McBreaity, Minkowsky, Pierce, Redmond, Shute, Sutton, Teague, Trotzky, Violette, Wood.

ABSENT — Perkins, Sewall, C.;

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

A Roll Call was had.

10 Senators having voted in the affirmative and 20 Senators in the negative, with 2 Senators being absent, the motion to Indefinitely Postpone L. D. 847 does not prevail.

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: I would now ask Reconsideration and hope you all vote against me.

Mr. President, I withdraw my motion.

The PRESIDENT: The Senator from Cumberland, Senator Gill, has withdrawn her motion.

Which was Passed to be Enacted.

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

Senator GILL: Now I would ask for Reconsideration and hope you will all vote against me.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Gill, that the Senate Reconsider its action whereby L. D. 847 was Passed to be Enacted.

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.

The Bill, having been signed by the President, was by the Secretary presented to the Governor for his approval.

AN ACT to Provide a Right-of-way to Pedestrians Against Drivers Entering Private Ways. (S. P. 457) (L. D. 1305)

Comes from the House, Failed of Enactment.

Which was Passed to be Enacted, in non-concurrence, and signed by the President.

Sent down for concurrence.

Emergency

AN ACT to Regulate Motorized Bicycles. (H. P. 906) (L. D. 1073)

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

ky.

Senator MINKOWSKY: Mr. President and Members of the Senate, you may recall when this Bill first came out of the Transportation Committee, I questioned some aspects of it, and generally the concerns I raised were addressed.

This morning, I think most of us had received some type of a Mail gram from the Motorcycle Industry Council. It has addressed a little more fully some of the concerns I raised.

For the record, I think part of this should be inserted into it, "The bill carves out a special exempt category that is a good deal for the European dominated manufacturers of pedal equipment, mopeds. It is a very bad deal for Maine consumers and their safety."

Secondly, federally sponsored research has shown that 25 miles an hour mopeds do not, do not keep up with the traffic flow as well as 30 mile per hour mopeds, with adverse implications for traffic safety.

H. P. 906, by exempting 25 mile an hour pedal models from moped regulation would work against traffic safety interests by promoting the sale of 25 mile an hour models, over 30 miles an hour products."

Presently in the State of Massachusetts, I understand from this Mail gram, which has a 25 miles an hour limit on mopeds, is considering a bill to raise the moped speed limit to 30 miles per hour. The 25 mile an hour limit has not worked well in Massachusetts. The organization feels it would never work well in the State of Maine.

One final point that they stress, Mr. President and Members of the Senate, none of the 45 states with moped laws have two separate categories as proposed in this particular document. The separate categories are unnecessary, difficult to enforce, and conducive to administrative confusion and red tape.

That basically would be the reasons why I don't think this particular document deserves number one, to be Enacted into law, and especially number two, as an emergency piece of legislation. I would simply ask for a Division. Mr. President, when the vote is taken.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of Enactment of L. D. 1073, please rise in their places to be counted.

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

8 Senators having voted in the affirmative, and 17 Senators having voted in the negative, L. D. 1073 Failed of Enactment, in non-concurrence.

Sent down for concurrence.

Constitutional Amendment

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Amend the Law and Constitutional Provisions Relating to Consolidating Initiative and Referendum Elections to Dates of the Next General Election. (H. P. 1112) (L. D. 1317)

This being a Constitutional Amendment and having received the affirmative votes of 27 members of the Senate, with No Senators having voted in the negative, was Finally Passed and having been signed by the President, was by the Secretary presented to the Secretary of State.

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 7, 1981 by Senator COLLINS of Knox.

Pending—Enactment

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

The President laid before the Senate the second Tabled and specially assigned matter: Bill, "An Act to Reimburse Owners of Livestock, Poultry or Beehives which are Destroyed or Damaged by Dogs or Wild Animals." (S. P. 582) (L. D. 1558)

Tabled—May 8, 1981 by Senator COLLINS of Knox.

Pending—Consideration

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

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

Bill, "An Act Creating the Maine Clean Indoor Air Act." (H. P. 347) (L. D. 395)

Tabled—May 8, 1981 by Senator CONLEY of Cumberland

Pending—Passage to be Engrossed.

On motion by Senator Conley of Cumberland, Retabled until later in today's session.

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

SENATE REPORT — from the Committee on Agriculture — Bill "An Act to Promote the Maine Potato Industry" (S. P. 517) (L. D. 1439) LEAVE TO WITHDRAW

Tabled—May 8, 1981 by Senator COLLINS of Knox.

Pending—Acceptance of Report.

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

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

Senator WOOD: Mr. President is L. D. 1282 in the possession of the Senate?

The PRESIDENT: The Chair would answer in the affirmative, the Bill "An Act to Amend the Criminal Code and Related Criminal Laws" (S. P. 444) (L. D. 1282) having been held at the Senator's request.

On motion by Senator Wood of York, the Senate voted to Reconsider its action whereby this Bill, (L. D. 1282) was Passed to be Enacted.

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

Senator DEVOE: Thank you, Mr. President. Mr. President and Members of the Senate: I move this item be Tabled for 2 Legislative Days, pending the receipt of information from the Attorney General's office as to whether a Fiscal Note is needed.

The PRESIDENT: The Chair would advise the Senator that it is more or less Out of Order to debate a Tabling Motion.

On motion by Senator Collins of Knox, Tabled for 2 Legislative Days, pending Enactment.

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

Papers from the House House Papers

Bill, "An Act Establishing a Volunteer Income Protection Program for Shellfish Harvesters." (H. P. 1450) (L. D. 1590)

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

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

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Amend the Provisions Requiring the State to Reimburse Municipalities and Counties for Losses Caused by Property Tax Revenues and Credits Enacted after April 1, 1978. (H. P. 1419) (L. D. 1589)

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

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

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.

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

Papers from the House 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 Private a Sales Tax, Trade-in Credit for Loaders and Chainsaws Used to Harvest Lumber." (H. P. 79) (L. D. 76)

Bill, "An Act to Provide Reimbursement of Sales Tax on Depreciable Machinery and Equipment Used in Agriculture." (H. P. 119) (L. D. 150)

Bill, "An Act to Exempt Certain Farm Structures from Municipal Assessments." (H. P. 192) (L. D. 205)

Bill, "An Act to Provide an Income Tax Credit for Oil and Gas Furnace Automatic Vent Dampers." (H. P. 438) (L. D. 485)

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

Bill, "An Act to Provide an Investment Tax Credit from Investment in Qualifying Energy Property." (H. P. 770) (L. D. 913)

Bill, "An Act to Encourage the Use of Wind Power." (H. P. 895) (L. D. 1022)

Bill, "An Act to Provide a Tax Credit for Certain Hydroelectric Plants." (H. P. 1023) (L. D. 1233)

Bill, "An Act to Permit Municipalities to Charge a Service Fee on the University of Maine." (H. P. 1024) (L. D. 1234)

Bill, "An Act Concerning Partial Reimbursement for Property Taxes Paid by Certain Fraternities." (H. P. 1136) (L. D. 1353)

Bill, "An Act to Provide an Investment Tax Credit for Farmers and Fishermen." (H. P. 1164) (L. D. 1385)

Bill, "An Act to Exempt Gasoline and Other Motor Fuels Used for Agricultural or Fishing Purposes." (H. P. 1194) (L. D. 1418)

Bill, "An Act to Adopt the Multistate Tax Compact." (H. P. 1196) (L. D. 1420)

Bill, "An Act to Change the Method of Taxing Nuclear Power Plants." (H. P. 1219) (L. D. 1443)

Bill, "An Act to Reduce the Subsidy Index for the Local Share of the State and Local Allocation by 50% for Residential Property and Shift the Tax Burden to the Individual Income Tax." (H. P. 1288) (L. D. 1503)

Bill, "An Act to Exempt Jet Fuel used for International Flights from the 2 cent per Gallon Excise Tax." (H. P. 1368) (L. D. 1553)

RESOLVE, to Reimburse Mr. and Mrs. David Condon of Levant for Property Damage and Personal Injury Resulting from Assistance Given the Division of Special Investigation by Mr. Condon. (Emergency) (H. P. 1298) (L. D. 1509)

Bill, "An Act to Create a Land Use Violation Hearing Examiner." (H. P. 559) (L. D. 636)

Bill, "An Act Permitting School Administrative Districts to Dissolve and Municipalities to Detach including those having Outstanding Indebtedness." (H. P. 703) (L. D. 858)

Bill, "An Act to Enable a Town within a School Administrative District to Withdraw or Change their Participation to a More Limited Community School District." (H. P. 934) (L. D. 1104)

Bill, "An Act to Require School Administrative Districts and Community School Districts

to Obtain Voter Approval of a Municipality's Voters Before Closing an Elementary School in that Municipality." (H. P. 921) (L. D. 1092)

Leave to Withdraw

The Committee on State Government on, Bill, "An Act to Combine the Offices of Justice of the Peace and Notary Public." (H. P. 758) (L. D. 897)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on State Government on, Bill, "An Act to Authorize the Commissioner of Personnel to Study Wage Comparability Between Male and Female Workers in State Government." (H. P. 1156) (L. D. 1377)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on State Government on, Bill, "An Act to Clarify State-Owned Building Inspection Responsibilities." (H. P. 782) (L. D. 927)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on State Government on, Bill, "An Act to Establish an Employee Award Program for Suggestions for Improving State Government Operations." (H. P. 1135) (L. D. 1352)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

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

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Ought to Pass

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures for Aroostook County for the Year 1981. (Emergency) (H. P. 1445) (L. D. 1586)

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

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

The Committee on State Government on, RESOLVE, Authorizing the Governor to Convey by Sale to the Passamaquoddy Tribe and Penobscot Nation the State's Interest in Certain Buildings now Located within the Indian Reservations." (H. P. 715) (L. D. 840)

Reported that the same Ought to Pass.

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

The Committee on Legal Affairs on, Bill, "An Act Pertaining to Willful Killing and Injuring of Police Dogs and to Licensing Fees for Police Dogs." (H. P. 717) (L. D. 849)

Reported that the same Ought to Pass.

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

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Piscataquis County for the Year 1981. (Emergency) (H. P. 1446) (L. D. 1587)

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 Reports were Read and Accepted, in concurrence, and the Bill and Resolves Read

Once and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Relating to and Increasing the Appropriation of Funds for Assistant District Attorneys." (H. P. 560) (L. D. 634)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-335).

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

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

The Committee on Election Laws on, Bill, "An Act to Amend the Campaign Reporting Law." (H. P. 974) (L. D. 1162)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-334).

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

Which Report was Read.

On motion by Senator Pierce of Kennebec, Tabled until later in today's session, pending Acceptance of the Committee Report.

The Committee on Labor on, Bill, "An Act to Clarify the Procedure for Waiver of Unemployment Compensation Benefit Overpayment." (H. P. 848) (L. D. 1035)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-332).

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

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

The Committee on Taxation on, Bill, "An Act for the Assessment of Watercraft." (H. P. 1100) (L. D. 1297)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-331).

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

Which Report was Read.

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

Senator PRAY: Mr. President, I'd like to pose a question through the Chair to a member of the Taxation Committee, if they could explain the workings of this Amendment, as to how it may differ from present laws dealing with the taxation of watercraft.

The PRESIDENT: The Senator from Penobscot, Senator Pray, has posed a question through the Chair to a member of the Taxation Committee who may care to answer.

On motion by Senator Teague of Somerset, Tabled until later in today's session, pending Acceptance of the Committee Report.

The Committee on Taxation on, Bill, "An Act to Revise the Property Tax Laws." (H. P. 1161) (L. D. 1393)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-330).

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

Which Report was Read and Accepted, in concurrence, and the Bill Read Once. Commit-

tee Amendment "A" Read and Adopted, in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

The Committee on Fisheries and Wildlife on, Bill, "An Act to Provide a Special Muzzle-loading Hunting Season." (H. P. 218) (L. D. 255).

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-333).

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

Which Report was Read and Accepted, in concurrence, and the Bill Read Once. Committee Amendment "A" Read.

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

Senator PRAY: Thank you, Mr. President, Mr. President and Members of the Senate, another question through the Chair. Reading this Amendment, it would seem that this is going to establish an additional season on the deer herd. Just quickly glancing through the Amendment, I see nothing that would restrict an individual who had gotten a deer during the regular season going out during the Muzzle-loading Season and being allowed to get another one. Could anyone answer as to whether or not that's true?

The PRESIDENT: The Senator from Penobscot, Senator Pray, has posed a question through the Chair.

The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Mr. President, in response to the good Senator from Penobscot, you are still allowed only one deer.

Committee Amendment "A" Adopted, in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

The Committee on Business Legislation on, Bill, "An Act to Simplify the Requirements for the Granting of Permission to Additional Institutions to Use Established Satellite Facilities." (Emergency) (H. P. 998) (L. D. 1221).

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-327).

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

The Committee on Health and Institutional Services on, Bill, "An Act to Enhance and Protect the Rights of Recipients of Mental Health Services." (H. P. 912) (L. D. 1078)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-339).

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

The Committee on Agriculture on, Bill, "An Act to Diversify Maine's Participation in the Eastern States Exposition." (H. P. 1254) (L. D. 1478)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-325).

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

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

The Committee on Energy and Natural Resources on, Bill, "An Act to Allow the Board of Environmental Protection to Authorize and Pay for Oil Spill Damage Studies." (H. P. 995) (L. D. 1183)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-321).

Comes from the House, Passed to be En-

grossed as amended by Committee Amendment "A" as amended by House Amendment "A" (H-336) Thereto.

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

Ought to Pass in New Draft

The Committee on Business Legislation on, Bill, "An Act Relating to the Regulation of Business Practices between Motor Vehicle Manufacturers, Distributors and Dealers." (H. P. 735) (L. D. 873)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1441) (L. D. 1584)

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

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Making Appropriations and Allocations for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary for the Proper Operation of State Government for the Fiscal Years Ending June 30, 1982, and June 30, 1983." (Emergency) (H. P. 229) (L. D. 218)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1440) (L. D. 1583)

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

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

Senate Divided Report

Nine Members of the Committee on Judiciary on, Bill, "An Act to Clarify the Status of Certain Real Estate Easements in the State." (S. P. 224) (L. D. 611)

Reports in Report "A" that the same Ought to Pass as amended by Committee Amendment "A" (S-193).

Signed:

Sensors:

DEVOE of Penobscot
CONLEY of Cumberland

Representatives:

DRINKWATER of Belfast
REEVES of Newport
JOYCE of Portland
O'ROURKE of Camden
LUND of Augusta
LIVESAY of Brunswick
SOULE of Westport

Three Members of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass as amended by Committee Amendment "B" (S-194).

Signed:

Sensor:

KERRY of York

Representatives:

HOBBS of Saco
BENOIT of South Portland

One Member of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representative:

CARRIER of Westbrook.

Which Reports were Read.

The Majority Ought to Pass, as amended, Report "A" of the Committee Accepted and the Bill Read Once. Committee Amendment "A" Read and Adopted, and 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:

**Communication
House of Representatives**

May 11, 1981

Honorable May M. Ross
Secretary of the Senate
110th Legislature
Augusta, Maine
Dear Madam Secretary:

The House voted today to Adhere to its action whereby it accepted the Majority "Ought Not to Pass" Report of the Committee on State Government on Bill "An Act to Reduce the Length of the Maine Legislative Session" (S. P. 436) (L. D. 1265)

Respectfully,
S/EDWIN H. PERT
Clerk of the House

Which was Read and Ordered Placed on File.

**Committee Reports
Senate**

Ought to Pass — As Amended

Senator CARPENTER for the Committee on Election Laws, Bill "An Act to Forbid Payments for Signing or Distributing State Referendum Petitions or Absentee Ballots." (S. P. 198) (L. D. 566)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-195)

Senator SEWALL for the Committee on Labor on, Bill, "An Act to Permit the Opportunity for Continuing Health Insurance." (S. P. 477) (L. D. 1360)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-188).

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

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

Orders

Expressions of Legislative Sentiment recognizing:

Chris Bean, Geraldine Beeaker, Erwin Braley, Marie Clarke, Methyl Hodgkins, Marie Howard, Geneva Kirk, Jeannette LeClair, Harold Lucas, Bryce McEwen, Barbara Pelletier, Claudie Sirois and Ted White, who are recipients of the First Annual Lewiston-Auburn Volunteer Recognition Award. (S. P. 596) presented by Senator TRAFTON of Androscoggin (Cosponsor: Representative BERUBE of Lewiston).

The University of Maine School of Law faculty and staff for assisting the 110th Legislature through its class in legislative drafting. (S. P. 597) presented by Senator CARPENTER of Aroostook.

Which were Read and Passed.
Sent down for concurrence.

**Committee Report
Senate
Divided Report**

Six Members of the Committee on Legal Affairs, Bill, "An Act to Prohibit the Dissemination of Obscene Material." (S. P. 243) (L. D. 698)

Reported in Report "A" that the same Ought to Pass as amended by Committee Amendment "A" (S-190).

Signed:

Representatives:

SOULAS of Bangor
STOVER of West Bath
SWAZEY of Berwick
TREADWELL of Veazie
DUDLEY of Enfield

Three Members of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass as amended by Committee Amendment "B" (S-191).

Signed:
Senator:

SHUTE of Waldo

Representatives:

PERRY of Mexico

McSWEENEY of Old Orchard Beach

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

Signed:

Senators:

CHARETTE of Androscoggin

VIOLETTE of Aroostook

Representatives:

COX of Brewer

GWADOSKY of Fairfield

Which Reports were Read.

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

Senator SHUTE: I move Acceptance of Report "B".

The PRESIDENT: The Senator from Waldo, Senator Shute, moves that the Senate Accept Report "B" of the Committee.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: Mr. President and Members of the Senate: I stand here today appealing to you to vote for a bill which will reverse the direction that we, in the State of Maine, have been going in for the past decade regarding the dissemination of obscene materials throughout our state. For too many years now the public has been more and more subjected to obscenity in the form of pornographic literature, movies, and soforth, and obscene performances both live and on video tapes. Authority to prohibit such distribution and performances has been vague due to the Supreme Court's refusal, up to recently, to make a clean cut decision as to what obscenity really means, although the dictionary clearly defines "Obscenity" as something offensive to one's feelings, or to prevailing notions of modesty or decency, lewd, disgusting, repulsive."

Following the Miller vs. California case last year, the United States Supreme Court upheld the decision handed down and ruled that material is obscene if considered as a whole to the average person when applying contemporary standards (A) its predominant appeal is to the prurient interest in sex, (B) it depicts or describes sexual conduct in a manner of which when applying contemporary standards, is patently offensive, and (C) it lacks serious literary, artistic, political or scientific value.

The fact that material is advertised, suggested or represented to appeal to an erotic interest may be considered in determining whether material is obscene.

With these definitions in mind and certainly not infringing on the rights of libraries, places of art, colleges, where literary, artistic, political or scientific publications, statues, paintings, photos, and soforth, are used for educational purposes, covered by present laws, I have presented this Bill as amended by Committee Amendment which makes it a Class D crime for the dissemination of obscene materials.

The bill directs itself to sexual conduct and the various deviations or sexual conduct which are made available to the public via the means I have described previously.

Trial on the issue of obscenity may be by jury and intervention by others disseminating the same matter shall be freely allowed, which protects the libraries, should there be any concerns which I cannot believe there should be. Whenever the attorney general or any district attorney may enjoin all persons he reasonably believes to be disseminating that matter as parties to that action.

In the past few years x-rated book stores began to appear in our state. In my own district town of Kittery such a store opened where films, books and materials could be seen and purchased. I received several calls and in-

formed these people that if three or more approached the district attorney, something could be done to close the store. No three persons together dared voice their disapproval and the store kept in business.

Getting more brazen and daring, the owner then moved his business to a well-traveled highway between Kittery and Eliot and started to show video tapes, then peep shows, then live nude shows and finally live shows of intercourse and other sexual acts. In addition, he had nude figures painted on the windows of the building and, on occasion, the performances appeared in front of the building clad only in thin apparel.

My telephone was kept busy with calls from my constituents demanding that something be done. In turn, I called the district attorney who informed me that there were no local or state laws that prohibited such shows, but that he would seek a means of stopping the live performances, if not closing the whole establishment. Within a week after he called me to say that he had found a way to stop the shows, the troupe of performers attempted to stage their show in nearby Dover, New Hampshire. Before they had proceeded very far, they were all arrested and later found guilty of violating New Hampshire statutes and paid substantial fines. Within a few days the district attorney stopped the live shows at the Kittery establishment and in the meantime the town council of Kittery at a town meeting at which approximately five hundred townspeople attended, passed an ordinance similar to one in effect in Old Orchard forbidding the dissemination of obscene materials in the town. The case is still pending and no court decisions having been reached, the store still pros video tape shows and sells obscene materials. Following the action of Kittery town officials, neighboring towns of Eliot, South Berwick, Berwick, York, Ogunquit and Wells have passed similar ordinances as preventive measures. The City of Waterville, the town of Calais, Brunswick, and other towns in Maine have similar concerns.

Some people have stated that such a law should be left up to the municipalities, but preparing such ordinances, having special town meetings, are expensive, and allowing these smut peddlars to jump from one area of the state to another seems foolish, in my opinion.

L.D. 698, as amended, is patterned after the New Hampshire law which has been tested in the New Hampshire Supreme Court and declared constitutional and is based on the Miller vs. California case that was upheld by the United States Supreme Court. Over 20 states have similar obscenity laws, including Massachusetts, Rhode Island, New Jersey, Mississippi, Michigan and Utah.

You have heard arguments that adults have the right to read, see and do what they please. I sympathize with the people who believe that it is their right to fill their minds with this trash, but do not feel that they have rights to force these materials into the public eye. Furthermore, they claim that minors do not have access to these materials. The owner of the Kittery store has openly admitted that although he did not intentionally allow minors into his establishment, he did not have an officer at the door to prohibit minors from entering, nor did he ask for I.D. cards. Who sees these publications and video tapes when they are purchased or rented? You can bet your bottom dollar that minors have access to whatever they want to see and are sometimes unwitting observers of such materials.

At the hearing in late March over 350 people congregated at the Civic Center to support L. D. 698 as amended some 50 to 75 appeared in opposition, mostly representing libraries which are protected under present law. The local press reported the crowd at 600 while the Maine Times stated that about 200 were present. Petitions signed by concerned residents of Maine have been circulated amongst the

Legislators and you all have received many phone calls and letters urging you to support the Bill. Meanwhile the magazine distributors, fearful that their circulation of questionable publications may be curtailed, have worked feverishly in an attempt to confuse the committee members by offering amendments which would make no change in the present law and have lobbied vigorously against passage of L. D. 698. Alarmed that the moralists are gaining ground, the Maine Times and radio commentators have ridiculed the bill and the sponsor.

I believe that the time has come to put a stop to the obscene shows, publications, etc., and urge you to vote against Report "B" and then Accept the Majority Report "A".

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

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate: there is quite a difference in Report "B" and Report "A". As I understood it when the Bill was put in, there was some problem in Kittery with live sex shows. That's what the Report "B" addressed in the Bill.

What Report "B" does, is prohibits live sex shows or simulated sex shows, and also to prohibit advertising obscene material from store windows so that it can be seen from the street. That's about as far as it goes, with the exception of it does retain the juvenile section under obscenity, which the original Bill did away with. I guess Report "A" does retain that now.

As I look at the Bills that are the two Reports, Report "A" would most likely do away with your H.B.O. movies, your x-rated movies, your recording and your printed material, or anything with over nine printings, or to distribute more than nine copies of anything. I think most Members of the Committee felt that this was a little further than what the intent of the Bill was, and so several members signed Report "B".

Report "B" does strengthen the present law. It does retain the present juvenile section in the law. It does not go beyond what, I think, might be the Constitutional limits under the obscenity statutes.

I would urge you to Accept Report "B".

The PRESIDENT: Is the Senate ready for the question.

The Chair recognizes the Senator from Aroostook, Senator Violette.

Senator VIOLETTE: Mr. President and Ladies and Gentlemen of the Senate: just to clarify the position of those four in Report "C", it's just basically our feeling that we were unalterably opposed to Report "A". If we reach that position where we really are going to debate "A", well, we will do so at that point. We just felt that Report "B", quite frankly, there are suitable laws already within the statutes to deal with material being placed in the public eye, under the juvenile obscenity statutes. The shows that Senator Hichens referred to were dealt with under existing statutes and they were closed.

It was basically for those reasons that I opposed Report "B" and Report "A".

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

Senator HICHENS: Mr. President, the Senator from Aroostook, Senator Violette, is entirely correct. Report "B" does nothing different than what we already have on our laws. If we Accept Report "B", we are not changing the laws whatsoever. If we Accept Report "A", which I certainly hope that you will, we are taking a step in the right direction. The Attorney General's office wrote up this Amendment for me, that I presented to the Committee, for their consideration. It is Constitutional. A great many of our communities in the State have been very much upset as to what is happening. This will put a stop to it.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: I would like to pose a

question to the good Senator from York. I'm reading in one of the Reports any visual representation, including motion pictures, films, pictures, and photographs, objects, figures, or statues, or live performances. Would this effect the hootchy-kootchy girls when they come to the New Portland Fair? Would they be in violation of this law?

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond, has posed a question through the Chair.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: Mr. President, to present the bare facts, I think that the hootchy-kootchy girls are not included in obscenity rules throughout our State.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: I would request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

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

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

Obviously less than one-fifth having arisen a Roll Call is not ordered.

The Chair will order a Division.

Will all those Senators in favor of the motion by the Senator from Waldo, Senator Shute, that the Senate Accept Report "B" of the Committee, please rise in their places to be counted.

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

15 Senators having voted in the affirmative, and 14 Senators having voted in the negative, the motion to Accept Report "B" of the Committee does prevail.

The Bill Read Once. Committee Amendment "B" Read and Adopted, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Orders of the Day

The President laid before the Senate, Bill, "An Act to Reimburse Owners of Livestock Poultry or Beehives which are Destroyed or Damaged by Dogs or Wild Animals" (S. P. 582) (L. D. 1558), Tabled earlier in today's session by Senator Collins of Knox, pending Consideration.

The Chair recognizes the Senator from York, Senator Hichens.

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

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

Is this the pleasure of the Senate?

The motion prevailed.

The President laid before the Senate, Bill, "An Act Creating the Maine Clean Indoor Air Act." (H. P. 347) (L. D. 395), tabled earlier in today's session by Senator Conley of Cumberland, pending Passage to be Engrossed.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you, Mr. President, Mr. President, I'd like to move that the Senate Reconsider its action whereby it Adopted Committee Amendment "A".

The PRESIDENT: The Chair understands the Senator from Penobscot, Senator Pray, moves that the Rules be Suspended for the purposes of Reconsideration.

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: A parliamentary inquiry. Do I understand that the pending motion will require a two-thirds vote in order to clear the

way for amendment?

The PRESIDENT: The Chair would answer in the affirmative.

Is it the pleasure of the Senate to Suspend its Rules for the purposes of Reconsideration?

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Penobscot, Senator Pray, that the Senate Suspend its rules for the purposes of Reconsideration, please rise in their places to be counted.

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

16 Senators having voted in the affirmative, and 12 Senators having voted in the negative, the motion to Suspend the Rules does prevail.

Is it now the pleasure of the Senate that this Bill be Passed to be Engrossed?

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

Senator PRAY: Thank you, Mr. President, Mr. President and Members of the Senate: The present Bill that's before us, it's my understanding that it would relate to town meetings, meetings of selectmen, or the town councils, throughout the State. It would deal with school boards. It would deal with the county government, and the planning board, and municipalities, and everything else.

Basically, if one individual objected to anybody smoking at that meeting, then there would be no smoking. I find a few things wrong with that. First of all, I'll let you all know that I speak as a non-smoker, as an individual who has, in my 35 years, has never had a puff on a cigarette. I never have smoked in my life, but I have some reservations and concerns about a law which gives a minority of one, in any crowd such powers to put its own wishes upon those around him.

I don't like smoking. I find it rather hard sitting here between the two individuals that I do when smoking was allowed in this Chamber. Both of them notorious for chain smoking, and at times I had to leave Chamber to get a breath of fresh air.

The amendment which I had hoped to Adopt would have related only to this Legislature, and of course, since that time we have Adopted a Rule which no longer allows smoking in the Session.

Because of the concern that I have about us passing judgement upon all these other levels of government, I would like to have the Body here today consider voting against the present motion, which is Passed to be Engrossed, and hopefully in the end, this Bill will take its proper place.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate: A year ago today I was smoking 2½ packs a day, and I supported this bill, or a bill similar to this. Today I am pleased to say that I'm no longer smoking, for the last six months, I feel better, and I have less problems supporting this Bill than I did last year.

I think Senator Pray's comments about a minority of one have to be looked at in perspective. We have done a lot of things in our society, right things, good things, justifiable things because of the rights of one person. It was due to the infringing on the rights of one person, that some of the southern schools were opened to blacks a few years ago. For one person or less we build wheelchair ramps in all our public buildings now.

So, I don't think that this is a move in a radical new direction, by any means. It is an attempt to enforce, what I believe the sponsor of this Bill, or a phrase, I believe the sponsor of this Bill coined some time ago when he said, in response to the argument that I have a right to

smoke, he said, "I believe, your right to smoke ends at my nose." I think that's an important factor.

There was smoking in this Chamber for a long while, and I know it offended some people. It bothered, physically bothered, some people, including one Senator who is still in this Chamber, who was reluctant to say anything about it, even though it did cause her some physical discomfort. So, I don't think this is placing that great a burden on the smoking public.

I am not a "Reformer." I'm not as actively involved in this Bill as I was a year ago at this time, but I do think that it does move toward a problem that does exist or at least a potential for a problem that does exist in many of our public meetings, public proceedings, for which there may not be a suitable solution right now.

Some municipal bodies and some other public bodies have taken steps to assure that the rights of anybody bothered by cigarette smoke are protected, but some have not and some may back away from that in years to come. So, I don't see that the legislative attempt at solving this problem is anything too terrible.

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

Senator GILL: Mr. President and Members of the Senate: there are 30 million Americans like the good Senator, Senator Carpenter, who have kicked the habit, and they no longer smoke cigarettes. Millions more are still trying to kick the habit.

In the population, as a whole, only one out of four people smoke. Even counting our cigar smoking friends and our pipe smoking friends. Non-smokers are clearly the majority. Non-smokers are no longer a silent majority.

The levels of carbon monoxide that enter a person's body their bloodstream, even though they are non-smokers, by being in the room with a smoker, it's just far above the standards that are allowed.

Researchers have found that smoking seven cigarettes in one hour, even in a ventilated room, created carbon monoxide levels of 20 parts per million, and that is far above what is an acceptable level. Those non-smokers who were exposed to these levels, the carbon monoxide level in their body, in their blood, not only doubled within the first hour, but doubled again during the second hour. When non-smokers leave a smoky room, it takes hours for that carbon monoxide level to drop and it lasts for hours in their bloodstream.

I think that when it comes to this particular Bill in front of us today, it has the desirable affect of regulating only public and tax supported property. It does not get into purely private property. A taxpayer whose health is threatened by smoke, should still be able to enjoy the property supported by his tax dollars. A taxpayer should be able to participate in government activities without being harmed by smoke.

This is a Bill similar to the one we had two years ago, and we had hoped, when that bill was vetoed, that the general public would be educated as to what the harmful effects of smoking were, and in public meetings they would stop smoking.

I know that in my own community, in my city hall, we just underwent a renovation, and they forgot to put the No Smoking signs back up after the renovation and painting, and it is just a horror show down there. You just can't even see, the room is probably a little smaller than this one, and you can't even see the city councilors as they sit up front, some nights, because it's so heavily filled with smoke, and we do have some members of our city council who refuse to give up their smoking even for that short period of time, yet they encourage the general public to come to the meeting. The general public, for the most part, could not stand it, because their eyes would water. They would start coughing and it would be a disaster for

some of them. Some of them are affected by asthma, and we have to take those people into consideration.

People who do not smoke have rights. We talk about rights all the time, in this Body. Non-smokers have the right to breath clean air, free from harmful and irritating tobacco smoke. This right supersedes the right to smoke when the two conflict.

Non-smokers have the right to express firmly, but politely, their discomfort and adverse reactions to tobacco smoke. They have the right to voice their objections when smokers light up without asking permission. Non-smokers also have the right to take action through legislative channels, and, this is the channel that we have taken this time, because the other ones don't seem to work.

So, I ask you please to consider and vote against the pending motion. I believe its, the pending motion was?

The PRESIDENT: The pending action would be Passage to be Engrossed.

Senator GILL: Alright, I would ask you to allow this to be Passed to be Engrossed.

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

Senator SUTTON: Mr. President, very briefly, this little jewel slipped through its first time with the Majority Report, under the swift work of the President.

But, ladies and gentlemen, this again, in my opinion, it is not a question of smoking. It's a question of what we should be legislating and what we shouldn't be legislating, and this truly is something that we should not be legislating.

The bill allows for those who, for a decision at a meeting to smoke or not to smoke. If that's the case, let's leave it that way right now.

As far as the State's concerned, I haven't seen any abuse of the smoking situation here at any of our State meetings. If we are going to legislate, we should be legislating only for the State and not for the towns and communities.

As soon as we pass this, it's going to be the first step to doing it all up and down the line. They've been trying to do it as long as I can remember, and the next thing it's going to be the stores and the banks and everyplace along the line.

This is something we should not legislate. It has nothing to do with whether you support smoking or not. Let's leave it to the people to decide, and keep the State from putting more unnecessary laws that are going to interfere with people's lives.

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

Senator BUSTIN: I think that this Bill is simply a public awareness type of Bill.

One of the things that I think that you should keep in mind, that I'm sure everyone has heard about no smoking many, many times, I have not because I have not been in this body, and I have not been privy to everything that has been said in previous years, so I'm not going to bore you with all the obvious things that you have heard before, but I would like to make a couple of points.

One, the fine has been taken off this Bill. There is no fine. If you happen to be smoking at a public meeting, you'll be told that its not allowed. All that is says is that you put up no smoking signs.

The other thing that you ought to consider is that right now, if I had to go to a Democratic Senate Caucus Meeting this morning, I had some choices. I had three choices. I could stay in that caucus meeting and I could smell the smoke that was being blown in that room. I could leave that caucus meeting and not participate, or I could ask that there be no smoking, perhaps embarrass myself, and perhaps be defeated.

Now, I think that it is more fair, for those people who want to smoke, to have to get a vote to smoke rather than for me or for those who don't smoke and want to participate in a public

meeting to have to take a vote for no smoking.

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

Senator PRAY: Mr. President and Members of the Senate: I commend all the previous speakers. Their points, I think, are well meant and well taken. The last comments from the Senator from Kennebec, Senator Bustin, I'd agree with.

I have no objections to a law in the books which would say you'd have to take a vote to smoke, but don't just say that one individual can make that determination. That's what this law says.

Also in her remarks, she said basically what this Bill does is this Bill allows signs to be put up. Well, I think that anybody can put these signs up now. In fact, in most town meeting places, and of course throughout the Legislature, there are No Smoking signs up now, and most individuals, if you go down, you'll find, in several hearings, you'll find some individual who completely ignores the sign until somebody points it out to them, anyway.

So, I think that without any fine, without any enforcement on this law, all you're doing is basically what we already have on the books, thus, we come back to the Senator from Oxford's position, Senator Sutton, that this is just another needless law that is going on the books. That, in all honesty, is my opposition to it. I would just hope that we would defeat the existing motion.

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

Senator GILL: Mr. President, this Bill came out of the Health and Institutional Services Committee with a vote of 12 to 1. We had other bills, no-smoking bills, before us on that committee. We heard much testimony from a variety of people, some of them who complained about finding cigarette ashes in their lettuce as they went through the grocery stores. Some of them who, just objected to being in a position where there were non-smokers, and they were caught in an environment where there is smoke.

As someone said at the committee hearing, smoking is not, smoking is somewhat different than smelling perfume or strong cheese. Smoking can kill. Strong perfume and cheese, you can walk away from it. It doesn't kill. Maine men, and we have quite a few men in this Chamber, Maine men, their chances of getting cancer, lung cancer, from smoking is higher than almost any state. Maine has gone from fourteenth to eighty in malignancy because of smoking. I think that the people in this Chamber might be concerned about that. I am not because I am a non-smoker, and I will voice my opinion and choose to leave a room if the smoke does bother me. There are some people who would be less vocal, probably, than I.

I think that side stream effects we've all heard about, I don't want to go into all the long litany of what cigarette smoking can do against us. I think we all have heard much debate. We've all done much reading about this.

I think it is important for you to know that the Committee did have other Bills before ours and we came out with a lesser of what we had before us and thought this would be more palatable.

If people can't attend a meeting for an hour or two hours without smoking then it's just a shame, but I think they have the option of going outside a building or out in the hall to do their smoking.

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

Senator BUSTIN: Mr. President and Members of the Senate. I feel that I have to answer to the Senator from Penobscot, Senator Pray, and I think that what I heard him say was that it would only take one vote of somebody to be able to stop the smoking.

What this Bill does, it says it permits smoking at public proceedings if all those present

had given their consent so that one person wouldn't be able to tell the meeting that they could have it smoking or they couldn't. All members would have to.

I may have misunderstood him; I will stand corrected.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator **TRAFTON:** Mr. President, and Men and Women of the Chamber, this so-called needless law that we're discussing this afternoon deals with probably the most important issue that we'll deal with during the Session, and that is the issue of public health.

It's interesting for me to note that in this same Session, we're dealing with a number of bills which relate to highway related accidents, and in fact many of us are knocking each other over in the rush to try to prevent highway related accidents. We're dealing with the helmets, and non-helmets. We're dealing with safety straps and non-safety straps, and all the various issues that we think may in some way contribute to lessening the toll that is being taken on our highways.

About 50 thousand people die on our highways in traffic related accidents. 90,000 die from lung cancer. 450,000 die in other types of related diseases caused by smoking, in part.

The issue before us is clearly common sense, and how we wish to exert that common sense in a leadership role and make it clear to the public that they have a right to appear in public meetings to represent their viewpoint without risking a hazard to their health.

In 1979 cigarette smoking was the single most preventable environmental factor contributing to illness, disability, and death in the United States. It has its toll in dollars and cents, and we are concerned in here about the cost of health care. The cost to our nation in that same year, 1979, was estimated to be \$2.7 billion in medical care costs, absenteeism, decreased work productivity, and work related accidents.

I think the issue is clear, and I hope that you will join with the good Senator from Cumberland in encouraging passing this Bill today, and enacting it a later time.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you, Mr. President. Mr. President, Men and Women of the Senate, I've listened with interest as the debate moved from the common sense approach to what are we doing this for? Well, I've been here before, and many of you have too. Many of us remember that the last no smoking bill was reported out of the Health of Institutional Services Committee in a previous Legislature was vetoed by the Governor of this State, and his veto was sustained.

I would hope that the 110th Maine Legislature would act as responsibly in passing L. D. 395 as reported out of the Committee on Health and Institutional Services with an overwhelming Majority 12 to 1 Ought to Pass, as amended.

The Bill would indeed ban smoking at meetings of the Legislature and its committees and subcommittees. Our rules already prevail. Have you ever had the rule on your Committee unilaterally set aside? It happened to me last week.

It would also ban smoking for any board or commission of any State, county or municipal agency including local city counsels and school boards, and any board, committee, or agency of the University of Maine. What's the matter with that? Don't we always assume or presume to take a leadership role? Since when do we legislate just for the State and those things which we legislate in this hallowed Chamber affect only the State? Who are we kidding?

We're talking about the lives of men, women, and children in the State of Maine, who are born without cigarettes, or pipes, or cigars in their hands or clenched between their teeth. They have rights, too. Can't we get that

through our heads finally?

It's not okay to have to ask anymore, that people stop smoking. Have you ever been there at a town counsel meeting, when a woman who is allergic to smoke, whose item was on the agenda, request that smoking be forbidden, and I don't know how else to tell you, but she was practically laughed right out of the council room. She doesn't represent the minority. Non-smokers represent the majority. As the good Senator from Cumberland, Senator Gill, said, Non-smokers are the majority.

Those people who wish to smoke can step outside if they wish, or they can ask. It's their turn to ask if they can smoke. Unless smokers can receive permission from other persons present at the meeting, smoking will be prohibited.

We're finally, people, about to take a very huge, giant step toward a goal that we all strive so frequently over for hundreds of years, public health. Now, I'm not that naive, nor am I that innocent, that when I approach these halls and made it to the third floor this morning, I looked at a group of prestigious members of the Third House, the Lobby, and I said, ah huh, here we go again. Here we go again.

Are you, as responsible members of the Maine Senate, going to be convinced by the Third Lobby, that the public health, and safety if you will, yes, safety of your constituents takes a second place to the wishes of the Industry Lobbyists. How's that for plain language?

The intent of L. D. 395 as amended is, one to protect the general public, and two, to allow free access to public places. It's really 2 very simple concepts, and hardly radical in nature in 1981.

This Bill is not an irrational attempt to control private lives. A person can make a private decision to smoke, but it ceases to be private when it is done in a public place at the expense of others.

Rights to smoke and other rights extend until they reach other peoples noses. That's how succinctly the students in my law class at Freeport High School phrase it "Your rights extend until it reaches my nose." I'd like to give credit to the student who gave me that quote.

If you are concerned this afternoon about the quality of indoor air, for yourself, for your children, or if you are concerned about both freedom and public health, then you'll support the pending motion of Engrossment Mr. President I request that the vote be taken with the Yeas and Nays.

THE PRESIDENT: A Roll Call has been requested.

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

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

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

The pending question before the Senate is Engrossment.

A Yes vote will be in favor of Engrossment.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Brown, Bustin, Carpenter, Clark, Collins, Emerson, Gill, Hichens, McBreairty, Pierce, Sewall, C.; Teague, Trafton, Trotzky, Usher, Wood.

NAY — Ault, Charette, Conley, Devoe, Duttremble, Huber, Kerry, Minkowsky, Najarian, O'Leary, Pray, Redmond, Shute, Sutton, Viollette.

ABSENT — Perkins.

A Roll Call was had.

16 Senators having voted in the affirmative, and 15 Senators in the negative, with 1 Senator being absent, L. D. 395 was Passed to be Engrossed, in concurrence.

The President laid before the Senate:
SENATE REPORT—from the Committee on Agriculture—Bill, "An Act to Promote the Maine Potato Industry" (S. P. 517) (L. D. 1439) **LEAVE TO WITHDRAW**

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

Pending—Acceptance of Report

On motion by Senator Hichens of York, Recommended to the Committee on Agriculture. Sent down for concurrence.

The President laid before the Senate, Bill, "An Act to Amend the Campaign Reporting Law." (H. P. 974) (L. D. 1162) Tabled earlier in today's session, by Senator Pierce of Kennebec, pending Acceptance of the Committee Report.

Which Report was Accepted, in concurrence, and the Bill Read Once. Committee Amendment "A" Read.

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

Senator **PIERCE:** Mr. President, I present Senate Amendment "A" to Committee Amendment "A" under filing number S-199 and move its adoption.

THE PRESIDENT: The Senator from Kennebec, Senator Pierce, now offers Senate Amendment "A" to Committee Amendment "A" and move its adoption.

Senate Amendment "A" (S-199) Read and Adopted. Committee Amendment "A", as amended by Senate Amendment "A", Adopted in non-concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

The President laid before the Senate, Bill "An Act for the Assessment of Watercraft." (H. P. 1100) (L. D. 1297) Tabled earlier in today's session, pending Acceptance of the Committee Report.

On motion by Senator Teague of Somerset, Retabled for 1 Legislative Day.

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

Enactors

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

AN ACT to Amend the Fee Schedule for the Payment of Appointed Forest Fire Wardens. (H. P. 506) (L. D. 557)

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

AN ACT Relating to the Employment of Minors. (S. P. 188) (L. D. 490)

AN ACT Concerning the Transfer of Funds from One Appropriation to Another Appropriation. (S. P. 370) (L. D. 1112)

AN ACT Concerning Appointed Chief Administrative Officers of Local Districts under the Maine State Retirement Laws. (H. P. 418) (L. D. 465)

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)

AN ACT to Amend the Provisions for Election as Voter Member of a County Charter Commission. (H. P. 767) (L. D. 903)

AN ACT to Clarify Institutions Eligible for Free Fishing Permits. (H. P. 840) (L. D. 1006)

AN ACT to Establish Restrictive Covenants for Property Affected by Hazardous Waste. (H. P. 976) (L. D. 1164)

AN ACT to Authorize the Refunding or Crediting of Fuel Taxes Paid on Worthless Accounts. (H. P. 989) (L. D. 1177)

AN ACT to Assist Homeowners in Peak Power Conservation. (H. P. 1131) (L. D. 1348)

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. (S. P. 172) (L. D. 422)

Emergency

AN ACT to Amend the Maine Nonprofit Corporation Act. (S. P. 542) (L. D. 1513)

Emergency

AN ACT Increasing Indebtedness of the Limestone Water and Sewer District. (H. P. 1424) (L. D. 1579)

These being emergency measures and having received the affirmative votes of 28 members of the Senate, with No Senators having voted in the negative, were Passed to be Enacted, and having been signed by the President, were by the Secretary presented to the Governor for his approval.

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

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

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

In the Senate, May 7, 1981, Majority Ought Not to Pass Report Read and Accepted.

Comes from the House, Recommended to the Committee on Judiciary, in non-concurrence.

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

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

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

The Chair recognizes the Senator from York, Senator Wood.

Senator WOOD: Mr. President, I would move that the Senate Recede and Concur and would like to speak to that motion.

The PRESIDENT: The Senator has the floor.

Senator WOOD: Mr. President and Members of the Senate: The other day we debated this Bill at great length. Although many were absent that evening, I don't want to go over the long arguments I made the other night, but I would like to address a few of the issues that were raised.

The Members of the Judicial Committee that voted Ought Not to Pass raised the arguments that, if we did away with plea bargaining, we would do away with those times when new evidence was brought about that required the plea to be reduced. I thought about this long. I realized that with 96 percent of the cases in my county being plea bargained, what's that telling me is that 96 percent of the time, someone is not doing their job. It means they've had new evidence that requires them to reduce that plea.

If you go along with that argument, you're giving no incentive for the police officers, for the judge, for the prosecutors, for the defense attorneys to do a good job. You will encourage them to do a poor job by rewarding them by allowing them to plea bargain. That's the first argument.

The second argument was one that said, well, if you can't convict on a higher crime, you might as well get them on a lesser crime. I thought about that. I began to ask myself, if this is true then, does the victim suffer less when you plea bargain? If the victim was robbed, all of a sudden, is the victim robbed of less money when you plea bargain? If he or she was bodily damaged, does the hurt go away any less when you plea bargain? If the victim was killed, is he brought back to life when you plea bargain? Do you think about the defendant. Think about the victim and the effect that plea bargaining has on those victims.

There was an interesting article in Sunday's paper about victims, and the trauma that crime leaves those victims with. I would argue, that if we began to reverse the trend, and the victims see that the criminal is treated in a

just manner, maybe some of that trauma will subside. When they see the defendant going into the courtroom, and being let off on a lesser charge, then that trauma is only accentuated, and not done away with.

Please, when you vote today, think of the victim. Harry Truman had a phrase. He called some politicians snolly gosters. A snolly goster is a politician that talks a good line, but then when the real guts of the matter comes down, votes the other way. You talk about law and order. When the time comes to vote law and order, you sort of slide away from that issue.

I would say today that we can prove to the voters of Maine that we are not snolly gosters. That we are serious about law and order, that we are serious about changing our way of looking at law and order. If you choose not to Recede and Concur, when that constituent comes up to you and says, how come so and so got off? How come our courts continually let people off for lesser crimes when they were charged with more serious crimes? In the past, you could say, well, that was the prosecutors, or that was the judges, or that was the liberal permissive society that we live in. After today, if you don't vote to Recede and Concur, you can simply say, the reason that person was let off, was because of plea bargaining. I voted for plea bargaining, I think those persons should get off. It's as simple as that. The buck stops here.

We have a chance to turn the system around. I did not get emotional the other day. I tried to argue logically and rationally. I can see no logical or rational reason to allow plea bargaining to continue. It is time to take justice out of the market place and return it to our court system.

I would urge you, plead with you, to Recede and Concur.

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 speak with regards to this issue, mainly because I was one of the individuals on the Judiciary Committee who opposed the good Senator from York, Senator Wood's Bill on plea bargaining. One of the reasons why I opposed it is, because I felt that the Bill, enacted as it was, would do great violence to our current system of justice, and not achieve the desired results.

I would have to say, with all due respect to the good Senator from Penobscot, Senator Devoe, that there were some compelling arguments brought forth by Senator Wood with regards to the plea bargaining issue. I would say that one of the ways that we might be able to address this issue would be through a thorough study of this system, including people within the Criminal Justice System, the Judiciary, and persons who have been wronged by various crimes.

I really believe that we are coming down to the end of the line legislatively and administratively. We are faced with some time constraints. I do believe that this bill, in terms of the change in terms of having a study, is in order.

Being a proponent of keeping the Judicial System on an even keel, and being reasonable with regards to adjudicating cases, I will say that I oppose the original Bill, but I do support the Senator from York's motion to Recede and Concur. As a member of the Judiciary, I will support a study with all people involved, and all individuals, and departments involved in this issue throughout the summer. Thank you.

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

Senator DEVOE: Thank you, Mr. President. With respect to the comments made by the Senator from York, Senator Wood, the fact that you plea bargain doesn't mean that there was new evidence discovered. What it very likely does mean is that the D.A. discovered that he perhaps did not have the facts to prove a particular charge, but did have the facts to prove a

lesser charge.

The second thing that we can't forget is the fiscal impact on the counties. We have in our county systems superior court buildings that have, I think, a maximum of two courtrooms. The statistics that the Senator from York offer that 96 percent of the cases in York County had been plea bargained, I just ask you, as a practical matter, as a taxpayer in the county, are you prepared to vote for a 20 percent, a 50 percent, a 75 percent increase in the amount which your county will have to pay for jurors, for court officers? Are you prepared to pay for the construction of new county buildings, housing just superior courts, that you can have several courts going year in and year out, trying cases?

If you're concerned about the victim, what is the victim going to feel like when the criminal walks out of superior court, after his defense council has had a motion for dismissal granted for the State's inability to grant a speedy trial? Is the victim going to be well served? I ask you, I suggest that he isn't going to be well served.

When you get right down to it, the Criminal Justice System has not, up to now, been administered to assuage the feelings of the victim. The Criminal Justice System has always, historically, been administered to mete out justice to defendants who are guilty.

You have lots of criminal trials, where you have a victim. Yet, for some reason, the State hasn't been able to prove its case, either after a court trial, or a jury trial. The defendant walks out of the courtroom, down the steps of the county building, having been vindicated by the court or by the jury. Yet, you have a victim who felt he was wronged. The State felt he was wronged to the extent where they would bring charges against the person.

We're not administering the Superior Court System to make the victims feel good. We're administering the Superior Court System, we're administering our Criminal Justice Laws, to mete out justice to defendants who are found guilty, after having been tried, or who elect on their own, to plead guilty to a lesser charge.

I ask you, Members of the Senate, to consider these things when you're voting on the motion to Recede and Concur. Mr. President, I would like to ask for a Roll Call on this vote.

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

Senator WOOD: Mr. President and Members of the Senate: It's really hard to argue against the potential cost of this Bill, the potential impact on our court systems, because we really do not have all of the answers. I would be misleading you if I said that I had all of the answers. I think it's an issue that merits our concern. I think if we simply Adhere and kill this measure, that we haven't given it a proper amount of concern.

I would argue, and I know that we're not supposed to argue other states. I would argue, if you look at the Alaska experience, they did not require any further outlay of money, to enforce their plea bargaining ban. I had the report on Alaska. To my knowledge, not one member of the Judiciary Committee read that report. I think it's kind of unfair to criticize, when we have an example, to look at, to see what the result of plea bargaining is.

If the message we are sending today is that we can not change our Criminal Justice System, because it will cost money, then the message we are sending to our criminal element, is Maine is a free state. Do whatever you want, because we're unwilling to pay the price to enforce our laws. Maybe a better approach would simply be to erase certain criminal acts from the books and say, that's no longer a crime in Maine. I don't think it's a suitable way. I think this way is a much more suitable way.

Until we have the arguments, until we have the facts before us, I think it's premature to kill this Bill at this point. I think it deserves

some study. I think the people of this State might be willing to pay the price, if they had their study in front of them.

The PRESIDENT: A Roll Call has been requested.

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

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

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

The pending question before the Senate is the motion by the Senator from York, Senator Wood, 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 — Brown, Bustin, Carpenter, Charette, Clark, Conley, Dutremble, Gill, Hichens, Kerry, McBreaity, Minkowsky, Najarian, Pray, Trafton, Usher, Wood.

NAY — Ault, Collins, Devoe, Emerson, Huber, O'Leary, Pierce, Redmond, Sewall, C.; Shute, Sutton, Teague, Trotzky, Violette.

ABSENT — Perkins.

Senator O'Leary of Oxford was granted permission to change his vote from Nay to Yea.

Senator Gill of Cumberland was granted permission to change her vote from Yea to Nay.

A Roll Call was had.

17 Senators having voted in the affirmative and 14 Senators in the negative, with 1 Senator being absent, the motion to Recede and Concur with the House does prevail.

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

Senator CONLEY: Mr. President, having voted on the prevailing side, I now move that the Senate Reconsider its action whereby it just voted to Recede and Concur on L. D. 1437.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Conley, that the Senate Reconsider its action whereby it voted to Recede and Concur with the House.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: I move this item be Tabled for 1 Legislative Day.

The PRESIDENT: The Senator from Penobscot, Senator Devoe, now moves that this item be Tabled for 1 Legislative Day, pending the motion to Reconsider.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President, I promise you I will not ask for a Roll Call. I will request a Division on the Tabling motion.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Penobscot, Senator Devoe, that L. D. 1437 be Tabled for 1 Legislative Day, please rise in their places to be counted.

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

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion to Table for 1 Legislative Day, pending the motion by the Senator from Cumberland, Senator Conley, does prevail.

On motion by Senator Pierce of Kennebec, Adjourned until 8:30 o'clock tomorrow morning.