

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 1, 1982 to May 13, 1983

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

Augusta, Maine
April 6, 1983

Senate called to order by the President.

Prayer by Pastor Theodore Hersom of the Spears Corner Baptist Church of Gardiner.

PASTOR HERSOM: Ladies and Gentlemen, it gives me great pleasure to be here this morning and take this group to the Throne of Grace of our Lord Jesus Christ.

So, if we'll bow our heads, we'll look to Him. Our heavenly Father, we thank Thee over and over for this great privilege, and for this great freedom, and for this great Country in which we are citizens and members.

We thank Thee, today, for this group that's here, this Legislative group, and we just come to Thee with this gratefulness in our hearts, that You're going to shine Your blessings upon us from sea to shining sea.

This morning, whatever we discuss, and whatever comes before this Body of Men and Women, may they all do it, in part, for the interest of their people. We ask You, today, to bless our State for it is one of the great state's in our Union, and we're very thankful and very grateful for each and every one of us, and we look forward to great prosperity and great working together with You.

Today, Lord, we just ask You to give us some of the wisdom that You gave Solomon, that we may use it for the glory of our Country, and for our State, and for our people.

We close by saying, Lord, it is wonderful to come into Thy presence; bringing our wants and our needs, knowing that You are going to help each and every one of us. So, bless us all here today, Lord, and we'll be very grateful and thankful for this moment. For we ask all of this in Jesus's Precious Name, the only Name under heaven where we can have salvation, and we can have this great privilege of communing with Thee, for we ask it in His Precious Name. Amen.

Reading of the Journal of yesterday.

The PRESIDENT: The Chair at this time wishes to extend its thanks to the Majority Floor Leader, the distinguished Senator from Penobscot, Senator Pray, for his outstanding job in acting as President Pro-Tem of yesterday.

Senator Pray of Penobscot was granted unanimous consent to address the Senate, Off the Record.

(Off Record Remarks)

Papers From the House
House Papers

BILL, "An Act to Authorize Municipalities to Guarantee Delivery of their Solid Wastes to Specific Waste Facilities." (Submitted by the Department of Environmental Protection pursuant to Joint Rule 24) (H. P. 1048) (L. D. 1392)
Comes from the House, referred to the Committee on Energy and Natural Resources and Ordered Printed.

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

BILL, "An Act to Require the Payment of Prejudgment Interest at Prevailing Market Rates on all Judgments, Dating from the Time of the Incident Giving Rise to the Claim." (H. P. 1049) (L. D. 1393)

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

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

BILL, "An Act to Clarify Sanctions for Repeated Violation of the Labor Laws of Maine." (Submitted by the Department of Labor pursuant to Joint Rule 24) (H. P. 1050) (L. D. 1394)
Comes from the House, referred to the Committee on Labor and Ordered Printed.

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

BILL, "An Act to Amend the Law Governing Traveling Shows." (Submitted by the Department of Public Safety pursuant to Joint Rule 24) (H. P. 1051) (L. D. 1395)

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

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

BILL, "An Act to Change the Positions of County Treasurer and Register of Deeds from Elected to Appointed." (H. P. 1052) (L. D. 1396)

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

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

BILL, "An Act to Make Corrections in the Maine State Housing Authorities Law." (H. P. 1053) (L. D. 1397)

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

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

BILL, "An Act Providing for Administrative Changes in Maine Tax Laws." (Submitted by the Department of Finance and Administration pursuant to Joint Rule 24) (H. P. 1054) (L. D. 1398)

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

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

(Off Record Remarks)

Senate Papers

BILL, "An Act to Create an Uncontrolled Site Clean-up Program and to Provide for the Removal of Certain Hazardous Waste from the McKin Site in Gray, Maine." (Emergency) (S. P. 465) (Presented by Senator DIAMOND of Cumberland) (Cosponsors: Representative CARROLL of Gray and Representative MITCHELL of Freeport)

Reference to the Committee on Energy and Natural Resources suggested.

On motion by Senator Pray of Penobscot referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

BILL, "An Act to Amend the Laws Governing the Administration of Medications in Group Home Intermediate Care Facilities for the Mentally Retarded." (Submitted by the Department of Human Services pursuant to Joint Rule 24) (S. P. 466) (Presented by Senator BUSTIN of Kennebec) (Cosponsors: Representative MELENDY of Rockland and Representative PINES of Limestone)

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

Sent down for concurrence.

BILL, "An Act to Provide Exemptions on Sales or Donations to State, any Political Subdivisions or the Federal Government under the Sales and Use Tax Law." (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27) (S. P. 467) (Pres-

ented by Senator PERKINS of Hancock) (Cosponsors: Representative ZIRNKILTON of Mount Desert, Representative SALSBURO of Bar Harbor and Senator WOOD of York)

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

Joint Resolution

On motion by Senator SHUTE of Waldo the following Joint Resolution (S. P. 469) (Cosponsors: Senator HAYES of Penobscot, Representative ROLDE of York and Representative MASTERTON of Cape Elizabeth)

JOINT RESOLUTION TO RATIFY AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROVIDE FOR A DELAY IN AN INCREASE IN COMPENSATION TO MEMBERS OF CONGRESS UNTIL AN INTERVENING ELECTION OF REPRESENTATIVES HAS OCCURRED

WHEREAS, the 1st Congress of the United States of America at its first session, in both Houses, by a constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring that the following [article] be proposed to the legislatures of the several states, as [an amendment] to the constitution of the United States, . . . which [article], when ratified by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz:

ARTICLE

"No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.", now, therefore, be it

RESOLVED: By the Members of the Senate and the House of Representatives of the 111th Legislature, now assembled, that such proposed amendment to the Constitution of the United States of America be and the same is hereby ratified; and be it further

RESOLVED: That certified copies of this resolution be forwarded by the Secretary of State to the Administrator of General Services, Washington, D.C., and the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States.

Which was Read.

On motion by Senator Pray of Penobscot referred to the Committee on State Government and Ordered Printed.

Sent down for concurrence.

Committee Reports
House

Ought Not to Pass

The following Ought Not to Pass reports shall be placed in the legislative files without further action pursuant to Rule 15 of the Joint Rules:

BILL, "An Act to Set Limits on Deposits of Returnable Containers." (H. P. 840) (L. D. 1090)

BILL, "An Act to Authorize the Public Utilities Commission to Conduct a Study on the Costs of Electrical Space Heating in Residential Units." (H. P. 779) (L. D. 1008)

BILL, "An Act Relating to New Installations of Pay Telephones." (H. P. 449) (L. D. 542)

Leave to Withdraw

The following Leave to Withdraw reports shall be placed in the legislative files without further action pursuant to Rule 15 of the Joint Rules:

BILL, "An Act to Amend the Subdivision Law." (H. P. 504) (L. D. 602)

BILL, "An Act to Make Allocations from the Low-Level Waste Siting Fund for the Fiscal

Years Ending June 30, 1984, and June 30, 1985." (Emergency) (H. P. 933) (L. D. 1216)

BILL, "An Act to Ensure the Safe Operation and Installation of Boilers used by Electric Utilities." (H. P. 861) (L. D. 1124)

Ought to Pass

The Committee on Judiciary on BILL, "An Act Relating to the Nonliability of Physicians or Other Persons who Voluntarily Report Physical or Mental Impairment of Licensees to the Secretary of State." (H. P. 367) (L. D. 598) reported that the same Ought to Pass.

Comes from the House with the Report Read and Accepted and the Bill Passed to be Engrossed.

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

Ought to Pass — As Amended

The Committee on Public Utilities on BILL, "An Act to Remove the Requirement that Certain Municipal Water Utilities Secure Approval of the Public Utilities Commission to Issue Short-term Debt." (H. P. 747) (L. D. 959) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-98)

Comes from the House with the Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-98).

Which Report was Read and Accepted in concurrence. The Bill Read Once. Committee Amendment "A" (H-98) was Read and Adopted, in concurrence. The Bill as Amended Tomorrow Assigned for Second Reading.

The Committee on Local and County Government on BILL, "An Act to Increase the Level of Compensation for Part-time Deputy Sheriffs." (H. P. 247) (L. D. 294) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-103)

Comes from the House with the Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-103)

Which Report was Read and Accepted in concurrence. The Bill Read Once. Committee Amendment "A" (H-103) was Read and Adopted, in concurrence. The Bill as Amended Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

The Committee on Education on BILL, "An Act Concerning School Transportation Contracts." (H. P. 605) (L. D. 753) Reported that the same Ought to Pass in New Draft under same title (H. P. 1062) (L. D. 1385)

Comes from the House, the Report Read and Accepted and the New Draft Passed to be Engrossed.

Which Report was Read.

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

Senator WOOD: Mr. President, I'd like to pose a Parliamentary Inquiry.

The PRESIDENT: The Senator may state his inquiry.

Senator WOOD: Is this Bill properly before us in light of Joint Rule 15, Section 12?

The PRESIDENT: The Chair would respond that the Bill is not properly before this Body, at this time, having violated section 12, of Joint Rule 15.

Senate

Ought Not to Pass

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 15 of the Joint Rules:

BILL, "An Act to Require Oil Dealers to Adjust Contract Prices for Budget Customers when Cash Retail Prices are Reduced." (S. P. 269) (L. D. 822)

Leave to Withdraw

The following Leave to Withdraw reports shall be placed in the legislative files without further action pursuant to Rule 15 of the Joint Rules:

BILL, "An Act Concerning Workers' Compensation for Officers of Corporations." (S. P. 332) (L. D. 977)

Ought to Pass — As Amended

Senator ERWIN for the Committee on Agriculture on BILL, "An Act to Improve the Administration of Agricultural Fairs." (S. P. 298) (L. D. 912) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-47)

Which Report was Read and Accepted. The Bill Read Once. Committee Amendment "A" (S-47) was Read and Adopted. The Bill, as amended, Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

Senator KANY for the Committee on Energy and Natural Resources on BILL, "An Act to Extinguish Obsolete Mineral and Mining Rights." (S. P. 53) (L. D. 145) Reported that the same Ought to Pass in New Draft under same title (S. P. 468) (L. D. 1414).

Which Report was Read.

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

Senator WOOD: I would like to pose a parliamentary inquiry.

The PRESIDENT: The Senator may state his inquiry.

Senator WOOD: Is this Bill properly before us? It seems to be in violation of Joint Rule 15, section 12.

The PRESIDENT: The Senator from York, Senator Wood is correct. The Bill is not presently in form to be presented to this Body.

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

Senator KANY: Point of inquiry, please. Could we have a fuller explanation of the ruling?

The PRESIDENT: Section 12, Joint Rule 15 states, "New Drafts." New Drafts printed pursuant to these rules shall include the Legislative Document number the new bill replaces with the names and the original sponsors and cosponsors."

The Chair would state that these Bills will be held and will be admitted in some form that will comply with the Joint Rule, or the Joint Rule will be changed.

Divided Report

The Majority of the Committee on Legal Affairs on RESOLVE, Authorizing Gerald Pelletier to Bring Civil Action Against the State of Maine (S. P. 51) (L. D. 144)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-48)

Signed:

Sensors:

SHUTE of Waldo
CHARENTE of Androscoggin

Representatives:

HANDY of Lewiston
McSWEENEY of Old Orchard Beach
PERRY of Mexico
COX of Brewer
DUDLEY of Enfield
COTE of Auburn
DILLENBACK of Cumberland
STOVER of West Bath
SWAZEY of Bucksport

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

Signed:

Senator:

DANTON of York

Which Reports were Read and the Majority Ought to Pass Report of the Committee was

Accepted. The Resolve Read Once.

Committee Amendment "A" (S-48) was Read and Adopted.

The Resolve, as amended, Tomorrow Assigned for Second Reading.

Second Readers Senate

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

BILL, "An Act Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Law." (Emergency) (S. P. 459) (L. D. 1390)

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

Orders of the Day

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

RESOLVE, Authorizing the Conveyance of a Certain Unused Building and Land Owned by the State to the Town of Wells for \$10,000 (H. P. 1024) (L. D. 1325)

Tabled—March 31, 1983 by Senator PRAY of Penobscot.

Pending—Passage to be Engrossed.

(In House, March 29, Passed to be Engrossed.)

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

Senator VIOLETTE: Mr. President, I move that L.D. 1325 lay on the Table.

The PRESIDENT: The Chair will order a Division.

Will all those Senators in favor of the motion by Senator Violette of Aroostook, that L.D. 1325 be Tabled, please rise in their places to be counted.

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

18 Senators having voted in the affirmative, and 8 Senators having voted in the negative, L.D. 1325 was Retabled.

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

BILL, "An Act to Conform Maine Garnishment Laws to the United States Code, Title 15, Section 1673, the Federal Consumer Credit Protection Act." (S. P. 110) (L. D. 262)

Tabled—March 31, 1983 by Senator PRAY of Penobscot.

Pending—Passage to be Engrossed.

(In House, March 22, 1983, Passed to be Engrossed as Amended by Committee Amendment "A" (S-26) and Senate Amendment "A" (S-32) in concurrence.)

(In House, March 31, 1983 Passed to be Enacted)

(In Senate, March 31, 1983, Reconsidered Enactment and further reconsidered Engrossment)

On motion by Senator Pray of Penobscot Retabled for 1 Legislative Day.

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

BILL, "An Act Relating to Business, Travel or Recreation on Sunday." (S. P. 29) (L. D. 84)

Tabled—March 31, 1983 by Senator PRAY of Penobscot.

Pending—Further Consideration.

(In Senate, March 29, 1983 Passed to be Engrossed as Amended by Committee Amendment "A" (S-38).)

(In House, March 31, 1983 Passed to be Engrossed as Amended by Committee Amendment "A" (S-38) and House Amendment "C" (H-108) in non-concurrence.)

The PRESIDENT: Is it the pleasure of the Senate that the Senate Recede and Concur with the House?

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Mr. President, I move that the Senate Adhere.

The PRESIDENT: The Senator from Cumber-

land, Senator Clark, moves that the Senate Adhere.

The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Mr. President, are we on Final Enactment?

The PRESIDENT: The Chair would state the Senate is presently in non-concurrence with the House.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: I move the Senate Insist.

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

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President, we presently have three motions before us.

The PRESIDENT: The Chair would state that we have one motion before us. A motion to Insist.

Is it now the pleasure of the Senate that the Senate Insist?

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: I move the Senate Recede and Concur.

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

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Thank you, Mr. President, Mr. President, Men and Women of the Senate, I would hope this morning that the Senate of Maine would not Recede and Concur with the House. L.D. 84, the so-called "Sunday Sales Bill" was reported out of the Committee on Business Legislation with a vastly Majority Ought to Pass Report, and at that time, this Chamber subscribed to the Majority Report. It went down to the other Body, at which time House Amendment "C" under filing number (H-108) was attached to the Bill. This Amendment, in fact, does that which the majority of the Committee on Business Legislation debated, on which they deliberated, and on which they ultimately rejected.

The Statement of Fact in House Amendment "C", which is currently attached to the Bill and before us in non-concurrence from the other Body, reads, "This Amendment allows an employee who does not wish to work on a Sunday, due to family obligations, religious convictions, or other reasons, to be excused from the requirement of work on the additional days, which the store may now be opened under this Bill." It does not interfere with the hiring or scheduling practices of stores, which already may be open on Sundays. It, also, requires that employers who choose to stay open on Sundays, between Thanksgiving and Christmas must pay time and a half to all employees who work on Sunday.

I recognize the politics involved in this Bill, and I recognize as Chair of that Committee, situated in Room 135 downstairs, that in fact, they are those who would support the measure as amended by the other Body, but I would submit to you that that would reflect political reasons, rather than sincere substance or substantiate and/or good philosophical reasons.

What this Amendment would do, Members of the Senate, it would mean that employers across the State have eroded from purview or their policy-making, the determination of the hours of their respective employees for these four Sundays of the year. That, in fact, should those employees, of those stores which would choose to remain open and who currently are prohibited from being open under Maine's current Sunday Blue Laws, would be compensated at time and a half, whether or not, they were exceeding their forty hour general work minimum level. How does that affect the rest of the citizens of Maine, who have to work many times on Sundays and/or weekends, fifty-two weeks

of the year to provide the services that we as citizens expect and even demand?

I would submit to you, members of this Body, that we have serious substantive, constitutional questions that are embraced in the House Amendment before us. It is on that premise, and on the basic unfairness of it all, that I would ask you not to support the pending motion before us, which is to Recede and Concur. I acknowledge that for political reasons, members of the so-called "Third House," are embracing some of the concepts, even somewhat reluctantly, that are incorporated into this House Amendment.

I would submit to you that it is the responsibility of this Chamber, as it always has been, to look at the issue closely, cleanly and constitutionally, which sets aside the political reality and makes the decision, yes, that much harder, and yes, your vote that much more responsible.

I do not believe that this measure will ultimately meet its demise in the other Chamber, should it be returned to that Chamber in the clean fashion that we embraced it when it was first before us.

I believe that L. D. 84 in its amended form with Committee Amendment "A" reflects the current conditions, economically speaking, out there across the State. Should we, this morning, move to Recede and Concur and that motion prevail, we are in fact, setting aside a different classification of employees making them different for four weeks of the year than all of those other hard-working Maine men and women. In addition to that, removing from management, and I hate to develop a potential labor relations Bill, their policy-making decisions about scheduling employees. Yes, the commercial enterprises across the State very much want this Bill, which would allow those stores which are currently prohibited from opening on Sundays to open restrictively on the four Sundays between Thanksgiving and Christmas and even more restrictively, between the hours of 12 and 5 p.m.

This Legislature has spoken and embraced that concept, that we would intrude and expand in to what is the purview of the business men and women across the State, so that this Bill will be politically acceptable, I would submit to you, would be an act of irresponsibility.

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

Senator MINKOWSKY: Mr. President and Members of the Senate, I'm the sponsor of this Bill, and I must first say to the Committee on Business Legislation that I respect the amount of work they put into this piece of legislation. It's one of the few Committees that I can say that I have appeared before that has been fair and objective in looking out for all different points of view, and they rationalize very closely.

The good Senator from Cumberland, Senator Clark, indicated very clearly and articulated, the major concerns, I, also, had with the Amendment, and I'm not going to deny that to anyone. I don't believe government should involve itself, to any degree, in negotiations in the private sector of business. I must further state that over my years of the Maine House and Senate, I've observed many "political decisions being rendered." This political decision in behalf of this Amendment is no different than the ones we have addressed in the past, nor the ones we will address in the immediate future, and in further Legislative Sessions.

These stipulations are not really new but they are being applied in other states. Not because I want to make correlation between what Maine does and what other states do, but just to make it clear that the major stores, the anchor stores referred to are the ones who are being hurt by this. The major anchor stores do already have these two provisions as conditions of work in their respective stores. It took a great deal in the previous session of Legisla-

ture to the present time to have a cohesive group of people who were ultimately opposed to Sunday sales agree to the original Bill as it was. It is not uncommon in an Legislative Session not to use political expediency, but to compromise on these conditions.

This morning, all I'm asking the members of the Senate to do is realize the demand by the general public is significant for Sunday sales, but we have restricted it to the malls because they were not in existence when the Sunday sales was enacted originally, and it presents a different concept of doing business altogether.

Just for the point of clarity, regardless of time and a half, we are talking twenty man hours over a four weeks span of time. I really believe that we should have this particular test during the next two years span of time in which to address if this is unconstitutional or it's not in the best interest of business.

Bear in mind one other point, this will not affect in the slightest degree those businesses in the State of Maine that are presently opened on Sunday and are doing business.

Finally, Mr. President and Members of the Senate, I had this distributed yesterday, an article which appeared in my local paper, the Lewiston Evening Journal, editorially, that addressed this particular Bill and it simply finally said, the two amendments served to establish what may be termed balance in the Christmas holiday season opening Legislation, both retail stores and retail store owners, and their personnel are given choices and this is the way it should be.

I would hope Mr. President and Members of the Senate that you would Accept the motion to Recede and Concur with the other Body, and when the vote is taken, I would request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Thank you, Mr. President, Mr. President, Men and Women of the Senate, I would respond to the good Senator from Androscoggin, Senator Minkowsky, the prime sponsor of L. D. 84, with the following remarks:

Yes indeed we're talking about twenty working hours, and I would be remiss if I didn't suggest that they're working hours rather than man hours for indeed the predominance, or the predominant sex, who clerk in these stores, are in fact, not men, but women. Yes, this is a political decision, I submitted to you that that was, in fact, the case. Not the ramifications of the Bill, but the politics of the Bill and yes, those issues, political issues have been before us in the past, and will be before us in the future, and are before us currently. It is this Chamber which has historically and traditionally set aside political decisions for substance. If, indeed, as the good Senator suggested this morning in his remarks that those anchor stores in the malls across the State currently provide a voluntary Sunday shift, and currently provide time and a half wages, why then is it necessary to mandate it in a Bill?

Further, the scope of this Bill is not directed exclusively to the malls. There are those businesses across the State who do not meet the current Sunday Closing Law and are prohibited from opening. Yes, the genesis of this Bill originated with the malls, but other stores are affected and other stores who are currently prohibited from being open will be mandated to pay time and a half to those people who staff their establishment; whether or not, those people for these twenty hours exceed their forty hour work week.

I ask you again, what about all the other men and women who work on Sundays across the State? Will they receive time and a half? They're working within their forty hour a week. Maine's current Sunday Sales Law is blatantly unfair, not only because of its application, economically, and realistically, but we're making it

additionally unfair. We aren't addressing the problem in a positive, sincere way. What currently is our law, is unfair. Even though twenty years ago the Supreme Judicial Court of this State upheld it; it is acknowledged among the merchants across the State that it would not stand a Constitutional test today, which is why we're here.

I would submit that the good Senator from Androscoggin did not suggest in his testimony before the Committee on Business Legislation that these alternatives should be seriously considered. These alternatives were suggested by those who testified neither for nor against and were alluded to in the testimony of the opponents of the Bill. This Chamber has accepted the concept which is embraced in L. D. 84 in its amended fashion, once. I would submit that that same concept would be embraced by the other Body, should House Amendment under filing number (H-108) not be before them.

I urge you to reject the pending motion.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, I honestly had no intention of speaking on this issue, but the good Senator from Cumberland, Senator Clark, has on numerous occasions during her debate raised the issue of the specter of some sort of political, more political consideration being looked at in this Bill than in other bills.

First of all, I would submit to you that it's probably the most proper place in the State for political consideration be considered, if that's the case. I come from Aroostook County, an area that everybody says will be hurt by a Sunday sales opening, and I voted to accept the Committee Report. More out of loyalty, I guess, than a heartfelt sense of rightness of the Bill.

I decided right then that if the Bill were to go through I would like to see some acknowledgement by this Legislature that Sunday is a special day. I consider it to be a special day. If this Legislature as a two-part system considers Sunday sales of those other stores is appropriate then I would like to see an acknowledgement that Sunday is a special day.

I have no problem whatsoever with the position of the good Senator from Cumberland, that we are making an exception, making a specialized class of people in these stores. I would have no problem with a position were it before this Body, which is not, that any employee required to work on Sunday be paid time and a half. I certainly have no problem with that position, if it were before the Body, but it's not. All we have before the Body is this Bill as amended, and I would suggest that we focus on that this morning when we vote.

If we are going to have Sunday sales of all stores in the State of Maine, that we say to those stores, okay, you can have your sales, you can have your four days, you can have your Christmas shopping, but we're going to say that our employees are entitled to a day of rest or something to compensate for giving up that day of rest. Thank you.

(Off Record Remarks)

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

Senator DIAMOND: Thank you, Mr. President. Men and Women of the Senate, there are three problems that I have with this Amendment and this Bill that's come down from the other Body, amended.

One is, as has already been articulated by the good lady from Cumberland, Senator Clark, the employees; second, the employers; and thirdly, we the Maine Legislature. Now the employees we have been told, in my town of Windham for example, we have a big Brooks Store, Bradley's and twenty feet away, we have a little store that's about four thousand square

feet, which is now currently open on Sundays, and if this would pass the way it is before us now, and become law, twenty feet away in the larger stores we would have employees who would be mandated to receive time and a half on that Sunday. Yet, in the little store, just a stone's throw away, you'd have employees who are getting regular time if they're under forty. Now that seems to be a discrepancy we should deal with.

Employers do have a right. I think, we as a Legislature and as the Maine Senate, have to look out for our employees, but also those small and large businesses we call employers.

The image I am concerned about mostly is for we in the Senate and in the other Body called, the Maine Legislature. If we pass this piece as it now appears before us, and we end up saying to those people back home, and all of your homes and mine, that yes, we said that the people who work on Sundays in those large stores, we've said that they should indeed get time and a half, even if it is voluntary, even if they chose to work on that Sunday, but you, young lady or young man, working in the next store down, you do not get that time and a half. Now what does that leave a taste in your mouth as far as the Legislature, again? Now, I think, we can do better than that.

I think the Senator from Cumberland, Senator Clark, has pointed out very well. I support the original intent of this Legislation. The questionnaire that I received all support that mostly, but I think we have to be careful about stepping into a hole. I would see this amended version being that very hole we'd like to avoid. Thank you, Mr. President.

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

Senator BALDACCI: Thank you, Mr. President, Members of the Senate, there's one thing that disturbs me in the discussion on this particular Bill. This isn't the first state to discuss time and a half, and also, the possibility of not forcing anybody to work on Sunday. I followed very closely in the State of Massachusetts the situation in doing just the same thing. It seems like it is in fairness to the employees. I think it is very important to pose the question, what about all those thousands of people that work at those malls throughout the State of Maine that are going to be forced to work on Sunday, if something like this isn't passed? You jockey around the schedule and you say, well that's the schedule, you've got to work on Sunday. What about those people? There is a lot more of those people that work in those malls that aren't unionized, they aren't represented, they are at the whim of that management and all of a sudden they are going to be faced with a situation, I've got to work or I'm going to lose my job.

Now it seems in fairness that if you're setting up a special situation where they can open 12 to 5, which isn't really what all the other stores can open—so it is a special situation—it would seem like it would only be fair to compensate that employee, or at least, say to him, look you know if you don't want to work, and you want to do things with your family you won't lose your job. It just seems to me like it is fair.

It is not a third house or anybody else that made the proposal. I was following the Massachusetts situation and I thought that they handled that very fairly.

So when you talk about the employee that is down the street that works at Mr. Donuts or McDonalds. Think about the thousands that work in malls and how many people those malls have under employment, and all of a sudden you are saying to them, as an employer, hey look you're not unionized, you're not represented by anybody else, I deal with you directly, you don't want to work on Sunday, you're out.

If you think of all those people and that is the reason that I want to go to Recede and Concur, but I don't want—it's nothing against anybody

else that has talked the other way, that is why I think that it is a very fair thing to do

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

Senator CHARETTE: I wasn't going—Thank you, Mr. President—Women and Men of the Senate: I wasn't going to speak on this issue this morning. I think that the Chairman of our Committee, has well covered all of the issues and the discussions that were part of this Bill.

We are at a point this morning were it has become very difficult on which way to vote on this issue, however, I will stand by my vote on Committee, and I have to explain why, and perhaps I was one of the most voiceful when it came to the issues of paying time and a half for a 5 hour work weekday. That is what we are talking in this case. A person that could be employed by this large store for 5 hours a week, only, would be paid time and a half. Now we are saying, we are discriminating the large stores in not being able to open on Sundays—now we are going to create another type of discrimination—we're going to pay an individual 5 hours.

As an employer where I employ people who work a seven day week, work 24 hours around the clock, that was my feeling on Committee that I didn't want this type of thing to become law, I did not feel that—to me it is unconstitutional to start mandating employers how they are going to pay their employees, just certain employees, certain days of the year.

As far as the voluntary part, I didn't think that that was a big issue. I have never had a hard time hiring people to work Saturdays, Sundays or any day of the week.

So I am going to stick with the Amendment of the Committee. We worked very hard and I just feel right in this hold morning. Thank you very much.

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

Senator PEARSON: Mr. President, Ladies and Gentlemen of the Senate, I move Indefinite Postponement of this Bill and all of its accompanying papers, and I would like to speak to my motion.

The PRESIDENT: The Chair would have to inform the Senator that his motion would be out of order, as we are in non-concurrence.

Senator PEARSON: Would the motion be in order once the concurrence problem is resolved?

(Off Record Remarks)

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

Senator MINKOWSKY: Mr. President and Members of the Senate, just think back when we are speaking about special considerations we gave special considerations twenty years ago to the small merchants in the State of Maine, to allow them to open on Sundays, all day in some areas if they met the qualification of five thousand square foot mandate.

One other factor which should be, I should have brought out, is very simple that we are giving them this privilege or option to open those stores Sundays before Christmas, they may choose to open or they may choose to stay closed.

So I do not think that we are going beyond the scope in the name of equity and fair play for those particular four Sundays. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

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

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

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

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

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

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Baldacci, Brown, Bustin, Carpenter, Danton, Dow, Emerson, Erwin, Gill, Hayes, Hichens, Kany, Minkowsky, Najarian, Pearson.

NAY—Charette, Clark, Collins, Diamond, Dutremble, McBreairty, Pray, Sewall, Shute, Teague, Trafton, Twitchell, Violette, Wood, The President Gerard P. Conley.

ABSENT—Perkins, Redmond, Usher.

A Roll Call was had.

15 Senators having voted in the affirmative and 15 Senators in the negative, with 3 Senators being absent, the motion to Recede and Concur, Failed.

The PRESIDENT: Is it the pleasure of the Senate to Insist?

It is a vote.

Senator Pray of Penobscot was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Carpenter of Aroostook, Adjourned until 9 o'clock tomorrow morning.