

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
May 11, 1983
Senate called to order by the President.

Prayer by Charles Crump, Minister to the Church of Christ in Augusta.

MISTER CRUMP: Let us all give reverence as we pray! Our Father in heaven, as we humbly bow in Thy presence, we come to thank Thee for another day in which You've given us to live. We've come to thank Thee Father for the privilege of prayer. That we still have it within our Government. We're so thankful for those Senators and other leaders who have fought for this wonderful thing that we have and enjoy.

We're thankful, Father, for our government, how it has stood the test of time. We're thankful for those who have gone on, who fought battles for us. Help us to realize that we're standing on the shoulders of these great men.

Our Father, we would ask Thee to continue to bless America, in that we might always have peace and we pray that we will ensue it. We pray for men, yet of the future, we pray for statesmen that would rise to come to these elected positions, to even better our Government.

We ask Thee, Father, that we may always look unto Thee as a Nation. We would ask Thee, Father, that we might become more interested in the greatest Book that has ever been, the Bible. For this is our prayer, in Christ Name we offer it. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

The PRESIDENT: The Chair will appoint as conferees on the part of the Senate on Bill, "An Act to Require the Wearing of Protective Headgear by all Motorcycle, Motor Driven Cycle and Moped Riders". (L. D. 1027)

Senators: Danton of York
Diamond of Cumberland
Gill of Cumberland

Papers from the House Non-concurrent Matter

BILL, "An Act Relating to Training Penobscot Law Enforcement Officers." (S. P. 81) (L. D. 192)

In Senate, March 29, 1983 Passed to be Engrossed.

Comes from the House, Passed to be Engrossed as Amended by House Amendment "A" (H-219) in non-concurrence.

On motion by Senator Carpenter of Aroostook, Tabled for 1 Legislative Day, pending Further Consideration.

Non-concurrent Matter

BILL, "An Act to Establish New Selection Procedures for the Maine Indian Tribal-State Commission Chairmanship." (S. P. 342) (L. D. 1016)

In Senate, May 2, 1983 Passed to be Engrossed as Amended by Committee Amendment "A" (S-76).

Comes from the House, Passed to be Engrossed as Amended by Committee Amendment "A" (S-76) and House Amendment "A" (H-220) in non-concurrence.

On motion by Senator Carpenter of Aroostook, Tabled for 1 Legislative Day, pending Further Consideration.

Order Joint Resolution

On motion of Senator NAJARIAN of Cumberland, the following Joint Resolution (S. P. 546) (Cosponsors: Senator CONLEY of Cumberland, Representative CONNOLLY of Portland, Senator GILL of Cumberland)
JOINT RESOLUTION URGING EMPLOYMENT

OF MAINE WORKERS IN CONSTRUCTION AND OPERATION OF BATH IRON WORKS PORTLAND EXPANSION PROJECT

WHEREAS, unemployment is a subject of great interest and concern to the citizens and Legislature of the State of Maine; and

WHEREAS, Bath Iron Works, a subsidiary of Congoleum Corporation and the largest private employer in the State, has entered a tripartite agreement with the City of Portland and the State to construct and operate a shipyard and dry-dock facilities; and

WHEREAS, this agreement came about by Act of the Legislature and public ratification with the stated purpose of increasing the flow of commerce and providing enlarged opportunities for gainful employment by people of Maine; and

WHEREAS, vast sums have been committed by the city and the State to further this project at Portland, the site selected by the company; and

WHEREAS, the Portland expansion project was undertaken, with encouraging assurances, to serve as a catalyst for the betterment of Maine workers and the improvement of the Maine economy, and these expectations, held so dear, the Legislature cannot now ignore; now, therefore, be it

RESOLVED: That We, the Members of the 111th Legislature of the State of Maine now assembled in the First Regular Session, take this opportunity to respectfully remind the president and management of Congoleum Corporation and its subsidiary, Bath Iron Works, of the support Maine people have given to this project and of the high hopes Maine workers hold that they will be given job training opportunities and a fair chance for gainful employment before soliciting begins elsewhere and, further, We affirm our desire that Maine workers, who are widely known for their skill, honesty, integrity and hardworking nature and who have shared a history of solid and fruitful success with this shipbuilding company for over half a century, be allowed some consideration and preference in the construction and operation of this expansion project; and be it further

RESOLVED: That suitable copies of this resolution be prepared and transmitted forthwith to the appropriate heads of Congoleum Corporation and its subsidiary, Bath Iron Works.

Which was Read and Adopted.
Sent down for concurrence.

Committee Reports House Ought to Pass

The Committee on Health and Institutional Services on BILL, "An Act to Allow Retailers to Sell Prison Made Items" (Emergency) (H. P. 1097) (L. D. 1445) 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 Assigned for Second Reading later in today's session.

Ought to Pass as Amended

The Committee on Business Legislation on BILL, "An Act to Conform State Antitrust Laws with Federal Antitrust Laws" (H. P. 788) (L. D. 1030) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-216).

Comes from the House with the Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-216)

Which Report was Read and Accepted in concurrence. The Bill Read Once. Committee Amendment "A" (H-216) was Read and Adopted, in concurrence. The Bill as Amended, Assigned for Second Reading later in today's session.

Divided Report

The Majority of the Committee on Business Legislation on BILL, "An Act to Permit Barbers to Cut Hair Outside of Barber Shops" (H. P. 293) (L. D. 352)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-215)

Signed:

Senators:

CHARETTE of Androscoggin
CLARK of Cumberland
SEWALL of Lincoln

Representatives:

CONARY of Oakland
STEVENS of Bangor
MURRAY of Bangor
BRANNIGAN of Portland
MacBRIDE of Presque Isle
MARTIN of Van Buren

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

Signed:

Representatives:

PERKINS of Brooksville
TELOW of Lewiston
RACINE of Biddeford
POULIOT of Lewiston

Come from the House with the Majority Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-215).

Which Reports were Read, and the Majority Ought to Pass, as amended, Report of the Committee was Accepted in concurrence.

The Bill Read Once.

Committee Amendment "A" (H-215) was Read and Adopted, in concurrence.

The Bill, as Amended, Assigned for Second Reading later in today's session.

Divided Report

The Majority of the Committee on Labor on BILL, "An Act to Reform the Workers' Compensation System" (Emergency) (H. P. 1019) (L. D. 1322)

Reported that the same Ought to Pass as Amended by Committee Amendment "B" (H-217)

Signed:

Senators:

DUTREMBLE of York
SEWALL of Lincoln
HAYES of Penobscot

Representatives:

WILLEY of Hampden
TAMMARO of Baileyville
NORTON of Biddeford
ZIRNKILTON of Mount Desert
TUTTLE of Sanford
BEAULIEU of Portland
BONNEY of Falmouth
SWAZEY of Bucksport

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

Signed:

Representatives:

LEWIS of Auburn
GAUVREAU of Lewiston

Comes from the House with the Majority Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "B" (H-217) and House Amendment "A" (H-226)

Which Reports were Read.

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

Senator DUTREMBLE: I move that we Accept the Majority Report and I'd like to speak to my motion.

The PRESIDENT: The Senator from York, Senator Dutremble moves that the Senate Accept the Majority Ought to Pass Report of the Committee.

Is this the pleasure of the Senate?

It is a vote.

The Senator has the floor.

Senator DUTREMBLE: The Bill before you today, Ladies and Gentlemen of the Senate, L. D. 1322, is the result of extensive negotiations that have spanned nearly a year. It's based entirely on the Committee, on the Speakers' Select Committee of Workers' Compensation and recommendations made by that Committee. The Bill is entirely consistent and completely, in its amended form consistent with the recommendations of that Committee.

The Committee was comprised, the Speaker's Committee, was comprised of twenty-three members, representing different interest groups of labor, of business, the insurance industry, and Legislators.

The Report of the Committee which is the basis for the Legislation we're voting on today was voted unanimously by those people who were present, including representatives of all the interest groups that I mentioned above.

L. D. 1322 was carefully drafted to make sure that the intent of the Committee was followed and the spirit of the Committee was followed. Our Labor Committee had a well-attended hearing on this Bill. We had many subsequent work sessions that followed to make sure, we reviewed and refined the Bill, and the whole process took nearly a month at which time we seriously and honestly attempted to address the concerns of all the people, all the interest groups that were present.

Committee Amendment "B" addresses those concerns, and it, also, keeps intact the intent of the Speakers' Committee Report. Committee Amendment "B" makes fifteen changes in fifteen different sections. All but two of these changes were technical in nature, making the Bill clearer, easier to work with and more definitive. The other two changes are substantial, of substantive in nature, but they are still consistent with the Speakers' Committee.

The first change increases the employee assistance from six to ten. The second change just clarifies the notice provisions of the Bill.

Again, I want to point out that the Labor Committee worked many, many hours on this Bill. I firmly believe that because of the work of the Committee, our own Labor Committee, because of the work of the Speakers' Committee that we've come out with a real good Bill here, that is going to work.

The current Workers' Compensation System doesn't seem to be benefiting too many people. For the employees, for the injured employee, there's weeks and weeks of delays, sometimes months, sometimes years. The employer is burdened with an expensive system, something that is really not responsive to him and of course the administration of the whole system just seems to overburden the commissioners with paper work. It's just behind the times.

The Bill creates a new system within the system that we have now. It's not perfect. I'm sure we will be back here next year fine tuning the system, making changes that are necessary, but it is better than what we have right now. Under this Legislation, we are changing the system from a grievance system to a direct pay or early pay system. We are eliminating the formal sign agreements and we are eliminating the need for attorneys in 90% of all the claims. At the same time, we are making sure that the injured employee is well taken care of and well represented.

Under this Bill, the payment to an injured employee would begin essentially within fourteen days from the time of injury. The employer or the insurance company has an additional thirty days, while he is making the payments to the injured party, if he wants to decide whether or not wants to contest a claim. If he doesn't contest a claim within those forty-four days, then he cannot stop payments to the injured party, unless he has approval from the commissioner. If during those forty-four days he does contest the

claim, then he must let all the parties know, and an informal conference will be held with the commissioner within three weeks. The injured employee will be advised and prepared by an employee assistant, for this informal conference. At the informal conference, a commissioner may issue an advisory opinion. After a week after this informal conference, the employer or the insurance company may choose to pay, make payments to the injured employee. If they do not, then, either side may hire an attorney and litigate the case.

This Bill, also, provides for the modernization of the Workers' Compensation System. It creates four district offices, one in each County of Androscoggin, Cumberland, Penobscot and Aroostook. It creates an office of ten employee assistants to help the injured employee in his informal conferences and provides for two new additional commissioners. It will, also, provide for additional court reporters and clerical staff. It, also, provides for further funding of the data retrieval system, which is currently being implemented. In other words, what we're doing here is modernizing the Workmens' Compensation System, hoping to make it more effective.

As I said earlier, this Bill is not a perfect Bill. It's a Bill that was worked on by a lot of people. Regardless of whether you perceive yourselves as being as pro-labor or pro-business. I think we all have some concerns on different parts of this Bill. Everybody had to give a little, maybe a little bit more than they wanted to, when they worked on this Bill. Everybody took a little, maybe not as much as they wanted to. At least, I think right now we've got a Bill that addresses the main concerns of having a Workers' Compensation System that works, and works for all the people involved.

This Bill will not solve the problem of the Workers' Compensation System. It took many years to get to where we were, or to where we are. This is a good first step. This Bill is the result of a study, of an analysis of the problems of the Workers' Compensation System. It is the result and a product of compromise and negotiations. I think it is very important to point out, that there is nothing in this Bill that was not agreed to by the members who represented the different factions that were present, including business, labor and insurance. Our Committee, who worked diligently on this Bill and made some changes, also, gave it's stamp of approval.

I would hope, today, that we would Pass this Bill. I believe we already have and that we would follow it right through the procedures. Mr. President, I would hope that we would, Under Suspension of the Rules, give the Bill a Second Reading at this time.

The Bill Read Once.

Committee Amendment "B" (H-217) Read and Adopted, in concurrence.

House Amendment "A" (H-226) Read and Adopted, in concurrence.

On motion by Senator Dutremble of York, under Suspension of the Rules, the Bill Read a Second Time and Passed to be Engrossed, as Amended, in concurrence.

Sent forthwith to the Engrossing Department.

Senate

Change of Reference

Senator BALDACCI for the Committee on Public Utilities on BILL, "An Act to Allow the Public Utilities Commission to set Rates on the Basis of Interpretation of Federal Law" (S. P. 413) (L. D. 1260) Reported that the same be referred to the Committee on Judiciary.

Which Report was Read and Accepted.

On motion by Senator Pray of Penobscot, Tabled until later in today's session, pending Reference.

Divided Report

The Majority of the Committee on Fisheries

and Wildlife on BILL, "An Act to Prohibit Harassment of Hunters, Trappers and Fishermen" (S. P. 63) (L. D. 169)

Reported that the same Ought to Pass in New Draft under same title (S. P. 543) (L. D. 1586)

Signed:

Sensors:

REDMOND of Somerset
USHER of Cumberland
DOW of Kennebec

Representatives:

JACQUES of Waterville
CLARK of Millinocket
MacEACHERN of Lincoln
SMITH of Island Falls
GREENLAW of Standish
CONNERS of Franklin
RODERICK of Oxford
PAUL of Sanford
ERWIN of Rumford

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

Signed:

Representative:

KELLY of Camden

Which Reports were Read.

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

Second Readers

House

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

BILL, "An Act to Revise the Markup Percentage for Maine Produced Products Under the Liquor Law" (H. P. 1084) (L. D. 1432)

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

BILL, "An Act to Create a Statutory Will" (H. P. 1182) (L. D. 1575)

Which was Read a Second Time.

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

Senator TRAFTON: Mr. President and Members of the Senate, it's not my intent to have a rehash of yesterday's sound drumming on this Bill, however, I would like an opportunity to prepare some amendments, technical in nature to the statutory will, which is included in L. D. 1575 I would request that somebody move that this item be Tabled for 2 Legislative Days for that purpose. Thank you.

On motion by Senator Carpenter of Aroostook, Tabled for 2 Legislative Days, pending Passage to be Engrossed.

House — as Amended

BILL, "An Act Relating to Enforcement of Handicapped Parking Zones on Turnpikes and the Interstate System by State Police" (H. P. 931) (L. D. 1210)

BILL, "An Act to Amend the Statutes Governing the Licensing, Approval and Registration of Adult and Child Care Programs" (H. P. 791) (L. D. 1032)

BILL, "An Act to Establish a State Standard for Funding Certain Workers under the Workers' Compensation Commission" (H. P. 1083) (L. D. 1429)

BILL, "An Act to Protect the Integrity of the Unemployment Compensation Fund" (Emergency) (H. P. 1174) (L. D. 1561)

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

Senate

BILL, "An Act Relating to Authority of the Land Use Regulation Commission over Organized Municipalities" (S. P. 302) (L. D. 916)

Which was Read a Second Time.

On motion by Senator Carpenter of Aroostook, Tabled until later in today's session, pending Passage to be Engrossed.

Senate — as Amended

BILL, "An Act to Prohibit Residency Requirements for Municipal Employees" (S. P. 61) (L. D. 167)

Which was Read a Second Time and Passed to be Engrossed as Amended. Sent down for concurrence.

BILL, "An Act to Change the Date of the Primary Election to the First Tuesday in September" (S. P. 103) (L. D. 235)

Which was Read a Second Time.

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

Senator HAYES: I'd like to move that L. D. 235, Bill, "An Act to Change the Date of the Primary Election to the First Tuesday in September" be Indefinitely Postponed. I'd like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator HAYES: This Bill, in my judgment, has serious impacts, potential impacts upon the political system and the process of election in the State of Maine. It is a Bill, that might be described as a Bill that would support the incumbency in running for re-election, but I think it represents a real opportunity to quickly make a long-term mistake.

I suggest to you that there are a number of areas that this Bill would impact in the electoral process. The electoral process in any government has a certain need for time: the time to mobilize support, the time to raise and gather funds, the time to analyze your opponents and to work for putting your campaign together, the time, today, in high technology to develop suitable media and production and just a normal process for people to make up their minds about the election.

This Bill severely compresses the time frame for the general election. It provides for essentially eight weeks during which the campaign for general election can be handled. I submit to you, that is not sufficient time for a candidate, especially in a State level race, to raise funds, to mobilize support, and to put together a campaign organization. I submit to you it's not time needed to profile your opponent, to conduct survey of citizen needs, and to analyze the system in which you're working. It is not time to reserve the media and to provide for production of the television and the print materials that a candidate needs. It is not the time for the normal development of a campaign and the development of partisan identities. Not everybody makes up their mind in politics at the same rates. This Bill, I submit to you would adversely impact upon low-income people, and peoples who's partisan identities are the weakest.

I must admit I'm very reluctant to tinker with the political system that we have. I know it has a lot of flaws. I know people in the public find that sometimes the election process is too long, too cumbersome and a burden to themselves and the families. I know the politicians sometimes find that the political campaign is long and arduous. This length of time serves a very important function for the community and for the citizens to make up their mind and to choose wisely. I think, if you look back upon this last election, you can see that there's certain rhythm to the election campaign and to the process of citizens deciding how they will vote.

I'm very reluctant to experiment with this political system, and I urge you to vote to Indefinitely Postpone.

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

Senator DIAMOND: Thank you, Mr. President, Men and Women of the Senate, I appreciate the good Senator from Penobscot, Senator Hayes for bringing out the point that he brought out on time. I think this Bill is not original. I cannot claim original authorship of this. It's been around our Legislature for a long time.

The point that Senator Hayes brought out, time is the very reason this Bill is here. That's it!

I didn't think of this. People, town, after town, after town, called me during the campaign and after, and the questionnaire that I sent out, as most of you have done since we've been here, 70% and 80% of the people said, "close up the campaign; shorten it up; it's too long; it's too expensive." This is a way of doing that.

In 1976, in both parties, the Republicans and Democrats, put eight people in a Primary. In '78, they put five people in a Primary. In '82, we had two U. S. Senators; we had five group Electoral Candidates; five Congressional Candidates and nearly three hundred Legislative Candidates. That's a lot of people, and a lot of time, and a lot of money. The people out there, Ladies and Gentlemen, are being turned off. Campaigns have become very, very sophisticated. No longer is it the old, "how you doing today down the store"? And maybe I'll send a note and maybe I won't. Campaigns are very sophisticated; computers are being used; direct mailing, specialized mailing; plumbers get one kind of mail; electricians get another; housewives get another; very, very astute campaigning. Because of that, it becomes very, very costly, and because of that sophistication, it becomes very, very long. Time, Ladies and Gentlemen, time is what's causing the problem. Because, what's happened with all of this sophistication and lengthening of the process, the issues become foggy. The issues are not distinct any longer, and it becomes difficult for the voter out there to decide who they're going to vote for and why. Because the thing is drawn out so long, they become turned off. That's a concern. The voters recognize it. If you ask them how they would vote on this Bill, I think you'd find seven or eight out of ten, who would say "yes, we'd vote for it." We need to do something to make the political process more crisped and not more foggy. Other states do this very thing, other states have primaries in September. As I say, this is not a new idea.

Speaking of money, you know when Ken Curtis ran for Governor in 1966, in his general and in his primaries, he spent a little over one hundred thousand dollars. Governor Brennan, as candidate, spent over five times that amount. You see, we've increased everything with our knowledge and our depth of getting the voters. We've gone after them in a very sophisticated manner, and we've just stretched this whole thing out.

Mind you, this Bill does not prohibit anyone from campaigning for as long as they want to. It does not stop anyone. It simply encourages them through the primary process. I talked to several people involved in political process, and they tell me, and I guess I agree, that they look at the primary and then they back-up, a month or two months or a year, whatever it's going to be. The primary is the initial focus date. This, I think, is the encouragement we need.

If there ever was a victim advocacy bill this is it, because the poor people out there who are being subjected to T.V. and newspaper and our letters and our door-knocking, and all the things we do I think we have to take them into account.

One of the key questions that came up, or concerns that came up was raising money. How will candidates be able to raise money in the eight weeks, ensuing from the primary? Well, that was an issue that I felt had to be addressed right off quick. Other states handle that very well. We can. I talked to some of those people who ran for statewide office, and I asked them about that. What about the money issue? Running for Congress, for example. They told me that they don't get their big money until October anyway, because the folks don't want to give their contributions till late in the season, because that's when it's most appreciated. It isn't a matter of losing that money, that money is going to come anyway. You see, the problems here Ladies and Gentlemen is change and I recognize that. It's not

easy to make a change, but I think we might want to consider this change very, very carefully.

I spoke to several groups around Southern Maine and Central Maine about this Bill. The last group in York I spoke to voted unanimously, and there probably was fifty-five or sixty people there to pass this. Every group I spoke to supported it. There's a lot of support out there, Ladies and Gentlemen for this Bill, and I would ask for yours. Thank you very much.

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

Senator HICHENS: Mr. President and Members of the Senate, I rise with mixed emotions on this Bill. I, too, am in favor of shorter campaigns, but I think that Maine is a very unique State and that we have so many thousands of tourists come in during the summertime. We have our primaries all over in June and then most candidates layoff until the first of September anyway, so our tourists are not subjected to all the campaigning that they would be if our primaries came in the early September. I know that we have a tourism bill. We're trying to encourage more tourists to come in and I don't think they'd be subjected to all the political campaigning which would be going on in August, back in July even, for the September primaries. Let's keep our politics within our own State and have our Primaries in June and have our elections in November.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate, the good Senator from York brings to mind the problem that I would have were this piece of Legislation be Enacted. I would have problem, I think, separating the natives from the transients, trying to decide who I was going to give my piece of literature to, and who I was going to give my presentation to.

I've, also, had a problem in running, and because once awhile going through a town you'll stop in to a tourist area and just for a brief to say "hello", something and they are very quick to say, "what are you doing here now, we haven't got time for you?" This is the time when we're making our money. This is the time, in the tourism areas, when we're trying to make it so that we can survive through the Januarys, Februarys and Marchs. These are the times when we do this so, therefore, in my area, my people would be very, very reluctant to have me, or any other person campaigning during this time, because of the influx of the tourists.

I, therefore, would support the good Senator from Penobscot, with his request to leave the primaries at a time that it is now, and hope that those of you who have tourists in your area, and Maine is a large tourists area, that perhaps we would address this by another means of limiting the advertising time or limiting other areas.

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

Senator PRAY: Mr. President, Ladies and Gentlemen of the Senate, I rise as the cosponsor of this proposal and would like to address a few of the comments that have been made.

A little over a decade ago, I had a political science course at the University of Maine from the professor there, who now serves in this Chamber. One of the courses I took from him was political theory, of where he, I can remember drawing up on the chalkboard the Cone Theory. In reference to time and issues, and how the citizenry or the electorate made their decision to whom they were going to vote for, and how they valued various issues as it came down closer to the campaign, it became more important based upon less and less issues. I believe, if I remember correctly, was that the cone lasted as long as time prevailed. If you shorten time, then the concentration of issues, itself, would become smaller and can-

didates would talk about usually the more important issues. I hope I remember correctly. I, also, think I got an "A" in the course, so I must have done pretty good back then, in it. A few of the things I learned there I've applied in this present profession here, and it's been rather successful for me.

I think, also, even the Senator from Penobscot, Senator Hayes would have to agree to is that Maine citizenry rates as one of the more politically astute citizenry of any state. Each of us who have campaigned on a door-to-door basis realize that the public knows an awful lot about what goes on down here. They know an awful lot about the issues. I'm surprised how many of them know exactly the various votes that take place down here and how we stand on them.

I think that this Bill addresses, not a question of, does it give somebody an advantage over someone else, but it's the whole question of time of which the Senator from Penobscot, Senator Hayes opposes the Bill. I believe that the Maine citizenry can handle this burden that is going to be placed upon them. I think that the political candidates are going to respond to the time limit that's allowed to them. As the Senator from Cumberland, Senator Diamond has pointed out, it doesn't shorten the campaigns. Candidates can start as early as they want to, in reference to starting in January and the year before which they presently do now. I think that it would take a to provide for a concentration of the media, of the political surveys that take place at an appropriate time on the calendar and we'll not stretch it out somewhere where it starts in April and May evaluating where people stand, so that politicians can take positions. This might provide an opportunity for politicians to take a position and then allow the people to evaluate their positions, instead of visa versa.

In reference to the remarks by the Senator from York, Senator Hichens in reference to not being able to tell the natives from the out-of-staters, I think that if you can't tell the difference, maybe you shouldn't be serving here to start with. I don't go to many motels and sporting camps to campaign when I go through my district. I usually hit the homes, and I do have a number of homes in my district that are owned by out-of-staters in the Moosehead Lake Region, for example. I have, even in the fall, run into a number of people who are not from the State of Maine. So, that happens. Maine is not just a summer tourists State it's a year-around, four-season State. We promote the four-season program, so, we're going to have the tourists no matter what time of the year that we have the campaigns. I think that's one of those very weak arguments to Indefinitely Postpone this Bill at this time. Thank you, Mr. President.

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

Senator HAYES: Mr. President, Members of the Maine State Senate. Only a couple brief comments. One is, I think Senator Pray probably richly deserved the grade that he received from the course. I'm going to check out what it was.

One thing you should bear in mind that the costs of elections in America and the State of Maine are going to increase at a very rapid rate. This Bill in no way will decrease the costs of running for office. They're going to go up by leaps and bounds you can plan on that. This is not going to affect the costs, it however, may relate to the abilities of people running for office to generate funds.

The real issue is this. Are we willing at this time to tinker with the electoral process based upon the kinds of information that we have. I frankly, feel a little uncomfortable, reasonably uncomfortable, taking a more conservative position on this issue. I do believe that, change for the sake of change is not necessarily good politics.

I would ask for a Roll Call on this.

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

Senator DIAMOND: Thank you, Mr. President. Ladies and Gentlemen of the Senate, just two quick responses, if I could.

The gentleman from Hancock, Senator Perkins and the gentleman from York, Senator Hichens worried us a little bit about who are those people we should be contacting to ask for their vote I've observed those two gentlemen in this Body, and I respect them highly for their ability to mail to various people, and I think they better than I, probably know who the residents are, but how old they are and how many months they've been in their district. I think they are very astute at that process. I would hope that I could learn from them. I think that that concern is probably not as deep as we might think.

In terms of the tinkering with the electoral process as the gentleman from Penobscot, Senator Hayes pointed out I think that the people out there are telling us to tinker. Not only tinker, but readjust, and so I think that's maybe the very thing we should be doing.

I would point out the editorials that I sent out a while ago that were printed in the Portland Press, supporting this position, and I would thank you all for, those of you who sent notes on these editorials, saying you support the position too. I guess it's probably time we got on with the voting. Thank you very much.

The PRESIDENT: Is the Senate ready for the question?

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

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

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

The pending question before the Senate is the motion by the Senator from Penobscot, Senator Hayes that L. D. 235 be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.
The Doorkeepers will secure the Chamber.
The Secretary will call the Roll.

ROLL CALL

YEA—Carpenter, Collins, Dutremble, Emerson, Erwin, Hayes, Hichens, McBreairty, Perkins, Sewall, Shute, Twitchell, Violette, The President Gerard P. Conley.

NAY—Baldacci, Brown, Bustin, Charette, Clark, Danton, Diamond, Dow, Gill, Kany, Minkowsky, Najarian, Pearson, Pray, Teague, Traf-ton, Usher, Wood.

ABSENT—Redmond.
A Roll Call was had.

14 Senators having voted in the affirmative and 18 Senators in the negative, with 1 Senator being absent, the motion to Indefinitely Postpone, Failed.

Which was Passed to be Engrossed, as amended.
Sent down for concurrence.

Enactor

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

An Act to Amend Mandatory Zoning and Subdivision Control. (H. P. 1160) (L. D. 1531)

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

Orders of the Day

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

BILL, "An Act to Require Swimming Pools to be Enclosed" (S. P. 511) (L. D. 1528)

Tabled—May 9, 1983 by Senator CARPENTER of Aroostook

Pending—Enactment
(In House May 9, 1983 Bill and Accompanying Papers Indefinitely Postponed)
On motion by Senator Pray of Penobscot, Retabled for 2 Legislative Days.

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

BILL, "An Act to Extend Consumers Freedom of Choice Regarding Insured Mental Health Services" (H. P. 743) (L. D. 955)

Tabled—May 10, 1983 by Senator PRAY of Penobscot

Pending—Passage to be Engrossed.
(In House May 4, 1983, Passed to be Engrossed as Amended by Committee Amendment "A" (H-190)

(In Senate May 6, 1983 Senate Amendment "A" (S-96) Read and Adopted.)

On motion by Senator Pray of Penobscot, Retabled until later in today's session.

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

BILL, "An Act to Establish the Third-party Prescription Program Act" (S. P. 518) (L. D. 1539)

Tabled—May 10, 1983 by Senator PRAY of Penobscot

Pending—Further Consideration
(In Senate May 3, 1983, Passed to be Engrossed)

(In House May 9, 1983 Passed to be Engrossed as Amended by House Amendment "A" (H-209) in non-concurrence)

On motion by Senator Carpenter of Aroostook, Retabled for 1 Legislative Day.

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

BILL, "An Act to Amend the Unfair Trade Practices Law" (H. P. 1178) (L. D. 1567)

Tabled—May 10, 1983 by Senator PRAY of Penobscot

Pending—Passage to be Engrossed
(In House May 9, 1983 Passed to be Engrossed)

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Charette. Senator CHARETTE: Mr. President, I would move Indefinite Postponement on this Bill and speak to my motion.

The PRESIDENT: The Senator from Androscoggin, Senator Charette moves that this Bill be Indefinitely Postponed.

The Senator has the floor.

Senator CHARETTE: Thank you, Mr. President. Mr. President, Women and Men of the Senate, this Bill was the subject of a great deal of work by the entire Business Legislation Committee. A number of work sessions were held, all of which were attended by representatives of the Attorney General's Office and representatives of various interest groups.

One thing that became clear to me is that this is a very complicated legal issue we are dealing with here. Certainly, the importance of the Bill goes well beyond one word "damages". Now, we sat through a number of discussions of the 1979 Supreme Court Case *Bartner versus Carter*, and we learned that the Supreme Court clearly excluded damages as a remedy, recognizing to give consumers damages on top of the other rights they have in the Unfair Practices Act would be to go too far and would prejudice business too much.

Another point which was discussed, at length, was that there are already a number of remedies in the law right now and these are substantial remedies on the which a consumer may receive damages. For example, an aggrieved consumer may recover damages under expressed warranty actions, implied warranty actions, breach of contract action, common law fraud actions, negligence actions and a product liability action.

Another point I noted was that there was no consumer testimony for this Bill. It was argued and debated by lawyers only. The bottom line, I discovered, is that there will be many more cases brought under the Unfair Trade Practices Act and some of those cases should not be brought under that act. Honest and reasonable businesses will be brought into court on unfair trade practice charges when they are not justified and business costs will go up to defend these law suits, and perhaps even to pay attorney fees when no such attorney fees should be paid.

Another point which concerns me is that we don't even understand the limits of the damages involved. Let's take the example of a washing machine which breaks down. What will damages include? They might include the following: costs to fix the machine, costs to wash all of your clothes in the meantime; costs of detergent; costs to travel to the laundromat; a cleaning bill for clothes that you might otherwise wash; some amount of money for all the nuisance involved for having to go to a laundromat.

Now, some of those damages clearly are not reasonable, yet, they might be recovered under this law. So since there is no need for this change, and consumers remedies exist in the law today, I would move and hope that the Senate will vote for Indefinite Postponement of this Bill.

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 recognize when my colleague on the Committee on Business Legislation, the good Senator from Androscoggin, Senator Charette reflects the position of a number of people who have been working sedulously on this Bill, whether it be in this Chamber or in the lobby outside. I would attempt, insofar as possible, to address in part some of the remarks that he shared with us this morning. Before I do that specific nature, or in a specific way, I'd like to give you a little bit of background on this measure.

L. D. 718, in New Draft, currently is a good Bill. That's what it is, it's a good Bill! The Committee on Business Legislation did work extensively on this measure and many of us worked a little more extensively than others.

Let me share with you some of the background. Currently, the Unfair Trade Practices Act provides for two enforcement tools against unfair, or deceptive acts, or practices in the conduct of any trade, or commerce. One, the attorney general may seek an injunction or; Two, a person who suffers any loss of money or property thereby may bring a civil action in Superior or District Court.

The private remedy for an Unfair Trade Practice provides that the court may order any of the following relief: One, a restitution for example, you get your money back for the purchase price, etc; Two, an injunction; Three, reasonable attorney fees and costs of court.

The purpose of this Bill is to add in these remedies the recovery of damages, and the good Senator from Androscoggin, Senator Charette is accurate when he said that the Amendment that the Committee proposes includes one word, but please look at the Amendment, (which I thought that I had here in my folder.) which says, damages, but, also, adds the words, "other than punitive damages."

The Committee was deliberate in its amending process, in that we did not wish to address the issue of punitive damages for surely that was outside the scope of our desire and we did not want to expand this beyond what we believed, at least, the Minority of the Committee and for a long time most of us who signed the Minority Report thought that it was the Majority of the Committee, was the scope and the intent of the sponsor of the Bill.

For the purpose of the New Draft, L. D. 1567,

places the damages provision in its proper place in the statute, rather than under the fees and costs provision, as in the original bill, L. D. 718. In addition the New Draft, specifically excludes as I've mentioned, punitive damages, for that was not our intent to punish.

What does this Bill, L. D. 1567, in New Draft do, or add to the current law? Presently, a consumer who brings a civil action is limited to equitable remedies, such as those which I listed, restitution and injunction, and recovery of attorney fees and costs. The consumer is not, and I emphasize not, entitled to recover the full costs which he/she has borne as the result of the unfair trade practice.

Let me give you an example which many of us on that Committee, because there are no lawyers on that Committee, that helped some of us, hopefully most of us, to illustrate the difference. Under Title 10, M.R.S.A., Subsection 1482, subsection 2, an insulation contractor must spell out in the contract the type of insulation to be installed in a residence under the contract. Failure to do so is a violation of the Unfair Trade Practices Act by virtue of Title 10, M.R.S.A. Subsection 1483. For this example, and I ask you to listen to the examples for those among us who aren't lawyers, this is the way many of us learn. Assumes that the contractor fails to do that, and installs a type of insulation which is very hazardous to the health of the occupants. Under the current law, the homeowner may sue the contractor for a violation of the Unfair Trade Practices Act. The court may then order the contractor to pay back the contract price for the job. Meanwhile, the homeowner may be left with a house that is both, uninhabitable and unsaleable. He or she may recover one thousand dollars for the insulation job, plus attorney fees and costs, but be left with a fifty thousand dollar mortgage on a useless house, or a five thousand dollar bill to repair the damage. In addition, he or she may have had consequential or incidental damages from having secure alternative housing. This example, while it's not the most simple example and I sort of lean toward the more simple example, and may share it with you later this morning, points out the difference between restitution, which is return of the one thousand dollars paid to the contractor for the insulation job, and damages. The homeowner's actual losses as a direct result of the contract. The question may be asked, "can't damages always be recovered anyway?" and that was the focus of much of the concern of our Committee. You know where that Committee is located. I won't have to remind you this morning.

In many cases, the answer is "yes". Damages could be recovered anyway. However, the question isn't really quite that simple, nor is the answer. Here are a few considerations in that regard. Different action: Since you can't recover damages for the Unfair Trade Practice you must allege and prove some other basis for recovery. Examples of other theories of recovery might include fraud, negligence, breach of contract, breach of warranty, or any number of other theories, such as, intentional infliction of mental distress. Depending on the circumstances of the case, this may mean adding only one additional paragraph, a separate count, all of those legal people from the AG's office kept telling me, to the complaint. That makes sense.

In another case, it may necessitate several pages. The production of documents and the use of additional witnesses, and then the issue becomes a little more complexed to some of us who are not law school graduates.

Or different proof. In some cases, the consumer might present little or no evidence, other than that forwarded on the Unfair Trade Practice claim, but in some cases, such as fraud, the claimant needs to prove additional facts and has a much higher proof, a burden of proof than in most Unfair Trade Practice cases. In the insulation example, the consumer

not only will need to prove the contractor failed to disclose as required, but that he negligently, or even fraudulently introduced this dangerous material into the residence. If claiming negligence, the consumer may have to present evidence of his own precautions or her own precautions, or absence of fault. That indeed refers to the burden of proof, and the more complexed responsibilities in that area;

Then we have attorney involvement, and even though I know this issue has been alleged to be a lawyer's issue, while the Unfair Trade Practices Act does currently allow the consumer to recover reasonable attorney fees, he or she may not need an attorney for the more simple case or the simpler case. To the extent the consumer is forced to alleged and prove additional facts, the need for an attorney is increased. Perhaps, that the basis or the foundation, why it is alleged that this Bill is an attorney's bill or a lawyer's bill and, therefore, not worthy of approval from this Body.

Another question, does this increase the number of cases, my good friend from Androscoggin, has alleged in which attorney's fee would be awarded? Well, the Bill doesn't exactly affect the current laws provisions regarding attorney fees, to the extent, I love to use that phrase lawyers use it all the time, to the extent that the Bill makes consumers, or the consumer more likely to seek enforcement of the private remedy, under the Unfair Trade Practices Act, the awards might indeed increase.

The reasonable converse of this is that consumers don't presently enforce their rights under the Act, because it is an ineffective remedy.

Another question, what is an unfair trade practice anyway? The good Senator from Androscoggin has answered that for you. I have a long list which I will spare reading because it consumes two full pages about what is and statutorily prescribes unfair trade practice. In addition to that long list, which I will be glad to share with any of you, should you wish to read it, the Attorney General may define all of those unfair trade practices by rule, guided by the FTC's interpretation of parallel Federal law.

Is L. D. 1567 a dramatic new change? In terms of the possible benefits to Maine consumers, who are in fact, victims of unfair trade practices the Bill could have a major impact. Testimony was extensive from the Attorney General's office but that testimony indicates, however that it would not be unusual. Why? Because there are a number of other states, including incidently Massachusetts, New Hampshire and Vermont who allow recovery not only for actual damages but for punitive damages as well.

Yet, here we have before us a measure that provides for actual damages, excludes punitive damages specifically and addresses the needs of Maine consumers.

I have suggested that in fact Maine consumers have been, are and probably will be in the course and stream of events in the business and industry practices across our State victims of unfair trade practices.

I hasten to add for the Record, because all of us embrace this as well I feel sure, that those unfair trade practices reflect the minority of practices. But where, in fact, they do occur the consumers who are victimized should have access to remedy and that remedy should also include the damages. Thank you.

(Off Record Remarks)

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

Senator SEWALL: Thank you, Mr. President, and Members of the Senate, I first would like to commend my colleague, Senator Clark for her presentation on this Bill, this is an old chestnut that has been back time and time again, it was there when I was in the Judiciary Committee

and this time it showed up in Business Legislation.

Senator Clark has said that this is a good Bill, and it certainly is, it is a very good bill for trial lawyers. Because really what it does is it puts into the section of the law damages, where attorney fees are awarded. That's kind of less risk for trial lawyers. That is why the trial lawyers want it. It isn't a consumer bill it is a trial lawyer bill. That is the simple answer to it.

Now to get to Senator Clark examples and I'll try and answer all of her questions. For instances in the insulation example, in the same cases a consumer can sue for damages in front of the same judge, at the same time for breach of contract, breach of warranties, negligence, and product liability and the recovery can include the fifty thousand dollars for the house, the cost to live anywhere else, if the home is not inhabitable. The good Senator, also, says that it might be easier to prove under these statute that may be true. It might be a little easier to win if they can work under this statutes, but they still have to allege and prove the facts under any law. This isn't any different there are plenty of places where a consumer can recover.

This State is known for its consumerism since I've been here since 1974 we have done all sorts of things to help the consumer. This doesn't help the consumer, this helps the trial lawyer. Plain and simple.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Knox, Senator COLLINS.

Senator COLLINS: Mr. President there were two or three things in the remarks of the Senator from Cumberland, Senator Clark that caught my ear, one of them was parallel federal law. This Unfair Trade Practices Act through the years has been before both the Committee on Business Legislation and the Committee on Judiciary. I can recall it being before the Judiciary Committee some five or six years ago with a similar attempt to expand the scope of the Maine law. The Federal Act originally was a preventative type of thing with a power and a federal agency to enjoin bad practices. We have all heard of bait and switch practices, various types of deception, misleading advertising and that sort of thing. All of these practices could be enjoined and the issue of damages was not involved. Attorney fees came into the picture at a fairly early time and in the State of Maine attorney fees have been involved, as well, in connection with this particular act.

Some of us will probably remember that in some countries and of course from our point of view particularly in the United Kingdom attorney fees are handled in a much different way than they are in this country. Yet this country is the most litigious country in the world, we run to court at the drop of a hat, we are determined to sue to protect our rights and in my judgment we overdue that tendency to redress our wrongs.

For every wrong there should be a remedy and there is a remedy many of us will recall that we've heard in this Chamber before about the common law. The common law is something that exists as part from our statutes. The common law does provide remedy and I gather from listening to Senator Clark that she would like to have the remedy rolled into one ball. But I pointed out that this very Bill still leaves the remedy, in two parts, at least, because it specifically excludes punitive damages. Some times we speak of exemplary damages which is now-a-days an important part of many law suits.

So if the endeavor is to get the package altogether in one place this doesn't do it. If the endeavor is to make it easier to collect attorney fees, and increase the volume of litigation then this Bill is the type of thing that will do it.

I have brought suits on behalf of consumers

many times through the years and I know what the problems are, there are very few of our Maine businessmen that do not try to remedy any mistakes that they make, it is only that occasional bad apple that becomes the problem. For every bad apple I can assure you there are four or five consumers bad apples who are delighted to run to court particularly when they can get a free ride. I suggest to you that the danger in this Bill is that it invites too much of a free ride for consumers who do already have a remedy but who may be encouraged to go a little too far by this sort of procedure. Thank you.

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

Senator TRAFTON: Mr. President and Members of the Senate I rise in support of the Majority Ought Not to Pass Report today and I join in the motion of Senator Charette of Androscoggin County to Indefinitely Postpone this matter.

I am not a member as you know of the Joint Standing Committee on Business Legislation but a member of the Joint Standing Committee on Judiciary. Interestingly enough last session this bill was heard before the Joint Standing Committee on Judiciary and I am not sure why it was changed and referenced to the Business Legislation Committee but in fact it was during this session.

I thought that it would be useful to point out that this Bill is a result of a particular Maine Supreme Judicial Court Case the case of *Bartner v. Carter* and I thought that it might be helpful today to just briefly describe the facts of those cases, the facts of that case, and indicate how the law was applied to those facts. The *Bartner* case involved the sale of real estate, a lot in Bass Harbor and it was advertised as a lot of three-quarters of an acre in size. The purchasers on that representation offered to purchase that lot, in fact, when the deed was finally reviewed just prior to sale a discrepancy appeared. It appeared to the purchasers, at least, that it was less than three-quarters of an acre. It was only approximately one-half to six-tenths of an acre. The purchaser pointed this fact out to the sellers and to the real estate broker, and at that time the closing of that real estate transaction was put off for approximately two weeks. The sellers gave the purchasers the option at that time to terminate the contract and simply walk away from the transaction as a whole. Instead the purchasers decided to pursue this property, decided to go ahead and in fact went to a closing and purchased the land. At that closing the sellers did provide the purchasers with an additional opportunity to walk away from this transaction, simply tear the contract up, due to the discrepancy in size as advertised and in reality. What happened after the closing is a little bit hard to ascertain, but in fact the purchasers did sue both the sellers and the real estate broker and included a count for unfair trade practices in their complaint. The plaintiffs lost their case in Superior Court and the court in that Superior Court case found that yes the premises did contain less than three-quarters of an acre, however the defendants acted in good faith and both parties had an equal opportunity to see the property and the plaintiffs were not misled as to the size of the property. In fact the Superior Court found that there were no unfair trade practices in that particular situation. On appeal of that Superior Court case the Maine Supreme Judicial Court said they agreed with the Superior Court and said that under the Unfair Trade Practices act damages could not be recovered. That consumers had been given, and I am quoting here from that particular opinion, "consumers had been given a powerful weapon which was capable of being used improperly for harassment and improper cohesive tactics by the plaintiffs." Some limitation was necessary and this powerful remedy that the

court point to was the right to sue, the mandatory recovery of attorney fees, and the right to restitution. The limitation which the court was thinking about was the damages were not an appropriate remedy under the unfair trade practices.

I am concerned personally and as a member of the Joint Standing Committee on Judiciary about creating what appear to be a new Torts, a new claim under the Unfair Trade Practices Act for damages. I believe that the inclusion of the word "damages" would lower the existing standard in civil court cases for the award of damages. I am talking actual damages not special damages and I think that this amendment to the Unfair Trade Practices Act would place business in real jeopardy in their ability to defend their actions in court.

I ask you to join in Senator Charette's motion of Indefinite Postponement. Thank you very much.

(Off Record Remarks)

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

Senator CARPENTER: I didn't intend to speak on this this morning but the more I get involved with this Bill the more confused I become. Since it has been volleyed about as a lawyers bill, I as the newest lawyer in the Chamber probably I ought to have something to say. If you read the Bill it is pretty straightforward it is LD 1567 and I would just allude to the case that the good Senator from Androscoggin, Senator Trafton spoke of. While I have not read the case it seems to me very clear that this bill would have had, this particular section of the law, had it been ineffect at that time would have had no impact on this case, because in fact in that case the defendant was found to not have committed an Unfair Trade Practice so there would have been no restitution available as it was, I understand, there certainly would have been no damages available, and no attorneys fees, etc.

I think that even though the case as pointed out by the good Senator from Cumberland, Senator Clark hopefully is fairly rare. I think that it is a realistic, real life situation that can happen, and in that situation as she pointed out under present law the aggrieved plaintiff could get their money back that they spent, but in fact they might be out, might have been damaged to the tune of thousands of dollars, and yet could not recover.

I don't think that this is an attorney's bill, I think that the logic that has been put forth by the good Senator from Cumberland Senator Clark as to why this is not an attorney bill, in fact is good logic I would hope that you would join with me this morning and the good Senator from Cumberland and opposed the motion to Indefinitely Postpone this Bill.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Lincoln, Senator SEWALL.

Senator SEWALL: Thank you Mr. President, and Members of the Senate, just for the benefit of the newest attorney in the Senate, I would like to read what I read in my remarks when he was not in the Chamber.

In the good Senators, Senator Clark's example of the insulation in the same case, at the same time, in front of the same judge damages for breach of contract, breach of warranty, negligence, and product liability and recovery to include fifty thousand dollars for the house or the cost to live elsewhere, if the home is not habitable could all be collected. There is that chance right now. The only difference in this you see is if you add that section of damages into this Law then you can collect the attorneys fees.

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

Senator CLARK: Thank you, Mr. President.

Mr. President and Men and Women of the Senate, I knew, I was going to try to avoid it, but now I am going to share with you my favorite case because it is something that I experienced and it is something with which I can very closely identify.

Before I do that let me suggest to you that while it has been alleged there may be some question as to why this measure L.D. 718 was referred to the Joint Standing Committee on Business Legislation, because it went to the Joint Standing Committee on Judiciary in a previous 110th Maine Legislature, let me, also, stand before you as the veteran grandmother of that Committee in years of service and say that it has been before the Committee on Business Legislation in sessions previous to the 110th Maine Legislature. So it is not exactly inappropriate that this Bill would go before the Committee on Business Legislation for in fact we have dealt with the issue at previous times.

Senator Sewall from Lincoln is exactly right when she said that in those earlier sessions Maine did take giant steps with reference, or with direct relation to moving ahead in the area of consumerism as a concept in addressing our statutes and adding quite a number more which I call consumer issues and consumer laws.

I am glad that the Senator from Aroostook, Senator Carpenter addressed the Maine court case of Bartner vs Carter and emphasized the fact that even though, I sort of was prepared that, that would be the case that would be presented here in the debate this morning, the consumer did not win his case in that issue and that in fact there was no violation found.

I have here in my hand a monograph published by the Insurance Information Institute called, "Public Attitudes Towards Civil Justice", and an accompanying cover letter, perhaps all of you received it as well as did I. The letter is dated March 4, 1983 and I would quote from that letter, "public reactions to difficulties in proposed changes in the civil justice system are addressed in this monograph, this publication, this monograph titled, "Public Attitudes Towards Civil Justice" reviews the findings of a survey conducted for the Institute in 1982 by the Gallop Organization and some key findings of the survey include, the public in general supports the principles of the torts system," that is reassuring. "The public would support changes in the paying of punitive damages." Yet the Committee on Business Legislation has contained L.D. 718 in redraft L.D. 1567 to exclude punitive damages feeling that damages would be a positive move forward, and yet not move into that, what I, what we perceive to be a somewhat soft area of punitive damages. The majority does not believe that penalty is required with relative, with specific reference to punitive damages beyond fully compensating award. But emphasis here is on "fully compensating award" it is the position of the minority report from that Committee, that that fully compensating award includes damages.

L.D. 1567 in New Draft has been alleged by the good Minority Floor Leader Senator Collins of Knox as a free ride, and while I am hesitant to put words in his mouth and/or to place in a phrase "free ride" that which he did not intend, that was my impression with reference to some of the remarks that he shared with us. There is no free ride in L.D. 1567 the consumer must prove violation and prove amount of actual damages. There is no effect on attorneys fees, because fees are not awarded based on percent of award in the cases where the consumer would prevail.

Obviously, I would urge you to join me and oppose the pending motion of Indefinite Postponement.

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

Senator CHARETTE: When the vote is taken I would ask for a Roll Call, please.

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 Androscoggin, Senator Charette that LD 1567 be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Brown, Charette, Collins, Diamond, Dow, Emerson, Erwin, Gill, Hichens, McBreaity, Perkins, Sewall, Shute, Teague, Trafton, Twitcheil, Usher.

NAY—Baldacci, Bustin, Carpenter, Clark, Danton, Dutremble, Hayes, Kany, Minkowsky, Najarian, Pearson, Pray, Violette, Wood, The President Gerard P. Conley.

ABSENT—Redmond.

A Roll Call was had.

17 Senators having voted in the affirmative and 15 Senators in the negative, with 1 Senator being absent, the motion to Indefinitely Postpone, L.D. 1567 in non-concurrence, Prevailed. Sent down for concurrence.

(Senate at Ease)

The Senate called to order by the President.

(Off Record Remarks)

On motion by Senator Najarian of Cumberland the Senate voted to Reconsider whereby it Enacted

An Act to Promote the Development of Human Resources in Rural Areas of Maine (S. P. 441) (L. D. 1348)

(Recall pursuant to Joint Order (S. P. 544).) (In House, May 9, 1983 Passed to be Enacted. (C "A" S-83))

(In Senate, May 9, 1983 Passed to be Enacted. (C "A" S-83))

The PRESIDENT: The Senator has the floor. Senator NAJARIAN: Mr. President I would just like to speak briefly, No?

The PRESIDENT: The Senator has the floor. Senator NAJARIAN: This Bill required an annual appropriations of twenty-five thousand dollars, the appropriation was not on the Bill, but it is in the part two budget. I could give you the reasons why this Bill slipped by but naturally it would exonerate me of any fault upon further reflection, I don't think any explanation is necessary as we refer to the Common Law so often here this morning, I think the thing speaks for itself.

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

Senator BROWN: I move that L.D. 1348 be placed on the Special Appropriations Table.

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

Senator PRAY: A Parliamentary Inquiry.

The PRESIDENT: The Senator may state his inquiry.

Senator PRAY: Mr. President, I believe that we Suspend the Rules, but have we reconsidered whereby this Bill was Enacted?

The PRESIDENT: The Chair would answer in the affirmative.

On motion by Senator Brown of Washington, placed on the Special Appropriations Table, pending Enactment.

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

Record.

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

Under Suspension of the Rules, there being no objections all items previously acted upon were sent forthwith.

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

Senator Wood of York was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Carpenter of Aroostook, Recessed until 4:30 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

Study Report — Committee on Education

The Committee on Education to which was referred the Study by the Legislative Council Relative to School Finance have had the same under consideration and ask leave to submit its findings and to report that the accompanying BILL, "An Act to Reform the School Finance Act" (H. P. 1197) (L. D. 1588) be referred to the Joint Standing Committee on Education for public hearing and printed pursuant to Joint Rule 18.

Comes from the House with the Report Read and Accepted and the Bill referred to the Committee on Education.

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

House Papers

BILL, "An Act to Clarify the Types of Property Which Pass by Deed" (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27) (Emergency) (H. P. 1176) (L. D. 1570)

Reference to the Committee on Judiciary suggested.

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

On motion by Senator Carpenter of Aroostook, Tabled until later in today's session, pending Reference.

BILL, "An Act Adjusting the Rate of Refund of Motor Fuel Tax to Users of Aircraft and to Make Technical Adjustments to the Motor Fuel Tax Laws" (Submitted by the Department of Transportation pursuant to Joint Rule 24) (Emergency) (H. P. 1177) (L. D. 1571)

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

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

Senator WOOD: Mr. President, I move that the Rules be Suspended and the Bill be given its First Reading at this time.

The PRESIDENT: The Senator from York, Senator Wood moves that L.D. 1571 be given its First Reading at this Time without Reference to Committee.

Is this the pleasure of the Senate?

It is a vote.

Under suspension of the Rules, the Bill Read Once without Reference to a Committee, Ordered Printed, and Tomorrow Assigned for Second Reading.

Committee Reports

House

Leave to Withdraw

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

Rules:

BILL, "An Act to Require the City of Caribou to Establish a Voting District in the Unorganized Township of Connor" (H. P. 125) (L. D. 133)

Ought to Pass as Amended

The Committee on Education on BILL, "An Act to Address School Failure in Kindergarten and Early Elementary Grades" (H. P. 1066) (L. D. 1404) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-221)

Comes from the House, the Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-221)

Which Report was Read and Accepted, in concurrence.

The Bill Read Once.

Committee Amendment "A" (H-221) was Read and Adopted, in concurrence.

On motion by Senator Pray of Penobscot, the Senate voted to reconsider its action whereby it Adopted Committee Amendment "A".

The PRESIDENT: The Senator has the floor.

Senator PRAY: Thank you, Mr. President. Mr. President, I'd like to ask a question through the Chair to a member of the Educational Committee. In looking at the Committee Amendment, which is now pending before us, I notice the statement in the statutes if we adopt this, is that any financing, that this amendment would make it clear that it is not intended, as a method of financing existing efforts, but to encourage developments of new and expanding programs.

My concern is the fact that whether or not the additional programs are sufficiently being funded that we would want to hamstring any type of effort to take care of existing programs as well?

The PRESIDENT: The Senator from Penobscot, Senator Pray has posed a question through the Chair to any member of the Joint Standing Committee on Education who may wish to respond, if they so wish or desire.

The Chair recognizes the Senator from Penobscot, Senator Hayes.

Senator HAYES: The expressed purpose for this Bill is designed to provide new programs in dealing with failure in kindergarten and to provide additional services in that area. It is a pilot program that would provide funding for various competitive proposals to work in this area. It is not designed simply to add additional staff or to beef up the present offerings. Committee Amendment "A" (H-221) was Adopted, in concurrence.

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

The Committee on Energy and Natural Resources on BILL, "An Act to License Waste Oil Dealers and to Include Waste Oil Within Coverage of the Maine Hazardous Waste Fund" (H. P. 389) (L. D. 472) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-223)

Comes from the House, the Report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-223)

Which Report was Read and Accepted, in concurrence.

The Bill Read Once.

Committee Amendment "A" (H-223) was Read and Adopted, in concurrence.

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

Ought to Pass in New Draft Under New Title

The Committee on Energy and Natural Resources on BILL, "An Act to Create the Longfellow Wilderness Preserve" (H. P. 199) (L. D. 243) Reported that the same Ought to Pass in New Draft under New Title, RESOLVE, Directing the

State Planning Office to Inventory Virgin Timber Stands on State Lands (H. P. 1193) (L. D. 1579)

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

Which Report was Read and Accepted in concurrence.

The Resolve, in New Draft under New Title Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Energy and Natural Resources on BILL, "An Act Relating to Ownership of Land Adjoining Public Ways Under the Law Defining Subdivision" (H. P. 544) (L. D. 696)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

McBREAIRTY of Aroostook

KANY of Kennebec

PEARSON of Penobscot

Representatives:

MITCHELL of Freeport

RIDLEY of Shapleigh

MICHAUD of East Millinocket

HALL of Sangerville

MICHAEL of Auburn

JACQUES of Waterville

The Minority of the same Committee on the same subject matter. Reported that the same Ought to Pass in New Draft under same title (H. P. 1196) (L. D. 1587)

Signed:

Representatives:

KIESMAN of Fryeburg

BROWN of Livermore Falls

DEXTER of Kingfield

McGOWAN of Pittsfield

Come from the House with the Minority Report Read and Accepted and the New Draft Passed to be Engrossed.

Which Reports were Read and the Majority Ought Not to Pass Report of the Committee was Accepted, in non-concurrence.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Judiciary on BILL, "An Act Relating to Victims' Bill of Rights" (H. P. 630) (L. D. 782)

Reported that the same Ought to Pass in New Draft under same title (H. P. 1192) (L. D. 1578)

Signed:

Sensor:

TRAFTON of Androscoggin

Representatives:

DRINKWATER of Belfast

JOYCE of Portland

CARRIER of Westbrook

LIVESAY of Brunswick

FOSTER of Ellsworth

SOULE of Westport

HAYDEN of Durham

HOBBS of Saco

BENOIT of South Portland

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

Signed:

Sensors:

COLLINS of Knox

VIOLETTE of Aroostook

Representative:

REEVES of Newport

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

Which Reports were Read and the Majority Ought to Pass, in New Draft, Report of the Committee was Accepted, in concurrence.

The Bill, in New Draft, Read Once and Tomorrow Assigned for Second Reading.

Second Readers**House**

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

BILL, "An Act to Allow Retailers to Sell Prison Made Items" (Emergency) (H. P. 1097) (L. D. 1445)

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

House — as Amended

BILL, "An Act to Conform State Antitrust Laws with Federal Antitrust Laws" (H. P. 788) (L. D. 1030)

BILL, "An Act to Permit Barbers to Cut Hair Outside of Barber Shops" (H. P. 293) (L. D. 352)

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

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

Communications

The Following Communication:

Committee on Audit and Program Review
May 11, 1983

The Honorable Gerard Conley

Senate President

State House

Augusta, Maine 04333

Dear President Conley,

The Committee on Audit and Program Review is pleased to report that it has completed the business placed before it concerning the 47 recommendations made by the Audit Committee of the 110th Legislature. We are also pleased this particular legislation referred to the Committee was reported out and voted on unanimously by both the House and Senate.

The Committee is continuing its work and has now begun its review of the Departments of Conservation and Inland Fisheries and Wildlife and independent agencies as charged under the Maine Sunset Act. We are looking forward to a productive and cooperative year ahead as we work with the substantive committees and the legislature as a whole.

Respectfully,

S/SEN. G. WILLIAM DIAMOND

Senate Chairman

S/Rep. NEIL ROLDE

House Chairman

Which was Read and Ordered Placed On File.

The PRESIDENT: The Chair wants to commend the good Senator from Cumberland, Senator Diamond for getting his work done and making it possible for us to get out of here, in some near given date.

The Following Communication:

Committee on Energy and Natural Resources

The Honorable Gerard P. Conley

President of the Maine Senate

State House Augusta, Maine 04333

Dear President Conley:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the IIIth Maine Legislature, the Joint Standing Committee on Energy & Natural Resources has had under consideration the nomination of Peter J. Wiley of Falmouth for appointment to the Board of Environmental Protection.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the IIIth Maine Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Clerk Called the roll with the following results:

Yeas: Senators 3

Representatives 9

Nays: Senators

Representatives 1

Absent: 0

12 members of the Committee having voted in the affirmative and 1 in the negative with 0 being absent. It was the vote of the Committee that the nomination of Peter J. Wiley of Fal-

mouth for appointment to the Board of Environmental Protection.

Sincerely,
S JUDY C. KANY
Senate Chairman
S/DONALD M. HALL
House Chairman

Which was Read and Ordered Placed On File.

The PRESIDENT: The Joint Standing Committee on Energy and Natural Resources has recommended that the nomination of Peter J. Wiley be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Energy and Natural Resources be overridden: In accordance with 3 M.R.S.A., Chapter 6, section 151 and with Joint Rule 38 of the 111th Legislature, the vote will be taken by the yeas and nays. A vote of Yes will be in favor of overriding the recommendation of the Committee. A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?
The Doorkeepers will secure the Chamber.
The Secretary will call the Roll.

ROLL CALL

YE—None.
NAY—Baldacci, Brown, Bustin, Carpenter, Charette, Clark, Collins, Danton, Diamond, Dow, Dutremble, Gill, Hayes, Hichens, Kany, McBreairty, Minkowsky, Najarian, Pearson, Perkins, Pray, Sewall, Shute, Trafton, Twitcheil, Usher, Violette, Wood, The President Gerard P. Conley.

ABSENT: Emerson, Erwin, Redmond, Teague.

No Senators having voted in the affirmative and 29 Senators in the negative, with 4 Senators being absent, and none being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted.

The nomination of Peter J. Wiley is confirmed.

The Secretary was directed to inform the Speaker of the House.

Senate Papers

BILL, "An Act Relating to Emergency Planning for the Area Around Nuclear Power Plants" (S. P. 547) (Presented by Senator BALDACC I of Penobscot) (Cosponsors: Representative BOST of Orono, Representative CURTIS of Waldoboro and Representative VOSE of Eastport)

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

Sent down for concurrence.

BILL, "An Act to Clarify and Make Corrections in the Inland Fisheries and Wildlife Laws" (Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 24) (S. P. 548) (Presented by Senator USHER of Cumberland) (Cosponsors: Representative CONNERS of Franklin, Representative PAUL of Sanford and Representative KELLY of Camden)

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

Sent down for concurrence.

Committee Reports

Senate

Ought to Pass as Amended

Senator USHER for the Committee on Election Laws on BILL, "An Act to Change the Deadline for Holding Municipal Caucuses" (S. P. 113) (L. D. 265) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-111)

Which Report was Read and Accepted. The Bill Read Once.

Committee Amendment "A" (S-111) was Read and Adopted.

The Bill, as amended, Tomorrow Assigned

for Second Reading.

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

Orders of the Day

On motion by Senator Carpenter of Aroostook the Senate voted to remove from the table:

BILL, "An Act to Clarify the Types of Property Which Pass by Deed". (H. P. 1176) (L. D. 1570)

Tabled earlier in today's session, on motion by Senator Carpenter of Aroostook, pending Reference.

On motion by Senator Carpenter of Aroostook, referred to the Committee on State Government and Ordered Printed, in concurrence.

The President laid before the Senate:

SENATE REPORT — from the Committee on Public Utilities on BILL, "An Act to Allow the Public Utilities Commission to set Rates on the Basis of Interpretation of Federal Law" (S. P. 413) (L. D. 1260) Reported that the same be referred to the Committee on Judiciary.

Tabled—May 11, 1983 by Senator PRAY of Penobscot.

Pending—Acceptance of Committee Report.

On motion by Senator Carpenter of Aroostook referred to the Committee on Judiciary.

Sent down for concurrence.

The President laid before the Senate:

SENATE REPORT — from the Committee on Fisheries and Wildlife on BILL, "An Act to Prohibit Harassment of Hunters, Trappers and Fishermen" (S. P. 63) (L. D. 169)

Majority Report — Ought to Pass in New Draft under same title (S. P. 543) (L. D. 1586)

Minority Report — Ought Not to Pass.

Tabled—May 11, 1983 by Senator PRAY of Penobscot

Pending—Acceptance of Either Report.

On motion by Senator Usher of Cumberland, the Majority Ought to Pass in New Draft/Report of the Committee was Accepted.

The Bill, in New Draft, Read Once and Tomorrow Assigned for Second Reading.

The President laid before the Senate:

BILL, "An Act Relating to Authority of the Land Use Regulation Commission over Organized Municipalities" (S. P. 302) (L. D. 916)

Tabled—May 11, 1983 by Senator CARPENTER of Aroostook

Pending—Passage to be Engrossed.

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

Senator McBREAIRTY: Mr. President, I offer Senate Amendment "A" (S-110) to L. D. 916 and move its Adoption.

The PRESIDENT: The Senator from Aroostook, Senator McBreairty offers Senate Amendment "A" (S-110) and moves its Adoption.

Senate Amendment "A" (S-110) was Read.

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

Senator PEARSON: Mr. President, I request the sponsor of the Amendment to explain the Amendment.

The PRESIDENT: The Senator from Penobscot, Senator Pearson has posed a question through the Chair to the Senator from Aroostook, who may respond if he so desires.

The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator McBREAIRTY: Mr. President and Members of the Senate, this Amendment requires towns, as well as plantations to have a Land Use Plan as restrictive, as they now have under LURC before they can be out from under.

I'll read the Statement of Fact, "this Amendment requires towns and plantations to adopt planning and zoning at least as strict as present Maine Land Use Regulation Commission Standards before they are no longer

subject to Maine Land Use Regulation Commission.

The Bill, as it was written didn't include towns, just plantations.

Senate Amendment "A" (S-110) was Adopted.

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

Senator PEARSON: Mr. President, is it in order to move the Indefinite Postponement of the Bill and Accompanying Papers?

The PRESIDENT: The Chair would state in the affirmative.

Senator PEARSON: Mr. President, Men and Women of the Senate, I do move the Indefinite Postponement of this Bill and its Accompanying Papers.

Senator McBreairty of Aroostook and I have a basic philosophical difference about zoning, I think. I was not here when the Land Use Regulation Commission was established. I understand that it was established in an attempt to zone and sensibly manage unorganized territory. I understand that the proponents, at that time, and the ones today, still maintain that while we did make mistakes in our towns, because of lack of zoning that we had a golden opportunity in those towns, those areas that were undeveloped to make sure that its management was done in a sensible and sane manner.

Senator McBreairty has always maintained, as I understand his argument, and he's very consistent in it, that unorganized territory should not have to have any more restrictions than organized. It's almost, in my opinion, like turning back the clock and wishing that we had done in all the communities of the State the best thing that we could have in retrospect.

The fact remains that not all towns were smart enough, bright enough, or had enough foresight to have good planning and zoning. So, hopefully, we've learned by those mistakes in the unorganized territory and have zoned them or planned them in a sensible manner.

What his Amendment, today does, is to require that all towns in the State have zoning the same as unorganized territory. It is not possible. It is not possible, I think, due to the nature of the beast. But, what is possible is to have some sensible planning in unorganized territory when you start from, in most instances anyway, communities that have very little population.

I have brought this measure before you twice; I have failed twice. I have had various people tell me at various times that the reason they voted against my position was to send a lesson, a message to LURC, for one reason, or another. I think the time has come now for us to act responsibly, and I hope that you see that responsibility the same way that I do, and that is; this Bill is bad, this Amendment makes it worse, and so I do move the Indefinite Postponement of this Bill and ask for a Division.

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

Senator PRAY: Mr. President, Ladies and Gentlemen of the Senate, I rise as the Senator from Penobscot, and to express that in most ball games, in three strikes and your out, and this is the third attempt in my understanding from the comments of the Senator from Penobscot, Senator Pearson, having tried twice before this will be the third swing at the ball. I, as one, hopes he misses it, because I think he misinterpreted the intent of the sponsor of this Amendment.

As I read the Amendment, it states that any municipality organized after September 23rd of 1971. That's just about a dozen years ago, and I think, the vast majority of towns in this State were organized prior to that date. I would suspect it be less than a dozen or so communities would fall into this category. I think the Amendment improves and takes care of some of the concerns which people had yesterday, that we were going to allow some of

the unorganized territories just to organize for the intensive purpose of getting away from Land Use Regulation Policy. My understanding of this Amendment states that they will have to draw up a plan, at least equal to that, but it will be their plan. Then, they do not have to go on as the present law states, for a period of four years under the LURC jurisdiction, even though they themselves are an organized town or plantation. Once they adopt their own plan, if that is the correct intent of the sponsor of this Amendment, then it is an improvement upon the Bill that we accepted here yesterday. It provides some protection, and insurance that those areas of the State that we as Maine people are all concerned about, some other community, usually in the extreme northern or eastern portion of this State, will at least provide some protection for its own land as we ourselves wish our own communities would who perhaps do not have zoning.

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

Senator McBREAITY: Mr. President and Members of the Senate, I'm sure that there must be some misunderstanding here. The purpose and scope of the Land Use Regulation Commission stated, "that the Legislature finds that it is desirable to extend principal of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State. Now, unorganized and deorganized was described as organized and deorganized areas shall include all areas located within the jurisdiction of the State of Maine except areas located within organized cities, and towns, and Indian Reservations.

For the duration of LURC, or since LURC has been created, they have had jurisdiction over the plantations and when towns started to get out, the law was amended to continue to have jurisdiction over towns. Whether you vote for this Bill or not, or this Amendment, is to whether you trust municipalities that have existed for one hundred and fifty years and run their own business, once they've adopted a plan, which many towns are not required to do now, can get out from under LURC and continue to run their own business.

I maintain that the law as we're administering it now definitely must be Unconstitutional, because we have a State agency going into organized towns and putting regulations on them, holding public hearings outside those towns; changing their zoning and land use plans, and the towns have absolutely nothing to say about it. How would you like to have your town being handled like that?

The Amendment that I offered today, is an Amendment to make sure that no town gets out from under LURC prior to adopting a Land Use Plan as strict as LURC has on them presently.

Then we have got to trust them, municipalities that have been in existence for a hundred and fifty years to continue to carry out that plan and their own business. Naturally if they wish to make some changes that are more stringent or less stringent as they go along they will have that privilege as your town or mine have.

That is what this Bill does, and the amendment makes it stronger, because the originally Bill would have let towns out and once they went out they would have been in the same category as dozens and dozens of towns that we live in now. They would not have come under the Environmental Laws of the State as many towns do now.

So I would hope that we would pass this Bill and let these towns adopt plans if they wish, if they do not wish to adopt this type of plan they can continue to stay under LURC, many of them I assume will because they are getting this service for free now or either the taxpayers from the other towns, or the unorganized territory is paying for it now. If we let them out they will have to pay for their own. Thank you.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Penobscot, Senator Pearson that L. D. 916 be Indefinitely Postponed, please rise in their places to be counted.

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

9 Senators having voted in the affirmative, and 16 Senators having voted in the negative, the motion to Indefinitely Postpone L. D. 916, Failed.

The Bill was Passed to be Engrossed, as amended.

Sent down for concurrence.

The President laid before the Senate: Bill, An Act to Extend Consumers Freedom of Choice Regarding Insured Mental Health Services (H. P. 743) (L. D. 955)

Tabled—May 11, 1983 by Senator PRAY of Penobscot

Pending—Passage to be Engrossed (In House May 4, 1983, Passed to be Engrossed as Amended by Committee Amendment "A" (H-190)

(In Senate, Committee Amendment "A" (H-190) Adopted; Senate Amendment "A" (S-96) Adopted)

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

Senator CLARK: Mr. President, I present Senate Amendment "B" to L. D. 955 under filing number S-112 and move its Adoption.

The PRESIDENT: The Senator from Cumberland, Senator Clark offers Senate Amendment "B" (S-112) and moves its Adoption.

Senate Amendmnet "B" (S-112) was Read and Adopted.

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

Sent down for concurrence.

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

Senator Carpenter of Aroostook 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.