

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**FIRST REGULAR SESSION**

**May 16, 1983 to June 24, 1983**

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**August 4, 1983**

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STATE OF MAINE  
 One Hundred and Eleventh Legislature  
 First Regular Session  
 JOURNAL OF THE SENATE  
 Augusta, Maine  
 May 17, 1983  
 Senate called to order by the President.

Prayer by the Reverend Clayton A. Alward of the Full Gospel Assembly of North Monmouth.  
 REVEREND ALWARD: Our gracious Father in Haven, this morning we thank You for this opportunity we have together with these people. We ask You, Lord, this morning to give us wisdom and knowledge, Lord, to these people that have grave decisions to make. Lord, we pray, God this morning that Your mighty presence will be in this place throughout the day. Guide us in our thoughts; guide us in our decisions. We'll be grateful to thank You, Father, in Jesus' Wonderful Name. Amen.

Reading of the Journal of yesterday.

**Communication**

The Following Communication:

**State of Maine**  
**One Hundred and Eleventh Legislature**  
**Committee on Education**  
 May 16, 1983

The Honorable Gerard P. Conley  
 President of the Senate of Maine  
 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 111th Maine Legislature, the Joint Standing Committee on Education has had under consideration the nomination of Joseph D. Murphy of Biddeford to the State Board of Education.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators 2  
 Representatives 3  
 NAYS: Senators 1  
 Representatives 7  
 ABSENT: 0

Five members of the Committee having voted in the affirmative and eight in the negative, it was the vote of the Committee that the nomination of Joseph D. Murphy of Biddeford to the State Board of Education be denied.

Sincerely,  
 /S/ KENNETH P. HAYES  
 Senate Chair  
 /S/ STEPHANIE LOCKE  
 House Chair

Which was Read and Ordered Placed on file.

On motion by Senator Pray of Penobscot, the Joint Standing Committee on Education's recommendation that the nomination of Joseph D. Murphy be denied was Tabled until later in today's session pending Consideration.

**Senate Paper**

BILL, "An Act to Provide Workers' Compensation Coverage to Emergency Medical Services' Persons." (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27) (S. P. 563) (Presented by Senator Twitchell of Oxford) (Cosponsors: Representative Jackson of Harrison, Representative Roderick of Oxford and Representative McCollister of Canton)

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

(Off Record Remarks)

**Committee Reports**

**House**  
**Ought Not to Pass**

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

BILL, "An Act to Increase the Minimum Wage" (H. P. 1013) (L. D. 1338)  
 BILL, "An Act Relating to Banking Disclosure" (H. P. 957) (L. D. 1228)

**Leave to Withdraw**

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

BILL, "An Act to Equalize the Years of Participation and Benefits Under the Maine State Retirement System" (H. P. 1098) (L. D. 1449)  
 BILL, "An Act to Promote Better Voter Participation and to Designate the Day of the State General Election a State Holiday" (H. P. 820) (L. D. 1060)  
 BILL, "An Act to Improve and Strengthen the Referendum Process" (H. P. 1032) (L. D. 1357)

**Ought to Pass in New Draft**

The Committee on Education on BILL, "An Act to Amend the Laws Pertaining to Dissolution and Withdrawal from School Administrative Districts and Community School Districts" (H. P. 854) (L. D. 1104) Reported that the same Ought to Pass in New Draft under same title (H. P. 1214) (L. D. 1610)

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

Which Report was Read and Accepted in concurrence. The Bill in New Draft Read Once and Assigned for Second Reading later in today's session.

The Committee on Energy and Natural Resources on BILL, "An Act to Prevent the Closing of Fire Lookout Towers" (H. P. 153) (L. D. 161) Reported that the same Ought to Pass in New Draft under same title (H. P. 1217) (L. D. 1613)

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

Which Report was Read and Accepted in concurrence. The Bill in New Draft Read Once and Assigned for Second Reading later in today's session.

**Ought to Pass in New Draft under New Title**

The Committee on Business Legislation on BILL, "An Act to Prevent Abuses in Certain Land Installment Contracts" (H. P. 853) (L. D. 1103) Reported that the same Ought to Pass in New Draft under New Title, BILL, "An Act to Require Certain Disclosures in Land Installment Contracts for Improved Residential Property and to Provide for Recordation of those Contracts" (H. P. 1213) (L. D. 1609)

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

Which Report was Read and Accepted in concurrence. The Bill in New Draft under New Title Read Once and Assigned for Second Reading later in today's session.

**Divided Report**

Nine members of the Committee on Energy and Natural Resources on BILL, "An Act to Require Review of Road Construction" (H. P. 627) (L. D. 779) Reported in Report "A" that the same Ought to Pass in New Draft under same title (H. P. 1215) (L. D. 1611)

Signed:  
 Senators:

KANY of Kennebec  
 McBREAIRTY of Aroostook  
 PEARSON of Penobscot  
 Representatives:  
 HALL of Sangerville  
 MICHAUD of East Millinocket

KIESMAN of Fryeburg  
 JACQUES of Waterville  
 MCGOWAN of Pittsfield  
 RIDLEY of Shapleigh

Two members of the same Committee on the same subject matter Reported in Report "B" that the same Ought to Pass in New Draft under same title (H. P. 1216) (L. D. 1612)

Signed:

Representatives:  
 MICHAEL of Auburn  
 MITCHELL of Freeport

Two members of the same Committee on the same subject matter Reported in Report "C" that the same Ought Not to Pass.

Signed:

Representatives:  
 BROWN of Livermore Falls  
 DEXTER of Kingfield

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

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

The Bill, in New Draft, Read Once and Assigned for Second Reading later in today's session.

**Divided Report**

The Majority of the Committee on Health and Institutional Services on BILL, "An Act to Regulate Smoking on Public Conveyances in the State of Maine" (H. P. 829) (L. D. 1067) Reported that the same Ought to Pass in New Draft under same title (H. P. 1211) (L. D. 1604)

Signed:

Senator:  
 BUSTIN of Kennebec  
 Representatives:

RICHARD of Madison  
 PINES of Limestone  
 MANNING of Portland  
 CARROLL of Gray  
 MELENDY of Rockland  
 BRODEUR of Auburn  
 NELSON of Portland

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

Signed:

Senators:  
 CARPENTER of Aroostook  
 GILL of Cumberland

Representatives:

WEBSTER of Farmington  
 MAYBURY of Brewer  
 (Representative SEAVEY of Kennebunkport Abstained)

Comes from the House with the Majority Report Read and Accepted and the New Draft Passed to be Engrossed as Amended by House Amendment "A" (H-240).

Which Reports were Read.

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

Senator BUSTIN: Mr. President, I move the Ought to Pass Report of the Committee.

The PRESIDENT: The Senator from Kennebec, Senator Bustin, moves that the Senate Accept the Majority Ought to Pass, in New Draft, Report of the Committee.

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate: As you can see, the good Senator from Kennebec, Senator Bustin and I, once again part company on the issue, I guess you would say the issue of smoking, but I would rather think it was the issue of just how far you can go in forcing people to do certain things.

If you look at the New Draft which is L. D. 1604 it appears to me to be a totally unnecessary piece of legislation, yet, it's titled "An Act to Regulate Smoking on Public Conveyances in the State of Maine." However, what the Bill

does, it says, "smoking is prohibited in elevators, and intrastate buses," and you must have signs, and then it goes on to talk about ferries, "smoking is prohibited on ferries except as follows": and it does put down some guidelines as to where you can smoke on the Casco Bay Lines and what not.

The Bill is unnecessary for a couple of reasons. First of all, the Federal Department of Transportation presently has regulations which require that all buses allocate 25% of their seats to smoking, in the rear of the bus as I understand it. As far as the elevators are concerned, State and Municipal and County Governments presently prohibit smoking in elevators on Government properties and insurance companies by contract prohibit smoking in elevators located in commercial buildings. As far as the ferries are concerned, there is presently a something called, "the Maine State Ferry Advisory Board" which is set up to advise the Commissioner of Transportation on things such as this and it seems to me it would be more appropriate that they would set down the rules and regulations. The largest ferry service in the State which is Casco Bay Lines, as I understand it presently, voluntarily has set aside certain areas where you can smoke and the rest of the boat, you can't smoke.

It just seems to me that this is once again a totally unenforceable and totally unneeded piece of legislation. I would ask you to vote against the pending motion, and we can take the Ought Not to Pass Report.

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

Senator BUSTIN: Thank you, Mr. President. Ladies and Gentlemen of the Senate, not being one to give up easily, I will fight the good fight until the end, and hope that those good Senators who stuck with me yesterday will stick with me today; at least, let's make some kind of an effort to indicate that smoking is not acceptable when it harms other people.

On smoking, the people say to me, "well, I always ask if I can smoke when I'm in front of you." I always say, "well, it never bothers me. I always give permission to smoke." Well, that's because in most instances, smoke does not bother me personally. I can handle it, when it's at the dinner table or it's in a home, if it's not for a whole length of time, at a cocktail party, I can handle that. What I cannot handle, however, is public conveyances. It literally makes me sick to my stomach. I guess you need to choose between lighting up that cigarette when I'm on the bus or something that isn't quite as attractive even as smoking cigarettes, because it literally does make me sick. You put me on the water with all that kind of motion along with and being confined in a very enclosed space with smoking, and you are going to have one sick lady on your hands. Now, you can make a choice as to whether you want to have that kind of a health problem or you want to smoke. I think that that is a very big consideration. I think you ought to think of that, because all this Bill does is, if you will look at it, on the ferries, "it's prohibited on ferries except as follows" and it allows smoking in the area where it's not confined where you're not going to cause that kind of difficult health problem.

So, I would plead with you to please, take a good look at that Bill before the vote is taken and make your decision based on what I said and whether it makes you sick or not for instance, for heaven sakes, and if you're not a smoker and if you do have some problem with motion sickness, that's what we're talking about in this Bill.

When the vote is taken, Mr. President, I ask for a division.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President and Members of the Senate, I oppose this Bill

simply because it is an intrusion upon what is already being accomplished by the people in the private sector of business.

I received two letters, one from the Brunswick Transportation Company and one from my own community of Lewiston, Hudson Bus Company. I think of significant value was part of the message that was sent to me by Mr. Ouellette of the Brunswick Transportation Company. Mr. Ouellette states not only that the Bill would be impossible for anyone to enforce, but it is also discriminatory and it imposed additional regulation in an area that we are already controlling.

Secondly, smoking on chartered buses has in the past, always been controlled by the chartering party and in forty years of business this has never been a problem.

Thirdly, we also control smoking on our escorted tours by stipulating as a tour condition the following: 'passengers are asked to refrain from smoking while aboard the coach. If one cannot, the seat in the rear may be used for smoking, provided that smoke does not bother other passengers. Our escort may request no smoking should the smoke become excessive and a hindrance to the quality of our tour.'

I think these are very valid, sound constructive reasons that the people who are in a regulated industry are taking the necessary precautions in which to secure the health of these people who utilize their service. I just cringe when I think of what is coming through this Legislature with regulation, over-regulation it's really it's not in the interest of the people in the State of Maine. I would sincerely hope that the pending motion would fail, and subsequently, we could Adopt the Ought Not to Pass Report.

The PRESIDENT: Is the Senate ready for the question?

Will all those Senators in favor of the motion by Senator Bustin of Kennebec that the Senate Accept the Majority Ought to Pass, in New Draft, Report of the Committee, please rise in their places to be counted.

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

11 Senators having voted in the affirmative, and 19 Senators having voted in the negative, the motion to Accept the Majority Ought to Pass, in New Draft, Report of the Committee, Failed.

The Minority Ought Not to Pass of the Committee was Accepted, in non-concurrence.

Sent down for concurrence.

#### (Off Record Remarks)

#### Senate Leave to Withdraw

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

BILL, "An Act Concerning Open Burning When There is Snow on the Ground" (S. P. 127) (L. D. 314)

BILL, "An Act to Further Clarify the Right of Citizens to Petition for Special Town Meetings" (S. P. 450) (L. D. 1371)

#### Ought to Pass

Senator McBREAIRTY for the Committee on Energy and Natural Resources on BILL, "An Act Relating to the Forest Practice" (S. P. 525) (L. D. 1548) Reported that the same Ought to Pass.

Which Report was Read and Accepted. The Bill Read Once and Assigned for Second Reading later in today's session.

#### Ought to Pass as Amended

Senator USHER for the Committee on Fisheries and Wildlife on BILL, "An Act Concerning Artificial Fishways in Dams and Other Artificial Obstructions in Inland Waters" (S. P. 405) (L. D. 1253) Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-

124)

Which Report was Read and Accepted. The Bill Read Once. Committee Amendment "A" (S-124) was Read and Adopted. The Bill, as amended, Assigned for Second Reading later in today's session.

#### Divided Report

The Majority of the Committee on Fisheries and Wildlife on BILL, "An Act to Discourage Violation of Wildlife Laws" (S. P. 143) (L. D. 435)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-125)

Signed:

Senators:

USHER of Cumberland  
DOW of Kennebec  
REDMOND of Somerset

Representatives:

MacEACHERN of Lincoln  
CLARK of Millinocket  
JACQUES of Waterville  
ERWIN of Rumford  
CONNERS of Franklin  
RODERICK of Oxford

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

Signed:

Representatives:

SMITH of Island Falls  
GREENLAW of Standish  
KELLY of Camden  
PAUL of Sanford

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

The Bill Read Once.

Committee Amendment "A" (S-125) was Read and Adopted.

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

#### Second Readers House

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

BILL, "An Act Concerning the Admissibility in Criminal Proceedings of Statements by Minors Describing Sexual Contact" (H. P. 1201) (L. D. 1595)

BILL, "An Act Relating to Registration and Inspection of Motor Trucks used for Fishing" (H. P. 1205) (L. D. 1600)

BILL, "An Act Relating to Unauthorized Taking of Agricultural Products" (H. P. 1209) (L. D. 1603)

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

#### House — As Amended

BILL, "An Act to Amend the Election Laws" (H. P. 950) (L. D. 1231)

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

#### Senate

BILL, "An Act Concerning Records of Arrests of Criminal Offenders" (S. P. 559) (L. D. 1616)

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

Sent down for concurrence.

#### Enactors

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

An Act Relating to Forged or Illegal Prescriptions. (S. P. 492) (L. D. 1491)

An Act Pertaining to License Revocation Notices Issued by the Commissioner of Inland Fisheries and Wildlife. (S. P. 357) (L. D. 1078)

An Act Relating to Agricultural Contracts. (S. P. 272) (L. D. 835)

An Act to Restructure Maine's Insurance Management Program. (S. P. 482) (L. D. 1464)

An Act to Permit Barbers to Cut Hair Out-

side of Barber Shops. (H. P. 293) (L. D. 352)

An Act to Amend the Reporting Requirements in Cases of Death Due to Abuse or Neglect. (H. P. 715) (L. D. 906)

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

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

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

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

An Act Relating to Victims' Bill of Rights. (H. P. 1192) (L. D. 1578)

On motion by Senator Pray of Penobscot, Tabled for 1 Legislative Day, pending Enactment.

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

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

#### Emergency

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

#### Emergency

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

#### Emergency

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

These being emergency measures and having received the affirmative votes of 30 members of the Senate, with No Senators having voted in the negative, were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

#### Emergency

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

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

#### Orders of the Day

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

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

Tabled—May 13, 1983 by Senator CARPENTER of Aroostook.

Pending—Passage to be Engrossed.

(In House May 10, 1983 Passed to be Engrossed)

(In Senate May 10, 1983 the Minority Ought to Pass Report Read and Accepted in concurrence.)

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

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

BILL, "An Act Relating to the Appointment of County Officials" (H. P. 1200) (L. D. 1594)

Tabled—May 16, 1983 by Senator PRAY of Penobscot.

Pending—Passage to be Engrossed.

(In House May 12, 1983 Passed to be Engrossed.)

On motion by Senator Carpenter of Aroostook, Retabled.

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

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

Tabled—May 16, 1983 by Senator PRAY of Penobscot.

Pending—Enactment.

(In the House May 9, 1983 Bill and Accompanying Papers Indefinitely Postponed.)

(In the Senate May 13, 1983 Passed to be Enacted in non-concurrence.)

(In Senate May 16, 1983, Reconsidered Enactment.)

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

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

BILL, "An Act Concerning Submerged and Intertidal Lands Owned by the State" (H. P. 952) (L. D. 1233)

Tabled—May 16, 1983 by Senator PRAY of Penobscot.

Pending—Passage to be Engrossed.

(In House May 12, 1983 Majority Ought Not to Pass Report Read and Accepted.)

On motion by Senator Pray of Penobscot, Retabled for 2 Legislative Days.

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

Senator PEARSON: Mr. President, is the Senate in possession of L. D. 365?

The PRESIDENT: The Chair would answer in the affirmative the BILL, "An Act Regulating the Activities of Political Action Committees" (H. P. 306) (L. D. 365) having been recalled pursuant to Joint Order SP 560.

On motion by Senator Pearson of Penobscot, the Senate voted to Suspend the Rules:

On motion by Senator Pearson of Penobscot the Senate voted to reconsider its action where-by LD 365 was Passed to be Engrossed.

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

The PRESIDENT: The Senator has the floor.

Senator PEARSON: Mr. President, Committee Amendment "A" and the House Amendment were in conflict and the Engrossing Department has told us that we have got to get them out of indistinct. I now move that Committee Amendment "A" be Indefinitely Postponed.

On motion by Senator Pearson of Penobscot, the Senate voted to Indefinitely Postpone Committee Amendment "A" in non-concurrence.

The PRESIDENT: The Senator has the floor.

Senator PEARSON: Mr. President, I now move that this Bill be Passed to be Engrossed as amended by House Amendment "A" in non-concurrence.

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

Senator COLLINS: Mr. President, a question through the Chair, I wonder if the good Senator from the Election Laws Committee would give us just a rough idea as to how this Bill would now stand with these adjustments.

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

The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Mr. President, Men and Women of the Senate, I really am not totally familiar with the conflict between the House Amendment and the Committee Amendment.

The gist of the Bill regulating political action committees says that, "political action committees must report to whom they gave money just as we must report from who we received it. Right now the laws say that you must report where your money comes from, if it is over fifty dollars. This particular Bill will allow you to be able to go to look at any political action com-

mittee on one sheet and find out where they sent their different amounts of money to, to any given lists of candidates.

Right now that information is available, however, what you would have to do is to look into every single candidates expenditure reporting form in order to find out where it is. Unanimously in the Committee, we felt that that should be in one source so if you were looking at, say for example, Maine AFL-CIO, and you wanted to know who they gave money to, you could find it in one place.

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

Senator COLLINS: Mr. President, my further inquiry is purely of a technical nature. I understood that the Amendment which is now with the Bill removed the limitation on contributions to committees that were dealing with referenda, because of probable constitutional problems and the section that I assume was intended to do that simply says, "that no committee may make expenditures in support or opposition to a candidacy." That part I understand, but then it says, "or to a political committee an aggregate amount greater than five thousand dollars in any election." Perhaps I haven't understood all the definition of work correctly. I'm just seeking the intention of the Committee, as to whether that language about "to a committee" is meant to not include a committee organized for the promotion or opposition with respect to referenda, because I think that was the purpose of the Amendment but I'm not clear whether that language is what you intend to accomplish.

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

Senator PEARSON: Mr. President, Men and Women of the Senate, I now understand what the Senator from Knox was driving at, and he is correct we have no intention, and I hope that this Amendment does not do that I don't think it does, of limiting its referendum, because we believed and found that that was unconstitutional. This is designed for a specific candidacy of an individual.

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

Sent down for concurrence.

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

Senator Carpenter of Aroostook was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Carpenter of Aroostook, Recessed until 4 o'clock this afternoon.

#### Recess

#### After Recess

The Senate called to Order by the President.

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

#### Papers From the House Non-concurrent Matter

BILL, "An Act to Include the Term "Sexual or Affectional Orientation" in the Maine Human Rights Act." (S. P. 237) (L. D. 679)

(In Senate May 16, 1983, Passed to be Engrossed as Amended by Committee Amendment "A" (S-117) as Amended by Senate Amendment "A" (S-123) thereto.)

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

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

Senator WOOD: I move that we Adhere.

The PRESIDENT: The Senate from York, Senator Wood moves that the Senate Adhere.

The Chair recognizes the Senator from York,

Senator Dutremble.

Senator DUTREMBLE: I move that we Recede and Concur.

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

The Chair will order a Division.

Will all those Senators in favor of Receding and Concurring with the House, please rise in their places to be counted.

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

The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator McBREAIRTY: I request a Roll Call.

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

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

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

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

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

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA—Carpenter, Dutremble, Emerson, Erwin, McBreairty, Minkowsky, Pearson, Perkins, Pray, Sewall, Shute, Teague, Twitchell.

NAY—Baldacci, Brown, Bustin, Charette, Clark, Collins, Danton, Dow, Gill, Hayes, Kany, Najarian, Trafton, Violette, Wood, the President-Gerard P. Conley.

ABSENT—Diamond, Hichens, Redmond, Usher.

A Roll Call was had.

13 Senators having voted in the affirmative and 16 Senators in the negative, with 4 Senators being absent, the motion to Recede and Concur with the House, Failed.

On motion by the Senator from York, Senator Wood, the Senate voted to Adhere.

#### House Papers

BILL, "An Act to Modify Early Retirement Plans for State Employees Hired After September 30, 1983." (H. P. 1218) (L. D. 1617)

Comes from the House, referred to the Committee on Aging, Retirement and Veterans and Ordered Printed.

Which was referred to the Committee on Aging, Retirement and Veterans and Ordered Printed, in concurrence.

BILL, "An Act Concerning Control of the Content of Rebuttals to Media Editorials." (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.) (H. P. 1212) (L. D. 1615)

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

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

#### Senate Paper

BILL, "An Act to Establish a Program to Abate, Clean Up and Mitigate Threats to Public Health and the Environment from Uncontrolled Hazardous Substance Sites." (Emergency) (S. P. 565) (Presented by Senator DIAMOND of Cumberland) (Cosponsors: Representative CARROLL of Gray, Representative MITCHELL of Freeport and Representative DAVIS of Monmouth)

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

Sent down for concurrence.

#### Senate Ought to Pass in New Draft

Senator DIAMOND for the Committee on Audit and Program Review on BILL, "An Act to Standardize the Disciplinary Proceedings of Health Profession Licensing Boards" (S. P. 483) (L. D. 1465) Reported that the same Ought to Pass in New Draft under same title (S. P. 561) (L. D. 1618)

Which Report was Read and Accepted.

The Bill, in New Draft, Read Once.

Under Suspension of the Rules, the Bill, in New Draft, Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

#### Second Readers House

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

BILL, "An Act to Amend the Laws Pertaining to Dissolution and Withdrawal from School Administrative Districts and Community School Districts" (H. P. 1214) (L. D. 1610)

BILL, "An Act to Prevent the Closing of Fire Lookout Towers" (H. P. 1217) (L. D. 1613)

BILL, "An Act to Require Certain Disclosures in Land Installment Contracts for Improved Residential Property and to Provide for Recordation of those Contracts" (H. P. 1213) (L. D. 1609)

BILL, "An Act to Require Review of Road Construction" (H. P. 1215) (L. D. 1611)

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

#### Senate

BILL, "An Act Relating to Forest Practice" (S. P. 525) (L. D. 1548)

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

Sent down for concurrence.

#### Senate — As Amended

BILL, "An Act to Discourage Violation of Wildlife Laws" (S. P. 143) (L. D. 435)

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

Sent down for concurrence.

BILL, "An Act Concerning Fishways in Dams and Other Artificial Obstructions in Inland Waters" (S. P. 405) (L. D. 1253)

Which was Read a Second Time.

On motion by Senator Danton of York the Senate voted to Reconsider its action whereby Committee Amendment "A" was Adopted.

The PRESIDENT: The Senator has the floor. Senator DANTON: Mr. President for the Committee on Bills in their Second Reading I present Senate Amendment "A" to Committee Amendment "A" and move its Adoption.

The PRESIDENT: The Senator from York, Senator Danton offers Senate Amendment "A" to Committee Amendment "A" and moves its Adoption.

Senate Amendment "A" (S-127) to Committee Amendment "A" was Read and Adopted.

Committee Amendment "A" as amended by Senate Amendment "A" thereto was Adopted.

The Bill, as amended, Passed to be Engrossed.

Sent down for concurrence.

#### Orders of the Day

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

The nomination of Joseph D. Murphy of Biddeford to the State Board of Education.

Tabled—May 17, 1983 by Senator PRAY of Penobscot.

Pending—Consideration.

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

Senator COLLINS: Mr. President, first a mat-

ter of procedure, I understand that it is the Report of the Committee on Education that this appointment be denied therefore, the usual question a vote of "No", would in this case mean denial of the appointment?

The PRESIDENT: The Chair would state that a vote of "No" would be in support of the Committee's recommendation. A vote of "Yes" would be to override the Committee's recommendation.

Senator COLLINS: Thank you, Mr. President.

The PRESIDENT: The Chair would further state, in order to override the Committee's recommendation it would take two-thirds of those present and voting.

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, a member of the Senate, the Senator from York, Senator Hichens was unable to be here this afternoon. He was a member of the Committee on Education and heard this nomination and has written down a very brief statement about his concerns which I'd like to share with the Senate.

It says, "last week when Mr. Murphy appeared before the Committee, he seemed very unsure of himself responding to questions asked by Committee members. Several times he changed his opinion during his answer and on two occasions could not give an answer to the questions asked."

Mr. Murphy is a fine appearing gentleman. I'm sure the Committee has no question of his character. His qualifications as being a definite asset to the Board of Education raises questions in the minds of the majority of the Committee. As you will note, the vote of the Committee you will see that it is not a strict partisan vote; two of the Committee members opposing the nomination are of the Democratic Party, one being the co-chairman of the Committee, who has had several years of experience as a Legislator, a member of the Education Committee and one who has made a decision several times on Governor's nominees for the Board of Education."

This is the end of the statement from the Senator from York.

I would make one further observation in the four to five hundred confirmations that have passed through this Senate since the system was introduced here some seven or eight years ago. We have had only one occasion that I can recall, where the Senate has overridden the decision of a Committee. That happened to be also, an appointment to the Board of Education back during the Administration of Governor Longley. I submit to override the decision of a Committee is a step that should not be undertaken lightly; particularly when the Committee has made careful investigation, has had the benefit of hearing the nominee and the witnesses directly and conducting their research, in this case, with a recess of a few days between the initial hearing and the time of final decision. Thank you, Mr. President.

The PRESIDENT: The Joint Standing Committee has recommended that the nomination of Joseph D. Murphy of Biddeford to the State Board of Education be denied.

The Chair recognizes the Senator from Penobscot, Senator Hayes.

Senator HAYES: Members of the Maine State Senate, as chairperson of the Joint Standing Committee on Education, I think it's incumbent upon me to provide a little information on this hearing.

The hearing of the Joint Standing Committee on Education for Joseph D. Murphy of Biddeford as Trustee of the State Board of Education resulted in a Divided Report, 8-5, to deny confirmation. The majority based their action primarily on Mr. Murphy's presentation at the hearing. It was generally agreed that response to some questions, it was clear that Mr. Murphy had not been properly briefed. It was, also, clear that his verbal style caused some

distress among members of the Committee.

Neither the majority nor the minority, however, found him to be unqualified, in terms of his background, his training, he is by the way, a graduate of the University of Maine in Portland in 1971. He's received a Masters Degree in the School of Administration from University of Southern Maine in 1977. He's been a principal of Biddeford Junior High School. He's been Assistant Principal of the same school. He has extensive background in education and in no way did the Committee feel his background qualifications were such as to deny him this position.

At the public hearing which was held, not one person came forward to indicate that there were any problems, any reservations in the qualifications of this candidate. Nor did we receive from the public at-large any communication, either by phone or by letter, which would indicate that this candidate was not qualified to be a member of the State Board of Education. He has a sound background in education; he has a good record in the community; he wants the position, and I believe that he would be a good candidate and a good member of the State Board of Education.

The PRESIDENT: The Joint Standing Committee on Education has recommended that the nomination of Joseph D. Murphy be denied.

The pending question before the Senate is: Shall the recommendation of the Committee on Education 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.

Is the Senate ready for the question?

The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President and Members of the Senate, I'm somewhat reluctant to rise, not that I'm reluctant about supporting the confirmation of Joseph Murphy, but the good Senator from Knox read some remarks that the good Senator from York, Senator Hichens had left behind for him to read about Mr. Murphy being unable to answer questions, hesitates, and I find that somewhat common when someone appears before a committee.

I don't expect everyone that comes up to Augusta to appear before a committee, whether it's in front of the Transportation Committee on a bill. I even find some Legislators that appear before a committee are somewhat nervous and hesitant to answer questions, they're unsure. The process is one that none of us is really familiar with until after we get here and serve here awhile.

I was always opposed years ago to doing away with the Executive Council, for some reason or another I always felt they handled things in a nice manner. That's just my own personal opinion. You know they screened the candidates, like I'm sure the committee does; they had a resume on the candidate. If they did find something that bad with the candidate, they got the Governor into the Council Chamber and they told him, "Governor, this nominee just hasn't got it and you'd better send him home and get someone else."

Now let's talk about Joe Murphy. Someone who is from my area and I might add, I wouldn't know if he's in this Chamber here today. Biddeford High School, University of Maine, Masters Degree; Volunteer for the handicapped; family man; principal; assistant principal; father, two children; interests, it says, reading, fishing, politics and education. Let's get to the one about politics. I'll tell you, being a family man and appearing before a committee, I just want to ask each and every Senate Member, how would you like to have a member of your family be willing to serve your State in good faith, devote your time, and we all know how much that job pays that this man is

willing to get involved in; it pays nothing, really, then to go before a committee and because he's stuttered or couldn't answer a question properly to get a vote of denial of that position? I'm sure that it's not his opinion, because I'm sure he is a grown capable man. I'm sure his family might be just a little bit upset.

I would hope that the Maine Senate, today, because of perhaps a committee listening to answers, in a perhaps not the way we would like to have answers asked or answered, gave them his report of 8-5, I believe it was. I would hope that the Senate, today, would confirm Mr. Murphy. I'm sure he would be devoted to his job; I'm sure he's an honest man and he will do a good job for us serving in this position.

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

Senator DUTREMBLE: Mr. President and Members of the Senate, I must rise here today since I personally know Joe Murphy.

I've known Joe since we were six or seven years old and I grew up with him. We were best of friends. Joe was an honest and a bright young boy, as he is an honest and bright young man today. I feel very confident that Joe will do the job when he gets the job on the State Board of Education. I'm very confident about that. Joe was a teacher, a principal, and was very good at it; has the support of all his friends, all the teachers, students and parents. I don't think we've ever heard any parents, students or teachers complaining about the job that Joe did.

I think that we should vote for Joe here, today, and approve his appointment. Thank you, Mr. President.

The PRESIDENT: The Chair will restate the question.

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.

The Doorkeepers will secure the Chamber.

The Secretary will call the roll.

#### ROLL CALL

YEA—Baldacci, Brown, Bustin, Carpenter, Charette, Clark, Danton, Diamond, Dow, Dutremble, Emerson, Erwin, Hayes, Kany, McBreairey, Minkowsky, Najarian, Pearson, Pray, Shute, Trafton, Twitchell, Usher, Violette, Wood, The President—Gerard P. Conley.

NAY—Collins, Gill, Perkins, Sewall, Teague.

ABSENT—Hichens, Redmond.

26 Senators having voted in the affirmative and 5 Senators in the negative, with 2 Senators being absent, and 26 being more than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be denied.

The nomination of Joseph D. Murphy is confirmed.

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

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

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

Tabled—May 17, 1983 by Senator CARPENTER of Aroostook.

Pending—Passage to be Engrossed. (In House May 10, 1983 Passed to be Engrossed.)

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

Senator CARPENTER: Mr. President, I offer an Amendment (S-126) and move its Adoption.

The PRESIDENT: The Senator from Aroostook, Senator Carpenter offers Senate Amendment "A" (S-126) and moves its Adoption.

Senate Amendment "A" (S-126) was Read.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, on your calendar the last few days, we've been moving this Statu-

tory Will Bill back day by day, while we tried to work out what were perceived to be minor problems or what could be turned out to be major problems with the language of it.

I want to first of all thank and commend the good Senator from Androscoggin, the Chairman of the Judiciary Committee, Senator Trafton for his diligent effort over the weekend in reading this Bill carefully and coming back and sitting down with myself and the prime sponsor of the Bill and coming up with these changes.

If you look at Senate Amendment "A" (S-126) you'll see the basic changes that we have made to make this what, I believe, as a palatable Bill, These changes could not have come about without the cooperation and goodwill of the Senator from Androscoggin, Senator Trafton. I want to thank him for that.

I think that this Bill will now do what the sponsors intend it to do; it's not a panacea. I don't hold it out to be that. I think it will be an appropriate vehicle for some persons, in some situations, and I would move the Adoption of the Amendment and Engrossment.

On motion by Senator Carpenter of Aroostook, Senate Amendment "A" (S-126) was Adopted.

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

Sent down for concurrence.

#### (Off Record Remarks)

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

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

Tabled—May 17, 1983 by Senator PRAY of Penobscot.

Pending—Enactment.

(In House May 9, 1983 Bill and Accompanying Papers Indefinitely Postponed.)

(In Senate May 13, 1983 Passed to be Enacted in non-concurrence.)

(In Senate May 16, 1983, Reconsidered Enactment)

On motion by Senator Pray of Penobscot, Retabled for 2 Legislative Days.

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

#### Papers From the House

Study Report—Committee on Aging, Retirement and Veterans to which was referred by the Legislative Council the study relative to Recodification of the Study Military Laws have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill, "An Act to Recodify the State Military Laws" (H. P. 1199) (L. D. 1593) be referred to the Committee 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 Aging, Retirement and Veterans.

Which Report was Read and Accepted and the Bill referred to the Committee on Aging, Retirement and Veterans, in concurrence.

#### Committee Reports House

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

BILL, "An Act to Encourage Public Access to Shoreland" (H. P. 842) (L. D. 1092)

BILL, "An Act Relating to Termination of Tenancy at Will" (H. P. 401) (L. D. 484)

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