

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eighth  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**May 26, 1977 to July 25, 1977**

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**Senate Confirmation Session  
September 16, 1977**

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## SENATE

June 14, 1977

Senate called to Order by the President.  
Prayer by Reverend James Brosius, Windsor Memorial Baptist Church in Windsor.

Rev. BROSIOUS: Let us pray. Dear Lord, we thank You for this day, and for another opportunity for these lawmakers to serve their country in this capacity. We want what is best for our State and our Nation, Lord, so we ask Your blessing upon this Session, and Your guidance in the lives of everyone present.

Help us always to remember that the fear of the Lord is the beginning of true wisdom, and that blessed is the nation whose God is the Lord.

These request we make in the name of Jesus Christ, Your son, who died for us, and wants to live within us. We thank You in Jesus name.

Amen.

Reading of the Journal of Yesterday.

**Non-concurrent Matter**

Bill, An Act to Regulate Campaign Activities on Election Day. (H. P. 1663) (L. D. 1863)

In the House June 9, 1977 Passed to be Engrossed as amended by House Amendment "A" (H-562).

In the Senate June 10, 1977 Minority 'Ought Not to Pass' Report Read and Accepted, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

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

Mr. TROTZKY: Mr. President, I move that the Senate adhere.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, now moves that the Senate adhere. Is it the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested.

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

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

15 Senators having voted in the affirmative, and 6 Senators in the negative, the Motion to adhere does prevail.

**Non-concurrent Matter**

Bill, An Act to Change the Deadline for Change in Party Enrollment in Order to Qualify for Voting in a Primary Election. (H. P. 1028) (L. D. 1246)

In the House June 2, 1977 Passed to be Engrossed as amended by House Amendment "A" (H-489).

In the Senate June 10, 1977 Bill and Papers. Indefinitely Postponed, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

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

Mr. PIERCE: Mr. President, I move we adhere.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now moves that the Senate adhere.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I move that the Senate insist and Join in a Committee of Conference.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate insist and join in a Committee of Conference.

The Chair recognizes the Senator from Ken-

nebec, Senator Speers.

Mr. SPEERS: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, this is one of the most progressive pieces of Legislation that has ever come down the pike dealing with primary elections. I am sure that the Majority Party of this House will multiply ten fold if this Bill is enacted.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Motion to insist and join in a Committee of Conference please, rise in their places to be counted.

Will all those Senators opposed to the Motion to insist and join in a Committee of Conference, please rise in their places to be counted.

8 Senators having voted in the affirmative, and 14 Senators in the negative, the Motion to insist does not prevail.

Is it the pleasure of the Senate to adhere? It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, having voted with the majority, I move that the Senate reconsider, and urge the Senate to vote against the Motion.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate reconsider its action whereby it adhered on L. D. 1246.

A viva voce vote being had,  
The Motion to reconsider does not prevail.

**Reconsidered Matter**

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

Mr. SPEERS: Mr. President, in reference to Bill, An Act to Regulate Campaign Activities on Election Day. (H. P. 1663) (L. D. 1863) I move that the Senate reconsider its action, and urge the Senate to vote against me.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate reconsider its action whereby it voted to adhere on L. D. 1863.

A viva voce vote being had,  
The Motion to reconsider does not prevail.

**Non-concurrent Matter**

Bill, An Act to Remove the Commercial License of Smelt Fisherman. (H. P. 1045) (L. D. 1272)

In the House June 10, 1977 Passed to be Engrossed as amended by Committee Amendment "A" (H-538).

In the Senate June 13, 1977 Majority 'Ought Not to Pass' Report Read and Accepted, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

On Motion of Mr. Chapman of Sagadahoc, The Senate voted to insist and join in a Committee of Conference.

**Non-concurrent Matter**

Bill, An Act Pertaining to the Granting of Preference in the Letting of State Contracts to State of Maine Resident Bidders. (H. P. 1648) (L. D. 1849)

In the Senate June 8, 1977 Passed to be Engrossed, in concurrence.

Comes from the House, Passed to be Engrossed as amended by House Amendment "A" (H-592) in non-concurrence.

On Motion of Mr. Morrell of Cumberland, The Senate voted to Recede and Concur.

**Non-concurrent Matter**

Resolution, Proposing an Amendment to the Constitution to Repeal the Section Concerning Continuity of State and Local Government in

Case of Enemy Attack. (H. P. 15) (L. D. 24)  
In the House June 10, 1977. Finally Passed.

In the Senate June 13, 1977 Failed of Final Passage.

Comes from the House, that Body having Insisted.

On Motion of Mr. Collins of Aroostook,  
Tabled One Legislative Day, Pending further consideration.

**Non-concurrent Matter**

Bill, An Act to Impose a 4-Quart Limit on the Taking of Smelts Throughout the Entire Smelting Season. (S. P. 320) (L. D. 1077)

In the Senate June 10, 1977 Report A Read and Accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-204);

Comes from the House, Report 'Ought Not to Pass' Read and Accepted in non-concurrence.

On Motion of Mr. Chapman of Sagadahoc, The Senate voted to insist and ask for a Committee of Conference.

**Joint Orders**

Expressions of Legislative Sentiment recognizing that:

Claude Sirois of Madawaska is the State School Boy Wrestling Champion for 1977 for his class and will compete in the forthcoming AAU competition in Europe. (S. P. 549)

Presented by Senator Martin of Aroostook.  
Cosponsor: Representative McHenry of Madawaska.

The Bangor High School Rams Boys' baseball team has won the Eastern Maine Class A baseball championship. (S. P. 550)

Presented by Senator Trotzky of Penobscot.  
Which were Read.

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

Mr. CONLEY: Mr. President, I would like to pay particular attention to S. P. 550 this morning. So often the Forest City has come under attack in this Session by many Members of this Body, but to show you what good sports we are we sponsored the Bangor High School nine runs. It is my understanding the game finally ended up 11 to 10 with Portland coming out the victor.

I would just pose the question through the Chair, if I might, along with offering my congratulations to Portland High School for their outstanding sportsmanship and the fine game they played yesterday, certainly the lesson they gave Bangor in the art of baseball, but I would like to ask through the Chair of the good Senator from Penobscot what he might have done with the other Order that he was carrying around in his left hand.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair to the Senator from Penobscot, who may answer if he so desires.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, I thought it was a nine inning game. It was only seven and we needed two more innings.

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

Mr. HEWES: Mr. President and Members of the Senate, this afternoon Orono and Cape Elizabeth square off in a Class "B" championship game, and I am sure that while Portland is crowing right now that either Orono or Cape or both combined would be pleased to challenge Portland for a nine inning game or a seven inning game or eight inning game.

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

Mr. PRAY: Mr. President, in reference to the previous speaker, I remember last year in this Chamber when I addressed the Honorable Senator Richard Berry in reference to the same team of his District, at that time which came out on the bottom of the contest with Sterns.

## (Off record remarks)

Which Orders were Passed.  
Sent down for Concurrence.

The PRESIDENT: The Chair at this time would ask the Sergeant-at-Arms to escort the Senator from Sagadahoc, Senator Chapman, to the rostrum, to act as President Pro Tem.

Thereupon, the Sergeant-at-Arms escorted, Mr. Chapman of Sagadahoc to the Rostrum where he assumed the duties of President Pro Tem, and the President retired from the Senate Chamber.

**Committee Reports****House****Ought to Pass in New Draft**

The Committee on Election Laws on, Bill, An Act to Revise Primary and Nomination Petitions. (H. P. 320) (L. D. 441)

Reported that the same Ought to Pass in New Draft under same title. (H. P. 1692) (L. D. 1872)  
Comes from the House, the Bill, In New Draft, Passed to be Engrossed as amended by House Amendment "A" (H-587).

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

**House****Divided Report**

The Majority of the Committee on Taxation on, Bill, An Act to Provide for an Income Tax Credit for Limited Political Contributions. (H. P. 1406) (L. D. 1568)

Reported that the same Ought Not to Pass.

Signed:

Senators:

WYMAN of Washington  
JACKSON of Cumberland  
MARTIN of Aroostook

Representatives:

CHONKO of Topsham  
TEAGUE of Fairfield  
IMMONEN of West Paris  
CAREY of Waterville  
TWITCHELL of Norway  
POST of Owl's Head

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-573).

Signed:

Representatives:

MAXWELL of Jay  
CARTER of Bangor  
COX of Brewer  
MACKEL of Wells

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

The Majority Ought Not to Pass Report Accepted.

**Divided Report**

The Majority of the Committee on Natural Resources on, Bill, An Act Relating to Discharges, Emissions and Leakages from Nuclear Generating Facilities. (H. P. 1382) (L. D. 1662)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-550).

Signed:

Representatives:

HUBER of Falmouth  
BROWN of Bethel  
BENOIT of S. Portland  
WILFONG of Stow  
BLODGETT of Waldoboro  
HUNTER of Benton  
HALL of Sangerville  
DEXTER of Kingfield  
GREEN of Auburn

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

Signed:

Senators:

TROTZKY of Penobscot  
O'LEARY of Oxford  
REDMOND of Somerset

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

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Penobscot, Senator Trozky.

Mr. TROTZKY: Mr. President, I Move the Senate accept the Minority Ought Not to Pass Report, and I would like to speak to my Motion.

The PRESIDENT Pro Tem: The Senator has the floor.

Mr. TROTZKY: Mr. President and Members of the Senate, this Bill is unnecessary. It requires the Maine Yankee Plant to provide the Commissioner of Human Services with all radio-active materials released into the Environment. This is done already. It is also done to the Nuclear Regulatory Commission, so I do not see any need for this Bill. By the way, excuse me, this information is also open to public scrutiny.

Minority Ought Not to Pass Report accepted in non-concurrence.

Sent down for concurrence.

**Divided Report**

The Majority of the Committee on State Government on, Resolve, Authorizing the Director of the Bureau of Public Lands to Transfer Land to Mr. and Mrs. John Donnan. (H. P. 1007) (L. D. 1210)

Reported that the same Ought to Pass in New Draft under new title: Bill, An Act Permitting the Director of Public Lands to Sell Small Parcels of Public Reserved Lands with Legislative Approval. (H. P. 1681) (L. D. 1875)

Signed:

Senators:

COLLINS of Aroostook  
MARTIN of Aroostook  
SNOWE of Androscoggin

Representatives:

DIAMOND of Windham  
LOCKE of Sebec  
KANY of Waterville  
STUBBS of Hallowell  
BACHRACH of Brunswick  
CURRAN of S. Portland  
VALENTINE of York  
MASTERTON of Cape Elizabeth

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

Signed:

Representatives:

CHURCHILL of Orland  
SILSBY of Ellsworth

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

Which Reports were Read.

On Motion of Mr. Collins of Aroostook.

The Majority Ought to Pass in New Draft Accepted in concurrence.

The Bill read once and Tomorrow Assigned for Second Reading.

**Divided Report**

The Majority of the Committee on Judiciary on, Bill, An Act to Establish the Maine Uniform Residential Landlord and Tenant Act. (H. P. 228) (L. D. 313)

Reported that the same Ought to Pass in New Draft under new title: Bill, An Act Defining the Rights and Responsibilities of Landlords and Tenants in Residential Property. (H. P. 1641) (L. D. 1843)

Signed:

Senators:

COLLINS of Knox  
CURTIS of Penobscot

Representatives:

TARBELL of Bangor  
HOBBINS of Saco  
BYERS of Newcastle  
ENDERSON of Bangor  
HUGHES of Auburn  
SPENCER of Standish  
BENNETT of Caribou

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

Signed:

Senator:

MANGAN of Androscoggin

Representatives:

GAUTHIER of Sanford  
DEVOE of Orono  
NORRIS of Brewer

Comes from the House, the Bill, in New Draft, Passed to be Engrossed as amended by House Amendments "A" (H-533), "C" (H-548) and "D" (H-578).

Which Reports were Read.

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

Mr. COLLINS: Mr. President, I Move the passage of the Majority Ought to Pass Report of the Committee.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, I signed the Minority Ought Not to Pass Report on this Bill, and the reason I did that was primarily because I felt that we are getting a little bit too far away as far as this Bill is concerned.

We are looking today at a situation, and if we take my City of Lewiston as an example, we have two parcels of land that are left for the use of apartment buildings, or purposes of building apartment buildings. What this Bill would do would be to discourage the building of apartment buildings almost entirely.

I can see several problems with this Bill that would be developing if we should pass this Bill. We currently have under the law today a warrantee of habitability, which is being covered under Title 14,6021. Now under this current warrantee of habitability, the tenant can rescind the contract if the place is uninhabitable, and can recover a just portion of the rent. Before he can rescind, however, he has got to give the landlord written notice of the condition which makes the premises unfit for human habitation within seven days prior to the discovery of the condition. Under the new Bill if the landlord, after receiving the notice from the tenant unreasonably fails under the circumstances to take prompt, effective steps to repair or remedy the conditions, then he shall be found in default by the Court. What is prompt and effective time to remedy the conditions? That leaves it up to question.

Secondly, under this Bill the warrantee of habitability is currently broken only if the premises are found to be unfit for human habitation. This Bill, however, provides that a warrantee is broken if any condition exists in this dwelling unit, including the common areas, which endanger or materially impairs the health and well being of the tenant or of the public. The question here is the expansion if any conditions exist in the dwelling unit itself, including the common areas. For example, the back of the apartment building may have a couple of trash cans, one of them is overly full. This may, according to the tenant, at least, materially endanger the health and well being of his family, and he will run off to Court right away and ask the Court to provide some injunc-

live relief. However, this is a new area in the law. It is not really a new area, but it is an extremely rarely used area which will require that the tenant run off to the Court and seek what he calls an injunctive relief. This is an affirmative injunctive relief, very rarely used in the law. What this would require is basically the Courts supervising the landlord to make sure that everything is being done properly.

This Bill becomes really dangerous in the long run. It becomes an ideal tenant Bill and very anti-landlord. I have a problem in seeing that this Bill becomes law. I would have been very happy with this Bill about six years ago when I was working as a legal aid in Boston. We could have really given it to the landlords on the chin over and over and over again, and just called the place unfit for human habitation. But you must remember one thing that has to come out here. What if the place is unfit for human habitation, and an individual, we will call him Charlie Brown, goes into an apartment building and wants to rent an apartment, and he sees the apartment, he approves of the apartment, there is an agreement, a contract to rent the apartment for X amount of dollars a week or a month or for the year. All of a sudden now the place becomes so unfit for human habitation because of causes not of his own, that he must run to the Court and get this affirmative injunctive relief. What would have caused the place to have become so uninhabitable in the space of time that he is in there?

Now I warn the members of this Body that the ones that I have seen have become uninhabitable over the years that I have done evictions or work with legal aid have generally been from the tenant himself. I recall the old days when a building was found uninhabitable, but that is because the tenant kept throwing his beer bottles through the windows, and after a while there were so many vacant spaces in places where there were formerly windows that the place became very cold and freezing.

Now if we pass this Bill, I think we are going to put a tremendous burden on the landlords in the State of Maine. If we, for example, force a landlord whose place has become uninhabitable because it has gone down to the point where it cannot be fixed, and the landlord seeks this affirmative injunctive relief from the Court the landlord cannot really go out of business any further. What he is going to have to do is fix the place. He is going to have to put the money up. He is going to have to stay in the business, because of this remedy that is almost never used today. So what we are saying here is you pass this Bill and you are going to have some real deep trouble.

I think that you should seriously read the portions of this Bill, read the Amendments and decide whether you really want to do this, because if this Bill passes you are going to have an awful lot of landlords who would rather stay out of the business, and at today's prices for homes you cannot afford to have too many landlords going out of business, so think about it very seriously before you do vote.

On Motion of Mr. Speers of Kennebec, Tabled until later in Today's Session. Pending the Motion of the Senator from Knox. Senator Collins, that the Senate accept the Majority Ought to Pass Report.

#### Divided Report

The Majority of the Committee on State Government on, RESOLUTION, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money and Retaining the Power Within the Legislature to Override such Item Vetoes. (H. P. 1287) (L. D. 1520)

Reported that the same Ought Not to Pass.

Signed:

Senator:

MARTIN of Aroostook

Representatives:

CURRAN of S. Portland  
BACHRACH of Brunswick  
SILSBY of Ellsworth  
LOCKE of Sebec  
VALENTINE of York  
MASTERTON of Cape Elizabeth  
DIAMOND of Windham

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

Signed:

Senators:

COLLINS of Aroostook  
SNOWE of Androscoggin

Representatives:

KANY of Waterville  
CHURCHILL of Orland  
STUBBS of Hallowell

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, I Move the Senate accept the Minority Ought to Pass Report, and would speak briefly to my Motion.

The PRESIDENT Pro Tem: The Senator has the floor.

Mr. COLLINS: Mr. President and Members of the Senate, this is a Bill that has been before this Body at another Session. It provides a management tool, I think, for the Chief Executive. It permits him to veto particular items in an Appropriations Bill, so that he does not have to make the judgment as to whether or not to accept or reject the entire budget. This ability is held in some 43 or 44 states, and I think it is time that the State of Maine also considered it.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President, I request a Division.

I think the Senator from Aroostook, Senator Collins, did an excellent job explaining the Bill. It is not a new idea. It was here in the last Session and it was soundly defeated in the last Session.

I strongly urge you to indefinitely postpone the Bill.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate, I hope it will not be considered a conflict of interest for me to be speaking on this Bill, and I am sure there are many who would dispute that it possibly could be, but I would urge this Body very strongly to accept the Minority Ought to Pass Report on this particular item.

This Bill has been introduced before, and this Body in its wisdom has passed the Bill before, and it seems to me to be eminently logical that the Chief Executive of this State should have the authority to identify those specific areas in an appropriations measure which he so very strongly disagrees with that he feels he must veto those particular items, and I would simply point out that the Legislature is giving up no more power than it has always had, because even if those specific items happen to be vetoed, they are returned to the Legislature and the Legislature has the opportunity, as it has with all vetoed items, of either sustaining or overriding the veto.

I would hope that the Senate would accept the Minority Ought to Pass Report on this Bill, and I would ask for a Roll Call.

The PRESIDENT Pro Tem: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one fifth of those Senators present and voting. Will all those Senators present in favor of a Roll

Call, please rise in their places to be counted.

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

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate, in no way do I feel as if the good Majority Leader is going to have a conflict on this issue, but I would like to address one point one concern that I have on this issue.

I think it was the original intent of the Legislature, in separation of powers, and the fact that the Legislators were given the ability to accept the budget, and to amend certain Section of Legislation and then pass that Legislation on to the Governor for his total rejection or acceptance, and I think that if we accept this pending report today, that what we will be doing in attempt, we will be in a small way separating the powers of the Legislature. We will be passing on something to the Governor, something which we have not done in the past and which we have not seen fit to do in the past as the Legislature on the whole. I think that we should take careful consideration of that point before we continue on perhaps in this direction.

When I consider the Legislative process in the past, and the previous Session that I was here, and addressed a number of issues, particularly those within the budget process, I would be quite concerned with the actions of the Governor, the individual on the second floor, no matter present Governor or any future Governors. The powers that he would have to separate particular issues and to separate the Legislative Bodies on those issues. Many times there are Legislative matters that go through that some of us as individuals are opposed to. We can address that through the Amendment process here on the floor, or if there is something particular that we dislike then we can usually find an individual in either one Body or the other to address that issue through the Amendment process to take it out. I do not believe that we should be passing this on to any individual on the second floor.

The PRESIDENT Pro Tem: Is the Senate ready for the question. The pending question before the Senate is the Motion of the Senator from Aroostook, Senator Collins, that the Senate accept the Minority Ought to Pass Report of the Committee.

The doorkeepers will secure the Chamber.

The Secretary will Call the Roll.

YEA — Chapman, Collins, D.; Collins, S.; Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Levine, Lovell, McNally, Morrell, O'Leary, Pierce, Redmond, Snowe, Speers, Troitzky.

NAY — Cummings, Mangan, Martin, Merrill, Minkowsky, Pray, Usher, Wyman.

ABSENT — Carpenter, Conley, Katz, Sewall.

21 Senators having voted in the affirmative, and 8 Senators in the negative, with 4 Senators being absent, the Motion to accept the Ought to Pass Report of the Committee does prevail.

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

#### Divided Report

The Majority of the Committee on Judiciary on, Bill, An Act Relating to Legal Representation and Indemnification of State Officers and Employees. (Emergency) (H. P. 1312) (L. D. 1559)

Reported that the same Ought to Pass in New Draft under new title: Bill, An Act to Revise the Maine Tort Claims Act. (H. P. 1679) (L. D. 1873)

Signed:

Senators:

COLLINS of Knox  
CURTIS of Penobscot

Representatives:

BENNETT of Caribou  
DEVOE of Orono

TARBELL of Bangor  
SEWALL of Newcastle  
GAUTHIER of Sanford

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass in New Draft under new title: Bill, An Act to Revise the Maine Tort Claims Act. (H. P. 1680) (L. D. 1874)

Signed:

Senator:

MANGAN of Androscoggin

Representatives:

SPENCER of Standish

HOBBS of Saco

NORRIS of Brewer

HENDERSON of Bangor

HUGHES of Auburn

Comes from the House, the Bill, in New Draft (H. P. 1680) (L. D. 1874) Passed to be Engrossed.

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Knox Senator Collins.

Mr. COLLINS: Mr. President, I move passage of the Majority Ought to Pass in New Draft Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, again I have to rise to oppose the Motion of the Chairman of Judiciary Committee, and I am a signer of the Minority Ought to Pass Report. There is basically only one distinction between the Majority Ought to Pass and the Minority Ought to Pass Report, and that basic distinction is called fairness.

As I look at this Bill, the Bill is basically a revision of the Maine Tort Claims Act, but the revision does simply one thing. It differs from the Bill that the Majority reported out in that it adds a provision in Section 8103, Subsection 1, that State employees are immune from Tort Liability to the same extent that the State is immune. What I foresee as quite a problem is that if the State is immune in a specific action and a State employee is thereby involved with that action, the person who is injured cannot sue the State of Maine. Therefore, the best place is to go against the State employee. It bothers me tremendously that the State should be so pure, sweet and clean it cannot be sued, and we are going to try to turn around and hit the State employee on it.

Now it is my impression that in those areas where the State is immune from suit, that State employee should automatically be immune from suit. In those areas where the State is not immune from suit, then the State employee is not immune from suit, and the Committee did get ample evidence that the cost of insurance for employees in the area where the State is not immune from suit has been found to be extremely reasonable.

What we are basically looking at here is the same Bill, 1873 and 1874, exactly the same Bill, with that one exception in 1874, which is the Minority Report. The Minority Report basically states let us be fair about all of this. If we are going to let the State get out of it because we are going to claim some sort of immunity, then the State employee who was involved in that same action should also be immune from being sued. Let us not leave the State employees wide open from law suits when the State of Maine will back off and say, ah ah, we are pure, we are sweet, we are immune. Do not touch us, but go after him. I feel that this protection under LD 1874 is important.

I think that we are here in the Legislature to pass legislation that is fair for everyone, and I think that we are the protectors of the people as far as Legislation is concerned, and I think that this fairness has to come through in its Legislation, and I think LD 1874 is the fairest one of the two to pass.

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

Mr. COLLINS: Mr. President, I am glad to join issue with my fellow Judiciary Member from Androscoggin, Senator Mangan, on the issue of fairness.

First, let me review just a bit where we are in governmental immunity. Prior to last October, it was a long established rule that governments were immune from suits, at least in the Tort Area. Last October the Court struck down that rule, saying that since it was a Court created rule that it felt it could unless the Legislature expressed a different policy.

The Legislature last January enacted the Maine Tort Claims Act, which reestablished the rule of sovereign immunity for governmental entities, but provided that commencing July 1st of this year there would be open to liability certain specific areas, particularly the areas of motor vehicle, equipment, construction and then the use and maintenance of public buildings, certain other carefully defined areas. The areas that we intended to open were areas where it appeared likely that an insurance program could be arranged within the reach of the pocketbooks of Maine communities and the State, if the State would wish to have that kind of protection. In some areas, the state prefers to be a self insurer. But for the small towns, it is vitally important that there be insurance in the areas where the town is exposed to liability.

We invited the insurance industry and the representatives of our towns and cities to continue to study this matter and to report back to the Judiciary Committee. This happened. The insurance industry found that they could insure the exposure. They found that the price was within reach, in general, but they also found certain flaws in the language, and they made some suggestions to our Committee. We met several times with representatives of the insurance industry, with representatives of our towns and cities, and members of State government departments. We also heard from the Maine State Employees Association and other organizations who represent employees.

We found as a result of this insurance study that in these areas where the State and other governmental entities were to become liable, that it was possible to insure the employees at a modest additional cost, and that modest additional cost seemed to be reasonable and within reach of most of our entities. So we decided to accept some changes in the existing Tort Claims Law, and to try to get those changes into effect by July 1st when the principal liability sections of the existing law become effective.

Having looked at the matter in this way, we then were faced with the question, should immunity be extended in the areas where the government is immune to the employees of government. And this is where we had the disagreement in the Committee. Senator Mangan's view is expressed with the language which makes the employee immune.

The view which the Majority of the Committee supported does not make the employee immune, but it does provide that the government may, may indemnify and may defend its employee if it sees fit. This is an important distinction, of course, and the question of fairness that is presented to us in this debate is, is it fair for the citizens of Maine to be deprived of all remedies when the citizen is injured by the action of a governmental employee in the scope of that employees work. If we are to pass the view as filed by Senator Mangan, we would be denying the citizen all redress, except to come to the Legislature with a special Bill asking for permission to sue the state. We have a few of those now. But I submit that this is not the best way to provide a redress for the citizen, because many citizens with small claims, small wrongs, will not find the courage or the money to arrange for this procedure of first going to the Legislature

and getting a special enactment, and then if he succeeds in the Legislature bringing suit against the State or against some other entity.

The argument is made sometimes that the State employee ought to be in the same position as the employee of any other large employer, like the power company or the telephone company or the paper company. Now if you work for one of these private employers, you are personally liable if you commit a Tort. It may be that your company will be named as a co-defendant and that the company will help or even carry the major burden of defending the action, but nonetheless you are personally responsible and liable if you are negligent and you are working for a private employer.

We do not think in our Majority view that the State employee should hold a superior position to that private employee. Now, in the areas of motor vehicles and buildings there is a provision to protect everyone through these various mechanisms and through the medium of insurance, but there are a great many areas where if we enact this immunity for the employee, we will be imposing a particular hardship on the private citizen who is injured. For example, patients in our Mental Health Institutions or in Community Health Centers, wherever government is providing services other than through motor vehicles and equipment and buildings. There are many areas of exposure where it seems to me that we ought not to deny the citizens the right to have redress against someone, and if the employee of the government is sued, and if he becomes liable to pay a judgment there is still the power of the government, if it deems it to be an appropriate case, to step in and indemnify by paying the Bill on behalf of its employee. So I submit that this is a case where fairness, as well as good governmental management, requires the passage of the Majority Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I have signed and support the Majority Report, primarily because I believe that individuals should be responsible insofar as possible for the results of their own actions.

I would like to point out, however, that government is different in some respects, in that we now have, in Chapter 2 of the laws which were passed by this Legislature, a personal immunity for employees of government in particular areas, and those are the special areas that are unique to government action. Specifically they are Legislative or Quasi-Legislative actions, Judicial or Quasi-Judicial actions, and the performance or failure to exercise or perform a discretionary act, and I think that we would find that in those very special categories we have already provided the immunity which this Legislature has deemed to be wise, and that immunity would not be touched by the acceptance of the Majority Report.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I would like to begin by making the request that when the vote is taken on this that, it be taken by the yeas and nays.

I would like to have the attention of the Senate, to make a couple of brief points about this Bill. The Senator from Knox, Senator Collins, has given a very lengthy and usually accurate and good description of all the things that are in this Bill that he would have us accept. I am afraid that during that explanation it may have seemed to some of you as if this is another one of those difficult lawyer's issues that you have to be a lawyer to understand, and I suggest that it is not. Nor is this, I suggest, an issue that should divide Democrats and Republicans, and I would point out that the position urged by the Minority of the Judiciary

Committee in regards to the protection of State employees is the same position that was taken in 1971 by a Committee of the 105th Legislature chaired by David Benson, vice-chaired by Kenneth McLeod, and which included the services of Harry Richardson. These people all took the position that the Minority of the Judiciary Committee has taken today, that the State employees and officers should be free from the possibility of suit. So this is not, I suggest, a Democrat or Republican issue, and it is not an issue that one has to be a lawyer to appreciate.

I suggest that the issue is really very simple, and there are obviously elements of fairness on both sides. But the issue is this; when a State employee acting within the scope of his duties is sued for an act from which the State has protected itself from liability, can that employee be sued or should he have the same protection that the State has. Now some will say that the individual that has been wronged or claims that he has been wronged has a right to redress that wrong, and I do not argue with that statement. But consider the position that the Legislature is taking if it accepts the Majority Report. The position is that the State should not allow itself to be sued for that act, that the employer should not allow itself to be sued, because the risk is too great. The State cannot afford to insure itself for that risk. Therefore, because we are fair minded men and women, we say that we will allow the employee to be sued for the same act, presumably with the same problems of calculating the possibility of something going wrong and dealing with it. I suggest that that is not the proper way to address the problem of having relief for people who have a wrong done to them, or claim they have a wrong done to them. There has to be a better way than that.

Now the way left in regards to the State is to bring a Bill before this Legislature, which has been done in nine cases this time, and in most cases those Bills are acted upon favorably by this Legislature and the right to sue the State is granted. As imperfect as that remedy is, I suggest that it is more commendable to the Legislature to leave as a remedy, than to say well you can just take an action against the State employee.

Let us look at it from the standpoint of the ability to pay for the claim. Who has the greater ability to pay — the State or the employee? The answer to that I think is obvious. We all know how many of our employees are paid such dismal wages.

Let us look at it from the standpoint of controlling conduct. Some people argue, you know, that the Tort Law, the ability to sue people for the wrong that you say they have done to you, is really a way to control primary conduct, to keep people from doing things that put themselves in that position. In other words, if it is a wrong to be negligent and to harm somebody, that the ability to sue for that negligence will control people and make them more careful about what they do. If you subscribe to that belief, and it is a debatable subject, then consider the position that we are in. The State is the employer, and certainly the one with as much ability to control the safeness or the unsafeness of conduct on the job as the employee is free from suit. What we are saying is that the employee who acts within the confines that are set up, and certainly there is an element there of the possibility to be negligent as well as on the part of the employer, if we say his conduct is so important to control that he is susceptible to suit. I suggest here again that is a distinction that is without merit, that if we are really concerned with controlling primary conduct, if that is the reason we want to leave liability for the employee, then we should be just as fast and just as quick to see that the State is liable for those acts as well, because the employer, in defining the job and what will be

done on the job, and in making available the safety rules and regulations, and making available the safety equipment, and seeing to it that the proper people are employed, and the proper atmosphere is created, is just as responsible in the average cases for seeing that the lack of negligence exists on the job, that good judgment exists on the job, as the employee that happens to be there.

Now these areas that we have excluded from suit are very difficult decisions to be made sometimes. The question that arises is after the Senator from Penobscot, Senator Curtis, speaks is what is meant by the exceptions that we have. Well I think the Legislative and Judicial are fairly clear. Everybody in this Chamber can understand what that is. But we have this final exemption which is discretionary action, and that, I suppose some Members of this Body could say is a sufficient exception from the right to sue the employee to take care of the problems that you might think of. For example, the person who works at South Portland decides to take a few boys out on some sort of outing, and one of those boys escapes and does something wrong and the person who took them out is sued. Now some of you here may believe that that would be a discretionary act on his part, and, therefore, he would be immune to suit. I am not sure of that, and that brings us to one of the problems with the position that was suggested by the Majority Committee, and that is because discretionary act of employees is one of the most litigated words that we have in our judicial system in this area of law, and if you look at the Federal experience in trying to define that, if you look at the experience of different states, you can predict that if we accept the approach of the Majority of the Committee, that we will have a great deal of litigation in our Superior Court over the years as to what is a discretionary act. It has happened in every other state that has tried to establish this distinction. It is a distinction that is very difficult to make, and sort of fades into wondering if it is meaningful when you get to the edges of it.

I suggest to the Senate that the position to take on this matter is to treat the employees the same way as the State is treated. Now I think when the Senator from Knox, Senator Collins, reviews the history it is important to try to figure out where the State employees were before the recent Supreme Court decision, and the subsequent action of this Legislature. And that was an issue of some discussion and some debate before those decisions were made. But there were Attorney General's opinions, as recent as a couple of years ago, which maintained that the State employees had this sort of immunity that this Bill here would give back to them. In other words, what I am suggesting to you is that there very well might be, and I believe that it is, that all that this Bill would do is give back to the State employees the same sort of immunity that they had before.

Our people ask the State, and we ask the people who work for the State to do some very difficult things, whether it is taking care of a road and having to tear it up while cars continue to pass over it, or whether it is taking care of people who are in an institution for the mentally ill, or whether it is asking a policeman to go out and deal with 10 or 15 drunks. The fact of the matter is that we ask our State employees to do some of the most difficult, unmanageable jobs that there are in our whole society. That is probably why government is doing them is because the private sector was not interested. I suggest that if the State is going to make itself immune, then we have to extend that some protection to State employees.

If the issue comes down in your mind to equity between the private employee and the public employee remember this, the public employee always has the pocket of his employer behind him. Because of the doctrine

of respondent superior there is always the possibility for the person to take the action against the employer. In fact, that is what is usually done. It is the employer's pocket that usually pays in these cases where the employee is acting within the scope of his duties.

We have closed that possibility by virtue of this act before us, and the Act passed previously as a possibility, and so the public employee does not stand in the same relationship to his employer. His employer has already used his extraordinary status with regards to the law to make himself immune from suit. I suggest that if it is too difficult for the State to insure, too high a risk for the insurance companies to calculate, then the only fair and equitable thing to do is to extend that same protection to our State employees, until that day as we are willing to lower the guard for the State, and then we should treat the State employees the same way.

(Off Record Remarks)

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate, I took a jaunt yesterday afternoon over to the Secretary of State's office, Motor Vehicle Division, just to take care of a constituent problem, and while I was there I happened to be talking with a young lady. I was talking about salaries and wages and how much they made, and this young lady was making somewhere in the vicinity of \$130.00 to \$140.00 a week. She had been working with the Motor Vehicle Division for 28 years, and she was one of the highest paid employees in the Motor Vehicle Division in this special section that is involved there.

It bothers me to think that we are going to subject this employee to a law suit, because after all we have got to sue somebody. The State of Maine itself cannot be sued because it is a sovereign. It wants its own immunity. Now if the sovereign cannot be used under the rationale of the good Senator from Knox County, Senator Collins, if they cannot sue the State, then you have got to have some sort of redress for the poor citizen, and the poor citizen is going to have his redress against the poor State employee, because the state of Maine says, ah ah, we are out of it.

Now there is one way out of this. If the action or the accident or what have you happens in the scope of the employees work, we are not talking about something frivolous. He is not going for a trip on his own to get a Dairy Queen in Gardiner. We are talking about while he is doing his work, his day to day work, and in the scope of his work something happens, and the State says you cannot touch us, then the poor citizen who needs redress can go after the poor State employee, the one who grosses \$140.00 a week and takes home probably \$110.00.

Now, of course, the government may indemnify, but the word is may, it is not shall, it is may. They may not also. Now it bothers me tremendously that we eliminate the Legislature or Legislative action, we eliminate the Judiciary — they are the big ones. We eliminate discretionary action, and why we threw discretionary action in the Judiciary Committee was because so many town fathers came up to the Judiciary Committee and said look, if we make a decision one way or the other we could be sued. It is dangerous. If it is something in our discretion, then we will not have that many problems. If you do not put that in, then we are going to have a lot of people who are afraid to run for office, because they could be sued. However, if there is a problem and the State cannot be sued because they are immune, the ideal situation is go after the state employee. After all the \$110.00 a week and a family to support, he can afford to pay for all these law suits,

and the State of Maine may, if they decide, pay for it.

I again state very clearly, and I do not think anybody has disputed this matter, but it is a matter of fairness. If you want to be fair about all of this, if the State cannot be sued, eliminate the suit for the State employees. If the State can be sued, and we know that they can be sued in certain areas like motor vehicle areas where most of our State employees might end up with the actions anyway, then open it up. But if the State of Maine cannot be sued, eliminate the suit from the State employees. Let us be fair about all of this.

I urge you to vote against the Majority Ought to Pass Report.

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

Mr. COLLINS: Mr. President, I take exception to one point raised by the good Senator from Cumberland, Senator Merrill. He suggested to us that we were simply going back to the same immunity that State employees had under an Attorney General's opinion issued two or three years ago. That opinion was very carefully dissected by the Judiciary Committee last January, and Members of the Attorney General's staff were brought in to help us to understand it, and I would submit that the particular opinion was issued for a very limited purpose and had a very limited thrust to it, and that the present staff of the Attorney General's office virtually disowns it for anything other than its very narrow limited purpose, and I think it has no general applicability in the current scene.

So rather than going back to something that the Senator says was once had, what we would be doing if we undertake this new stand would be to make a radical departure from the historic rights of our citizens and creating a class of super citizens, which super citizen has no responsibility for his negligent acts because he works for the State. He becomes the immune super citizen.

I do not think that is sound public policy. I think we have to look at what is fair for the great bulk of our citizens and rely on the good sense of administration to take care of indemnity if and when it is deserved by a governmental employee.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I simply would like to express support for the minority position on this particular Bill. As has been said a number of times in the debate, if a private individual is working within the scope of his employment and happens to be negligent, the individual who is wronged has the opportunity to sue not only that individual but the employer as well, and, in fact, that almost universally is what happens.

But what the State of Maine has done has been to say that with its employees, we can leave them open for liability for a negligent act, but that the State itself will not accept the responsibility that would be the responsibility of the private employer.

Now we do have the option, which has been noted, that has been taken advantage of a number of times in this Session. It is taken advantage of in every Session that certainly I have been here, and that is, of course, the option to have an individual put in a Bill to ask permission to sue the State. It seems to me that although that certainly seems somewhat cumbersome, that that is the better approach to the problem than to leave the employee liable all on his own.

The PRESIDENT Pro Tem: Is the Senate ready for the question?

A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators

present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

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

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to make just one quick point to be sure that people who have been listening to this debate understand that the employees that we are talking about are employees of all governmental entities, and not just the State. The employees would include employees of municipalities and counties and quasi-municipal organizations.

The PRESIDENT Pro Tem: The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins, to accept the Majority Ought to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate, I would just like to clear up what may be a misunderstanding after the Senator from Penobscot, Senator Curtis' statement. Indemnification, the possibility to indemnify applies to all employees, municipal as well as State. The question presented by the Minority Report, however, the question of immunity, would apply only to State employees and not County and Municipal.

The PRESIDENT Pro Tem: The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Collins, D.; Collins, S.; Curtis, Hewes, Hichens, Huber, Lovell, Morrell, O'Leary, Redmond, Snowe, Trotzky, Wyman.

NAY — Chapman, Cummings, Danton, Farley, Greeley, Jackson, Levine, Mangan, Martin, McNally, Merrill, Minkowsky, Pierce, Pray, Speers, Usher.

ABSENT — Carpenter, Conley, Katz, Sewall. 13 Senators having voted in the affirmative, and 16 Senators in the negative, with 4 Senators being absent, the Motion to Accept the Majority Ought to Pass Report does not prevail.

Minority Ought to Pass Report accepted in concurrence.

The Bill (H. P. 1680) (L. D. 1874) Read Once, and Tomorrow Assigned for Second Reading.

#### Committee of Conference

The Committee of Conference on the disagreeing action of the two branches of the Legislature, on

AN ACT Authorizing Municipalities to Create Development Districts (H. P. 1216, L. D. 1482) have had the same under consideration, and ask leave to report: That the House recede from passing the bill to be engrossed as amended by House Amendment "A" (H-414), recede from adoption of House Amendment "A" (H-414), Indefinitely Postpone House Amendment "A" (H-414), adopt Committee of Conference Amendment "A" (H-590) submitted herewith, and pass the bill to be engrossed as amended by Committee of Conference Amendment "A".

That the Senate recede from passing the bill to be engrossed as amended by Committee Amendment "A" (H-377) and House Amendment "A" (H-414), recede from Adoption of Committee Amendment "A" (H-377), Indefinitely Postpone Committee Amendment "A" (H-377), recede from adoption of House Amendment "A" (H-414), Indefinitely Postpone House Amendment "A" (H-414), adopt Committee of Conference Amendment "A" (H-590) submitted herewith, and pass the bill to be engrossed as amended by Committee of Conference Amendment "A" (H-590) in concurrence.

On the Part of the House:

MacEACHERN of Lincoln  
HENDERSON of Bangor

DRINKWATER of Belfast  
On the Part of the Senate:  
JACKSON of Cumberland  
PIERCE of Kennebec  
O'LEARY of Oxford

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

#### Senate

##### Leave to Withdraw

Mr. Collins for the Committee on State Government on, Bill, An Act to Articulate Lines of Authority for all State-Budgeted Programs. (S. P. 233) (L. D. 896)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

##### Divided Report

The Majority of the Committee on Labor on Bill, An Act Relating to Arbitration under the State Employees Labor Relations Act. (S. P. 150) (L. D. 392)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-238).

Signed:

Representatives:

DUTREMBLE of Biddeford  
McHENRY of Madawaska  
LAFFIN of Westbrook  
BUSTIN of Augusta  
BEAULIEU of Portland  
ELIAS of Madison  
FLANAGAN of Portland

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

Signed:

Senators:

REDMOND of Somerset  
McNALLY of Hancock

Representatives:

TARR of Bridgton  
PELTIER of Houlton  
LEWIS of Auburn

Which Reports were Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I move the acceptance of the Ought Not to Pass Report, and would like to speak to my Motion.

The PRESIDENT Pro Tem: The Chair recognizes the same Senator.

Mr. McNALLY: Mr. President, this Bill I will try to explain and I am sure that if I have made a mistake on it that the good Senator from Penobscot who put it in will correct me.

This is the first of six Bills for binding arbitration, and it had a good long hearing. It had people from both sides speaking for and against, and binding arbitration, in case anybody is not too clear what it is, is an argument for it by the proponents of it, saying that it will speed up the differences between the employer and the employees. It is also, as an argument against it, is that once it has gone to binding arbitration, regardless of whether the arbitrator is an out-of-State person that has no knowledge as to what the needs of Maine are, or what the abilities they have to pay are, whatever they decide on, that is binding and will have to be paid for.

Now this Bill, if I understand it correctly the way it is written, and along with its Amendment, which says in the Amendment that the governor shall put in his budget any binding arbitration monies that has been agreed by them shall be funded, and also this Bill states that this will be taken up by the Legislature, which to me makes the Legislature sort of an arbitrator of labor disputes, and that is the reason



that I cannot see why that we should bring the Legislature into labor negotiations. I think that they should be kept immune from it.

According to the people who testified, there are approximately 7,000 employees that will be considered in the negotiations, and the process, of course, as you know, is the first thing is they try to negotiate. If that does not come about, they mediate, they have a fact finding board, and then if there can be no agreement, they have an arbitrator appointed from each side, and whatever the arbitrators propose and do, that must be paid for because it is binding.

This can cause a lot of extra cost and difficulty. There have been a good many letters that I have received from all over the State against the Bill. It does not seem to me that it is the proper thing that we should go into, that we should cut off the arms of the employer completely in order to let them sit in on negotiation with part of what should be put into a contract and then negotiated on.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President, I move this item lie on the Table pending the acceptance of either Report, for One Legislative Day.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I request a Division.

The PRESIDENT Pro Tem: A Division has been requested on the Motion of Senator Danton to Table this item for One Legislative Day.

Will all those Senators in favor of the Motion to table this item for One Legislative day, please rise in their places to be counted.

Will all those Senators opposed to the Motion to table this item for One Legislative Day, please rise in their places to be counted.

9 Senators having voted in the affirmative, and 15 Senators in the negative, the Motion to table this item for One Legislative Day does not prevail.

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

Mr. PRAY: Mr. President and Members of the Senate, just to clarify a few things to make sure nothing has been misinterpreted or misunderstood, this Bill relates to State employees and what it does is it makes issues binding upon either side, the State employees or the State, which decisions are made by the arbitrator, and that the legislature still has final say on these matters.

The PRESIDENT Pro Tem: Is the Senate ready for the question?

The pending question is the Motion by the Senator from Hancock, Senator McNally, that the Senate accept the Minority Ought Not to Pass Report of the Committee.

The Chair will order a Division.

Will all those Senators in favor of the Motion to accept the Minority Ought Not to Pass Report, please rise in their places to be counted.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I request a Roll Call.

The PRESIDENT Pro Tem: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

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

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I note in the Chamber at the present time, the absence of the Minority Leader, who has similar Legislation of

this kind in, and I know he is interested in this general subject area. I wonder if out of Senatorial courtesy someone could table this until later in Today's Session.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I would ask a question through the Chair as to the whereabouts of the Minority Leader. I realize that he is here, and he has been in the Chamber, and I am wondering if he may not be around in the hallway.

The PRESIDENT Pro Tem: The Senator from Kennebec, Senator Speers, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President, I Move this item lie on the table until later in Today's Session.

The PRESIDENT Pro Tem: The Senator from York, Senator Danton, now moves that this item lie on the Table until later in Today's Session.

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I request a Division.

The PRESIDENT Pro Tem: A Division has been requested.

Will all those Senators in favor of the Motion place this item on the Table until later in Today's Session, please rise in their places to be counted.

Will all those Senators opposing the Motion to place this item on the Table until later in Today's Session, please rise in their places to be counted.

11 Senators having voted in the affirmative, and 12 Senators in the negative, the Motion to Table this item until later in Today's Session does not prevail.

The Motion before the Senate is the Motion of the Senator from Hancock, Senator McNally, that the Senate accept the Minority Ought Not to Pass Report of the Committee.

A vote of yes will be in favor of accepting the Minority Ought Not to Pass Report. A Nay vote will be opposed.

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

#### ROLL CALL

YEA—Chapman, Collins, D.; Collins, S.; Cummings, Curtis, Greeley, Hewes, Hichens, Huber, Jackson, Lovell, McNally, Morrell, Pierce, Redmond, Snowe, Speers, Trozky, Wyman, Sewall.

NAY — Conley, Danton, Farley, Levine, Mangan, Martin, Merrill, O'Leary, Pray, Usher.

ABSENT — Carpenter, Katz, Minkowsky. 20 Senators having voted in the affirmative, and 10 Senators in the negative, with 3 Senators being absent, the motion to accept the Ought Not to Pass Report of the Committee does prevail.

The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I move for reconsideration and hope you will vote against me.

The PRESIDENT Pro Tem: The Senator from Hancock, Senator McNally, moves that the Senate reconsider its action whereby it accepted the Ought Not to Pass Report.

A viva voce vote being had, The motion to reconsider does not prevail. Sent down for concurrence.

The PRESIDENT Pro Tem: The Chair at this time would ask the Sergeant-at-Arms to escort the President to the Rostrum.

Thereupon, the Sergeant-at-Arms escorted the President to the rostrum, and the Senator

from Sagadahoc, Senator Chapman, to his seat on the floor of the Senate.

The PRESIDENT: The Chair thanks the Senator from Sagadahoc for his usual good job this morning.

(Applause)

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

Mr. SPEERS: Mr. President, I move that the Senate take from the table an item tabled until later in today's session, L. D. 313.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate take from the table L.D. 313, "An Act to Establish the Maine Uniform Residential Landlord and Tenant Act" (H. P. 228) (L. D. 313) which was tabled earlier in today's session by the Senator from Kennebec, Senator Speers, pending the motion of the Senator from Knox, Senator Collins, that the Senate accept the Majority Ought to Pass Report. Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President and Members of the Senate: I would ask a question of one of the members of the Committee on Judiciary, if this warrantee breach under the proposed bill can occur after the tenant has moved into the apartment. In other words, can it occur during the tenure of the tenancy under this proposed bill, or is this a breach that must be present before the commencement of the lease.

The PRESIDENT: The Senator from Cumberland, Senator Hewes, has posed a question through the Chair.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I believe this is a matter that could come up at any time during the tenancy. A previous legislature, as I am sure the Senator from Cumberland will recall, established the warrantee of habitability, which I would say, in other words, simply means that a place is fit for human habitation, and provided that if it was not fit for human habitation that a tenant could recoup excess rent in excess of its real value, and we have had a little period of time to see how this law works and there seems to be quite a few problems in making it have any real meaning.

I have been through four sessions now of hearings in which angry tenants and angry landlords have descended upon us from Bangor, Lewiston, Augusta and Portland. This seems to be a larger city problem really, and they have explained their problems. The tenants, of course, say that the landlords do not fix the roof or give them running water or electricity or whatever the problem may be. And, the landlord saying usually that the tenants do not pay the rent, and the tenants do a lot of damage and abuse the premises and so on. Well these problems are very common human problems, and sometimes I wonder if the legislature can really do anything about them.

But this bill as it comes to us now, after some amendments from the other body, seems to me to be a balanced type of a bill. If the dwelling is not fit for human habitation, and if the condition was not caused by the tenant or a person acting under his control, the tenant must give the landlord written notice of the uninhabitable conditions without unreasonable delay from the time that the tenant discovers the condition, and if under these circumstances the landlord unreasonably fails to make repairs, take steps to remedy this condition and, further, if the tenant was paid up at the time he gave the notice to the landlord, then and only then can the tenant take the landlord to court to ask the court to order the landlord to make the premises fit for human habitation.

Now there is one other feature in this bill that is on the side of the landlord. Sometimes there

is an apartment, or maybe it is a seasonal dwelling, or maybe it is a place where seasonal harvesters come when the crops are ready, that does not have some of amenities that usually are considered necessary these days for human habitation. Maybe it does not have running water. Maybe the roof leaks or something of that nature. Now if that is the case, this Act would permit the landlord and the tenant to agree that this problem is waived, because the tenant is occupying the property at a lesser rent than would be normally charged if the place were fit for human habitation, so that there are provisions in favor of the landlord and in favor of the tenant in this Bill, and because of this balance, as I saw it, I supported the Majority Report.

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

Mr. HEWES: Mr. President and Members of the Senate: I thank the good Senator from Knox, Senator Collins, for answering the question.

I do not think that the warrantee of habitability should apply during the tenure of the tenancy and I shall vote against the Ought to Pass Motion. I note there is quite a housing shortage in the state at the present time, and I think we should not discourage landlords by imposing extra restrictions on them. I also believe that this Bill would provide for the court to order a landlord to make certain repairs, rather than just if the apartment is not up to standard, saying that there is a breach of warrantee and letting money damages or whatever develop from that. I do not think the Court ought to be mandating repairs to a landlord.

I was House Chairman of the Committee on Judiciary six years ago when the original breach of warrantee of habitability Bill was passed, sponsored by Mrs. Brown, Marian Fuller Brown, and I thought we worked out an adequate law at that time. I think it has been working reasonably well, so I hope that you will vote against the Ought to Pass Report.

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

Mr. MANGAN: Mr. President and Members of the Senate: If we look at Title 14, 6021, which is the current warrantee of habitability which is enforced in our laws today, it states that in any written or oral lease or agreement for rental of a dwelling intended for human habitation, the landlord shall be deemed to covenant and warrant that such a dwelling is fit for human habitation. If the dwelling is not fit for human habitation, the tenant may, in addition to pursuing any of the remedies which may otherwise exist, rescind the rental contract and recover a just proportion of the rent. Consequently, damages may not be awarded for the breach of warrantee of habitability. In order to rescind the rental contract, the tenant, members of his family, his guests or invitees must not have proximately caused a condition which makes the premises unfit for human habitation. Before the tenant may rescind the rental contract, he must have given the landlord written notice of the condition which makes the premises unfit for human habitation within seven days of the discovery of the condition. At the time of the notice, the rent must be currently paid. If a landlord does not repair the condition within 30 days after receipt of the notice from the tenant, the tenant may then rescind the contract at any time within the next 30 days. A seven-day period within which the tenant must ratify or must notify the landlord commences at the time the tenant, in the exercise of reasonable care, could have discovered the condition.

We have everything that this bill really is trying to do, and what all of the proponents are speaking about. What in addition does this bill do that we should concern ourselves with? What we have in addition to is primarily we have an enforceable injunction. It is an affirmative injunction, and again I state it is an extremely

rare in the law, which will make the courts the supervisors of repairs. Do we have enough time in our system and have we got enough money in our appropriations budget to provide for extra judges to go out and baby-sit landlords so that the repairs be made accordingly.

Secondly, the interesting question comes up here is that if a landlord and a tenant have agreed to a contract for the rental of an apartment, what would all of a sudden make the place unfit? The kicker that comes in here is that the implied warrantee of fitness for human habitation in any written or oral agreement for a rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling is fit for human habitation. It is there already.

Now this bill expands something fierce the term of what a dwelling unit is. It now includes mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation. Almost anything that is setting in a location, any kind of a structure if somebody says it is fit for human habitation and somebody else agrees to it, all of a sudden then for some reason or other, without any cause of the tenant becomes unfit, then the landlord must then make it fit. I can imagine what would happen, say for example in some of those Washington County areas where there are blueberry habitations for the growers during the summertime. I can imagine that if a structure is being used for human habitation, and all of a sudden half way through the season somebody decides it is unfit and they go and see the judge, the judge can say, well, now we must have running toilets. We must have three showers. We must have four bedrooms. We must have adequate electrical appliances and the whole package. What makes a place fit for human habitation? Now does this require that any of these things that the tenant and the landlord are going to sit there together and say, well, look, this is a dump. This is a shack. This is a garage. You are agreeing here that it is fit for human habitation.

Now the whole thing just bothers me. There are so many questions in this thing and I cannot see that it would be right to accept the Majority Ought to Pass Report on this thing, and I would urge the Senate to vote against it.

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

Mr. MERRILL: Mr. President and Members of the Senate: I would like just briefly to make clear what I think this does change over the present law which was read in detail by the previous speaker.

This is not a new bill to the Senate. As a matter of fact, it passed a very similar bill during the session, only to see it defeated in the other body, and at that time I supported it as a compromise and considering the other bills which were before the Judiciary Committee which included a rewritten uniform piece of legislation, which would have, as some states have gone, would have Maine go in the direction of setting some sort of state codes and state standards, and that seemed to me to be a totally unacceptable approach, and what this bill before us does, as I understand it, and it is similar to the bill that has been previously passed by the Senate, and it just changes how one takes advantage of the remedy of implied warrantee that the apartment be habitable, and how it changes the law is that it does not require the tenant to move out in order to bring the action. Now the provisions are severable, and in order for the tenant to take advantage of the implied warrantee he has to move out of the apartment, and that, as you all I am sure could conclude in reflecting upon it for a moment, is an acceptable remedy to many people, and if the furnace is broken down and is not providing heat or some other condition has come about that is causing the place to be uninhabitable and unfit for the person and his family or her family living

there, then there had ought to be some other remedy, in order to make good our commitment in the law, which is presently in the law, which is that the apartment if it is going to be rented will be habitable. All this says is that he does not have to move out, that there are other remedies he can take to make the apartment habitable again, and seeing as we have made the pledge in the law that it be habitable I suggest that providing this remedy is not an unbecoming or an unwarranted extension of that act.

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

Mr. CONLEY: Mr. President, I pose a question through the Chair as to what is the pending question.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Knox, Senator Collins, that the Senate accept the Majority Ought to Pass in New Draft Report of the Committee.

The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, when the vote is taken, I request it be taken by the yeas and nays.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

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

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I wish to concur with the statements made by the good Senator from Knox, Senator Collins, and also my colleague from Cumberland, Senator Merrill.

The Bill before us will contribute to the improved housing and continued rent payment, and that is what brings about the balance in this Legislation. Unfit for human habitation has to be pretty bad. While it is being fixed, the landlord will continue to collect the rent. I think that this is the type of legislation that we would like to see put on the statutes to improve the relationship between both the landlord and the tenant, who would both become the winners in the long run.

The PRESIDENT: The pending question before the Senate is the motion by the Senator from Knox, Senator Collins, that the Senate accept the Majority Ought to Pass in New Draft Report of the Committee.

A yes vote will be in favor of accepting that Report. A nay vote will be opposed.

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

#### ROLL CALL

YEA — Chapman, Collins, S. Conley, Cummings, Curtis, Danton, Farley, Greeley, Hichens, Huber, Levine, Lovell, Martin, McNally, Merrill, Morrell, O'Leary, Pierce, Pray, Redmond, Snowe, Trotzky.

NAY — Collins, D.; Hewes, Jackson, Mangan, Minkowsky, Speers, Usher.

ABSENT — Carpenter, Katz, Wyman.

22 Senators having voted in the affirmative, and 7 Senators in the negative, with 3 Senators being absent, the Motion to accept the Majority Ought to Pass in New Draft Report does prevail in concurrence.

The Bill, in New Draft, Read Once, House Amendment "A" Read and Adopted, House Amendment "C" Read and Adopted, House Amendment "D" Read and Adopted. The Bill, as amended, Tomorrow Assigned for Second Reading.

#### Second Readers

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

#### House

Bill, "An Act to Approve the Expenditure of Funds from the Mental Health and Mental

Retardation Program Improvement Fund for the Fiscal Year ending June 30, 1978." (H. P. 1142) (L. D. 1366)

Bill, "An Act Relating to an Equitable Billing Procedure for Open-end Credit under the Consumer Credit Code." (H. P. 1140) (L. D. 1375)

Bill, "An Act Concerning the Certificate of Apparent Election and the Fee for Recounts in Election Contests." (H. P. 1691) (L. D. 1871)

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

Bill, "An Act to Promote the Sale of More Hunting Licenses to Non-residents Hunting Deer or Bear." (H. P. 1662) (L. D. 1858)

Which was Read a Second Time.

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

Mr. CONLEY: Mr. President, I wonder if some member of this illustrious committee might share its new found way of making more money for the Department of Fish and Games before we engross this Bill.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair to any member of the Fish and Wildlife Committee who may care to answer.

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

Mr. PRAY: Mr. President and Members of the Senate: I want to first of all clarify the statement made by the Democratic Floor Leader. This is not a new found idea. A number of states already at this time have a policy very similar to this.

One of the problems that we have found in the state in those individuals that are familiar with the sporting industry, and particularly in the fall with the hunting, find there is great concern for the size of our deer herd, and there has been also a great deal of concern expressed of the advantages of what a resident receives and what a non-resident receives. The issue before you addresses a unique licensing technique, to use the word of the good Senator from Cumberland, Senator Conley. The uniqueness of it is it requires establishment of a sportsman's license which will take the place of the small game license, and for an individual to hunt either of the two classifications of the big game of deer or bear to buy a separate permit. We have found in the fall of the year that many of the individuals that shoot one deer in a party, usually shoots more than one deer because they stay in the woods hunting bear. At least with this proposal that we have here, they would be required to pay an additional fee or get an additional permit to continue hunting.

The theory behind that is basically that with the cut in personnel by the Governor that there is not the number of wardens to enforce the existing statutes, so perhaps with a little bit of additional funding that we could have the additional personnel to enforce the laws.

There is one problem with the bill, and I myself was going to set it aside, and I have a Senate Amendment ready for it, which is being passed out at this time, is to establish the effective date on January 1978 so that we would not run into the problem which the 106th, I believe, ran into when they passed legislation increasing fees without putting an effective date on it, thus in the fall of the year, in October when the bill became law, all of a sudden the department had to change their licenses.

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

Mr. CONLEY: Mr. President, I think if there is one thing the state cannot afford to do is to continue to increase the fees, and particularly in this department. If anyone is running away with the bureaucracy in this state, it is the Fish and Wildlife Department.

Mr. President, I would like to set this aside permanently, and move this Bill be indefinitely postponed with all accompanying papers.

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

Mr. REDMOND: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested on the pending question.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate: I know that my beloved leader has great love for the Fish and Game Department, but I want to assure him this is not a Department Bill. As a matter of fact, the concept and the idea came from an individual in my district who deals with the non-resident hunters and sportsmen, as well as the resident sportsmen of the State of Maine, and of his concern, as he has mentioned so many times, in different departments around the state, and I will just refer briefly to the Department of Manpower Affairs where he stood less than two weeks ago in this Chamber and mentioned the fact that that department was down by 42 individuals in personnel, and the direction we should be going is filling those positions, and I just want to echo his concern that if we have problems with the Fish and Game Laws, then we should fill the vacancies in wardens that we have over there.

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

Mr. CONLEY: Mr. President, I was given the same song and dance at the time that the Moose Bill was before this Body, that if we passed that bill and then when the lottery was successful and put out the so-called sale of those who were fortunate to be drawn for the license itself to go out and slaughter these creatures, it was stated that, oh, we will be able to hire another 30 or 23, or whatever it was, wardens. Now again we do not need to continue the growth of bureaucracy. I think most people in this state would like to see it cut back, and I do not care where the idea came from, it is just additional revenue to increase the bureaucracy over there, and it has grown far enough, and I would hope the Senate would support the Motion to indefinitely postpone.

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

Mr. PRAY: Mr. President, I just would like to ask a question through the Chair to the good Democratic Floor Leader, the Senator from Cumberland, Senator Conley, that if the individual bought a sportsman license and a deer permit, what would the difference be in the price of the license that he is buying at this time, or has he read the bill.

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

Mr. JACKSON: Mr. President, the title of this bill fascinates me, "An Act to Promote the Sale of More Hunting Licenses to Non-Residents." I kind of question that. I have a little document here in front of me from the Department of Fish and Game on the sale of small game and big game hunting licenses, 1975 versus 1976. In 1976 we all know, we increased the big game hunting license by about \$15.00, I believe. The statistics show we had a decline in the sale of big game hunting licenses of 7,634. With the increase in the fee, we did have a small gain of 2.3 percent in revenue.

What I would suggest, maybe the good Senator from Penobscot would like to table this bill for a day, and I would be glad to prepare an amendment to reduce the cost of the licenses, and I am sure that would insure the sale of more licenses in the State of Maine. Otherwise, I would support the motion of the good Senator from Cumberland on the indefinite postponement of this bill.

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

Mr. PRAY: Mr. President and Members of the Senate: I would like to point out that perhaps the other Senator from Cumberland,

Senator Jackson, also has not read the bill, because what the bill will do, it gives the non-resident presently who would have to, if he wanted to hunt small game, he would go out and spend \$30.50 to buy a small game license. Then if he wanted to hunt big game in the state of Maine, he could go out and spend \$60.50. What this bill does is establish a sportsman's license for \$30.50 which will allow him to hunt small game for the same price he presently pays for small game, and if he wants to hunt deer in the State of Maine which happens to be the biggest big game animal that we have that attracts non-resident hunters, he would have to spend another \$30.00 instead of the additional \$60.00 so if his concern is in giving them a break, that is what the present bill does, and it also cuts down the rate on what a junior non-resident would have to pay, and it also further over on the page cuts down the archery license. So if his concern is to promote more licenses, particularly in his area so that his business may also flourish, this bill does it.

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

Mr. JACKSON: Mr. President, I submit to the good Senator from Penobscot the possibility of the reduction of the license fee, I am sure he is aware of it in the sporting camps, in the store that he has up there in the Northern part of Maine, that the majority of licenses are big game licenses, and I would be willing to bet that 90 percent of those licenses are purchased during the month of October and the first two weeks in November.

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

Mr. REDMOND: Mr. President, this bill was heard in committee, debated and discussed. This is a bill to accommodate the sportsman, and I would like to remind the most honorable Senator from Cumberland that conservation in fisheries and wildlife is attained by utilization, not those who are against shooting all our game and against catching our fish, and this bill, as the Senator from Penobscot has explained, really is a bill to accommodate a sportsman in many ways, and I hope that this body will vote for the Ought to Pass Report.

The PRESIDENT: The pending question before the Senate is the Motion by the Senator from Cumberland, Senator Conley, that the Senate indefinitely postpone L. D. 1858 and all its accompanying papers.

A Division has been requested.

Will all those Senators in favor of the Motion to indefinitely postpone, please rise in their places to be counted.

Will all those Senators opposed to the Motion to indefinitely postpone, please rise in their places to be counted.

11 Senators having voted in the affirmative, and 15 Senators in the negative, the Motion to indefinitely postpone does not prevail.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I offer Senate Amendment "A" (S-245) to the Bill, and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Pray, now offers Senate Amendment "A" and moves its adoption.

The Secretary will read Senate Amendment "A".

Senate Amendment "A" read and adopted.

The PRESIDENT: Is it now the pleasure of the Senate that this Bill, as amended, be passed to be engrossed?

A viva voce vote being had.

The Chair is in doubt and will order a Division.

Will all those Senators in favor of passing this bill to be engrossed, please rise in their places to be counted.

Will all those Senators opposed to passing this

Bill to be engrossed, please rise in their places to be counted.

16 Senators having voted in the affirmative, and 9 Senators in the negative, this Bill will be passed to be engrossed as amended, in non-concurrence.

Sent down for concurrence.

#### House — As Amended

**RESOLUTION**, Proposing an Amendment to the Constitution to Mandate the Appropriation of Funds for State Employee and Teacher (H. P. 2) (L. D. 2)

Which was Read a Second Time.

On Motion of Mr. Speers of Kennebec,

Tabled One Legislative Day,

Pending passage to be engrossed.

Bill, "An Act to Transfer the Eminent Domain Power of the Penobscot Indian Housing Authority to the Tribal Governor and Council and to Require Referendum Approval of any Action Relating to Eminent Domain." (H. P. 490) (L. D. 609)

**RESOLVE**, Authorizing John Carlo, Inc. to Resolve a Dispute with the State of Maine by Arbitration. (H. P. 1016) (L. D. 1231)

Bill, "An Act to Provide Safeguards Against the Use of Discriminate and Exclusionary Zoning Practices." (H. P. 1151) (L. D. 1369)

Bill, "An Act Concerning Equine Infectious Anemia." (H. P. 1138) (L. D. 1380)

Bill, "An Act to Provide Home Winterization for Older Citizens." (H. P. 1243) (L. D. 1468)

Bill, "An Act Concerning the Board of Registration in Medicine." (H. P. 1211) (L. D. 1478)

Bill, "An Act Repealing the York Beach Village Corporation." (Emergency) (H. P. 1601) (L. D. 1809)

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

#### Senate

**RESOLVE**, Authorizing Health Insurance Coverage for Fifteen Retired State Troopers. (Emergency) (S. P. 262) (L. D. 822)

Bill, "An Act Appropriating Funds from the General Fund for the Purpose of Developing a Parking Lot in Lincolnville." (Emergency) (S. P. 410) (L. D. 1418)

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

Sent down for concurrence.

Bill, "An Act Concerning the Powers of Plantations under Land Use Regulation and Zoning Statutes." (S. P. 546) (L. D. 1881)

Which was Read a Second Time.

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

Mr. PRAY: Mr. President and Members of the Senate: Since I was one of the co-sponsors of the original legislation, L. D. 492, and I reviewed L. D. 1881, and I see very little similarity between the original intent of the Bill that is now before us. I would like to pose a question through the Chair to the Chairman of the Natural Resource Committee, if he could tell me the difference between the two bills.

The **PRESIDENT**: The Senator from Penobscot, Senator Pray, has posed a question through the Chair to the Senator from Penobscot, Senator Troitzky, who may answer if he so desires.

The Chair recognizes that Senator.

Mr. TROTZKY: Mr. President and Members of the Senate: This Bill allows plantations to remove themselves from under LURC control and LURC jurisdiction, but first they must have environmental laws as strong as those administered by LURC. Today the present method of getting out from under LURC jurisdiction is for a Plantation to become a municipality, become a town.

The Senators who put this bill in want the Plantations to have that right, and still remain as Plantations, so the committee tried to accommodate them, but felt that the integrity of Maine Environmental Laws must be upheld.

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

Mr. PRAY: Mr. President, I move this item lie on the table for one legislative day.

The **PRESIDENT**: The Senator from Penobscot, Senator Pray, now moves that L. D. 1881 be tabled for one legislative day pending passage to be engrossed.

The Chair recognizes the Senator from Penobscot, Senator Troitzky.

Mr. TROTZKY: Mr. President, I request a Division.

The **PRESIDENT**: A Division has been requested.

Will all those Senators in favor of tabling this item for one legislative day, please rise in their places to be counted.

Will all those Senators opposed to tabling this item for one legislative day, please rise in their places to be counted.

10 Senators having voted in the affirmative, and 13 Senators in the negative, the motion to table does not prevail.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I would like to pose another question through the Chair to the Chairman of the Natural Resource Committee, if he could tell me the difference between a municipality and a plantation.

The **PRESIDENT**: The Senator from Penobscot, Senator Pray, has posed a question through the Chair to the Senator from Penobscot, Senator Troitzky, who may answer if he so desires.

Mr. TROTZKY: Mr. President and Members of the Senate: I would refer the Senator from Penobscot, Senator Pray, to a booklet entitled "The Study of Plantation Government in Maine" by the Bureau of Public Administration, and if he would like to see this after the session, I would be glad to show it to him.

The Bill was passed to be engrossed, Sent down for concurrence.

#### Senate — As Amended

Bill, "An Act Amending the Maine Automobile Insurance Cancellation Control Act." (S. P. 118) (L. D. 277)

Bill, "An Act to Allocate Moneys for the Administrative Expenses of the Bureau of Alcoholic Beverages, Department of Finance and Administration and the State Liquor Commission for the Fiscal Years Ending June 30, 1978 and June 30, 1979." (S. P. 104) (L. D. 233)

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

Sent down for concurrence.

#### Enactors

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

"An Act to Clarify Sex Discrimination in the Maine Human Rights Act." (S. P. 260) (L. D. 821)

On Motion of Mr. Speers of Kennebec, Tabled One Legislative Day, pending Enactment.

"An Act to Revise the Oil Burner Men Law." (H. P. 1644) (L. D. 1844)

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

On Motion of Mr. Speers of Kennebec, out of order and under suspension of the rules, the Senate voted to consider the following:

#### Enactor

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

#### Emergency

"An Act Making Current Service Appropriations from the General Fund for the Fiscal Years Ending June 30, 1978 and June 30, 1979." (S. P. 530) (L. D. 1859)

The **PRESIDENT**: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, there is one item in this piece of legislation which I think is extremely important and I would like to mention it to the Senate.

The increase in appropriations for the University of Maine of more than \$4 million proves that the legislature is deeply committed to assisting the University of Maine in solving its problems in improving public higher education in the State of Maine. I have been especially concerned with the large number of excellent faculty and professional staff at the University who have left the campuses to receive higher salaries in other states. The talent drain of this faculty flight has been a severe blow to the morale of those remaining.

Although the needs of the University will not be completely met by this bill, we are sending a message to the University, and to its dedicated employees, that we have stopped slashing the University's budget, and are expending significant constructive efforts to help solve the problem.

I would like to commend the Appropriations Committee for its concern, and the Senate for its approval of the Committee's efforts.

This being an emergency measure, and having received the affirmative vote of 26 members of the Senate, was passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

The **PRESIDENT**: On the record, the Chair would like to commend and thank very much the three Senators from Cumberland who have worked all winter long on this document; the Chairman, Senator Huber, Senator Merrill and Senator Morrell. I think are all deserving of the Senate's rising vote of confidence and thanks for doing the extremely difficult job very well.

(Applause)

#### Orders of the Day

The President laid before the Senate: Bill, "An Act Increasing the State Gasoline Tax." (H. P. 1159) (L. D. 1383) Emergency

Tabled — June 10, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

The President laid before the Senate: Bill, "An Act Regarding the Sales Tax for Sales Made Through Vending Machines." (S. P. 396) (L. D. 1355)

Tabled — June 10, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

The **PRESIDENT**: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President, I move the Senate suspend its rules and reconsider its action whereby it adopted Committee Amendment "A".

The **PRESIDENT**: The Senator from Aroostook, Senator Martin, now moves that the Senate suspend its rules and reconsider its action whereby it adopted Committee Amendment "A". Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the same Senator.

Mr. MARTIN: Mr. President, I now offer Senate Amendment "A" (S-239) and move its adoption.

The **PRESIDENT**: The Senator from Aroostook, Senator Martin, now offers Senate Amendment "A" (S-239) and moves its adoption. The Secretary will read Senate Amendment "A".

Senate Amendment "A" Read.

The **PRESIDENT**: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, just reading down very quickly through the Amendment to the Amendment, I note in the Statement of Fact that the purpose of this Amendment is to

provide that the sales tax will be effective from the time the Bill becomes effective until December 31, 1980. I pose a question through the Chair as to what happens after that date.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question through the Chair.

The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President and Members of the Senate: In response to that question, after 1980 or since the provision of three years 1980 the Bill is automatically repealed and to create or to continue this present exemption we would have to enact further Legislation to repeal the entire bill.

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

Mr. SPEERS: Mr. President, I would pose a further question through the Chair to anyone from the Committee on Taxation as to whether or not any of our other tax laws have such a provision in them.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question through the Chair to any Member of the Taxation Committee who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President and Members of the Senate: To my knowledge, no, but this is a new step that the Taxation Committee has taken with exemptions. We are beginning to sunset them so that when they do expire they will be subject to review, and if they warrant staying on the books, I am sure at that time the appropriate legislature will take care of that.

On motion of Mr. Speers of Kennebec, Tabled for One Legislative Day, Pending adoption of Senate Amendment "A" to Committee Amendment "A".

The President laid before the SSenate:

Senate Reports — from the Committee on Taxation — Bill, "An Act to Make Possible Property Tax Valuation Assistance to Local Officials." (Emergency) (S. P. 464) (L. D. 1607) Majority Report — Ought to Pass; Minority Report — Ought Not to Pass

Tabled — June 10, 1977 by Senator Speers of Kennebec

Pending — Acceptance of Either Report

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

Mr. WYMAN: Mr. President, I move we accept the Ought Not to Pass Report.

The PRESIDENT: The Senator from Washington, Senator Wyman, now moves that this Senate accept the Minority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, in reference to this item, it is my understanding that all this would do is allow the State Department of Taxation to make available this help if it is requested and wanted by the local level, and if that understanding is correct. I wondered if someone on the Taxation Committee could give me an explanation of why there is a Minority Ought Not to Pass Report.

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

Mr. WYMAN: Mr. President and Members of the Senate: There already is an avenue for appealing evaluations, and this just seems to me unnecessary because it is impossible to get correct evaluations. Recently there was an evaluation of a mill here in Maine and it was something like four different groups put evaluations on this property. One was a professional group from out of state and the evaluations ranged from in the \$40 millions to around \$78 million:

Now I do not think local assessors can do much worse than this, and they are also in all

the organized municipalities except five, there are provisions for a property owner to appeal the evaluation as it is placed by the local assessors. So I just think this is unnecessary and the first year and a half of the biennium it has a tax on it of something like \$275 million, and for the full two years, the following biennium, it would be around \$350 million.

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

Mr. MORRELL: Mr. President, could we ask the Secretary of the Senate to read the Report of the Committee please?

The PRESIDENT: The Secretary will read the report.

Committee Reports Read.

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

Mr. CONLEY: Mr. President, as I look at the title of the Bill, I notice that it is filed and reported by the Select Committee on State Property Tax Valuation pursuant to Senate Paper 610 of the 107th Legislature, and printed under Joint Rules 17. This is apparently one of the recommendations made by the Special Tax Study Committee and it seems to me that in reading the Statement of Fact and so forth that it seems like it is a very fine bill, and certainly one to prove to be of assistance to local assessors, and at least I would hope the Senate would vote against the pending motion, keep the bill alive so that we could take a further look at it as time goes by.

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

Mr. JACKSON: Mr. President, as a signer of the Minority Report, I would like to make an explanation as to why I signed that Ought Not to Pass. Number one, in the last legislature, the 107th, we set up a standard for assessment here in the state. By 1979 we are requiring that the municipalities, the minimum standard would be at the ratio of 70, a maximum of 80 or a minimum rate of 20.

I felt that with a piece of legislation such as this with the fiscal note that it does have on it, that with one year plus months before these communities meet this ratio of the standard, and basically to meet this standard they must be reassessed, revalued by professional appraisers to bring this into focus, that I just felt that we were dribbling the state's money, which is for the biennium \$260,000.00 down the drain. Also I felt that with the number of new positions that we were creating in the Department of Taxation, we were expanding a bureaucracy, when I feel that we should be sort of eliminating some of these positions or some of these procedures which are utilized, and let the local municipalities take more of the burden upon themselves.

As I stated earlier, this requirement has got to be met by 1979, and I feel that if the municipalities are expending a considerable amount of dollars for reappraisal, reevaluation, that the state should not get involved and spend \$260,000.00 in next two years when the municipalities have to meet this standard anyway.

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

Mr. MERRILL: Mr. President and Members of the Senate: One of the interesting facets of human nature is that two individuals can look at the same set of circumstances and come to the exact opposite conclusion.

I think that this bill should move along and be accepted in the legislative process, because of the very eventuality that the Senator from Cumberland, Senator Jackson, alludes to. We had a law on our books up until the last session that would have required every town and every municipality to joint tax assessment districts, and that approach was repealed by the 107th Legislature, and in its place was the approach that has been alluded to by the Senator from

Cumberland, Senator Jackson. That approach is to set up some bare performance standards for each municipality to conform to, and then to require that the State conform to those standards as time passes, and to leave it to the municipalities to pick their own devices. In other words, not to say that they have to go into a tax assessment district, although that possibility is open to them if they want to, and not to say anything about when the office will be open and what sort of tools that they have to have, but simply to say here is the standard, meet it. The State, I think, has a legitimate interest in seeing to it, not only because of its Uniform Property Taxation, but because of its general interest in equitable taxation, that the standards of evaluation be fair and equitable to all citizens.

But I suggest that if we are giving the communities that new requirement, that it is not inappropriate at all to make available this assistance. I mean it is the same sort of thing if you want to take it to a private level, as the Federal Government passing OSHA requirements and then making available some money to help the businesses, and I suppose it would usually be small businesses, to find out whether or not they are complying with those standards. They certainly should do that, and they have as time has passed. Well, here is a similar example. We have said to these cities and towns, you have to meet this performance standard, and I think this is just an attempt to provide some expertise in helping them to do it if they want to. Nothing mandatory, nothing required, just saying we asked you to do this, we have told you to do it by a certain date, here is some help that is available.

Now I submit to this Senate that this would be utilized for the most part by small cities and small towns. The larger cities have some fairly professional services available as far as evaluation is concerned. But some small towns are going to be in a real quandry, and they are going to be wondering what they should do, and what are the best procedures that they should follow in order to improve their assessment standards. This just lets the Selectman or the head selectman call up Augusta and have some people available to help them out. That is all that it does, and I think that it is sort of the obligation that goes with the demand and help these people out and give them the services they need to be able to improve their evaluation techniques.

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

Mr. SPEERS: Mr. President and Members of the Senate: If there is any one characteristic that could be said to be written in the recent history of this legislature and previous legislatures, it is that we have attempted continuously to improve the lot of the property taxpayer in the State of Maine. This is simply one more bill to come along to attempt to improve the assessment practices within the State of Maine, and I would point out that in this bill, it is not a mandatory situation. The bill provides some help if the individual municipality, if that town requests some assistance in their assessment practices. It seems to me to be an entirely reasonable approach.

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

Mr. JACKSON: Mr. President, I might point out, I am sure everyone of the Senators has this Report of the Select Committee on State Property Tax Valuation, which was published, I believe, in February of 1977, that on page 9 the quality assessment ratio, the average of the 16 Counties in the State of Maine was 36.4. Now that is really not a far cry from the 20 we have been talking about.

I would assume that there are some areas which need some assistance, and there are probably areas that would like it, but what I am saying is that here is \$260,000.00 on one piece of

legislation for 10 new positions, and all other expenses and capital improvements or expenditures, that I am sure that with the job that these communities are doing presently, and they have got until 1979 to meet this standard, that this \$260,000.00 could be utilized elsewhere more advantageously.

The PRESIDENT: Is the Senate ready for the question?

The pending question before the Senate is the motion by the Senator from Washington, Senator Wyman, that the Senate accept the Minority Ought Not to Pass Report of the Committee.

The Chair will order a Division.

Will all those Senators in favor of the motion to accept the Minority Ought Not to Pass Report of the Committee, please rise in their places to be counted.

The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be 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 Washington, Senator Wyman, that the Senate accept the Minority Ought Not to Pass Report of the Committee.

A yes vote will be in favor of accepting the Ought Not to Pass Report. A no vote will be opposed.

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

#### ROLL CALL

YEA — Chapman, Collins, D.; Cummings, Curtis, Farley, Greeley, Hewes, Hichens, Jackson, Lovell, Martin, McNally, Pierce, Snowe, Usher, Wyman.

NAY — Collins, S.; Conley, Danton, Huber, Levine, Mangan, Merrill, Minkowsky, Morrell, O'Leary, Pray, Speers, Trozky.

ABSENT — Carpenter, Katz, Redmond.

16 Senators having voted in the affirmative, and 13 Senators in the negative, with 3 Senators being absent, the motion to accept the Minority Ought Not to Pass Report of the Committee does prevail.

The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, having voted on the prevailing side, I now move reconsideration and hope that you vote against me.

The PRESIDENT: The Senator from Washington, Senator Wyman, now moves the Senate reconsider its action whereby it accepted the Minority Ought Not to Pass Report.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I am going to ask for a Division on the motion to reconsider, and ask the Senators to reconsider for a moment.

We really are facing a situation in a couple of years where there is going to be a great deal of pressure on this legislature again over these standards that we have set up. The people are going to be coming into this legislature complaining that they cannot meet these standards, and I just think that it would be a help if we are interested in improving property taxation to be able to say that we have made services available to the towns that wanted them and that is all this is about, the ugly head of the state, if that is the way you perceive it, will not come into your towns unless they are asked to, to provide this assistance. Now this is the opposite of a Portland Bill. This is a non-Portland Bill because Portland does not need this help. The citizens of Portland have very excellent,

very capable, very professional tax assessing in their town. Some of these small towns need this help, and I think that a vote the other way right now would show some foresight on your part, and would be a lot easier to explain a couple of years from now when these small towns come in and say we just cannot do this, we cannot meet these standards, to be able to point to the fact that this assistance was made available, and I would hope that the Senate would reconsider its position and make it available.

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

Mr. SPEERS: Mr. President, I would echo the sentiments just expressed, and I would hope the Senate would reconsider its position on this matter. I think it is probably a far more important bill than has been expressed so far in the debate this morning, and I would reiterate that it simply provides a mechanism whereby there can be some assistance provided for those towns which feel that they need some assistance and require that assistance.

The PRESIDENT: A Division has been requested.

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

Will all those Senators opposing the motion to reconsider, please rise in their places to be counted.

13 Senators having voted in the affirmative, and 16 Senators in the negative, the motion to reconsider does not prevail.

Sent down for concurrence.

The President laid before the Senate:

House Reports — from the Committee on Labor — Bill, "An Act to Increase the Minimum Wage to \$3 per hour." (H. P. 1173) (L. D. 1403) Report A — Ought to Pass as Amended by Committee Amendment "A" (H-529); Report B — Ought to Pass as Amended by Committee Amendment "B" (H-530); Report C — Ought to Pass as Amended by Committee Amendment "C" (H-531); Report D — Ought Not to Pass

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Acceptance of a Report.

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

Mr. McNALLY: Mr. President, I move that Report "D" be accepted, Ought Not to Pass, and I would like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Mr. McNALLY: Mr. President, already you have in the law, reading from it, "and whenever the highest minimum wage is increased in excess of \$2.30 per hour, the minimum wage established under this section shall be increased in the same amount, effective on the same date as the increase in the highest Federal Minimum Wage, but in no case shall the minimum wage exceed \$3.00 per hour." That is the present law.

Now if we go along with that idea, we will not be ahead of any of the other states. We will give the chance for people who might want to come here, and hire a factory or build a factory and become an industry, to see the advantages of being here in Maine, and not being taxed more than other things by a wage which is higher than the other states that they can go to.

The other thing is I have received several letters which I will not read, but I will tell you where they are from. I have one there from South Paris, which is a small concern which says that he is a small businessman and he would have to lay off his regular employee and the part time one. I have another one from Fort Kent which runs a clothing shop of some kind and states that they would have to do likewise. I got another one from Fort Fairfield, which is evidently about the same kind of a business, and they allow they would have to do the same

thing. I have got a letter here from Brunswick, Maine known as the Clothes House, Inc., and they say the same thing that these other letters are saying.

But I think it was expressed very fully by the good Senator from York, the Assistant Minority Floor Leader, when we were having a hearing about innkeepers etc., and he said it is pretty simple gentlemen, talking to us on the committee, if so and so comes about I now have four people that is working, and I will lay off one if I need to. If it still becomes too much money and I cannot make any money with my business, I will lay off another one until finally I will get them all laid off if I have to in order for me to keep doing business and make any money. I find that is what the little fellow is saying. I also have one letter here from the Solon Manufacturing Company, that maybe somebody else has, which is saying the same thing, that they are in competition with other states and also with foreign countries in what they produce up in Solon, that is why that I will ask for a Roll Call to Accept the Ought Not to Pass Report "D".

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

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

The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: Mr. President, I would like to ask permission to pair my vote with that of Senator Katz, who is unable to be here today. It is my understanding that if he were here he would vote in favor of the motion, and I intend to vote in opposition to it.

The PRESIDENT: The Senator from Cumberland, Senator Morrell, now requests leave of the Senate to pair his vote with the Senator from Kennebec, Senator Katz, who if he were here would vote yea, and the Senator from Cumberland would vote nay. Is it the pleasure of the Senate to grant this leave? It is a vote.

Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Hancock, Senator McNally, that the Senate accept Report "D", Ought Not to Pass.

A yes vote will be in favor of accepting the Ought Not to Pass Report. A nay vote will be opposed.

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

#### ROLL CALL

YEA — Chapman, Collins, D.; Collins, S.; Cummings, Curtis, Greeley, Hewes, Hichens, Huber, Jackson, Lovell, McNally, Pierce, Snowe, Speers, Trozky, Wyman.

NAY — Conley, Danton, Farley, Levine, Mangan, Martin, Merrill, Minkowsky, O'Leary, Pray, Usher.

ABSENT — Carpenter, Redmond.

PAIRED — Katz, Morrell.

17 Senators having voted in the affirmative, and 11 Senators in the negative, with 2 Senators pairing their votes, and with 2 Senators being absent, the Motion to accept the Ought Not to Pass Report does prevail.

(See Action Later Today)

The President laid before the Senate: Bill, "An Act Relating to Suitability of Employment." (H. P. 764) (L. D. 903)

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

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

Mr. SPEERS: Mr. President, I move this item lie on the table.

The PRESIDENT: The Chair recognizes the

Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a Roll Call, please rise in their places to be counted.

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

The pending question before the Senate is the Motion by the Senator from Kennebec, Senator Speers, that L. D. 903 be tabled.

A yes vote will be in favor of tabling. A nay vote will be opposed.

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

#### ROLL CALL

YEA — Chapman, Collins, D.; Collins, S.; Cummings, Curtis, Greeley, Hewes, Hichens, Huber, Jackson, Lovell, McNally, Morrell, Pierce, Snowe, Speers, Trotzky, Wyman.

NAY — Conley, Danton, Farley, Levine, Mangan, Martin, Merrill, Minkowsky, O'Leary, Pray, Usher.

ABSENT — Carpenter, Katz, Redmond.

18 Senators having voted in the affirmative, and 11 Senators in the negative, with 3 Senators being absent, the Motion to table does prevail.

The President laid before the Senate: Bill, "An Act to Amend the Membership and the Legislative Mandate of the Capitol Planning Commission." (H. P. 1128) (L. D. 1345)

Tabled — June 13, 1977 by Senator Morrell of Cumberland

Pending — Enactment

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

Mr. MORRELL: Mr. President, we are still waiting for the Amendment from the Legislative Research, and I would appreciate it if somebody would table it for two legislative days.

On motion of Mr. Speers of Kennebec, Retabled for one legislative day.

#### (Off Record Remarks)

The President laid before the Senate:

House Reports — from the Committee on Business Legislation — Bill, "An Act Relating to an Increase in the Volume Fees Paid by Major Creditors under the Maine Consumer Credit Code." (H. P. 180) (L. D. 242) Majority Report — Ought to Pass as Amended by Committee Amendment "A" (H-485); Minority Report — Ought Not to Pass

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Acceptance of Either Report

On Motion of Mr. Pierce of Kennebec, Majority Ought to Pass as Amended Report Accepted.

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

The President laid before the Senate: Bill, "An Act to Amend the Maine Income Tax Law." (H. P. 1514) (L. D. 1749)

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

Passed to be Engrossed in concurrence as amended.

The President laid before the Senate: Bill, "An Act to Provide for the Provisional Payment of Certain Disability Benefits Pending the Outcome of a Workmen's Compensation Application." (H. P. 1373) (L. D. 1576)

Tabled — June 13, 1977 by Senator Huber of Cumberland

Pending — Enactment

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

The President laid before the Senate: Bill, "An Act Relating to Time Limitation on Providing Written Reasons for Termination of Employment." (H. P. 1085) (L. D. 1309)

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Consideration

The PRESIDENT: The pending question before the Senate, shall this Bill become a law notwithstanding the objections of the Governor? According to the Constitution, the vote will be taken by the yeas and nays.

A vote of yes will be in favor of the Bill. A vote of no will be in favor of sustaining the veto of the Governor.

Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I would appreciate if it a member of the Labor Committee that heard this bill may respond to this, but anyone that was opposed to this bill as it came through the Senate, I would appreciate it if they would stand up and state the reasons why they were opposed to it at that time.

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

The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I will tell you what happened in the Committee. This was a bill that was put in by a Representative, a young one whose father used to be in the other House when I was there, and on it it originally had a five day limit for furnishing the reason for any termination of an employee being out of work, and it was later amended to make it a ten day limit, but at the time I was revolving over in my mind what happens to my crew if I lay them off or fire anybody, I immediately get a form to fill out by the Manpower Affairs, and in a very short while due to the fact that we do have an office there in Ellsworth, then they get the reason why that man is out of employment.

There was only two people that spoke for it; one was an attorney for the Pine Tree Legal Assistance, and the other was a representative of the Garment Workers Union. The ones that spoke against it were simply a couple of other people that have to do with the same thing that I do, and they could not just understand why the bill was necessary. They spoke more on the idea that they could not see why the bill had to be put in.

But it is now on the books as you see it, and I think the Governor is right when he says it is not necessary, that it is something that can be taken care of by the Manpower Affairs, and as far as I know always has been taken care of by Manpower Affairs.

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

Mr. PRAY: Mr. President and Members of the Senate: I would just like to go through the statutes with you and with the original law and what this change does.

The present law at this time states that an employer shall, upon written request of an effective employee, give that employee the written reasons for termination of his employment. There has been several problems which has arisen to cause this legislation to be introduced. Basically, individuals have not received an answer from the employer, and in many matters that we have in State we are required to file within a certain number of days. For example, if I had laid off an employee and the individual filed for unemployment, I would have

so many days when the form came from the state to send that form back, and this piece of legislation just falls in line with that which we require employers to do with so many of our state forms, is that they would be limited in the number of days that they would have to respond within a certain time period. The original bill stated five days, and through the committee process we decided that was too short, and we would increase it to ten days. And, as I said, very similar to the many forms that we receive from the Bureau of Taxation, Manpower Affairs, and other Bureaucratic Institutions.

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

Mr. PRAY: Mr. President and Members of the Senate: I would just share one last remembrance with you. I believe that this Bill went through the three readings in this Chamber and went under the hammer each time.

The PRESIDENT: A vote of yes will be in favor of the bill. A vote of no will be in favor of sustaining the veto of the Governor.

The doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA — Conley, Farley, Merrill, Minkowsky, O'Leary, Pray, Speers, Usher.

NAY — Chapman, Collins, D.; Collins, S.; Cummings, Curtis, Danton, Greeley, Hewes, Hichens, Huber, Jackson, Levine, Lovell, Mangan, Martin, McNally, Morrell, Pierce, Snowe, Trotzky, Wyman, Sewall.

ABSENT — Carpenter, Katz, Redmond.

8 Senators having voted in the affirmative, and 22 Senators in the negative, with 3 Senators being absent, the veto of the Governor is sustained.

#### Reconsidered Matter

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

Mr. McNALLY: Mr. President, with reference to House Reports — from the Committee on Labor — Bill, "An Act to Increase the Minimum Wage to \$3 per hour." (H. P. 1173) (L. D. 1403) having voted on the prevailing side, I move for reconsideration and hope you will vote against me.

The PRESIDENT: The Senator from Hancock, Senator McNally, now moves the Senate reconsider its action whereby it accepted the Ought Not to Pass Report relative to L. D. 1403.

A viva voce vote being had,

The Motion to reconsider does not prevail.

Sent down for concurrence.

The President laid before the Senate: Bill, "An Act to Repeal the Age Limit for Directors of Mutual Institutions." (H. P. 860) (L. D. 1049)

Tabled — June 13, 1977 by Senator Chapman of Sagadahoc

Pending — Enactment

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

The President laid before the Senate:

Senate Report — from the Committee on Veterans and Retirement — Bill, "An Act to Base Adjustments of Teacher and State Employee Retirement Allowances on the Consumer Price Index." (S. P. 317) (L. D. 1075) Ought to Pass as Amended by Committee Amendment "A" (S-236)

Tabled — June 13, 1977 by Senator Speers of Kennebec

Pending — Acceptance of Report

Ought to Pass as Amended Report Accepted.

The Bill Read Once. Committee Amendment "A" Read.

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

Mr. SPEERS: Mr. President and Members of the Senate: This bill is a child of this body as it is sponsored by three members of this body, and it is an attempt to allow state employee retirees, teacher retirees, an opportunity to receive increases in their retirement benefits without the necessity of coming to the legislature each and every single year.

But there is an important proviso on that condition, and that proviso is that as long as the Retirement Fund and solvency of the Retirement Fund is not being endangered. I think we all know and recognize the condition of the Social Security System under the Federal Laws at the present time. I think we all share the grave concern that we do not create a situation with our State Retirement System that would also place that Retirement System in the same jeopardy as the Social Security System is now under the Federal system.

The Bill, as it was originally introduced, took into consideration that concern, and stated that the retirement benefits would be increased periodically in keeping with the consumer price index, as long as and only as long as the actuary of the Retirement System indicated that the solvency of the Fund would not be placed in jeopardy, and if the actuary so indicated, then the trustees would have to come back to the legislature, and the legislature would have to make an affirmative determination on that report, and it would be voted yes or no and we could take into consideration the contributions to the fund that are made by active state employees.

Now under the present condition, the present situation, under present law, state retirees automatically receive an increase with every general wage adjustment that active state employees undergo, and I would submit to you that the fund is an extremely solvent fund. It is very sound fund. In fact, it is the envy of other states of this Union because we do have an entirely sound Retirement Fund for our retired employees, but it is sound even though it takes into consideration and grants a retirement benefit increase every time that active state employee's wages increase. Under those conditions it is still a sound fund.

Now I am not in very wide disagreement with the Report of the Committee and the Committee Amendment, but I am in disagreement with that Report on one very fundamental issue. The Committee Amendment would tie increases in the retirement benefits solely to the consumer price index, and it states that if the consumer price index rises by more than four percent in any given year, then the question of retirement benefits, an increase in retirement benefits must be put to the legislature again. Now in the first place I submit to this body that obviously the Consumer Price Index does rise more than four percent per year, and is expected to do so in the next number of years, and that this would, if we adopt this Committee Amendment, place the retirees in precisely the position that they are in at the present time, that is that they would have to come to this legislature each and every year for a determination as to their benefits.

What I would propose to do, if this Amendment is defeated, would be to offer a Senate Amendment on the Second Reading of this Bill, which would also tie the benefits into the Consumer Price Index. But unlike the Committee Amendment would take into consideration the fact that state employees wages will very hopefully be increasing over the next few years, the next coming years, and that those increased contributions to the fund ought also to be taken into consideration as to the continued solvency of the Retirement Fund.

What my Senate Amendment would do would be to provide that there be determined a percentage increase for state employee wages each year, and that if the Consumer Price Index

rose more than three percent, not four, but three percent above the percentage increase of your state employee's wages, the active employees and, therefore, the contributions given into the fund, that if that occurs, then they would have to come back to the legislature for determination as to the benefits to be granted. But if it does not go above that, then the benefits would be granted automatically.

Now I submit that this does not endanger the solvency of the fund, because we are taking into consideration increased employee contributions, active employee contributions to the Retirement Fund, and that is what is being done today and the fund is solvent, it is a sound fund, and I think that we should continue to take into consideration the contributions that are being made by active state employees.

Now I would suppose that if you feel that the legislature should not take into consideration, should not provide for an automatic trigger such as the Consumer Price Index, then you probably should vote against the entire bill. But I think that the legislature can very easily afford to provide for an automatic trigger as long as at the same time we provide that that automatic trigger does not run away with the fund, and that if it does begin to outstrip the contributions that are being made by active state employees, then there is a provision that the Retiree Board of Trustees must come back to the legislature for that determination.

Mr. President, I would move the indefinite postponement of the Committee Amendment. When the vote is taken I ask that it be taken by the yeas and nays.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, the Committee Report, which is substantially found in Committee Amendment "A", is a unanimous Report, and the position of the committee was reached only after considering a great many alternatives, including those that were urged upon us by the good Senator from Kennebec. It would really be most helpful if we had before us the Amendment which the Senator from Kennebec proposes as an alternative to this package. I have not seen it yet. I heard it described last night for the first time, but I did not fully comprehend it. I am not sure that I do right now.

I think it is too bad that we do not have it to study and deal with, and that the committee did not have the opportunity to have it and submit it to its actuary and find out in rather careful detail what it would mean to the system. It is extremely important to the Retirement System, not only for those already retired but for those who intend to retire and have this as a source of income in their old age. But whatever we do in this legislature will be something that will endure through the years in a way that will keep the solvency, as the Senator calls it, sound and still reflect inflationary trends as far as the money resources will permit.

The Senator's original suggestion that the word solvency be the test was explored with three actuaries, and all of them told us that this was not a satisfactory word in Retirement Systems, that it had a great many interpretations, and that none of these interpretations was objective, that it just was not a suitable test to apply if the legislature wanted an objective test to guide the board in awarding increases in the benefits.

So we made a survey of all 50 states and we looked at the Systems of those that attracted us most. We found that there were 12 states that were using the Consumer Price Index as a trigger for increasing benefits, and we found that in most of those states there was a lid on the amount of increase that could take place in any one year without reference to the legislative body. The range of ceilings among those 12

states was from one and one-half percent to. I believe, five percent in one state, but the bulk of the states were in the three percent and less category for ceilings.

The Committee finally came to a position of four percent, and at that point if the cost of living, if the Consumer Price Index has gone higher there is a provision that says that this will be reported to the Legislature, and the Legislature will then have to decide whether to permit a further increase in the benefits to be consistent with the Consumer Price Index at that point.

I strenuously oppose the Motion to kill the Committee's Amendment. I think that this is an area where we had ought to proceed with caution and with conservatism and with observation of experience. There is plenty of opportunity to change what we do as we gain experience. We are at a point now where we have to make a change because the traditional measure that has been used here for 10 or 12 years of the general wage increase level being the trigger and the measurement for raising benefits is now a thing of the past. We are now going into collective bargaining where different units will establish perhaps different rates, where the system of general wage increase will not be the order that we are following, and we have to find a better way.

But if we try the way suggested by the Senator from Kennebec what will happen. We posed this question to the actuary. He met with our full committee. The Senator was invited to attend but was unable to do so, and he pointed out to us the problems that he would have in a purely technical way of finding out what the average wage increase would be. There were problems of timing, units and he said to us that he just did not know how he would measure the average increase in wages under the new system that will be coming along with state employee raises. Now there may come a time when it is possible to make such measurements after we have had a little experience with collective bargaining and with the establishment of the pay scales and all, but until that time the actuary is saying to us that he does not know how to put together the sort of averaging that the Senator suggests should be the test.

As I understand the Senator's proposal, he would not only increase the benefits, the amount of the average increase in state employees pay in a given period, presumably a year, but there would also be up to a three percent increase beyond that if the Consumer Price Index took the level up to that point. The amount of inflation factor that is built into our present system is two percent, and if investment results because of high rates of return on new money coming in are greater than six and one-half percent, then from time to time it may be possible to go beyond the two percent inflation factor, but that is not anything that we can predict, so we come back to the question of just how much of this financial adventure should we entrust to the actuary of the system.

I have a very grave concern about the type of proposal that is offered to us, not in writing but by this recent verbalizing by the Senator from Kennebec. I have a further philosophical objection to his approach, and that is his idea that the Legislature should be taken out of the process as much as possible. I am entirely willing to take the Legislature out of the process for this triggering as long as there is a lid on the amount that can be triggered upward in any one year. But when we expose the ceiling to the blue sky potentially, it seems to me that the Legislature is advocating an important responsibility, not only its responsibility in appropriations, and appropriations do have to be made under current law if the system is falling short in an actuarial sense, but also its responsibility to keep an eye on this system, to review it periodically, to see what is happening, and to



get a sense of whether it is doing the kind of function that we want it to do. This idea that you put everything over in an automatic computer and forget about it just does not appeal to me.

We have on our calendar today another proposal of that same type in the form of a Constitutional Amendment, a step that would go even further than the proposal given us by the Senator from Kennebec. Pretty soon we will come to a point where the legislature is just a rubber stamp that meets and goes through the motions that do not mean anything. I would really miss the debates between our Minority Leader and our Majority Leader and others, if that were the case, and I do not think I would want to serve here anymore. I really think that we ought to be very careful in this area.

We are talking about a \$200 million Fund, and we are talking about the livelihood of people no longer able to work, because they have retired. We want them to keep up with inflation as much as the System permits, but we do not want to take any chances that the out-go will out-strip the actuarial needs for Funds in the System.

I hope that you will defeat the Motion to indefinitely postpone this Committee Amendment, and that you will go ahead with passage of the Bill as Amended by the Committee.

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

Mr. CONLEY: Mr. President and Members of the Senate: I first of all enjoyed very much the remarks made by the good Senator from Knox, Senator Collins, and as a co-sponsor for this Bill I share the same concerns as expressed by the good Senator from Kennebec, as well as the concern of the good Senator from Knox Senator Collins. But I do believe that in all fairness to this very important bill that we are discussing that the good Senator from Kennebec should at least have the opportunity to have his amendment before the Senate before any action is taken relative to the indefinite postponement of Committee Amendment "A".

Therefore, Mr. President, I would hope that some member of the Senate would table this until later in today's session.

On motion of Mr. Speers of Kennebec, tabled until later in today's session, pending the motion to indefinitely postpone Committee Amendment "A".

The President laid before the Senate: Bill, "An Act to Regulate Security Deposits on Residential Rental Units." (S. P. 519) (L. D. 1813)

Tabled — June 13, 1977 by Senator Conley of Cumberland

Pending — Motion of Senator Mangan of Androscoggin to Indefinitely Postpone

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

Mr. MANGAN: Mr. President, I request leave of the Senate to withdraw my motion to indefinitely postpone.

The PRESIDENT: The Senator from Androscoggin, Senator Mangan, now requests leave of the Senate to withdraw his motion to indefinitely postpone this bill. Is it the pleasure of the Senate to grant this leave? It is a vote.

The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, I believe the pending Motion before the Senate is to accept the Majority Ought to Pass Report.

The PRESIDENT: The Chair would advise the Senator that the pending motion will be enactment.

Mr. MANGAN: Mr. President, I, as I stated yesterday, have some very serious reservations about this bill. I tried to speak on this specific matter yesterday and I would like to point out for the members of the Senate some of the problems that I see specifically relating to this specific bill.

If we look at Section "B" of this bill, where it

states that the landlord is deemed to have complied with this action by mailing a written statement itemizing the reasons for the retention of any portion of the security deposit to the last known address of the tenant. Generally speaking, the last known address of the tenant is the place that he was just evicted from or has just left, and, therefore, I think that this is not proper notice to the tenant himself, and it would in effect not be any notice at all.

Further, the next paragraph stating that the landlord could retain security deposits for non-payment of rent, etc., is already in effect. However, if the landlord fails to provide a written statement or to return the security deposit within the time specified in Section 2, which is 21 days, then the landlord will forfeit his right to withhold any portion of the security deposit. That is interesting in light of the fact that I have done my time with the Legal Aid Society. I was in there for two years plus. I have been a tenant for the last 14 years, and I have seen so many apartments that have got no agreement with the landlord relating to security deposits, but if there is an agreement relating to a security deposit, the issue basically that comes up here is can the landlord withhold the security deposit at the termination of the tenancy, then the landlord must provide a written notice, according to this bill, of the reasons why the security deposit is being kept.

However, many times, and I recall the last eviction that I had where the landlord had to call the Fire Department to turn off the hot water, because the tenant had ripped the sink off the wall. He was very busy repairing and cleaning the apartment and trying to get it ship-shape so that he could spend the next two weeks or so trying to show the apartment, trying to get it filled again. He was so busy cleaning up the apartment and what not and had no time to sit down and justify why he was holding the security deposit of \$44.00. Well, had he done that, he would have said, "Well, for the damage to the sink, I withdraw \$500.00. For the fact that you knocked out a wall between the bedroom and the bathroom to make it more convenient for you to go to the bathroom, I have to assess you another \$5,500.00, or what have you, and since this does not really cover the security deposit I am afraid I am going to have to withhold your \$44.00.

We then get into Section 634 and wrongful retention. If the landlord does not provide the information within the 21 days, then the tenant notifies him, now we are assuming he can find the tenant. If he cannot find the tenant, then we have got a problem. Now seven days after that the tenant says I am going to bring you to court because you have wrongfully retained my money. If the landlord says, oops, I have forgotten and does not give him the money instantly, now we are not talking about defenses here, we are not talking about the sink, we are not talking about the walls, we are not talking about any damages, we are just saying if he does not kick back the money, the security deposit in seven days, then it will be presumed that the landlord is willfully and wrongfully retaining the security deposit. So the landlord has got to fight, one, the presumption, and he has got to go to Court to retain his \$44.00 for his \$10,000.00 in damages.

Now, the second issue that comes up here is whether the presumption can be rebutted or not. If it cannot be then there is double damages for willful retention of the security deposit. So what we are assuming is, first of all, he can find the tenant. If he cannot find the tenant, the tenant says ah ah, you have not found me. You have got seven days to give me back all my money. There is no defense. If there is no defense, then it is willfully presumed that he is willfully and wrongfully retaining the security deposit. If this is the case, then all of a sudden

he has got to kick back twice the security deposit.

I think we have hurt the landlords enough this year. I think we hurt them again this morning. It bothers me that we should be continuing with this type of legislation. I feel that it is wrong, and I would urge the Senate to vote against the pending motion for enactment.

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

Mr. TROTZKY: Mr. President and Members of the Senate: I would urge the Senate to enact this bill. There are many low-income citizens of the State of Maine who are tenants and the security deposit, whether it be \$150.00 or \$200.00 or more is very meaningful to them, and it is a lot of money, and it does not belong to the landlord. If the landlord wants to keep that security deposit, or keep part of that security deposit, then I feel that it is his obligation to give that tenant an itemized statement showing what the damages are in that apartment.

Secondly, the bill also provides an orderly means for the return of that security deposit, and it sets some time limits on that, within 21 and 30 days. That is enough time for a landlord to give the tenant an itemized list of damages if he wants to retain that deposit.

I would urge the Senate to support this bill.

Also, one other thing, in the bill, owner-occupied rental housing with five or fewer units is exempted.

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

Mr. CONLEY: Mr. President and Members of the Senate: Really, sometimes I become amazed at the Senate. This bill has been debated time and time again. It has been received by the Senate on every occasion, withstood every attack that has been made on the bill. The good Senator from Penobscot, Senator Trotzky, has very briefly described exactly what the bill does. It is a question as to whether the tenants are going to have some sort of rights.

I would just hope that the Senate this morning would stick by its previous convictions and pass this bill to be enacted, so we can get on with other legislation before us.

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

Mr. MORRELL: Mr. President, I move the question.

The PRESIDENT: The Senator from Cumberland, Senator Morrell, has moved the question. Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Penobscot, senator Trotzky.

Mr. TROTZKY: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I would ask what the Motion is before the Senate.

The PRESIDENT: The pending question before the Senate is Enactment of L. D. 1813.

The Chair recognizes the same Senator

Mr. CONLEY: Mr. President, the previous question was not ordered.

The PRESIDENT: The previous question was Enactment.

Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

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

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

**ROLL CALL**

YEA — Chapman, Collins, D.; Conley, Cummings, Curtis, Danton, Greeley, Huber, Jackson, Levine, Lovell, Martin, McNally, Merrill, Minkowsky, Morrell, O'Leary, Pierce, Pray, Snowe, Speers, Trotzky, Usher, Wyman.

NAY — Collins, S.; Hewes, Mangan.

ABSENT — Carpenter, Farley, Hichens, Katz, Redmond.

24 Senators having voted in the affirmative, and 3 Senators in the negative, with 5 Senators being absent, this Bill will be passed to be Enacted.

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

Mr. CONLEY: Mr. President, having voted on the prevailing side I now move reconsideration, and I hope you vote against me.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate reconsider its action whereby this Bill was passed to be enacted.

A viva voce vote being had,

The Motion to reconsider does not prevail.

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

The President laid before the Senate: Bill, "An Act Relating to the Jurisdiction of the Administrative Court." (S. P. 241) (L. D. 733)

Tabled — June 13, 1977 by Senator Merrill of Cumberland

Pending — Motion of the Same Senator to Reconsider action whereby Bill was Passed to be Engrossed.

The PRESIDENT: Is it now the pleasure of the Senate to reconsider its action whereby this Bill was passed to be engrossed? It is a vote.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I offer Senate Amendment "B" (S-244) and move its adoption. Senate Amendment "B" Read and Adopted.

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

Sent down for concurrence.

Out of order and under suspension of the rules: the Senate voted to consider the following additional papers from the House:

**Joint Orders**

Expressions of Legislative Sentiment recognizing that: Debra S. Allen has been recognized for her outstanding academic record by being chosen Valedictorian of Oak Hill High School. (H. P. 1719)

Margo L. Stevens has been recognized for her excellent academic record by being chosen Salutatorian of Oak Hill High School. (H. P. 1720)

The Oak Hill High School baseball team has won the Mountain Valley Conference Baseball Championship for 1977. (H. P. 1718)

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

On Motion of Mr. Huber of Cumberland, Adjourned until 9:30 tomorrow morning.