

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

January 3, 1979 to May 4, 1979

STATE OF MAINE
One Hundred and Ninth Legislature
JOURNAL OF THE SENATE

April 23, 1979

Senate called to Order by the President.

Prayer by the Honorable Mary Najarian of Portland.

Senator NAJARIAN: O God, the Fountain of wisdom, whose statutes are good, and whose law is truth, keep us from pettiness, let us be large in thought, in word and indeed. Free us from fault finding and hasty judgment. Teach us to put into action our better impulses. Grant that we may realize it is the little things that create differences, that in the important things in life we are as one.

From pride, vainglory, and hypocrisy, from envy, hatred, malice and all uncharitableness, good Lord deliver us. Amen.

Reading of the Journal of yesterday.

Senate Papers

Senator Pierce of Kennebec, presented, Bill, "An Act to Amend the Maine Sunset Law." (Emergency) (S. P. 512) (Reported out pursuant to Legislative Council order 4/17/79.)

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

Sent down for concurrence.

**Study Report—Commissioner
of Business Regulation**

The Commissioner of Business Regulation to whom was referred the study of the costs and benefits accruing to the State as a result of self-insurance of all or part of the group health benefits for State Employees, pursuant to Resolve 1977, chapter 75, has had the same under consideration, and asks leave to report that Bill, "An Act Relating to a Health Benefits Program for State Employees", (S. P. 513) (L. D. 1574) be referred to the Committee on Business Legislation for public hearing, and printed pursuant to Joint Rule 17.

**Study Report — Committee on
Business Legislation**

The Committee on Business Legislation to which was referred the study of the Continuation of Coverage under certain Group Health Insurance Policies, pursuant to Resolve 1977, Chapter 66, asks leave to report that Bill, "An Act to Require Conversion of Group Medical Coverage and Extension of Benefits." (S. P. 514) (L. D. 1575) be referred to this Committee for public hearing and printed, pursuant to Joint Rule 17.

Which Reports were Read and Accepted and the Bills referred to the Committee on Business Legislation.

Sent down for concurrence.

Orders

An Expression of Legislative Sentiment recognizing that: Brunswick High School won first place in the large school division in the Third Annual State Championship Math Meet held on April 12, 1979, at the University of Southern Maine and sponsored by the Maine Association of Math Leagues . . . (S. P. 515) is presented by Senator Clark of Cumberland, Cosponsored by Representative Bachrach of Brunswick and Representative Martin of Brunswick.

An Expression of Legislative Sentiment recognizing that: Yarmouth High School won first place in the small school division in the Third Annual State Championship Math Meet held on April 12, 1979, at the University of Southern Maine and sponsored by the Maine Association of Math Leagues . . . (S. P. 516) is presented by Senator Clark of Cumberland, Cosponsored by Representative Jackson of Yarmouth.

Which were Read and Passed.

Sent down for concurrence.

**Committee Reports
House**

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

Bill, "An Act to Provide Amateur Radio Operators with Initial Plates at Reduced Costs." (H. P. 765) (L. D. 962)

Leave to Withdraw

The Committee on Energy and Natural Resources on, Bill, "An Act to Amend the Subdivision Law." (H. P. 520) (L. D. 663)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act Concerning the Habitability of a Rental Unit." (H. P. 467) (L. D. 599)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Prohibit Unjust Retaliatory Evictions." (H. P. 596) (L. D. 740)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Establish a Judicial Selection Advisory Committee." (H. P. 1026) (L. D. 1280)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act Concerning Availability of Remedy under Laws Relating to Landlord-tenant Relations." (H. P. 1094) (L. D. 1355)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Establish a Truth-in-Renting Law." (H. P. 814) (L. D. 1016)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Permit the Consolidation of Certain Court Cases." (H. P. 741) (L. D. 928)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Clarify Judicial Discretion Under Warrant of Habitability." (H. P. 740) (L. D. 927)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act to Require Good Cause for Winter Eviction." (H. P. 739) (L. D. 926)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Judiciary on, Bill, "An Act Concerning Implied Warranty and Covenant of Habitability." (H. P. 244) (L. D. 289)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted, in concurrence.

Senator Katz of Kennebec, was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed until the sound of the bell.

Recess

After Recess

The Senate called to order by the President.

The Committee on Fisheries and Wildlife on, Bill, "An Act to Prohibit Hunting of Bear with Dogs and to Prohibit Hunting Bear with Bait." (H. P. 457) (L. D. 570)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Bill Substituted for the Report and Subsequently Passed to be Engrossed as amended by House Amendments "A" (H-199) and "C" (H-218).

Which Report was Read.

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

Senator REDMOND: I move that the Senate Accept the Leave to Withdraw Report.

The PRESIDENT: The Senator from Somerset, Senator Redmond now moves that the Senate Accept the Leave to Withdraw Report.

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Mr. President, I would ask the Senate to reject the motion to accept Leave to Withdraw Motion....

The PRESIDENT: The Chair will order a Division.

Will all those Senators in favor of Accepting the Leave to Withdraw Report of the Committee, please rise in their places to be counted.

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

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: I request a Roll Call.

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

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

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

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

Senator CONLEY: Mr. President, I'd be interested in hearing a little more about this bill before the vote was taken. I wonder if someone from that illustrious Fish and Game Committee that seems so deliberate on slaughtering our Natural Resources might give some wisdom.

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

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

Senator TRAFTON: Mr. President and Members of the Senate: This is L. D. 570 that we're speaking of this morning, An Act to Prohibit Hunting of Bear with Dogs and to Prohibit Hunting Bear with Bait.

The Bill has been amended, in the other body, to remove the provision dealing with the Hunting of Bear with Dogs. So if we were to reject the Leave to Withdraw Report, and substitute the Bill and its accompanying amendments, we would be prohibiting the Hunting of Bear with Bait.

I feel that it is only humane to accept this bill this morning. Certainly any sportsman with a gun has adequate advantage over a bear without the use of bait. I've received a number of concerned letters on this subject, as I'm sure many of you have, and I would hope you would join with me today and accept the Bill for the Report.

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

Senator NAJARIAN: Mr. President, I wish

permission to pair my vote with Senator Martin. If he were here, he would be voting Yes, and I would be voting No.

The PRESIDENT: The Senator from Cumberland, Senator Najarian, now Requests Leave of the Senate, to pair her vote with the Senator from Aroostook, Senator Martin. If he were here, he would be voting, Yea, and the Senator from Cumberland, Senator Najarian would be voting, Nay.

Is it the pleasure of the Senate to grant this leave?

It is a vote.

The pending question before the Senate is the Motion by the Senator from Somerset, Senator Redmond that the Senate Accept the Leave to Withdraw Report of the Committee.

A Yes vote will be in favor of Accepting the Leave to Withdraw Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Ault, Chapman, Clark, Collins, Cote, Devoe, Emerson, Farley, Gill, Lovell, McBreairey, Minkowsky, O'Leary, Perkins, Pierce, Pray, Redmond, Shute, Silverman, Sutton, Teague, Usher.

NAY—Conley, Hichens, Huber, Katz, Traf-ton, Trotzky.

ABSENT—Carpenter, Danton.

A Roll Call was had.

22 Senators having voted in the affirmative and 6 Senators in the negative, with 2 Senators having paired their votes, and 2 Senators being absent, the Motion to Accept the Leave to Withdraw Report of the Committee does prevail.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Senator O'LEARY: Mr. President, having voted on the prevailing side, I now move reconsideration and I would ask the Senate to vote against me.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, now moves the Senate Reconsider its action whereby it accepted the Leave to Withdraw Report of the Committee.

Will all those Senators in favor of Reconsideration please say Yes.

Will all those Senators opposed, please say No.

A Viva Voce Vote being had.

The Motion to Reconsider does not prevail.

Sent down for concurrence.

Ought to Pass

The Committee on Labor on, Bill, "An Act to Define Employer under the Occupational Safety and Health Law." (H. P. 817) (L. D. 1019)

Reported that the same Ought to Pass.

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

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

Ought to Pass — As Amended

The Committee on Fisheries and Wildlife on, Bill, "An Act to Permit the Advisory Council to the Commissioner of Inland Fisheries and Wildlife to Give Advice on the Approval of Rules." (H. P. 269) (L. D. 355)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-234)

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

The Committee on Labor on, Bill, "An Act to Clarify Unit Clarification Procedures under the Municipal Labor Relations Act." (H. P. 216) (L. D. 264)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-239)

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amend-

ment "A".

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

Divided Report

The Majority of the Committee on Health and Institutional Services on, RESOLVE, to Authorize Kennebec County to Develop a Pilot Program for Inmates Incarcerated at the County Jail. (H. P. 301) (L. D. 398)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-207)

Signed:

Senators:

GILL of Cumberland

CARPENTER of Aroostook

Representatives:

CURTIS of Milbridge

PRESCOTT of Hampden

BRENERMAN of Portland

BRODEUR of Auburn

CLOUTIER of S. Portland

VINCENT of Portland

NORRIS of Brewer

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

Signed:

Senator:

HICHENS of York

Representatives:

MacBRIDE of Presque Isle

MATTHEWS of Caribou

PAYNE of Portland

Comes from the House, the Majority Report Read and Accepted and the Resolve Passed to be Engrossed as amended by Committee Amendment "A".

Which Reports were Read.

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

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

Senator GILL: Mr. President, I would move Indefinite Postponement of Committee Amendment "A".

The PRESIDENT: The Senator from Cumberland, Senator Gill, now moves the Senate Indefinitely Postpone Committee Amendment "A".

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Mr. President, I would ask the Senator from Cumberland, Senator Gill to explain the amendment and why the Indefinite Postponement.

The PRESIDENT: The Senator from Androscoggin, Senator Trafton, has posed the question to the Senator from Cumberland, Senator Gill.

The Chair recognizes that Senator.

Senator GILL: Mr. President, Committee Amendment "A" is the Emergency Clause on the bill and the bill does provide for detainees as a pilot project for Kennebec County. The Committee feels that they would be willing to go along with the bill, if Enacted, taking place in the proper time, and not the Emergency Clause put on there.

Committee Amendment "A" Indefinitely Postponed in non-concurrence. The Bill, Tomorrow Assigned for Second Reading.

Senate

Leave to Withdraw

Senator Chapman for the Committee on Business Legislation on, Bill, "An Act Relating to the Sunday Sale of Furniture." (S. P. 388) (L. D. 1199)

Reported that the same be granted Leave to Withdraw.

Senator Chapman for the Committee on Business Legislation on, Bill, "An Act Concerning the Licensing of Wholesale Used Vehicle Dealers." (S. P. 435) (L. D. 1384)

Reported that the same be granted Leave to Withdraw.

Senator Shute for the Committee on Marine Resources on, Bill, "An Act to Establish a Marine Worm Council." (S. P. 315) (L. D. 945)

Reported that the same be granted Leave to Withdraw.

Senator Shute for the Committee on Marine Resources on, Bill, "An Act to Limit 3 Lobster Traps to One Warp in the New Meadows River North of the Basin." (S. P. 168) (L. D. 376)

Reported that the same be granted Leave to Withdraw.

Which Reports were Read and Accepted. Sent down for concurrence.

Ought to Pass — As Amended

Senator Shute for the Committee on Legal Affairs on, Bill, "An Act to Simplify the Requirements for Licensing Certain Clergymen to Perform Marriages." (S. P. 287) (L. D. 847)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-116).

Senator Farley for the Committee on Legal Affairs on, Bill, "An Act to Provide for Consistent Hours of Operation by State Retail and Agency Liquor Stores." (Emergency) (S. P. 293) (L. D. 854)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-117)

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

Divided Report

The Majority of the Committee on Labor on, Bill, "An Act Concerning Unemployment Compensation Benefits for Employees Formerly Working for a Bankrupt Employer." (S. P. 92) (L. D. 178)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-115)

Signed:

Senators:

SUTTON of Oxford

PRAY of Penobscot

LOVELL of York

Representatives:

MARTIN of Brunswick

FILLMORE of Freeport

McHENRY of Madawaska

BAKER of Portland

TUTTLE of Sanford

BEAULIEU of Portland

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

Signed:

Representatives:

CUNNINGHAM of New Gloucester

DEXTER of Kingfield

LEWIS of Auburn

Which Reports were Read.

The Majority Ought to Pass, as amended, Report, Accepted, and the Bill Read Once. Committee Amendment "A" Read and Adopted, and the Bill, as amended Tomorrow Assigned for Second Reading.

Second Readers

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

House — As Amended

Bill, "An Act to Revise the North American Indian Scholarship Act". (H. P. 387) (L. D. 497)

Bill, "An Act to Clarify the Responsibilities of the State Parole Board". (H. P. 977) (L. D. 1191)

Which were Read a Second Time and Passed

to be Engrossed, as amended, in concurrence.

Enactors

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

An Act to Clarify Certain Provisions of the Banking Laws. (H. P. 334) (L. D. 433)

An Act Concerning Appeals to the Superior Court. (H. P. 601) (L. D. 748)

An Act to Establish Standards for the Sale and Installation of Foam Plastic Insulation. (H. P. 622) (L. D. 779)

An Act to Protect Insurance Claim Adjusters and Appraisers from Conflict of Interest. (H. P. 654) (L. D. 813)

An Act to Define the Post of Sheriff as Full Time and to Increase the Salary of that Post. (H. P. 472) (L. D. 590)

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

An Act to Establish Registration of Polygraph Examiners. (H. P. 91) (L. D. 103)

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

Senator CONLEY: Mr. President and Members of the Senate: I was very hurriedly taking a look at this Bill, "An Act to Establish Registration of Polygraph Examiners". I noticed just in one part of it and that is the Examiners License Qualifications, and it states for qualifications, a person is qualified to receive a license as a polygraph examiner if A) he is at least 21 years of age and; B) who has not been convicted of a crime involving Moral Turpitude. I wonder if some member of the Committee might explain what a crime of moral turpitude is?

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

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: Mr. President and Members of the Senate: That question was raised in Committee, I do not know that I can give you an answer as I stand here right now. Apparently it is a use of words which have some meaning, but rather broad, as I am sure is what you are concerned about. I cannot give you a more specific answer as I stand here right at the moment.

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

On Motion by Senator Huber of Cumberland the Senate voted to remove from the Special Appropriations Table:

Bill, "An Act Providing for Archeological Investigation of the Viking-Coin Historical Site" (S. P. 139) (L. D. 321)

Bill, "An Act to Permit Juvenile Offenders who are Deaf or Mute or Both to be Committed to the Maine Youth Center". (S. P. 207) (L. D. 580)

These being emergency measures and having received the affirmative votes of 24 Members of the Senate, with 2 Senators voting in the negative, were Passed to be Enacted, and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Orders of the Day

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

HOUSE REPORTS — from the Committee on Energy and Natural Resources — Bill, "An Act Relating to Municipal use of land control techniques under the zoning laws." (H. P. 371) (L. D. 482) Majority Report — Ought to Pass as Amended by Committee Amendment "A" (H-187) Minority Report — Ought Not to Pass

Tabled—April 19, 1979 by Senator Katz of Kennebec

Pending—Consideration

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

Senator McBREAIREY: I move that the Senate Adhere.

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

Senator GILL: I move that we Recede and Concur, and would request a Division, and would like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator GILL: This is the Bill that we brought in the other day, on Land Transfer Rights, it is to protect suburban development and agricultural lands, in the communities. It is an innovative planning procedure, that has not been used too often and I think that the fact that it came from a particular area of the State probably is what did it in, in this body before.

It can be used all over the State, it is a voluntary measure, as I said before, it is strictly a transfer of land rights, to protect the agricultural land and it will increase the development in areas that can handle it, as far as house building. It will be around sewers that can handle house development and it will protect the rural areas for agricultural and timber land and for those things to come in the future.

If a developer chooses to build in an area what he will have to do is transfer title, or certificates to a farm land owner, and that will protect the farm lands. Then if in the future the farmer decides that he wants to use his lands for something else he can reverse that, all he will have to do is find another area, that is rural and that can be used as a transfer land.

It is in the public interest, I had in the Town and Country Paper that was distributed the other day, there was an article in there and I had it put on your desks and it is about conversion of farm lands.

The location of certain lands inherently protects them from development pressure, and only in improved markets situation can protect land from abandonment.

I think that the problem we run into is that the farm land might be selling for \$500. an acre and if the developer comes in he will offer the farmer a lot more money for his acreage and the farmers in the situation that they are in, particularly in the Southern part of the State, are often driven to sell their property because of the money that they will get from it, and in the future there just will not be any farm lands left if it is all developed and built upon. We would like to have it protected, and I would hope that you would consider voting to Recede and Concur, with the House.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Senator O'LEARY: Mr. President and Members of the Senate: I thought that we had pretty well covered this the other day, but to me, planning board establishes the rules when it lays out its zoning, and this is the game that should be played.

We are not supposed to change the rules in the middle of the game, and that is what this Bill is attempting to do.

I look at this as being one of those carnival games, where they put three peanut shells down there and they put the peanut under one of them. Now the floating zone is the peanut. So this person comes along and he's in the zone that is to be zoned for what it is, if it is a development. He purchases the property however, the planning board comes along and says Well, now this is the zone under here, we'll play the old shell game and we'll move it around and we'll pick up the peanut and whoops you missed, you lose.

That is what this Bill is all about, it is something that I do not believe is any good for our municipalities, they lay down the rules they play by the rules, do not change them in the middle of a game.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, when this matter came before us a week or so ago, I was not fully informed and since that time, I have read the material about it, and decided in my own mind that this Bill does have some merit.

I am very much surprised, to find members of this Body, who have spoken strongly in favor of Local Control opposing this Bill, because this Bill is very much an enabling type of Bill which simply extends the area of Local Control, of how the local community is developed, or not developed.

In my particular City, this Bill would have no value, but in some of the other communities that I represent for example the Island of Vinal Haven, the Island of North Haven, the Island of Monhegan, and some mainland areas where there is strong local thinking and feeling about preserving certain areas for open space, this enabling legislation might be very valuable.

So I would urge that we not just throw this out, because you may not want it for your town, this is simply saying that local people can make local decisions about how their zoning is arranged, and re-arranged, and because the present scope of zoning has not dealt with some of the more innovative techniques that are outlined here, this Bill would permit the use of some of those innovative techniques.

I really can not imagine very many towns wanting to use them, but there can be some towns that want to use them. I think that we ought to let them make the experiment with this type of thing, because the day is coming when it may be very important that some of our communities preserve farm land and preserve some forest lands and preserve some open space land in a way that does not deprive the owners thereof of value, and the selling of developmental rights and permitting the selling and rearrangement of development rights in certain areas of certain towns can have a great deal of usefulness. I would urge you to vote Yes, on the pending motion to Recede and Concur.

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

Senator SUTTON: Mr. President may I ask a couple of questions through the Chair. Number 1, Why can't towns make their own plans and do these things now? and Number 2, if this is enabling Legislation, what does a town have to do to enable itself to use this Law?

The PRESIDENT: The Senator from Oxford, Senator Sutton has posed questions through the Chair.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Senator O'LEARY: Mr. President, the answer to his first question is Yes, towns already have that right. The only problem that might occur is that someone may challenge it and they would have to go through the court process.

I think that the Senator from Knox, Senator Collins put his finger on it when he said that it is a measure of local control. We do have that local control and the way that your ordinances are made up now, or your zoning within municipalities, your planning boards, if it wants to change, not in the middle of the game but wants to change for the future, will have public hearings on proposed changes.

This right here is to me, going just a little bit too far, in that it does not, in my way of thinking, provide any assurances for those people who want to develop in an area from developing there is no security in putting down an investment.

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

Senator McBREAIREY: Mr. President and Members of the Senate: I think my chief reason for signing this Bill Ought Not to Pass is because I felt it was not needed.

The present law reads that the Comprehensive

sive Plan may include planning technique such as, but not limited to, planned Units Development, Site Plan Approval, Open Space Zoning, and Clustered Development. I believe that's all the Planning Board needs presently.

You know, in my area, we're getting a little concerned at the people who want to protect our farmlands. Many times they want to over-protect it. We think that when it comes to local control and you have a dozen farmers against a 12,000 member town or city that this local control can shift to the wrong place. So I'm just a little concerned with this innovative land technique that actually would give a planning board the authority to change about anything they want, anyway they want. I'm not real uptight about this bill. You can do what you want with it, I don't want it for my area.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Motion to Recede and Concur, with the House, please rise in the places to be counted.

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: I request a Roll Call.

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

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

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

The pending question before the Senate is the Motion by the Senator from Cumberland, Senator Gill that the Senate Recede and Concur, with the House.

A Yes Vote will be in favor of the Motion to Recede and Concur.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Clark, Collins, Conley, Cote, Devoe, Gill, Huber, Katz, Lovell, Najarian, Pierce, Trafton.

NAY — Ault, Carpenter, Chapman, Emerson, Farley, Hichens, McBreairey, Minkowsky, O'Leary, Perkins, Pray, Redmond, Shute, Silverman, Sutton, Teague, Trotzky, Usher.

ABSENT — Danton, Martin.

A Roll Call was had.

12 Senators having voted in the affirmative, and 18 Senators in the negative, and 2 Senators being absent, the Motion to Recede and Concur does not prevail.

Is it now the pleasure of the Senate to Adhere?

It is a vote.

The Chair recognizes the Senator from Aroostook, Senator McBreairey.

Senator McBREAIREY: Mr. President, having voted on the prevailing side, I now move reconsideration and I would urge you to vote against my motion.

The PRESIDENT: The Senator from Aroostook, Senator McBreairey, now moves the Senate reconsider its action whereby it voted to Adhere on L. D. 482.

Will all those Senators in favor of the Motion to Reconsider, please say Yes.

Will all those Senators opposed, please say No.

A Viva Voce Vote being had.

The Motion to Reconsider does not prevail.

The Chair laid before the Senate the Second Tabled and specially assigned matter:

Bill, "An Act Relating to Self-insurance under the Worker's Compensation Act." (H. P. 396) (L. D. 526)

Tabled—April 19, 1979 by Senator Chapman of Sagadahoc.

Pending—Passage to be Engrossed.

On Motion by Senator Chapman of Sagadahoc, Retabled for 2 Legislative Days.

The Chair laid before the Senate the Third Tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act to Permit Prosecuting Attorneys to Initiate Petitions for Revocation of Probation." (H. P. 503) (L. D. 611) Majority Report — Ought to Pass with Committee Amendment "A" (H-225); Minority Report Ought Not to Pass

Tabled—April 20, 1979 by Senator Trotzky of Penobscot.

Pending—Motion of Senator Devoe of Penobscot that Bill and Papers be Indefinitely Postponed.

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

Senator COLLINS: Mr. President, I was on the Ought to Pass side of this Bill. It's a close question in my judgment. The Bill was presented to us by the District-Attorney for Androscoggin, Franklin, and Oxford Counties, who is a veteran prosecutor, and one of our best prosecutors, in my judgment, even though he is a Democrat, and I talked with various law enforcement people about the issue. It just turns on whether the District-Attorney should be able to put his fingers into the Probation and Parole activity when there is a criminal violation, of course he already has the right to take criminal action in its own right, which is a separate procedure. This procedure is sometimes more rapid. It still requires due process and the decision of a judge, so there really isn't much chance for an aggressive D. A. to overdo his position.

But it seems to me there would be times when the District Attorney, as a law enforcement officer, ought to be able to step in when a Probation and Parole Officer is not moving rapidly enough or is ignoring the activity of his charge, when there has been a criminal violation. I would urge that we vote against the pending motion.

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

Senator TRAFTON: Thank you Mr. President and Members of the Senate. As you will remember from our prior debate on this issue, the good Senator from Penobscot, Senator Devoe explained his reasoning why he is supporting the Ought Not to Pass Report, and I would like to amplify some of the remarks that he made last week.

This bill originally started out as a very broad bill with many powers being delegated to the District Attorney, and a Member of the Committee redrafted it so that we have a very narrow amendment before us today, but even that amendment, I think, has several faults, and I would like to explain those to you.

First of all, if the D. A. is allowed to initiate revocation he can do this when he does not have an adequate case to actually bring about a trial on a criminal act. There's a different standard of evidence required for a revocation hearing than there is required for a criminal conviction. This standard is a preponderance of the evidence as opposed to absolute proof that a person is guilty.

The second problem with going to revocation hearing versus a trial for the second conviction, is that it allows the offender to escape a record for the second conviction. If he is tried and convicted in the usual manner, there's a clear record of the 2 convictions, but if we were to use the revocation route, under this amendment, there is only a record of the original conviction, and a subsequent revocation with no reason stated. So I think this bill has 2 serious flaws in it and I would urge you to reject the Ought to Pass Report.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Thank you very much, Mr. President. Mr. President, and Members of the Senate, I would sincerely hope that you would vote against the Motion to Indefinitely Postpone this particular measure. I think Senator Collins from Knox, gave you the most clear, concise evaluation of the bill that I've heard in the recent times.

You have to bear in mind, Mr. President and Members of the Senate, that the District Attorney, in Androscoggin County, being the keen, perceptive person he is, regardless of the fact that he is a very prominent Democrat, as the good judge may be in the near future, has gone through several of these particular cases.

Now I realize one thing, that the Parole Department may take objection to the fact that we are stepping into their domain, but the District, Attorneys are elected by the people and their interest is primarily prosecution, and getting the criminals off the street. This is one sure way, without playing games with the Parole Department, to address this particular situation, and I would hope that you would vote against the Motion to Indefinitely Postpone this particular bill.

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

Senator TRAFTON: Mr. President and Members of the Senate: I wouldn't want you to leave today thinking that the Probation Officers are playing games with revocation hearings, and I'd like to leave you with some statistics.

In my District, during the Calendar Year of 1978, over 120 revocations were initiated, and in District 1 which is Cumberland and York Counties, only 185 revocations were initiated, so in no way is the Probation Department hesitant to use their power to initiate these hearings.

The PRESIDENT: The Chair will order a Division.

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, please rise in their places to be counted.

8 Senators having voted in the affirmative and 17 Senators in the negative, the Motion to Indefinitely Postpone L. D. 611, does not prevail.

The Majority Ought to Pass, as amended Report Accepted, in non-concurrence, and the Bill Read Once. Committee Amendment "A" Read and Adopted in non-concurrence, and the Bill, as amended Tomorrow Assigned for Second Reading.

The Chair laid before the Senate the Fourth Tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act to Provide Restitution to Innocent Victims of Crimes." (H. P. 644) (L. D. 798) Majority Report — Ought to Pass with Committee Amendment "A" (H-214) Minority Report — Ought Not to Pass

Tabled—April 20, 1979 by Senator Trafton of Androscoggin

Pending—Acceptance of Either Report

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

Senator COLLINS: I move the Acceptance of the Majority Ought to Pass Report of the Committee.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves the Senate accept the Majority Ought to Pass, as amended Report of the Committee. Is this the pleasure of the Senate?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you very much, Mr. President, Members of the Senate, before a vote is taken on this, I would simply like to comment about a couple of very relevant provisions in the bill. I refer you to page 6 and page 7 of the amendment which is now the bill.

At the bottom of page 6, there is a paragraph

numbered 4, which reads in part, "proceedings may be conducted and awards made, whether or not a person is prosecuted or convicted of an offense arising out of the act, on which the claim is based."

I then refer you to the bottom of page 7 where there is Section 4208, entitled Awards. I direct your attention to the second line, in Section 1 of that. "after considering the evidence presented at hearing, the Board may order the payment of compensation to any claimant found deserving of an award. The Board shall make no award unless it finds that a crime was committed."

Members of the Senate, if we pass this bill, we're opening the door to the State Claims Board to set itself up as a quasar court. For example, let's say somebody is assaulted, and a complaint made, but for some reason, that person is found not guilty, or the case is not prosecuted by the District Attorney or whatever reason, but there is no finding of guilt. The injured party, nevertheless, may still apply to the State Claims Board and sitting his medical expenses and doctors expenses can still ask the State Claims Board for reimbursement of those expenses.

Now, 1 Section of the Bill, listed on page 7 of Committee Amendment "A" states flatly "The Board shall make no award unless it finds that a crime was committed." Yet on the preceding page, it states that "awards may be made whether or not a person is prosecuted or convicted of an offense arising out of the act in which the claim is based."

On the one hand you have one section of the Bill saying, that there need not be any finding that a crime was committed, and on the other page you have something that is exactly the opposite.

Furthermore a provision in this bill that troubles me is that once the Board does make a finding and decides that reimbursement of medical expenses, for example, be made, there is no requirement that payment be made direct to the hospital or to the doctor, instead it is given to the claimant. I think that this can have an adverse effect on doctors or hospitals, in that claimants may receive payments from the State and yet not be required to pay them over to the hospital or to the doctor, thereby depriving the medical care provider of the income which it is entitled to. Thank you very much, Mr. President.

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

Senator COLLINS: Mr. President, the concerns expressed by the good Senator from Penobscot, Senator Devoe, are indeed of interest to us. I think that we have to decide whether we think of this measure as part of the criminal law or as part of a program of helping victims of crime. We all know that a lot of criminals get off, that doesn't mean they didn't do it, that doesn't make the victim any healthier, or relieve his medical bills any. This bill, I agree, has some apparent procedural problems, but there's a saving clause in it that, I think, was not mentioned, to the effect that the Claims Board may suspend proceedings on the grounds that a prosecution for an offense arising out of the act in which the claim is based, has been commenced or imminent.

In other words, there's language here that prevents or permits, at least, the Claims Board from becoming involved in the criminal activity process. The normal matter would be to hold up any action with this Board until the criminal matter was settled one way or the other, but whether the criminal is convicted or not, there is a victim who is damaged and has incurred a great deal of medical expense. This essentially is a medical reimbursement, a sort of bill, most of the funding of it, if its funded, will come from the Federal Government under a new Federal Victims of Crime Program.

There's one area in our coverage for unfortunate people that is just not covered anywhere

else, you can insure yourself for a lot of things but some of the damages that people do suffer when they're attacked by criminals are not compensable in many other ways. This Board has a right to consider what other compensation has been available to the victims in reaching a decision as to whether an award should be made and how much that award should be.

I feel that there are enough safeguards in the bill, additional safeguards were put on in the other Body, so that boyfriends and girlfriends and so forth, don't get to share in any benefits that might be available. I think that since we already have a Claims Board in being, that does hear claims and has some ability to handle this sort of thing, that this type of medical reimbursement provision is worth a try in Maine.

On Motion by Senator Devoe of Penobscot, Tabled for 1 Legislative Day, pending the motion by Senator Collins of Knox.

The Chair laid before the Senate the Fifth Tabled and specially assigned matter:

Bill, "An Act Regulating Business Practices Between Motion Picture Distributors and Exhibitors." (H. P. 365) (L. D. 473)

Tabled—April 20, 1979 by Senator Katz of Kennebec.

Pending—Passage to be Engrossed.

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

Senator COLLINS: Mr. President, I'm indebted to the lobbyists on both sides of this issue, for absorbing 4 hours of my weekend, reading a lot of material and having interviews with local theater owners. I learned a great deal about the Movie Industry that I never knew before, and I still don't know how I'm going to vote on this bill, but I did find some intriguing legal questions involved in it, having to do with the effect upon Interstate Commerce and having to do with whether the State of Maine ought to try to regulate things that happen in Boston and New York and so on. I requested an opinion from the Attorney-General and I checked this morning to see what the timing might be, and apparently it might be a couple of days yet and I hope that someone might table this matter so that we could get that opinion before we act on it.

On motion by Senator Katz, of Kennebec, Retabled for 2 Legislative Days.

Senator Pierce of Kennebec, was granted unanimous consent to address the Senate, Off the Record.

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

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