

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred and Ninth
Legislature

OF THE
STATE OF MAINE

Volume II

First Regular Session

May 7, 1979 to June 15, 1979

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

May 22, 1979

Senate called to order by the President.

Prayer by Pastor Andrew D. Kane, United Baptist Church of Oakland.

Pastor KANE: I'd ask that you take this little folder that you received on top of the pile of literature, and that we read it together.

God is our shelter and strength,
always ready to help in times of trouble.

So we will not be afraid,
even if the earth is shaken and mountains
fall into the ocean depths;
even if the seas roar and rage,
and the hills are shaken by the violence.

There is a river that brings joy
to the city of God,
to the sacred house of the Most High.

God lives in the city,
and it will never be destroyed;
at early dawn he will come to its help.

Nations are terrified, kingdoms are shaken;
God roars out, and the earth dissolves.

The Lord Almighty is with us;
the God of Jacob is our refuge!
Come, see what the Lord has done!
See what amazing things he has done on earth!
He stops wars all over the world;
he breaks bows, destroys spears,
and sets shields on fire!

He says, "Stop your fighting,
and know that I am God,
supreme among the nations,
supreme over the world!"

The Lord Almighty is with us;
the God of Jacob is our refuge!

Let us pray. Our God we thank you for the
magnificence of this morning, not only Lord is
it there, but we are able to accept it and to
know that Thou art God.

We ask that as we share in the responsibilities
this morning and this afternoon, we realize
you have called us to this place, to be
ministers of love, ministers of creation, min-
isters to this group of people here in the State
of Maine.

You have called us from many places O God,
but you have called us to this place to be with
Thee. We acknowledge your presence. We ask
that we may praise you this day, with our pray-
ers, with our concerns, and with our love. We
come in the name of your son, Jesus Christ,
Amen.

Reading of the Journal of yesterday.

Papers from the House
Non-concurrent Matter

Bill, "An Act to Authorize the Provision of
Services to Developmentally Disabled Chil-
dren." (S. P. 377) (L. D. 1157)

In the Senate May 15, Passed to be Engrossed
as amended by Committee Amendment "A"
(S-163).

Comes from the House, Passed to be En-
grossed as amended by Committee Amend-
ment "A" as amended by House Amendment
"A" thereto (H-454), in non-concurrence.

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

Senator PIERCE: Mr. President, I move the
Senate Recede and Concur.

The PRESIDENT: The Senator from Kenne-
bec, Senator Pierce, moves that the Senate
Recede and Concur with the House.

Is this the pleasure of the Senate?

The Motion Prevailed.

Non-concurrent Matter

Joint Order Relative to Committee Cloture
(S. P. 563).

In the Senate May 18, Read and Passed.

Comes from the House, Read and Passed as
amended by House Amendment "A" (H-479),
in non-concurrence.

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

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

The PRESIDENT: The Senator from Kenne-
bec, Senator Pierce moves that the Senate
Adhere.

The Chair recognizes the Senator from Cum-
berland, Senator Conley.

Senator CONLEY: Mr. President, I notice
that the House Amendment deals with the 2
Joint Standing Committees, one on Appropria-
tions and the other on Taxation. I was just won-
dering if it was realistic to feel that these bills
can all be reported out by the Joint Order.

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

Senator TEAGUE: I feel that the Taxation
Committee does not need any extension in
time.

The PRESIDENT: Is it now the pleasure of
the Senate to Adhere?

The Motion Prevailed.

Non-concurrent Matter

Bill, "An Act to Provide that a Person's Pic-
ture shall Appear on His Driver's License and
to Provide for a Photographic Identification
for Nondrivers." (H. P. 940) (L. D. 1164)

In the House May 14, the Minority Report
Read and Accepted and the Bill Passed to be
Engrossed as amended by House Amendment
"A" (H-370).

In the Senate May 18, the Majority Ought Not
to Pass Report Read and Accepted, in non-con-
currence.

Comes from the House, that Body having In-
sisted and Asked for a Committee of Confer-
ence.

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

Senator O'LEARY: I move we Adhere.

The PRESIDENT: The Senator from Oxford,
Senator O'Leary, moves that the Senate
Adhere.

Is this the pleasure of the Senate?

The Motion Prevailed.

House Papers

Bill, "An Act to Increase the License Fees of
the Master, Journeyman and Apprentice Oil
Burner Man." (H. P. 1420) (L. D. 1623)

Comes from the House, referred to the Com-
mittee on Business Legislation and Ordered
Printed.

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

Bill, "An Act to Amend the Salary Range for
the Insurance Superintendent." (H. P. 1421)
(L. D. 1624)

Comes from the House, referred to the Com-
mittee on State Government and Ordered
Printed.

Which was referred to the Committee on
State Government and Ordered Printed in con-
currence.

Joint Resolution
STATE OF MAINE

IN THE YEAR OF OUR LORD ONE
THOUSAND NINE HUNDRED
AND SEVENTY-NINE

JOINT RESOLUTION REQUESTING
EMPLOYERS TO GRANT A LEAVE
OF ABSENCE FROM EMPLOYMENT
TO ANY EMPLOYEE ELECTED
TO THE LEGISLATURE

WHEREAS, the public interest will be
served by encouraging citizens from all walks
of life and from all economic circumstances to
serve in the State Legislature; and

WHEREAS, employers within the State can
help in that effort by adopting employment
practices which will permit employees to serve

in the State Legislature without loss of employ-
ment or other severe economic loss; now,
therefore, be it

RESOLVED: That we, the Members of the
109th Legislature, respectfully request em-
ployers in the State to grant a leave of absence
from employment to any employee elected to
the Legislature, with the assurance that, upon
completion of the term in office, the employee
will be reinstated to the previous position or
one of similar pay, seniority and benefits, if
such position is reasonably available; and be it
further

RESOLVED: That duly attested copies of
this resolution be transmitted forthwith to the
Chambers of Commerce throughout the State
of Maine.

(H. P. 1419)

Comes from the House, Read and Adopted.

Which was Read.

On motion by Senator Pierce of Kennebec,
Tabled, pending Adoption.

Communication

May 21, 1979

Honorable May M. Ross

Secretary of the Senate

109th Legislature

Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to Adhere whereby An
Act to Fund and Implement Agreements Be-
tween the State and the Maine State Em-
ployees Association and to Fund and
Implement Benefits for Managerial and Other
Employees of the Executive Branch Excluded
from Coverage under the State Employees
Labor Relations Act (H. P. 1321) (L. D. 1573)
Failed of Passage to be Enacted.

Respectfully,

EDWIN H. PERT

Clerk of the House

Which was Read and Ordered Placed on File.

On motion by Senator Katz of Kennebec, the
Senate voted to reconsider its action whereby
Bill, "An Act to Increase the License Fees of
the Master, Journeyman and Apprentice Oil
Burner Man." (H. P. 1420) (L. D. 1623) was re-
ferred to the Committee on Business Legis-
lation.

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

Senator KATZ: Mr. President, this is a late
arrival. The Chairman of the Committee as-
sures me he has a vehicle which is adequate to
deal with this. Therefore, I move that this Bill
be Indefinitely Postponed.

On motion by Senator Katz of Kennebec, In-
definitely Postponed, in non-concurrence.

Sent down for concurrence.

On motion by Senator Katz of Kennebec, the
Senate voted to reconsider its action whereby
Bill, "An Act to Amend the Salary Range for
the Insurance Superintendent" (H. P. 1421) (L.
D. 1624), was referred to the Committee on
State Government.

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

Senator KATZ: Mr. President, and Members
of the Senate, the Chairman of this Committee
gives me the same assurance that there are ve-
hicles within this Committee. I move this Bill
be Indefinitely Postponed.

On motion by Senator Katz of Kennebec, In-
definitely Postponed, in non-concurrence.

Sent down for concurrence.

Senate Papers

Senator Sutton of Oxford presented, Bill, "An
Act to Permit the Town of Canton to Withdraw
from School Administrative District No. 21 and
to Establish an Independent School Supervisory
Unit." (Emergency) (S. P. 567)

(Approved by a Majority of the Legislative
Council pursuant to Joint Rule 27)

The PRESIDENT: The Chair recognizes the

Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, this is a late arrival too. It's one of those situations where there is a very sticky local situation that exists between the communities. It's unique because time is of the essence. A school is about to be built, which will solve the situation admirably for 2 communities and be a disaster in the views of the third. Therefore, I move that this Bill be referred to the Committee on Education and Ordered Printed.

On motion by Senator Katz of Kennebec, referred to the Committee on Education and Ordered Printed.

Sent down forthwith for concurrence.

Senator McBreaity of Aroostook, Cosponsors: Senator Martin of Aroostook, Senator Katz of Kennebec and Senator Conley of Cumberland presented,

Bill, "An Act Relating to Requirements for Discharge into Class A Waters." (S. P. 566)

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

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

Sent down forthwith for concurrence.

Committee Report House

The following Ought Not to Pass reports shall be placed in the Legislative Files without further action pursuant to Rule 22 of the Joint Rules:

Bill, "An Act to Increase Legislative Salary in the First Year of the Biennium." (H. P. 445) (L. D. 562)

Bill, "An Act to Increase the Salaries and Certain Expense Reimbursements of State Legislators." (H. P. 565) (L. D. 711)

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Limit the Amount of Revenues Which may be Raised by Taxes in any Fiscal Year. (H. P. 330) (L. D. 429)

Leave to Withdraw

The Committee on Health and Institutional Services on, Bill, "An Act to Require that Children Receive Social Development Counseling During Divorce Proceedings." (H. P. 1141) (L. D. 1388)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Health and Institutional Services on, Bill, "An Act Concerning Interdepartmental Coordination of Services to Children and Families." (H. P. 1086) (L. D. 1353)

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 the Freedom of Access Law." (H. P. 628) (L. D. 770)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Agriculture on, Bill, "An Act to Abolish the Maine Milk Commission." (H. P. 554) (L. D. 701)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Business Legislation on, Bill, "An Act Concerning Licensing of Psychologists." (H. P. 887) (L. D. 1087)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Appropriating \$500,000 for the Improvement and Construction

of District Court Facilities." (H. P. 1189) (L. D. 1467)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Amend the Laws on Taxation to Provide for the Automatic Return of any State Surplus to the Taxpayers." (H. P. 532) (L. D. 653)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Require that Forest Land be Taxed According to Current Use." (H. P. 446) (L. D. 363)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish Property Tax Exemptions for Maine Homesteads. (H. P. 983) (L. D. 1218)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Amend the Tree Growth Tax Law." (H. P. 649) (L. D. 802)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Provide that the State Tax Assessor Shall Use Information from Federal Income Tax Forms to Determine Appropriate Valuation of Land under the Tree Growth Tax Law for those Taxpayers who Declare Capital Gains from Timber Sales on Federal Income Tax Returns." (H. P. 848) (L. D. 1033)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Provide for Full Disclosure of Tax Information on Tax Bills." (H. P. 610) (L. D. 791)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Create the Property Tax Homestead Relief Act of 1979." (H. P. 854) (L. D. 1054)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Establish the Maine Homeowners and Tenants Tax Relief Program." (H. P. 479) (L. D. 596)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

The Committee on Taxation on, Bill, "An Act to Provide for Public Notice of Any Municipal Tax Increase." (H. P. 611) (L. D. 792)

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.

Ought to Pass — As Amended

The Committee on Health and Institutional Services on, Bill, "An Act to Permit a Resident of an Intermediate Care Facility who Receives Aid for the Medically Needy to Give at Least \$250 a Month from His Income to a Dependent Spouse." (H. P. 1054) (L. D. 1305)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-458).

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

The Committee on Transportation on, Bill, "An Act to Provide for the Issuance of a Warning for Operating an Unregistered Motor Vehicle within One Month of the Expiration of Registration." (H. P. 858) (L. D. 1058)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-465).

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

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

The Committee on Public Utilities on, Bill, "An Act to Exempt Farmland from Sewer Assessments When the Land Receives no Benefit from this Construction." (H. P. 960) (L. D. 1185)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-452).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" thereto (H-470).

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

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act Relating to Forcible Entry and Detainer Hearings." (H. P. 463) (L. D. 577)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

COLLINS of Knox
DEVOE of Penobscot
TRAFTON of Androscoggin

Representatives:

STETSON of Wiscasset
SEWALL of Newcastle
SILSBY of Ellsworth
JOYCE of Portland
SIMON of Lewiston
LAFFIN of Westbrook
GRAY of Rockland

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

Signed:

Representatives:

HOBBS of Saco
CARRIER of Westbrook

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

Which Reports were Read.

On motion by Senator Conley of Cumberland, the Majority Ought Not to Pass Report of the Committee, Accepted, in concurrence.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Increase Interest Rates on Judgment Debts to 18%" (H. P. 501) (L. D. 608).

Reported that the same Ought Not to Pass.

Signed:

Sensors:

DEVOE of Penobscot
TRAFTON of Androscoggin

Representatives:

JOYCE of Portland
GRAY of Rockland
SILSBY of Ellsworth
SEWALL of Newcastle
CARRIER of Westbrook

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-449).

Signed:
Senator:

COLLINS of Knox

Representatives:

STETSON of Wiscasset
HOBBINS of Saco
SIMON of Lewiston
LAFFIN of Westbrook

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

Which Reports were Read.

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

Senator COLLINS: Mr. President, I move that the Senate Accept the Minority Ought to Pass Report of the Committee.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate Accept the Minority Ought to Pass Report of the Committee.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. Mr. President, and Members of the Senate: Committee Amendment "A" H-449. This bill deals with the amount of interest that can be assessed by the court after a judgment has been rendered. Committee Amendment "A" increases the amount from 10% to 12%, and further provides that after the time that an appeal has expired or an appeal has been denied, between that time and the time that judgment is finally paid, interest will beat the rate of 15%.

My reason in signing the Ought Not to Pass Report was that there seemed to be a feeling prevalent on the part of some members of the committee in some of the testimony that every defendant who is going to have to pay a judgment was an insurance company who was able to put the money out to use and earn a rate greater than 10%.

For that reason it was thought that maybe we ought to let this money go to work a little faster for defendants and we might induce insurance companies to pay off the judgments a little quicker, if the rate of interest that they, we're going to have to pay was a little higher.

I just feel that those who signed the Ought to Pass Report lost sight of the fact that not every defendant who has to pay a judgment is an insurance company with a seemingly bottomless pit of cash with which to pay judgments. We have a lot of people who do not have insurance companies behind them who have to pay judgments. It's for that reason that I think the amount of 10% interest prior to judgment is a sufficient rate of interest to get ordinary people to pay. Thank you very much, Mr. President.

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

Senator COLLINS: Mr. President, the title of this bill is misleading because we have taken out everything that had to do with 18%. There is one feature of the bill, as amended, that I would draw to your attention. That is that we have added a provision that allows the court to waive the interest in case of a defendant or a felon who is actually too poor to pay.

The Senator from Penobscot, Senator Devoe, is indeed correct that this applies to all judgment defendants unless they are found too poor to pay. But it is the experience, I think, of most attorneys that have to collect judgments that the ordinary small debtor pays within a

reasonable time, within the time that is allotted, under normal circumstances before the interest rate jumps up.

It's the sophisticated company and defendant, usually an insurance company that occasionally, not too often, but occasionally, takes advantage of the fact that they can make more money than the prevailing rate and therefore delays payment that the court has decided it ought to pay to meet the court's decision.

If you've tried to borrow money lately at the banks or you're buying a car on the installment basis, you know that interest rates are high, and if we keep them at a figure that is so low that it pays the defendant to not fulfill his court ordered obligations then we aren't helping the people that are justly entitled to be paid the debt that is owed them.

I think that we ought to discourage that sort of practice. This is a reasonable way to do it without penalizing that person that might have some rather difficult circumstances. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of Accepting the Minority Ought to Pass, as amended, 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.

5 Senators having voted in the affirmative, and 14 Senators in the negative, the Motion to Accept the Minority Ought to Pass as Amended, Report does not prevail.

The Majority Ought Not to Pass Report of the Committee, Accepted, in non-concurrence. Sent down for concurrence.

Divided Report

Eight members of the Committee on Labor on, Bill, "An Act to Protect Management Personnel Where Unjustly Discharged or Involuntarily Retired." (H. P. 748) (L. D. 957)

Reported in Report "A" that the same Ought Not to Pass.

Signed:

Sensors:

SUTTON of Oxford
LOVELL of York
PRAY of Penobscot

Representatives:

TUTTLE of Sanford
BEAULIEU of Portland
CUNNINGHAM of New Gloucester
LEWIS of Auburn
FILLMORE of Freeport

Four members of the same Committee on the same subject matter reported in Report "B" that the same Ought to Pass.

Signed:

Representatives:

DEXTER of Kingfield
McHENRY of Madawaska
MARTIN of Brunswick
WYMAN of Pittsfield

One member of the same Committee on the same subject matter reported in Report "C" that the same Ought to Pass as amended by Committee Amendment "A" (H-448).

Signed:

Representative:

BAKER of Portland

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

Which Reports were Read.

The Majority Ought Not to Pass, Report of the Committee, Accepted, in non-concurrence. Sent down for concurrence.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Prohibit Housing Discrimination Against Families with Children." (H. P. 630) (L. D. 781)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

COLLINS of Knox
DEVOE of Penobscot

Representatives:

STETSON of Wiscasset
GRAY of Rockland
SEWALL of Newcastle
JOYCE of Portland
CARRIER of Westbrook
SILSBY of Ellsworth

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-435).

Signed:

Sensor:

TRAFTON of Androscoggin

Representatives:

LAFFIN of Westbrook
SIMON of Lewiston
HOBBINS of Saco
HUGHES of Auburn

Comes from the House, Bill and accompanying papers, Indefinitely Postponed.

Which Reports were Read.

The Majority Ought Not to Pass, Report of the Committee, Accepted.

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act to Require that Most Hearings and Records Concerning Juvenile Crimes be Open to the Public." (H. P. 1091) (L. D. 1383)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Clarify the Provisions Relating to Hearings on Juvenile Crimes and to Establish an Experimental Program for Education and Counseling of Juveniles" (H. P. 1375) (L. D. 1601).

Signed:

Sensors:

COLLINS of Knox
DEVOE of Penobscot

Representatives:

GRAY of Rockland
SILSBY of Ellsworth
LAFFIN of Westbrook
STETSON of Wiscasset
JOYCE of Portland
SEWALL of Newcastle
SIMON of Lewiston

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

Signed:

Sensor:

TRAFTON of Androscoggin

Representatives:

HOBBINS of Saco
CARRIER of Westbrook

Comes from the House, the Majority Report Read and Accepted, and the Bill, in New Draft, Passed to be Engrossed as amended by House Amendment "A" (H-477).

Which Reports were Read.

The Majority Ought to Pass, in New Draft, Report of the Committee, Accepted, in concurrence, and the Bill Read Once.

House Amendment "A" Read and Adopted, in concurrence.

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

Senate

Ought to Pass — As Amended

Senator Usher for the Committee on Fisheries and Wildlife on, Bill, "An Act to Regulate Commercial Whitewater Outfitters." (S. P. 348) (L. D. 1094)

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

Senator Usher for the Committee on Fisheries and Wildlife on, Bill, "An Act to Clarify the Statutory Requirements for Issuance of

Maine Guides Licenses." (S. P. 374) (L. D. 1154)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-214).

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 Judiciary on, Bill, "An Act to Provide for Self-help for Minor Repairs under the Landlord-tenant Statutes." (S. P. 267) (L. D. 808)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

COLLINS of Knox
DEVOE of Penobscot

Representatives:

STETSON of Wiscasset
GRAY of Rockland
SILSBY of Ellsworth
SEWALL of Newcaste
CARRIER of Westbrook

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass as amended by Committee Amendment "A" (S-213).

Signed:

Senator:

TRAFTON of Androscoggin

Representatives:

LAFFIN of Westbrook
JOYCE of Portland
HOBBINS of Saco
SIMON of Lewiston
HUGHES of Auburn

Which Reports were Read.

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

Sensor TRAFTON: Mr. President, and Members of the Senate: I would ask you not to accept the Ought Not to Pass Report so that we might accept the Ought to Pass Report.

I think it's fair to say that the committee, although, divided, did have a great deal of concern about the areas that's addressed in this bill. We have amended it fairly significantly and I would call your attention to that amendment S-213.

Basically, this is an additional aid to the statute which we passed in the 108th dealing with warranty of habitability. Under that statute, landlords and tenants must use the court system if there's a condition which makes it unsafe for the health or safety of the tenant.

This bill would allow small minor repairs costing less than \$100 or an amount equal to one-half the monthly rent, whichever is less, to be repaired in a different way, which hopefully would not involve the court system. I think we have written enough safeguards into this amendment so that it's a fair balance between the rights of the tenant and the rights of the landlord. I would ask you to consider passing this, this morning.

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

Sensor COLLINS: This year the Judiciary Committee saw about 32 landlord and tenant bills. Happily the attending parties were able to boil it down to about 8, that really had consideration. This was one of those that seemed to have some merit, but it also had some problems.

The concern of many landlords is that a tenant may find a small flaw in the apartment or house and set about to do big things to it by way of repair. Then withholding the rent, as this particular bill would permit. Then if the landlord becomes upset and tries to get rid of the tenant, there's a section of the law that would say that retaliation is prohibited. There would have to be a court determination of good faith and reasonableness and whether the

action had been justified in some fashion.

In theory the safeguards built into this bill sound quite reasonable and if it passes, I hope it may work out. Many are concerned that the landlord would be forced to accept repairs that might not really be justified. His remedy would be to go to court and have the court decide whether it's justified. Well these are small repairs and if the repairs involved are \$100 or \$200, and if it's going to cost the landlord \$100 or \$200 to pay the lawyer that takes it to court and deals with it, obviously there is difficulty in working this kind of problem out.

So I don't know whether this is really an improvement to the existing law. When we wrote into the law, in the 107th Legislature, the Warranty of Habitability, I thought, thank goodness this puts this problem to rest. But every session the landlords and the tenants come in with new embroidery for the law and they want to spell out every jot and tittle and they want to be sure that they can go to court at the drop of a hat. It seems as though there's a great tendency to want to run a lot of their affairs through the courts.

I'm fearful that this will encourage more running to the courts. I guess that's my chief concern about it. I know that those who favor it say, oh no, this will keep it out of the courts, because we can do the repairs and deduct the money and so on. But in practice I just don't think that's the way things work out. That's the reason I have voted as I have. Thank you.

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

Sensor CLARK: Mr. President and Members of the Senate: This bill as has been said before in this Chamber is mine. I sponsored this bill in response to some chronic concerns expressed by tenants in my area as well as concerns expressed by people, renters, in my Legislative District for the past 7 years.

I appreciate the remarks of the good Senator from Knox, Senator Collins, this morning, and would emphasize that his opposition to the bill is really based on the fact that he fears, and it may or may not be justified, that should this bill pass, which does amend the Warrant of Habitability, it would encourage more running to the court.

Well it's my understanding and the understanding of past practice that that is in fact why this measure has been amended, as we see in Committee Amendment under Filing Number S-213.

The repairs which are embodied, embraced in this bill, currently are not minor repairs. I would read to you from subsection 6024, Sub. 1. "These are conditions which endanger or materially impair the health and safety of the tenants."

Furthermore tenants seem to enter into what may be considered expensive litigation, in order to seek repairs forcing their landlords to repair those conditions which do in fact endanger or materially impair the health and safety of their home.

I believe that the amendment, which was reported out by a minority of the Committee on Judiciary is reasonable and appropriate. I would be willing and responsive to further concerns as expressed by the Majority Signers of this report. I would hope this morning that we would accept the Ought to Pass Report, and allow this bill to be read and discussed among members of this 109th Legislature, and perhaps even further amended.

It seems to me that this measure which we have in its current status, before us, is reasonable and appropriate and will in fact, diminish the amount of litigation which goes to the court, and does jeopardize relationships between landlords and tenants.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Sensor DEVOE: Thank you, Mr. President.

Members of the Senate, one of the concerns I have with this bill is that it requires the tenant to do the work in a workmen like manner.

My view of workmen like manner may be considerably different than the tenant to whom I rent my home to. I had a call from a client last weekend, who had rented her and her husband's home to a woman in her sixties, who all be herself occupied a 7 room house in Bangor for about 9 months last year.

The lady told me that when she went into the home, for the first time, she discovered that nails had been driven into the walls. This lady had done other things to the house, she had let her pet dogs run wild in the house with the result that every rug now had to have a professional cleaner come in and do what he could to remedy this kind of a defect. This was not a low income or even a middle income person who was the tenant, it was somebody who was not worried about next month's expenses.

The problem that I see with this bill is that you are always going to have contention in the courts when you turn the tenant loose with a hammer and nails and a saw. If he says to a Judge, "Judge, I thought that I was doing it in a workmen like manner," but he actually is butchering the house, we have got problems. This bill is not going to help it, it is going to make it worse.

Then if you have the tenant who hires some work done, and he doesn't pay the artisan who did the work, that is opening the door for that person to put a mechanic's lien on the house. Something that will clutter up the records at the registry of deeds, something that will effect the credit rating of the owner of the property. For these reasons I join with the good Senator from Knox, Senator Collins, and urge you to accept the Ought Not to Pass Report. Thank you very much Mr. President.

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

Sensor CLARK: Thank you Mr. President. Mr. President and Men and Women of the Senate: I am sure that we could all share incidences which reflect the relationship mostly negative, between landlords and tenants. I can give you an armful of tenant cases where landlords have deprived their tenants, deliberately or negligently of a healthy and a safe rent.

To respond directly to the concerns of the Senator from Penobscot, Senator Devoe. On the second page of the amendment I would remind you that actual and reasonable costs to a fair and reasonable value emphasis shall not include the value of labor provided by the tenant or any member of his immediate family. I think that that addresses somewhat the issue of mechanic lien.

What is considered to be a workmen like manner, with reference to repairs, is frequently the same quality workmen like work that is done by trades people. Frequently today those people who do rent are those people who find themselves in those trades and occupations which are skilled or semi-skilled. Many of the conditions which exist, today, are those conditions which can be remedied very easily by the tenants.

I would suggest that this Bill again is reasonable, it is not a threat to landlords, it is not a give to tenants, it is a positive, positive amendment to that legislation which has been passed by earlier Maine Legislatures. I would also enlighten you by saying that similar legislation has been passed in 26 other states. I think that it is appropriate that Maine address positively that relationship of habitability, health and safety, between the landlords and the tenants in this State.

The PRESIDENT: Is the Senate ready for the question? The Chair will order a Division.

Will all those Senators in favor of the Motion by the Senator from Androscoggin, Senator Trafton, that the Senate, Accept the Ought to Pass, as amended, Report, please rise in their places to be counted.

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

7 Senators having voted in the affirmative and 19 Senators in the negative, the Motion to Accept the Minority Ought to Pass Report, does not prevail.

The Majority Ought Not to Pass Report of the Committee, Accepted.

Sent down for concurrence.

Second Readers

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

House

Bill, "An Act to Require the Reporting of Petroleum Inventories and Deliveries to the Office of Energy Resources." (H. P. 1355) (L. D. 1591)

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

House — As Amended

Bill, "An Act Concerning Persons Exposed to Diethylstilbestrol." (H. P. 499) (L. D. 635)

Bill, "An Act Concerning Setting of Electric Rates by the Public Utilities Commission." (H. P. 913) (L. D. 1118)

Bill, "An Act to Provide for a Method of Arranging Voluntary Meetings Between Adoptees and Adoptive Parents and Natural Parents." (H. P. 1190) (L. D. 1431)

Bill, "An Act Concerning Retirement for State Prison Employees." (H. P. 1138) (L. D. 1404)

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

Bill, "An Act to Make Substantive Changes in the Forestry Statutes." (H. P. 1126) (L. D. 1396)

Which was Read a Second Time.

On motion by Senator Katz of Kennebec, Tabled, for 1 Legislative Day, pending Passage to be Engrossed.

Senate

Bill, "An Act to Allocate Moneys for the Administrative Expenses of the State Lottery Commission for the Fiscal Years Ending June 30, 1980 and June 30, 1981." (S. P. 492) (L. D. 1532)

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

Sent down for concurrence.

Bill, "An Act to Exempt Certain Transportation Statutes from the Administrative Procedure Act." (S. P. 445) (L. D. 1365)

Which was Read a Second Time.

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

Senator PIERCE: Mr. President I present Senate Amendment "A" under filing number S-217 and move its Adoption.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now offers Senate Amendment "A" to L. D. 1365 and moves its Adoption.

Senate Amendment "A" (S-217) Read and Adopted. The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

Senate — As Amended

Bill, "An Act to Clarify the Consent Requirements for Adoptions." (S. P. 455) (L. D. 1385)

Bill, "An Act Relating to Appointment of Local Plumbing Inspectors in the Unorganized Townships." (S. P. 378) (L. D. 1158)

Bill, "An Act to Increase the Term of Special Licenses under the Marine Resources Law." (S. P. 169) (L. D. 370)

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 Establish a Special License for Retired or Inactive Pharmacists. (S. P. 331) (L. D. 965)

An Act to Permit Municipalities to Issue Bonds Under the Municipal Securities Approval Act for Water Supply System Projects. (S. P. 421) (1315)

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 Include Services Performed by Chiropractors under Health Insurance Policies and Health Care Contracts which Pay Benefits for those Procedures if Performed by a Physician. (S. P. 131) (L. D. 308)

On motion by Senator Katz of Kennebec, Tabled for 1 Legislative Day, pending Enactment.

An Act to Amend the Laws Relating to Games of Chance. (H. P. 672) (L. D. 833)

An Act to Provide for Full-time Workers' Compensation Commissioners and to Organize the Administration of the Commission. (H. P. 1379) (L. D. 1604)

An Act to Reimburse Municipalities for Expenses Incurred in Enforcing Statutes, Ordinances and Regulations Relating to the Operation or use of Motor Vehicles, Streets and Highways. (S. P. 183) (L. D. 413)

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

Emergency

An Act Relating to the Vocational-technical Institutes. (H. P. 1393) (L. D. 1613)

Emergency

An Act to Provide for the Codification and Indexing of State Agency Rules by the Secretary of State. (S. P. 510) (L. D. 1576)

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

Emergency

An Act to Amend the Maine Sunset Law. (S. P. 512) (L. D. 1577)

Emergency

An Act Making Additional Appropriations from the General Fund for the Current Fiscal Year Ending June 30, 1979, Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government and Amending the Effective Date of Abolishing the Mental Health and Mental Retardation Fund. (S. P. 500) (L. D. 1562)

These being emergency measures and having received the affirmative votes of 25 members of the Senate, 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 Unfinished Business

May 22, 1979

The following matters, in the consideration of which the Senate was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 25.

The President laid before the Senate the First Tabled and specially assigned matter for May 21:

Bill, "An Act to Improve Local Government Investment Opportunities." (S. P. 449) (L. D. 1364)

Tabled — May 18, 1979 by Senator Emerson of Penobscot.

Pending — Passage to be Engrossed.

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

Senator SUTTON: Mr. President I would like to present Senate Amendment "A" under filing number S-189 and move its adoption. I would

speak briefly to my motion.

The PRESIDENT: The Senator from Oxford, Senator Sutton, now offers Senate Amendment "A" to L. D. 1364 and moves its Adoption.

Senate Amendment "A" (S-189) Read.

The PRESIDENT: The Senator has the floor.

Senator SUTTON: Mr. President and Members of the Senate: I might remind you about this Bill. It is a permissive Bill that allows the municipalities in our State to send their monies to the State Treasurer to be invested on their behalf, which on the surface of it is a laudable exercise. The Treasurer is now doing that with State Funds, but that's a little different than being allowed to do it with the funds of the towns and our communities.

This amendment would take away that privilege, it would leave the requirement that the bonding be increased of the State Treasurer. This is really putting the State in the money management situation, which is something different than it is now. Managing someone else's money is not the same as managing your own. In this regard this bill could very well affect the credit rating and financial picture not only of the State, but also of the municipalities.

It would also put the State Treasurer in direct competition with the private sector, as far as money management is concerned. I am not convinced that the State should be inviting municipalities to invest their monies, unless the State is also willing to make the commitment of requiring the professional backgrounds and qualifications necessary to best insure competence and capable management.

In summary I am concerned that this Bill is premature and that it creates the authority for the State Treasurer to move in a very sophisticated financial area, utilizing the money of the municipalities. Although the concept has a nice ring, I personally believe that when we get into the area of finance and credit ratings the State should move cautiously and should provide all the safeguards possible to insure prudent investment and management and I would urge the Senate to Adopt this Amendment.

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

Senator AULT: Mr. President I am opposed to adopting this Amendment and would ask for a Division in its adoption.

The Statement of Fact of Senator Sutton's amendment says "that this amendment removes the provision that permits the Treasurer of State to invest municipal funds", in other words it guts the bill.

It goes on to say that the Treasurer of State's Office does not have the personnel or the expertise to administer such a program and would be required to hire money managers and other personnel if this Legislation is Enacted.

Because he does intend to gut the Bill I would like to point out a couple of important points, with regard to the legislation without his amendment. Namely that it is entirely voluntary and will remain so and whatever funds that the communities may chose to invest will be available to them, at any time that they so request.

The Bill is designed to provide one more investment opportunity for communities, which they may take advantage of or not. It is an authorization for the communities to participate in the State Treasury Cash pool and to take advantage of the investments and the rates available to the State Treasurer, if they so desire.

If they are able to do better by investing on their own or for whatever reason, would prefer to conduct their own investment program, or even to hold their funds uninvested, if they so desire they are entirely free to do so. There is nothing in the bill to prevent that decision. This is simply to provide an opportunity to participate in the investments that the State can make, if a Community should so desire.

Many of the small communities particularly should be able to benefit significantly by such

participation should they so desire.

The second point is that the cash invested, would be liquid. It would be available to the investing communities when wanted. Funds can be transferred by wire within a matter of minutes, and thus would be sent back to a community upon their request. Interest earned by the entire cash pool would be pro-rated according to the amount that the community had invested in the pool.

Another point is that rather than automatically luring communities away from the local bank this legislation by providing an additional investment opportunity would provide an incentive for communities, to examine the relationship and the benefits that they may receive from their local banks. If in fact the benefits that they may receive from their local banks. If in fact the benefits are more advantageous to a community to continue to invest in the local bank rather than participating in this State Cash pool it would be logical for the community to make that choice.

In relation to the second sentence of the Statement of Fact, in which Senator Sutton, maintains that the Treasurer of the State offices does not have the personnel or the expertise to administer such a program, and would be required to hire money managers, and other personnel if this Legislation is enacted. I would like to quote from a letter from the Treasurer of the State of Maine, former Senator Jerry Spears, in which he says "I just had the opportunity to read the Statement of Fact in Senator Sutton's Amendment (S-189) to the Local Government Investment Bill. I don't know where the statement came from, but it is simply not true! This office at the present time invests between one and six million dollars every day at the highest rates available. It would require no additional personnel to merely increase the amount of the figure being invested, and no more capable personnel could be found than who we have in the office at the present.

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

Senator CONLEY: Mr. President and Members of the Senate: I, like the good Senator from Kennebec, Senator Ault, find the Statement of Fact of the Amendment more offensive than I find the Amendment, but I would move that the Amendment be Indefinitely Postponed.

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

Senator SUTTON: Mr. President and Members of the Senate: I am not going to belabor this. I am concerned that the State has not in toto endeared me to its ability to perform great tasks.

I think that although they say that the Retirement Fund is not a State Agency, I think that this is an example of what happens when we get at this level. I think that we are making a mistake by even allowing our communities to be getting involved with our State Treasury.

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

Senator PERKINS: Mr. President and Ladies and Gentlemen of the Senate: I rise to support the Amendment offered by the good Senator from Oxford, I think that in the past this Legislature and past Legislatures have tried to be very diligent in not allowing the State to involve itself in direct competition with a private sector. This is exactly what this avenue does.

This provides that the State will become a direct competitor with the private sector, and I think that passage is a dangerous precedent.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Motion to Indefinitely Postpone this Amendment, please rise in their places to be counted.

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

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

On motion by Senator Katz of Kennebec, Tabled until later in today's session, pending Adoption of Senate Amendment "A".

The President laid before the Senate the Second Tabled and specially assigned matter for May 21:

Bill, "An Act Relating to the Administration of School Dental Health Programs." (H. P. 733) (L. D. 920)

Tabled—May 18, 1979 by Senator Minkowsky of Androscoggin.

Pending—Consideration.

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

Senator SUTTON: I hope that I do a little bit better, and more dramatically than I did the last time, but I would like to move that if the Senate, if it is proper, Recede and Concur with the House, and speak to my motion.

The PRESIDENT: The Senator from Oxford, Senator Sutton, now moves that the Senate, Recede and Concur with the House. The Chair would advise the Senate that this in effect would be Enactment of this Legislation.

Is it the pleasure of the Senate to Recede and Concur with the House?

The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: I probably would like nothing more than to Recede and Concur with the House, but I believe that there is an appropriation on this Bill.

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

Senator KATZ: Mr. President, this Bill has perplexed the Senate. Some people who have been voting against it, really support the notion but they feel that there was some kind of an understanding that after the initial period of state support that local communities would undertake the task of funding what I think a most important preventive medicine program.

As we were attempting to get enough support for the Enactment of this Bill, we have identified some people in the Senate who feel that they would be much more comfortable and support this program, as a priority concern if it had some kind of a sunset on it. If for example the State support was withdrawn after an additional two year period hoping that local communities then assume these costs as a regular cost of educating their kids, subject to reimbursement under School Funding Act.

I hope that we can enact this Bill at such time as it becomes appropriate to enact it, with the understanding that if in some other vehicle we have an opportunity to put a sunset on, to satisfy the very legitimate wants and needs of the people who have been uneasy about it that all of the Senate will join in supporting such a sunset. Right now the Bill is in a posture that it can not under any circumstances be amended.

The alternative would be to Adhere, at which case the Bill would be dead and subsequently it could be recalled from the Legislative Files and amended but it seems to me, that an understanding of support from all the members of the Senate that they would at least look at with some kindly eyes on the possibility of amending through some other vehicle and I think that this is probably the best bet.

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

Senator CONLEY: Mr. President, I would pose a Parliamentary Inquiry to the Chair. If the present position of the Bill is currently that it has been indefinitely postponed?

The PRESIDENT: The Chair would advise the Senator in the affirmative. It was Passed to be Enacted in the House, came up to the Senate, was Indefinitely Postponed, back to the other body where that body had Adhered to its previous position which was Enactment.

Senator CONLEY: Mr. President and Mem-

bers of the Senate: Listening to the good Senator from Kennebec, the Majority Floor Leader, when he talks about a sunset provision on this Bill, when in all honesty we have a sunset provision anyway, because we review it every two years.

It seems to me that this program is perhaps one of the most important programs that we have in State Government. That we rank number 50th in the nation with respect to dental programs.

I do not want to make a solemn pitch for the Bill this morning, but I do believe that it certainly should be one of those bills that the Appropriations Committee did report out.

Mr. President, it would be my hope that we could at least reconsider whereby this Bill was indefinitely postponed and then place it on the Appropriations Table.

The PRESIDENT: The Chair would advise the Senator that that motion would not be in order, because we are out of concurrence with the House.

Senator CONLEY: We can not Reconsider the Indefinite Postponement.

The PRESIDENT: The Motion to Recede and Concur would be the proper motion.

Senator CONLEY: Mr. President, could we Recede and Concur and then reconsider whereby it was Enacted in order to place it on the Appropriation Table?

(Senate at Ease)

The Senate called to order by the President.

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending the Motion by the Senator from Oxford, Senator Sutton, to Recede and Concur with the House.

The President laid before the Senate the Third Tabled and specially assigned matter for May 21:

Bill, "An Act to Require County Charters and to Transfer Approval for County Budgets from the Legislature to the Counties." (H. P. 1412) (L. D. 1618)

Tabled—May 18, 1979 by Senator Emerson of Penobscot.

Pending—Reference.

On motion by Senator Katz, of Kennebec, Retabled, for 1 Legislative Day.

The President laid before the Senate the Fourth Tabled and specially assigned matter for May 21:

HOUSE REPORTS — from the Committee on Taxation — Bill, "An Act Concerning State Valuation and Assessment." (H. P. 531) (L. D. 652) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass as Amended by Committee Amendment "A" (H-411)

Tabled—May 18, 1979 by Senator Collins of Knox.

Pending—Acceptance of Either Report.

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

Senator TEAGUE: I move that we Accept the Majority Ought Not to Pass Report.

The PRESIDENT: The Senator from Somerset, Senator Teague, moves that the Senate Accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, I would request a Division on this matter. It seems to me that the Minority has worked out a holding action that is especially valuable to the smaller towns and that we ought to give that consideration.

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

Senator TEAGUE: In answer to the good Chairman from Knox, Senator Collins, at the present time I think that we have 497 municipi-

palties in the State. There are only five that have not complied with the State Valuations in 1978 and these are Caribou, Gilead, Kittery, Presque Isle, and East Machias. In 1977 there was Wiscasset and Lebanon that failed to meet the standards.

As can be seen by this list, only a very small percentage of the total number of municipalities in the State are not in compliance or are not actively taking steps to bring themselves into compliance by 1979.

Further of the 5 municipalities listed above, Caribou and Presque Isle are currently exploring the possibility of a joint re-evaluation contract together with Houlton, which will bring them into compliance by 1980 or 1981. In addition Gilead is entertaining bids which will be subject to a special town meeting sometime in July. I think that you can see that most of the towns in the state are trying to do their best and there is just a very small minority that are holding back.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Acceptance of the Ought Not to Pass 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.

20 Senators having voted in the affirmative and 2 Senators in the negative, the Motion to Accept the Majority Ought Not to Pass Report in non-concurrence, does prevail.

Sent down for concurrence.

The President laid before the Senate the First Tabled and specially assigned matter for later in the day of May 21:

SENATE REPORTS — from the Committee on Appropriations and Financial Affairs — Bill, "An Act Appropriating Funds for Abortion Procedures for Persons Otherwise Eligible under Medicaid and to Effect Substantial Savings in the Costs of Government Services." (S. P. 464) (L. D. 1410) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass Tabled—Earlier in the day by Senator Katz of Kennebec.

Pending—Acceptance of Either Report.

On motion by Senator Katz of Kennebec, retabled for 1 Legislative Day.

The President laid before the Senate the Second Tabled and specially assigned matter for later in the day of May 21:

Bill, "An Act to Prohibit Rate Discrimination by Public Utilities." (H. P. 837) (L. D. 1041)

Tabled—Earlier in the day by Senator Devoe of Penobscot.

Pending—Passage to be Engrossed.

On motion by Senator Devoe of Penobscot, under Suspension of the Rules, the Senate voted to reconsider its action whereby it adopted Committee Amendment "A".

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

Senator DEVOE: Mr. President, I present Senate Amendment "A" to Committee Amendment "A" with a Filing Number of S-212, and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Devoe, now offers Senate Amendment "A" to Committee Amendment "A" and move its adoption.

Senate Amendment "A" (S-212) Read.

The PRESIDENT: The Senator has the floor. Senator DEVOE: Thank you, Mr. President, I would simply like to explain this is a technical amendment. The first paragraph of the Committee Amendment referred to electric and gas utilities, whereas the second paragraph of the Committee Amendment had the phrase every public utility, and there were no limiting phrases in there.

This amendment simply makes the second

paragraph conform with the first paragraph so that both paragraphs only apply to those utilities which provide electric or gas service only. Thank you very much, Mr. President.

Senate Amendment "A" Adopted.

Committee Amendment "A", as amended, Adopted, in non-concurrence.

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

Sent down for concurrence.

The President laid before the Senate the Third Tabled and specially assigned matter for later in the day of May 21:

Bill, "An Act to Permit Nonprofit Legal Service Organizations." (H. P. 642) (L. D. 797)

Tabled—Earlier in the Day by Senator Katz of Kennebec.

Pending—Motion of Senator Clark of Cumberland to Indefinitely Postpone Bills and Papers.

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

Senator COLLINS: Mr. President, I hope the Senate will vote No on the pending motion and continue its support of this useful bill.

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 Clark that L D 797 and its accompanying papers be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.

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

ROLL CALL

YEA—Carpenter, Chapman, Clark, Conley, Cote, Martin, Najarian, Pray, Sutton, Trafton, Trotzky, Usher.

NAY—Ault, Collins, Devoe, Emerson, Farley, Gill, Hichens, Huber, Katz, Lovell, McBreairey, O'Leary, Perkins, Pierce, Redmond, Shute, Silverman, Teague.

ABSENT—Danton, Minkowsky.

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 Indefinitely Postpone does not prevail.

The Bill, as amended, Passed To Be Engrossed, in non-concurrence.

Sent down for concurrence.

On motion by Senator Katz of Kennebec, the Senate voted to reconsider its action whereby Bill, "An Act to Require the Reporting of Petroleum Inventories and Deliveries to the Office of Energy Resources." (H. P. 1355) (L. D. 1591) was Passed to be Engrossed.

On motion by Senator Katz of Kennebec, Tabled for 1 Legislative Day, pending Passage to be Engrossed.

On motion by Senator Pierce of Kennebec, the Senate voted to take from the Unassigned Table a Joint Resolution Requesting Employers to Grant a Leave of Absence From Employment to any Employee Elected to the Legislature (H. P. 1491), Tabled earlier in today's session, on motion by Senator Pierce of Kennebec, Adopted, in concurrence.

Senator Hichens of York, was granted unanimous consent to Address the Senate, On the Record.

Senator HICHENS: There is a Lady Senator from Auburn, the twin city who all of us have noted is young and very

pretty;

her winning ways have won for her a front-row Senate Seat and I'm glad she's not in Southern Maine — for I would hate to beat

a person who's so gracious and has such winning ways.

She adds so much with her presence throughout these tedious days

she's also conscientious and fights for all it's worth

to pass the legislation to which she's given birth.

A transplant from the other branch — she's making herself known

as one concerned with people's needs and her efforts have shown

that she relentlessly plows on when she has fertile ground

in which to find fruition for the good things she has found

that helps the people she is serving here with us today

and so it's quite an easy task for me to stand and say

that on this May 22nd in the year of '79

I wish a Happy Birthday — to one so sweet and fine

and I'm sure as I look round the Senate all will join with me

in wishing all the very best to one as nice as she;

so will the Senator from Auburn rise to take a bow

as we applaud you on this day — and don't be bashful now!

Senator Trafton of Androscoggin, was granted unanimous consent to address the Senate, Off the Record.

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

Bill, "An Act to Amend Certain Property Tax Exemptions and to Require Continuing Periodic Review of Tax Exemptions." (H. P. 768) (L. D. 855)

Tabled—May 18, 1979 by Senator Teague of Somerset.

Pending—Passage to be Engrossed.

On motion by Senator Teague of Somerset, Retabled for 1 Legislative Day.

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

Bill "An Act Concerning Licenses Issued by the Department of Inland Fisheries and Wildlife." (H. P. 270) (L. D. 344)

Tabled—May 18, 1979 by Senator Perkins of Hancock.

Pending—Adoption of Committee Amendment "A" (H-438).

Committee Amendment "A" Adopted, in concurrence.

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

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

HOUSE REPORTS — from the Committee on Appropriations and Financial Affairs — Bill, "An Act to Increase the Funds for the Displaced Homemaker Program." (H. P. 779) (L. D. 981) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass as Amended by Committee Amendment "A" (H-432)

Tabled—May 21, 1979 by Senator Katz of Kennebec.

Pending—Acceptance of Either Report.

On motion by Senator Najarian of Cumberland, the Minority Ought To Pass, as amended, Report of the Committee, Accepted, in concurrence, and the Bill Read Once.

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

The President laid before the Senate the

Fourth Tabled and specially assigned matter: HOUSE REPORTS — from the Committee on Appropriations and Financial Affairs — Bill, "An Act to Provide Matching Funds to Support and Expand the Foster Grandparent Program." (H. P. 685) (L. D. 865) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass

Tabled—May 21, 1979 by Senator Katz of Kennebec.

Pending—Acceptance of Either Report.

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

Senator HUBER: Mr. President, I move acceptance of the Majority Report.

The PRESIDENT: The Senator from Cumberland, Senator Huber, moves the Senate Accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate: I realize that this bill is going no place, but I do think it's a good program and it's unfortunate that it's in this state today, but I understand the circumstances.

This is a program which allowed for grandparents who were poor to help families with their children, and they worked about half a week and received \$32 a week for their efforts. We had a good hearing on the bill. Many grandparents came up and testified to the change it had made to their life, as well as the people receiving help.

It was one of the priorities of the Committee on Aging. I just think it's unfortunate that this bill is not getting more favorable consideration.

The Majority Ought Not to Pass, Report of the Committee, Accepted, in concurrence.

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

SENATE REPORTS — from the Committee on Labor — Bill, "An Act Permitting Binding Arbitration for Public Employees in Critical Public Services." (S. P. 197) (L. D. 464) Majority Report — Ought to Pass as Amended by Committee Amendment "A" (S-191); Minority Report — Ought Not to Pass

Tabled—May 21, 1979 by Senator Conley of Cumberland.

Pending—Motion of Senator Sutton of Oxford to Accept Minority (Ought Not to Pass) Report.

The Minority Ought Not to Pass Report of the Committee, Accepted.

Sent down for concurrence.

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

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act to Limit Abortions in the Second and Third Trimesters to Certain Specified Situations." (H. P. 865) (L. D. 1061) Majority Report — Ought to Pass in New Draft and New Title of "An Act Relating to Abortions" (H. P. 1394) (L. D. 1612) Minority Report — Ought to Pass with Committee Amendment "A" (H-413)

Tabled—May 21, 1979 by Senator Conley of Cumberland.

Pending—Acceptance of Either Report.

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

Senator COLLINS: Mr. President, the Majority Report in New Draft is a rewrite of a bill that was originally offered by the Senator from Penobscot, Senator Trotzky, but which comes out in somewhat different language on a bill from the other body.

The Minority Report, in essence, would simply repeal the existing abortion language on our statutes which has been held by the Federal Court to be unconstitutional. I move the acceptance of the Minority Report this morning.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate accept

the Minority Ought to Pass, as amended, Report of the Committee.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. Mr. President and Members of the Senate: I rise in opposition to the motion made by the good Senator from Knox, Senator Collins. I would ask you to defeat the pending motion and instead accept the Majority Report which is now L. D. 1612.

Let me just summarize for you what I view L. D. 1612 would accomplish. As you know, in 1973, the U.S. Supreme Court held invalid the abortion laws of about forty-six States, in the decisions *Roe v. Wade* and *Doe v. Bolton*. Our existing statute concerning abortions, 17 M.R.S.A. §51 and under the decisions of the *Roe v. Wade* and *Doe v. Bolton* is clearly unconstitutional. L. D. 1612 is an attempt to replace the unconstitutional law now on the books with one that meets the standards set out in the *Roe* and the *Doe* cases.

Basically the Majority Report would do 2 things. It would require that all abortions be performed by a physician. Secondly, it would limit the right to have abortions after viability of the fetus to those instances which are required to preserve the life or the health of the pregnant woman.

Both of these policy objectives, I would point out, are explicitly allowed in the *Roe v. Wade*, and *Doe v. Bolton* cases.

Roe v. Wade proceeds on the assumption that before the fetus is viable, the State must treat the abortion as a medical procedure not a moral issue. Accordingly, the Court says that even in the first months of pregnancy, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician."

The Court went on to say:

"The State may define the term 'physician' to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined." and this provision is found in L. D. 1612.

This is one of the two things that we are seeking to do.

Second, *Roe v. Wade* recognized an "important and legitimate interest in potential life," extending throughout pregnancy, and it went on to hold that after the fetus is viable, that interest was "compelling." Once the State's interest has thus become "compelling," the State "may . . . regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Those 2 cases were decided in 1973.

In 1976 the U.S. Supreme Court decided the Case of *Planned Parenthood of Central Missouri v. Danforth*, which we have discussed in earlier debates in this Senate. In that case, the court upheld a statutory definition of "viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside of the womb by natural or artificial life-supportive systems."

You will note on page 2 of the L. D. the definition of viability which we have used is verbatim from the *Planned Parenthood v. Danforth*, Supreme Court Decision.

We further propose in this L.D. to make it a Class D crime to perform an abortion after viability, except where it is necessary to preserve the life or health of the pregnant woman. In order to avoid an unconstitutional "chilling effect" on doctors who seek to perform abortions on the early side of viability, or who feel that an abortion is medically necessary after viability, we have set the level of scienter on "knowing," at the second highest in the Criminal Code. It would be difficult to prove a case against a doctor under the new law, but that is probably necessary if it is to hold up under constitutional attack in court.

We submit to you, members of the Senate,

this bill is clearly within the limits of the previous U. S. Supreme Court decisions in *Roe v. Wade*, *Dow v. Bolton*, and *Planned Parenthood of Central Missouri v. Danforth* that the limits the Supreme Court itself has set out cannot be challenged by an attack on this bill. Thank you very much, members of the Senate.

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

Senator COLLINS: Mr. President and Members of the Senate: Considering this bill there are 2 areas of thinking. 1 is the legal area that has been described by the Senator from Penobscot, Senator Devoe. The other is a broad public policy on personal morality area.

With respect to the legal area, the Senator from Penobscot, has given you the legal history of the problem, but there is one later word that ought to be considered. The United States Supreme Court on January 9 of this year struck down a Pennsylvania Law requiring a physician who performs an abortion to try to save the life of the fetus if he believes the fetus is or may be viable.

We found in the testimony before the Judiciary Committee that there is a considerable difference of opinion among physicians. First as to when a fetus become viable, and second, as to the trend in viability. Apparently in some women, viability may happen at a much earlier point of time than with other women. So that it is not purely a time measurement of so many weeks from the date of conception.

The Pennsylvania Courts examined this problem and then it went up through the Federal Courts to the United States Supreme Court. The Court, I think, summarized the problem in this way in striking down the law. It said this. "It is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it requires the physician to make a 'trade-off' between the woman's health and additional percentage points of fetal survival."

Now it's this area of uncertainty about viability that makes a statute of this type very dangerous, because the physician is putting his career on the line as to whether he shall become a criminal or not, or whether, on the other hand, he ought to be doing what he considers the best thing for his patient.

It once again is inviting the Maine Legislature to intrude into that very specialized area of the professional judgment, where the physician is trying to do what is best for his patient.

It's interesting to note that a survey of Maine citizens done by a University of Maine sponsored polling organization found that 80% of Maine citizens think that an abortion ought to be a question to be decided between the woman and her physician; 18% disagreed with the proposal. Yet as I talk with some of my fellow Legislators I have the distinct impression that they believe that an overwhelming majority of their constituents feel the decision should not be between the woman and the physician. But that it should be decided here in this Legislature by an inflexible law.

Times have changed. Some of us are living a long time ago. I realize that emotional topics of this type are frequently not decided by legal precedents, legal shadows, or by reason or even by an overwhelming report about public opinion.

But again as I have in the past, I ask you. Does it make good common sense to have the State intrude between the patient and the doctor in this important area of personal problem? Ought Not those 2 people be the ones that make this important decision?

If you say in your own mind that the answer to that question is Yes, then you ought to vote in favor of the minority Report. If you also have concern about making a doctor a criminal with a statute that makes him choose between the health of his patient and possible criminality in an area where the topic under consideration is uncertain at best, then again you ought

to vote Yes on the pending motion. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: 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 the 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 motion before the Senate is the Motion by the Senate from Knox, Senator Collins, that the Senate Accept the Minority Ought to Pass, as amended, Report of the Committee.

A Yes vote will be in favor of the Minority Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Chapman, Clark, Collins, Emerson, Juber, Katz, Lovell, Najarian, Perkins, Sutton, Trafton.

NAY — Ault, Carpenter, Conley, Cote, Devoe, Farley, Gill, Hichens, Martin, McBreairey, Minkowsky, O'Leary, Pierce, Pray, Redmond, Shute, Silverman, Teague, Trozky, Usher.

ABSENT — Danton.

A Roll Call was had.

11 Senators having voted in the affirmative and 20 Senators in the negative, with 1 Senator being absent, the motion to Accept the Minority Report does not prevail.

The Majority Ought to Pass, in New Draft Report of the Committee, Accepted in concurrence. The Bill Read Once. The Bill, Tomorrow Assigned, for the Second Reading.

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

Bill, "An Act to Increase the Dollar Amount of an Accident that Must be Reported from \$200 to \$500." (H. P. 636) (L. D. 787)

Tabled — May 21, 1979 by Senator Chapman of Sagadahoc.

Pending — Passage to be Engrossed.

On motion by Senator Chapman of Sagadahoc, Retabled, for 1 Legislative Day.

The President laid before the Senate Bill "An Act to Improve Local Government Investment Opportunities." (S. P. 449) (L. D. 1364) tabled until later in today's session, pending Adoption of Senate Amendment "A".

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

Senator AULT: Mr. President I ask for a Division on Adoption of the Amendment. I would just remind the members of the Senate that this is a purely voluntary program, the money is always available to the towns, if they want it back. It requires no additional personnel in the State Treasurers Office, and might even provide for better relationships between the towns and their local banks if this bill is passed without the amendment. So I urge you to vote against adoption of the Amendment.

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

Senator SUTTON: Mr. President and Ladies and Gentlemen of the Senate: I would just like to remind you one more time that the Federal Government in many areas is in competition with the private sector. I am not sure how far we might be doing it in the State but this is a definite intrusion of the State in to the private sector which is in itself reason enough to not have them do this.

The good Senator is correct this amendment

does gut the Bill and that is exactly what it is supposed to do. There is one good provision in there and that is to increase the bonding limit on the Treasurer, otherwise I would have moved that we Indefinitely Postpone it, so I am not playing any games with you. But I do not think that the State ought to be in it, I do not think that we ought to permit our towns to send money to the State and keep them out of the banking business. I would also like to suggest that I cannot in my wildest imagination see how it will improve their relations with their local banks, and certainly are not going to improve them with the State.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of Adoption of Senate Amendment "A", please rise in their places to be counted.

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

15 Senators having voted in the affirmative and 14 Senators in the negative, the Motion to Adopt Senate Amendment "A" does prevail.

The Bill, as amended, Passed to be Engrossed.

Sent down for concurrence.

There being no objections, all items previously acted upon, with the exception of those items already being held were sent forthwith.

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

On motion by Senator Pierce of Kennebec, adjourned until 9:40 tomorrow morning.