

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Tenth  
Legislature***

OF THE

STATE OF MAINE

**Volume I**

**FIRST REGULAR SESSION**

**December 3, 1980 to May 1, 1981**

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## HOUSE

Thursday, March 12, 1981

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Albert Q. Perry of the First Universalist Church, Pittsfield.

The journal of yesterday was read and approved.

## Papers from the Senate

Bill "An Act Concerning Retirement of Personnel at the Maine Correctional Center and the Maine Youth Center" (S. P. 393) (L. D. 1186)

Bill "An Act to Increase the Minimum Retirement Allowance under the State Retirement Law" (S. P. 395) (L. D. 1188)

Came from the Senate referred to the Committee on Aging, Retirement and Veterans and ordered printed.

In the House, referred to the Committee on Aging, Retirement and Veterans and ordered printed.

Bill "An Act to Place Restrictions on Closing Costs Charged by Banks on Real Estate Transactions" (S. P. 398) (L. D. 1191)

Bill "An Act to Prohibit Segregation Requirements Concerning Returnable Bottles" (S. P. 396) (L. D. 1189)

Came from the Senate referred to the Committee on Business Legislation and ordered printed.

In the House, referred to the Committee on Business Legislation in concurrence.

Bill "An Act to Regulate the Alteration of Freshwater Wetlands" (S. P. 392) (L. D. 1185)

Came from the Senate referred to the Committee on Energy and Natural Resources and ordered printed.

In the House, referred to the Committee on Energy and Natural Resources in concurrence.

Bill "An Act to License Home Health Agencies" (S. P. 399) (L. D. 1192)

Came from the Senate referred to the Committee on Health and Institutional Services and ordered printed.

In the House, referred to the Committee on Health and Institutional Services in concurrence.

Bill "An Act to Ensure that the Provision for the Arbitration of Classification and Allocation Determinations in State Employee Collective Bargaining Agreements is not Inconsistent with the Personnel Law" (S. P. 402) (L. D. 1194)

Came from the Senate referred to the Committee on Labor and ordered printed.

In the House, referred to the Committee on Labor in concurrence.

Bill "An Act to Improve the Community Industrial Building Program" (S. P. 401) (L. D. 1193)

Came from the Senate referred to the Committee on State Government and ordered printed.

In the House, referred to the Committee on State Government in concurrence.

Bill "An Act to Require that Industry Wide Taxes be Levied only after Referendum Approval of the Persons who would be Required to Pay the Tax" (S. P. 397) (L. D. 1190)

Bill "An Act to Provide an Income Tax Check-off for Voluntary Contributions to the Department of Inland Fisheries and Wildlife" (S. P. 394) (L. D. 1187)

Came from the Senate referred to the Committee on Taxation and ordered printed.

In the House, referred to the Committee on Taxation in concurrence.

## Divided Report

Majority Report of the Committee on Health and Institutional Services reporting "Ought to Pass" as amended by Committee Amendment "A" (S-37) on Bill "An Act to Create the Charleston Correctional Center within the Department of Mental Health and Corrections" (S. P. 217) (L. D. 604)

Report was signed by the following members:

Senators:

GILL of Cumberland  
BUSTIN of Kennebec

—of the Senate.

Representatives:

PRESCOTT of Hampden  
HOLLOWAY of Edgecomb  
MacBRIDE of Presque Isle  
KETOVER of Portland  
RICHARD of Madison  
RANDALL of East Machias  
BOYCE of Auburn

—of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (S-38) on same Bill.

Report was signed by the following members:

Senator:

HICHENS of York

—of the Senate.

Representatives:

McCOLLISTER of Canton  
BRODEUR of Auburn  
MANNING of Portland

—of the House.

Came from the Senate with the Majority "Ought to Pass" Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-37).

In the House: Reports were read.

On motion of Mrs. Prescott of Hampden, the Majority "Ought to Pass" Report was accepted in concurrence and the Bill read once.

Committee Amendment "A" (S-37) was read by the Clerk.

Mr. Brodeur of Auburn offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-87) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Brodeur.

Mr. BRODEUR: Mr. Speaker and Members of the House: The amendment I am offering addresses the difference between the two reports, and I prefer doing it that way in order not to kill what the whole committee agrees is a good idea, to put into law the Charleston Correctional Center. Just some background on that. The Charleston Correctional Center is a new facility which is being used and is in the process of being purchased by the Department of Mental Health and Corrections to house the overcrowding of prisoners in our other institutions, and since the court is sentencing more prisoners to our present correctional facilities, there is a need of this bill.

But to address the difference in the two reports—first, I would like to address one of the arguments that may be made against adoption of this amendment, and that argument is that the issue will be dealt with in other legislation. I think it doesn't take very long for people here to realize that sometimes other legislation never gets passed and never gets considered, so I hope that argument is discounted.

The second argument is that because of that, I think we ought to do it right from the beginning rather than wait for other legislation.

The second argument is that the issue here is whether the director of the Charleston Correctional facility shall serve at the pleasure of the commissioner or whether he will be a classified employee. The position of the minority of the committee is that he should serve as the director, and my position is that he should serve at the pleasure of the commissioner. The reasons for this are due to the management policy.

The Department of Mental Health and Corrections has 3,000 employees and has 10 people who serve at the pleasure of the commissioner. The reason for those people serving at the pleasure of the commissioner was to have major management policy-making positions being such that the people who are making the policy are in tune with the policy of the administration, and this is to facilitate management.

The argument that will be made against this is that presently within the Bureau of Corrections, the three correctional center directors or superintendents of the Maine Youth Center, the Maine Correctional Center in Windham, and the State Prison are presently classified employees. But within the whole Department of Mental Health and Corrections, the other directors, the Levensen Center, the Aroostook Residential Center, Pineland Center, the Augusta Mental Health Institute and Bangor Mental Health Institute, along with the three bureau directors and two deputy commissioners, presently serve at the pleasure of the commissioner.

The argument made is that the Charleston Correctional Center would be a small facility, but that center, if the number of people that are sentenced to prisons is increased, could easily hold 60 to 90 people in the future, and once we put this in a classified position, it would probably be impossible to remove it from a classified position.

The commissioner asks that we have the director position serve at the pleasure of the commissioner. In cases of the Levensen Center, which is a center for the mentally retarded, and the Aroostook Residential Center, we have less—these people manage less individuals who are being served there than would be at the Charleston Correctional Center. I don't believe that this power to have a director serve at the pleasure of the commissioner would be used recklessly, and I would hope you would adopt this amendment.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: I am going to move to indefinitely postpone this amendment. This amendment does simply what the committee report "B" would have done to the bill. It says that the director of the Charleston Correctional Center will serve at the pleasure of the commissioner.

Representative Brodeur has given you some arguments why he thinks that the director should serve at the pleasure of the commissioner, and he has told you that the superintendents of AMHI, Bangor Mental Health Institute, Pineland, and the deputy commissioners and commissioners serve at the pleasure of the Governor and ultimately at the commissioner, but he didn't tell you that this would set a precedent in corrections. This would then be the only director in the area of corrections who would be serving at the pleasure of the commissioner. The warden at the State Prison does not serve at the pleasure, nor does the director at Hallowell, nor do the superintendents of any of the other facilities. This would be setting a precedent, and we do not believe, as a majority of the committee, that we should be deciding that a director of a facility, such as Charleston Correctional Center, should be serving at the pleasure of the commissioner.

Representative Brodeur was concerned that if we waited to address this in another bill which might go before State Government and deal with all classified personnel, that that issue may not come up.

We do have another bill which deals totally with corrections. It is "An Act to Create the Department of Corrections." In that bill, it specifically says that the legislation that would be prepared for the 110th Second Regular Session will deal with the classification system and the classification status of all employees. The majority of the committee feels that this is

the appropriate place to deal with classification, especially since you are talking about a director and not a superintendent or warden.

I would hope that you would support the majority of the committee and move to indefinitely postpone the amendment.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Brodeur.

Mr. BRODEUR: Mr. Speaker and Members of the House: I request a division.

In a rebuttal to the argument, she said that this issue would be dealt with in the legislation on splitting up the Department of Corrections. That issue may also not get passed.

One of the major arguments for having the director serve at the pleasure of the commissioner is that although a classified employee may be removed with cause, it is very difficult to remove somebody who still may not be following the policy that is given to that person. An example of a classified employee at Pineland—when the present commissioner of the Department of Mental Health and Corrections was the superintendent of Pineland, there was an employee who physically abused a resident, and that employee was fired by the then superintendent, now commissioner, but the employee appealed. An arbitrator, in binding arbitration, restored that employee to employment and said that that employer ought to be reprimanded. This is just an example to show how difficult it is to remove classified employees. I would hope that that is taken into consideration, that if we have somebody making policy at this level, that person should be in tune with the department and with the policy made by the administration.

The SPEAKER: A vote has been requested. The pending question is on the motion of the gentlewoman from Hampden, Mrs. Prescott, that House Amendment "A" to Committee Amendment "A" (H-87) be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

113 having voted in the affirmative and 14 having voted in the negative, the motion did prevail.

Thereupon, the Committee Amendment "A" was adopted in concurrence.

The Bill was assigned for second reading tomorrow.

#### Order Out of Order

Mrs. Mitchell of Vassalboro presented the following Order and moved its passage:

Recognizing: Calais High School, Dirigo High School, Ellsworth, Jr./Sr. High School, Fort Fairfield High School, Freeport High School, Gorham High School, Gray-New Gloucester High School, Greenville High School, Hyde School, Jay High School, Lawrence High School, Messalonskee High School, Monmouth Academy, Mount View High School, Noble High School, Oxford Hills High School, Pupil Rehabilitative Education Program of Portland, Scarborough High School, Schenck High School, Shead High School, Stearns High School, Van Buren District Secondary School, Windham High School, Winslow High School, Wisdom High School and York High School for their outstanding achievement in the "Vote '80" voter participation campaign; (H. P. 1074) (Cosponsors: Representative Higgins of Scarborough and Senators Collins of Knox and Conley of Cumberland)

The Order was received out of order by unanimous consent and read.

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker and Members of the House: We here, who are sitting in the 110th Legislature, would like to say a special congratulations to all the young people who took the time to register to vote. Obviously, we all here hope that you will be quite pleased with our performances today so that when you go to the polls two years from now you will remem-

ber what a good job we have done for you on the floor.

I think you should also know that Maine has one of the highest voter participation rates in the entire country, and I think that you make that stand out very well and we are very, very proud of you. We hope that you will continue to participate in the process.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: As a cosponsor of this Order today, which we felt would be easier than introducing a number of orders from the different high schools around that state, I, too, would like to welcome the young adults who are here in the balcony and commend them for taking the time last fall to become informed and involved in the legislative and electoral process. I think it is unfortunate, but true in some cases, that a great many of our people are somewhat skeptical and suspicious of politics and politicians, and I find it rather heartwarming that even though sometimes we are frustrated and feel that our process in the world and I think it is heartwarming to see the young people today who have become interested and informed in the process. I am glad that people such as them are showing some confidence in the system that perhaps has been lacking in the last few years.

I, too, welcome them, and I assure them that their legislator, if they have not seen them individually yet, would be more than happy to meet with them after the session and perhaps you can get a free lunch out of it as well.

Thereupon, the Order received passage and was sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

#### (Off Record Remarks)

#### Divided Report

Majority Report of the Committee on Education on Bill "An Act Providing for a Period of Silence in Public Schools" (S. P. 70) (L. D. 107) reporting "Ought to Pass" in New Draft (S. P. 272) (L. D. 699)

Report was signed by the following members:

Senators:

PIERCE of Kennebec

CLARK of Cumberland

—of the Senate.

Representatives:

ROLDE of York

LOCKE of Sebec

BROWN of Livermore Falls

BROWN of Gorham

MURPHY of Kennebunk

—of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Senator:

TROTZKY of Penobscot

—of the Senate.

Representatives:

CONNOLLY of Portland

THERIAULT of Fort Kent

THOMPSON of South Portland

MATTHEWS of Caribou

GOWEN of Standish

—of the House.

Came from the Senate with the Majority "Ought to Pass" in New Draft Report read and accepted and the New Draft passed to be engrossed as amended by Senate Amendment "A" (S-40)

In the House: Reports were Read.

The SPEAKER: The Chair recognizes the gentlewoman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker, I move acceptance of the "Ought to Pass" Report in New Draft and would speak to my motion.

The SPEAKER: The gentlewoman from

The SPEAKER: The gentlewoman from Sebec, Mrs. Locke, moves that the Majority "Ought to Pass" in New Draft Report be accepted in concurrence.

The gentlewoman may proceed.

Mrs. LOCKE: Mr. Speaker, Men and Women of the House: First, on behalf of all the positive signers of the new draft, I wish to thank our good natured chairman, Representative Connolly, for allowing me to move the "ought to pass" report before he rises in an attempt to kill the bill.

The bill, in new draft, is easily self-explanatory and it is very brief, so I wish to read it to you. "The school board of the school administrative unit may require, at the commencement of the first class of each day, in all grades in all public schools in their unit, that the teacher in charge of the room in which each class is held shall announce that a period of silence shall be observed for reflection or meditation, and during that period silence shall be maintained and no activities engaged in."

Now, some people are going to tell you that schools already have a right to do this, and that is true, but because of all the adverse publicity surrounding prayer in schools, many are not aware that a period of silence is permissible and are afraid to try it. Most schools don't retain an attorney on their staff and would have to pay for legal advice, or they may think that they have to, in order to be sure that they are not in violation of the Constitution if they did allow a period of silence.

An easily accessible statute would clear up any doubt and confusion in the minds of members of school boards. And, by the way, this is only permissible legislation, it is not mandatory.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker, Ladies and Gentlemen of the House: I hope we don't have a long debate on this, but I think the position of those of us who signed "ought not to pass" ought to be explained to you a little bit.

Representative Locke has explained to you what the new draft of the legislation does, and just to compare it with the original bill, the original bill mandated that there would be a period of silence in schools for the express purpose of praying; that was the purpose of the original bill and it was the clear intent of the sponsors in introducing the bill to achieve that end.

The committee amendment, because clearly what the proponents of the legislation were proposing in the bill, was unconstitutional, those that felt some sympathy for the bill in committee changed the bill to, number one, make it permissive and, number two, to delete all reference to prayer. Now the bill reads "meditation and reflection."

In 1963, the United States Supreme Court, in a decision, said that it is unconstitutional for prayer to be allowed in the schools or for Bible reading in a religious context to be allowed in the schools. In 1976, our then Governor James Longley requested an opinion of his attorney general, who is now the Governor of this State, Joseph Brennan, on the same question, and then Attorney General Brennan issued an opinion that insofar as a period of time is set aside that makes no reference to prayer or any designated purpose, that it is allowable, in the words of the attorney general, that the school administration may make available and schedule a particular silent interval.

It is okay now for any school in this state to have a period of silence, so long as that period has no religious connotation.

Representative Locke, in explaining that situation, said that the bill is still needed because many people in the state may not be aware of it. The press has caught onto this issue since it has been debated in the Senate. Those of you who have read the Portland Press Herald this morning saw that there was an editorial that

spoke out against this legislation. I am sure that because of the debate on this bill, everybody in a position of authority within the school establishments of this state will know, if they don't already, that it is okay to have a period of silence.

The sponsors, when they came to the committee and presented the bill, said that what they were concerned about was a loss of values in the state and across the nation and that they wanted to effect, in their words, a more appropriate climate for the acceptance of morality. The sponsor of the legislation was quoted in the newspaper prior to the hearing saying that it was his intent in sponsoring the bill to achieve recognition of the religious aspect of our lives. I submit to you that regardless of what this new draft says, it is the intent of the legislation to deal with the issue of prayer in public schools, and that is unconstitutional.

It is my opinion that many people will vote for this legislation not so much because they believe in it but because they find it politically expedient. I have no problems with that; I understand how things work in the political arena, but in my opinion it is intellectually dishonest to vote for this legislation. You should understand that it is already okay for a period of silence to be observed in the schools, and I would hope that you would vote against the motion.

Those who support this bill because they really believe that the issue of prayer should be addressed in the schools should be honest with us all and rise and make a motion to substitute the bill for the report. Then you will have the original bill before you and the issue, and all its cleanliness, will be there for us to vote on. I won't make that motion, but it might be appropriate.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. Murphy.

Mr. MURPHY: Mr. Speaker, Men and Women of the House: L. D. 699 provides for a period of silence for reflection and meditation, period. What first appeared to be a minority report grew to a majority "ought to pass" as we amended the bill. I think you will find a surprising broad philosophical representation in the "ought to pass" report. L. D. 699 is a new bill.

Then Attorney General Brennan, as Representative Connolly has indicated, issued an opinion that schools can have a moment of silence. But, ladies and gentlemen, you know how gun-shy school boards, superintendents and teachers are these days.

Parents appeared at the hearing indicating that administrators felt they did not have a legal ground to stand on to create a moment of silence. Within my two school districts that I represent, those school boards decided to have a moment of silence, and that is performed every morning at opening ceremonies.

This bill is a permissive act that gives a local board and parents the legal basis for a moment of silence. The local control and option is there if the board decides to use it.

If you have ever faced a group of wiggly, giggly elementary and junior high students in the morning as a teacher, you will understand and maybe appreciate the comment of a teacher at the hearing, that possibly this moment of silence might be beneficial to the teacher also at the beginning of the day.

I think we here in this House see the positive, beneficial results and the accomplishments that follow when the gavel falls and the Speaker reminds us that the House is in order, and we urge you to support the "ought to pass" report.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I debated internally whether I should speak on this bill, but there have been some eyebrows raised at my position on it, and even some dark mutterings that

there may be a move to take away my membership card in the American Civil Liberties Union. I am a member of the American Civil Liberties Union, and I very much admire the courage and tenacity of that organization in defending our liberties, but I don't always agree with the issues that they choose, and I don't on this particular issue.

My private views on school prayer are far to the right of this bill, and they may even be to the right of my friends from Livermore Falls and Harrison, if any such thing is possible.

I am a product of schools where we had prayer or chapel everyday, and as my friend from Livermore Falls has pointed out, it didn't do me any good, but that is beside the point.

I simply don't believe that this bill is a great, philosophical litmus test of whether you are for or against the Constitution or freedom of religion or freedom of speech or whatever. In my humble opinion, it is a nun issue being addressed by a nun bill.

At the hearing, the sponsor was asked, since schools could do this anyway, why should we have such a bill? He said, as you have heard, that many schools were not aware of it or they are uncertain of what their position was. He was asked if he would object to having the original "shall" in the bill changed to "may." He said he wasn't and therefore the bill was redone. Frankly, I am tired of having all of the ills of society being ascribed to taking prayer out of the schools and having this used as a club to beat us over the head on more important issues.

The moral majority notwithstanding, I have no fear that America is headed back to the intolerant, theocratic despotisms that marked some of our earliest governments on this continent, and rather I think that this bill is a very limited approach to assuaging the feelings of many people who are concerned about the moral state of our society and evidence that some of us cussed individuals can be reasonable and undogmatic at times.

The SPEAKER: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, Ladies and Gentlemen of the House: I ran this bill by my daughter, who is a school teacher and who I love very much. She has been teaching the fourth, fifth and sixth grades for many years. She said one problem she found with the bill was that instead of one minute, it ought to have been four hours and 59 minutes longer than that.

Seriously, she claims, you have already asked us to be your babysitters and we do have a minute of silence many times a day to get the attention of the children. They are already doing that.

The bill says you "may" require, the school board or administration "may" require, but I see down here two or three sentences further—when the class is held "shall" announce that a period "shall" be observed. Does that sound like "may" to you?

The SPEAKER: The Chair recognizes the gentleman from Monmouth, Mr. Davis.

Mr. DAVIS: Mr. Speaker, Ladies and Gentlemen of the House: I just hope that we don't accept the Portland Press Herald as gospel here in this House of Representatives. I know that on more than one occasion we have read their editorials and disagreed, and also we found the editorials not to represent all of the people of Maine.

I think we have seen the children in our local communities fleeing our schools to a certain degree to secular schools. I believe this period of silence should be a period when our children could shift their thoughts from outside activities to those of the school.

I would hope that you would support Representative Locke's position on this bill and vote for it.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Baker.

Mr. BAKER: Mr. Speaker, Ladies and Gentlemen of the House: Well, this is a bill that I had every intention of speaking on today. You know, I face, when I am not up here in the legislature, a lot of junior high and high school kids in the morning, and my interest in this bill is such that it led me to attend the hearing, and I did in fact speak and testify against the bill at the public hearing; I had many reasons.

Some of the people who have spoken to me privately about the bill say that the bill really doesn't do anything—I disagree. It does, I think, two things, and one of those things, I believe, the sponsors wanted to do—it basically puts language into the statutes which will say to local schools boards that it is okay, do it; so it does do something.

Something else it does, and some of you are not going to like what I have to say but I am going to say it anyway—it provides a roll call vote for people of the moral majority to look and judge who was morally correct on this issue. I suppose, because the bill doesn't do anything the local school boards can already do, that I could vote for this bill and probably increase my morality from a zero percent to ten percent, which is precisely one percent higher than my Chamber of Commerce rating, but I don't believe I could really do that; it wouldn't be very honest.

However, if you want to pass the legislation, and my local principal will tell me, Mr. Baker, you must go in and require a moment of silence so that your students can meditate on all sorts of things, what have you, and I am not really clear at this point what the sponsors want them to meditate on because I read in the paper the other day that they might even be thinking about the young woman a few seats in front of them and not necessarily on what they would like them to—I mean, I would much rather debate the issue of prayer. I am not against prayer, I was at the prayer here this morning.

I think if I was asked to do this, require a moment of silence, I may be tempted to add a few thoughts of my own before some of the students go into their meditation.

At the hearing, there was a man who did testify, and you really shouldn't judge a bill by everybody that is in support of it, I think that would be unfair, who make some remarks that really appalled me. Basically, the remarks were that according to something that he had known, that once the Roman Catholic President had become President of the United States, that would be the end of school prayer. Then he said, sure enough, when John Kennedy had been President of the United States, that was the end of prayer in public schools. I sat back and I was very upset and a number of the members of the committee were upset as well, and this bothered me. It bothered me because I felt it was some kind of religious intolerance that I have always been opposed to. I have seen this kind of thing happen and it bothers me very much. And I suppose what I would ask my students to meditate on is some of the horrible acts that have been committed in the name of religious intolerance. I think if we are really going to meditate, we ought to think about those things.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: Unlike the gentleman from Portland, Mr. Baker, I really hadn't intended to speak on this issue today, but as I do so, I would remind the House that I do strictly as a Representative from Scarborough. This is not a partisan issue, just the makeup of the two sides of the committee report would tell you that, so I don't speak here as a leader, only as a person who takes exception, I guess, with the gentleman's remarks concerning the fact that this is somehow going to be a roll call vote on moral majority and all that sort of thing. I don't really think it is and I don't think the fact that if it had been placed in front of us the other

way it would have been unconstitutional really matters here. Political expediency aside, I happen to feel that the real issue here is one whether or not the legislature wants to take and make some sort of a statement of conscience, I guess, on whether we feel it important to let local school districts, if they wish, allow for a moment of silence. I don't think that is perhaps asking for an awful lot.

People say it really doesn't do anything. Well, a lot of times they accuse the legislature of not really doing anything, and I guess that is why I happen to feel that legislation like this, if it is put on the books, at least it is a statement of fact, its intent, the fact that we agree with this sort of arrangement for our public schools.

I, too, hope you will go along with the good gentlewoman from Sebec today and adopt this bill.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I can tell you that my kids can pray 50 or 100 times a day if they want to. They do not need a law to make them pray.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: Already you have heard two Representatives from that wonderful city by the sea. You have already had quoted from my sacred scroll, the Portland Press Herald, which I agree with more often than not. I feel the other side of the Portland voter, the vast majority of those people of mine with their warm hearts. I know they will approve my vote here today when I throw that switch to the yes vote, and I will do it with a pure and warm heart as I support this bill.

Let's not cast a shadow on this noble venture. Yes, my great and dear friend down there, Representative Connolly, whom I protected his rights over the years, I ask that he give but a little to the people of Portland. They deserve his yes vote on this. Yes, Representative Harlan Baker, I know he is voting how those aristocrats and monuments in Congress Square would want him to vote, but let me tell you, I bring the word of the honest and the faithful, the true of both parties, from that wonderful city by the sea, and I ask that you join me in that yes vote today on this issue.

The SPEAKER: The Chair recognizes the gentleman from Fort Kent, Mr. Theriault.

Mr. THERIAULT: Mr. Speaker, Ladies and Gentlemen of the House: I was waiting for an opportune moment to stand up and say the few words that I am going to say, and I certainly missed the mark because I have to follow Representative Joyce.

I have heard people say here this morning that this bill really does nothing. I have to disagree with that because I had a prepared speech which I was going to make today and everybody said my speech for me, but there is one point that they did miss and I am glad that they did because I want to bring it to your attention.

Back in 1955, when I first got affiliated with the education process, this here is the size of the law book that we had at that time; it was hardly a quarter of an inch thick. If you want to take a look at it, this is a vintage copy, probably the only one in the state. It was difficult to locate it but I managed to find one. Now I want you to take a look at our law books that we have today. This is the book that I have been issued as a member of the Education Committee, and you will notice that it is in looseleaf style, it is not even bound, probably because we change it so frequently.

What I am saying is, this law does do something, and that something is that it clutters our law book.

The SPEAKER: The Chair recognizes the gentlewoman from Rumford, Mrs. Erwin.

Mrs. ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: As past department chap-

lain of the American Legion Auxiliary, I rise to support this legislation. Our organization is very much in favor of this.

The State of Massachusetts has passed similar legislation which has met the test of the court, and I would hope that you would support Representative Locke's motion.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentlewoman from Sebec, Mrs. Locke, that the Majority "Ought to Pass" Report be accepted in concurrence. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken. 103 having voted in the affirmative and 23 having voted in the negative, the motion did prevail.

Thereupon, the New Draft was read once. Senate Amendment "A" (S-40) was read by the Clerk and adopted in concurrence and the New Draft assigned for second reading tomorrow.

#### Non-Concurrent Matter

Bill "An Act to Create a Department of Corrections" (S. P. 376) (L. D. 1134) which was referred to the Committee on State Government in the House on March 10, 1981.

Came from the Senate with that Body having adhered to its former action whereby the Bill was referred to the Committee on Health and Institutional Services in non-concurrence.

In the House: Mr. Connolly of Portland moved that the House adhere.

The SPEAKER: The Chair recognizes the gentlewoman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: I would hope you would vote against the motion to adhere, because if we do, we are going to kill a bill in reference. I would hope that would not be the intent.

Mr. Speaker, I would make the motion that the House recede and concur.

Thereupon, the House voted to recede and concur.

#### Petitions, Bills and Resolves Requiring Reference

The following Bills were received and, upon recommendation of the Committee on Reference of Bills, were referred to the following Committees:

##### Business Legislation

Bill "An Act to Prohibit Refiners and Distributors from Selling Motor Fuel at Retail" (H. P. 1065) (Presented by Representative Brannigan of Portland) (Cosponsors: Senators Usher of Cumberland and Carpenter of Aroostook and Representative Fitzgerald of Waterville)

(Ordered Printed)  
Sent up for concurrence.

##### Education

Bill "An Act to Amend the Laws Governing School Administrative Districts" (H. P. 1066) (Presented by Representative Locke of Sebec) (Cosponsor: Senator Carpenter of Aroostook)

(Ordered Printed)  
Sent up for concurrence.

##### Energy and Natural Resources

Bill "An Act to Ensure that those Homes Receiving Fuel Assistance are Winterized" (H. P. 1067) (Presented by Representative Huber of Falmouth) (Cosponsor: Representative Jalbert of Lewiston)

(Ordered Printed)  
Sent up for concurrence.

##### Health and Institutional Services

Bill "An Act to Improve the Administration of the General Assistance Program" (H. P. 1068) (Presented by Representative Benoit of South Portland) (Cosponsor: Representative Michael of Auburn)

(Ordered Printed)  
Sent up for concurrence.

#### Judiciary

Bill "An Act Relating to Child Prostitution" (H. P. 1069) (Presented by Representative Connolly of Portland) (Cosponsors: Representative Ketover of Portland and Senator Conley of Cumberland)

Bill "An Act to Clarify the Sentencing Statutes under the Criminal Code" (H. P. 1070) (Presented by Representative Connolly of Portland)

(Ordered Printed)  
Sent up for concurrence.

#### State Government

Bill "An Act to Clarify the Administrative Procedure Act" (H. P. 1071) (Presented by Representative Tarbell of Bangor) (Cosponsors: Representative Hobbins of Saco, Bell of Paris and Lisnik of Presque Isle)

Bill "An Act to Establish Fairer and more Equitable Funding Considerations by the Maine State Commission on the Arts and the Humanities to Well-established Nonprofessional Community Theaters" (H. P. 1072) (Presented by Representative Ketover of Portland) (Cosponsors: Representatives Kany of Waterville and Boyce of Auburn)

(Ordered Printed)  
Sent up for concurrence.

#### Taxation

Bill "An Act to Permit Municipalities to Levy a Sales Tax on Meals and Lodging" (H. P. 1073) (Presented by Representative Brannigan of Portland) (Cosponsors: Representatives Lund of Augusta, Murphy of Kennebunk and Fowlie of Rockland)

(Ordered Printed)  
Sent up for concurrence.

#### Special Sentiment Calendar

In accordance with House Rule 56, the following items (Expressions of Legislative Sentiment)

Michael J. Sayward of Farmington, who is representing the State on the Junior National Ski Team, Class 1, Nordic Combined; (H. P. 1075) by Representative Webster of Farmington.

Chris Bean of Farmington, who is representing the State on the Junior National Ski Team, Class 1, Cross Country; (H. P. 1076) by Representative Webster of Farmington.

Mrs. Sarah Staples of North Vassalboro, who observed her 90th birthday on February 21, 1981; (H. P. 1077) by Representative Mitchell of Vassalboro. (Cosponsor: Senator Bustin of Kennebec)

Elizabeth Merrifield of Sanford, the youngest elected member of the Sanford Town Meeting; (H. P. 1078) by Representative Tuttle of Sanford. (Cosponsors: Representatives Paul of Sanford and Ridley of Shapleigh and Senator Wood of York)

Ruth Barberie of Sanford, who is retiring after 10 years of faithful service in the Sanford Town Clerk's Office; (H. P. 1079) by Representative Tuttle of Sanford. (Cosponsors: Senator Wood of York and Representatives Paul of Sanford and Ridley of Shapleigh)

Kristin Spath of Fort Kent, who has been selected as an Outstanding Young Woman of America; (H. P. 1080) by Representative Theriault of Fort Kent. (Cosponsor: Senator Violette of Aroostook)

David Berenson, Unit Director of the Maine Youth Center, winner of the Jefferson Award for greatest public service performed by an individual; (H. P. 1081) by Representative Ketover of Portland

Roland H. Carlton of Woolwich, who has retired from the Bath Iron Works after 25 years of service; (H. P. 1082) by Representative Cahill of Woolwich.

Leroy K. Hawes of Woolwich, who has retired from the Bath Iron Works after 38 years of service; (H. P. 1083) by Representative

Cahill of Woolwich.

There being no objections, these items were considered passed and sent up for concurrence.

#### House Reports of Committees Ought Not to Pass

Representative Post from the Committee on Marine Resources on Bill "An Act to Create a Wholesale Shellfish License" (H. P. 473) (L. D. 533) reporting "Ought Not to Pass"

Representative Kane from the Committee on Taxation on Bill "An Act Relating to Affixing of Indicia of Payment of Real Estate Transfer Tax of Deeds" (H. P. 582) (L. D. 662) reporting "Ought Not to Pass"

Representative Masterman from the Committee on Taxation on Bill "An Act to Repeal Portions of the Excise Tax Law" (H. P. 646) (L. D. 736) reporting "Ought Not to Pass"

Were placed in the Legislative Files without further action pursuant to Joint Rule 22, and sent up for concurrence.

#### Leave to Withdraw

Representative Nelson from the Committee on Aging, Retirement and Veterans on Bill "An Act to Provide for the Retirement of Forest Rangers in Fire Control Work after 20 Years of State Service" (H. P. 716) (L. D. 848) reporting "Leave to Withdraw"

Representative Post from the Committee on Marine Resources on Bill "An Act to Repeal Drag Limits in Blue Hill Bay" (H. P. 475) (L. D. 525) reporting "Leave to Withdraw"

Representative LaPlante from the Committee on Local and County Government on Bill "An Act to Amend the Authority Governing License Fees of Victualers" (H. P. 604) (L. D. 681) reporting "Leave to Withdraw"

Representative Gowen from the Committee on Education on Bill "An Act to Amend the Statutes Relating to Teacher Tenure" (H. P. 704) (L. D. 828) reporting "Leave to Withdraw"

Representative Connolly from the Committee on Education on Bill "An Act to Require that Energy Conservation Courses be Taught in Public Schools" (H. P. 737) (L. D. 875) reporting "Leave to Withdraw"

Reports were read and accepted and sent up for concurrence.

#### (Off Record Remarks)

#### Divided Report

Majority Report of the Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-80) on Bill "An Act to Increase the Compensation for Substitute Teachers" (H. P. 655) (L. D. 758)

Report was signed by the following members:

Senators:

TROTZKY of Penobscot  
CLARK of Cumberland

—of the Senate.

Representatives:

CONNOLLY of Portland  
GOWEN of Standish  
ROLDE of York  
LOCKE of Sebec  
THERIAULT of Fort Kent  
MATTHEWS of Caribou  
THOMPSON of South Portland  
MURPHY of Kennebunk  
BROWN of Gorham

—of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Senator:

PIERCE of Kennebec

—of the Senate.

Representative:

BROWN of Livermore Falls

—of the House.

The SPEAKER: The Chair recognizes the

gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" amended Report.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Brown.

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I guess I am not the push over that I once used to be. I am standing this morning to ask that you oppose the Majority "Ought to Pass" Report.

I, too, support higher salaries for substitute teachers. I think that \$20 a day, in most cases, is nowhere near sufficient for what these individuals are doing and the responsibilities that they are occasionally asked to assume.

I speak with a certain amount of knowledge about the subject, I have been a substitute, my wife has been a substitute, and I have also had an administrative position where I have been on the horn at six o'clock in the morning trying to find substitutes and finding a great deal of difficulty in attempting to do that. The sponsors will tell you that is one of the reasons why the bill was introduced.

However, I do think we ought to consider the old law of supply and demand, that as substitutes become harder to find, especially good substitutes, it seems to me the logical thing to do is to pay them more and perhaps make it more meaningful to their signing up for that kind of job. I, in fact, have encouraged my school board members to do just that, but that is my point, ladies and gentlemen, this should be a local decision. This is just one more example of one more mandate that we are passing down to the local units.

Finally, it is very interesting to note that the MTA, who earlier this year and last Fall, was passing around a petition to be signed and that petition said very clearly that any programs that are passed by the Maine Legislature which are mandating new and costlier programs, new or costlier programs, back home to the local units should be supplied with the necessary funds to carry out the economic considerations of the mandate. The MTA then went on record as being opposed to any new or additional mandated programs which were going to cost money. This is obviously such a program. I was surprised and amazed to hear the MTA representative at the hearing speaking in favor of this bill, because it very obviously went against the thing that they were so opposed to earlier in the session.

I urge you to vote against the motion to accept the "Ought to Pass" Report and I would ask for a division.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. Murphy.

Mr. MURPHY: Mr. Speaker, Men and Women of the House: I am afraid this is education day in this chamber with these two bills.

Representative Brown argues that the issue here is local control and expresses his opposition to mandate from above. While I, too, am an advocate of that philosophy, I must differ with my friend today.

L. D. 758 proposes to raise the minimum daily pay for a substitute teacher with four years of college, a bachelor's degree and certification, from the \$20 a day figure, established by the Legislature in 1967, to \$30 a day. This readjustment is clearly a legislative responsibility for the following reasons: The legislature in 1967 was aware, as we should be today, that substitute teachers are excluded from the collective bargaining process. That exclusion has meant that while the average Maine teacher's salary rose from \$6,000 in 1967 to \$13,000 in 1981, the minimum daily salary for a substitute in 1981 is the same as it was 14 years ago—\$20 a day. The precedent was established in 1967, when the legislature accepted responsibility for setting the minimum daily salary for substitute teachers. For all the talk of local control and mandates, we know that that responsibility rests with these Houses of the

Maine Legislature.

In 1967, the \$20 a day minimum was 60 percent of the average daily teacher salary; in 1981, that \$20 a day minimum is 27 percent of the average daily teacher salary—60 percent in 1967, 27 percent in 1981. Twenty dollars a day for a 7 hour work day is \$2.86 an hour, 49 cents an hour below minimum wage.

Let's put this into human terms—a parent who decides to add a second income to the hard-pressed family budget puts his or her name on the substitute list and, as Mr. Brown said, the phone rings at 6:00 a.m. The children have to be gotten up early, fed, clothed and taken to the baby sitter. At school, you assume all the teaching responsibilities and duties of the teacher who is out, including lunch room, study hall and potty patrol. Very frankly, we can say that the toughest job in education is that of the substitute teacher.

At the end of the day, after federal, state and retirement holdings, the sub has approximately \$13.70 left, his net pay; subtract the cost of a starch-filled hot lunch, mileage, and you are down to \$10. If you took one child to day care, you have just netted \$2 for the day. Two children in day care and you have lost \$6 by working that day.

The opponents who spoke at the hearing, after giving their testimony, when asked, would you work for \$20 a day, would you work for \$30 a day in the classroom today, every opponent said no. This is one reason why substitute teachers, who appeared to be in surplus in September, are almost extinct by January, and by April, in many cases, are found to be only warm bodies.

I cosponsored and speak today in favor of 758 because I feel that the substitute teacher is just as important to our children's education as the regular teacher who is there the other 179 days. I urge you to accept the responsibility and charge so clearly placed upon us in 1967 by an earlier legislature, and vote yes for the near unanimous "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentlewoman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to speak to you for a few moments today because I used to be a substitute teacher. In fact, two days before I was sworn into this legislature, I worked for \$30 a day and was glad to get the money.

I would like to return first to a few comments made by my good friend, the gentleman from District I. He spoke about supply and demand. In the Auburn and Lewiston school systems last winter, we saw a very good example of that in substitute school teaching pay. At that time, beginning substitute teachers were paid \$20 a day. However, with the big flu epidemic, Lewiston and Auburn discovered that it could not get substitute teachers at \$20 a day, so it raised the pay to \$25 a day, and after experience in the classroom, teachers were then paid \$30 a day. So, indeed, supply and demand is very much alive out there in the substitute school market.

However, I would like to turn briefly to a few comments about the substitute teacher job. Being a substitute teacher is really a terrific job. One works about five hours a day. The working conditions are generally excellent. One can work every single day if one wants to, but one can also quit at a moment's notice. One can just say, I am sorry, I don't want to work Fridays or, I am sorry, I am through. What other kind of job do you have that flexibility to come and go?

My fellow substitute teachers in the Auburn school district, I think most of us were free spirits who were quite anxious to have flexible jobs where we could quit at a moment's notice or where we could take a day off without explaining it to anyone, and that is why we were substitute teachers. However, when you want that type of flexibility in a job situation, you can hardly expect top dollar.

The gentleman from Kennebec pointed out a few things to you about substitute teaching. He talked about the phone ringing at six in the morning. As soon as you reach the priority list in your school district, the phone starts ringing in the evening instead. Furthermore, I would like to point out that not all substitute teachers do have four years of college and most are not certified.

I do hope that you will vote against this measure today.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Speaker, Ladies and Gentlemen of the House: Yesterday in the corridor Representative Murphy approached me and today Representative Matthews also talked about this bill. At first I thought I was going to vote against it, and I have changed my mind because I began to think about the times when I have taught school over the last 12 or 13 years and I can remember the few days that I have been out of school because of sickness coming back and seeing notes on my desk from the person who took my place that said — this has been the worst day of my life, and then having the kids tell me the next day when I had returned and gotten through reading the note things like — you wouldn't believe what we did to her yesterday. If everybody in here thinks about their high school years or their grade school years, I bet you can remember some of the horror shows that you put on for substitutes over the years.

There were two students here in front of me a few minutes ago from Bonnie Eagle High School, and I leaned over and I said to them, what is the worst thing you have ever done to a substitute when you have been in school? One of them said, well, we changed seats around and we used fictitious names. For example, if they send the attendance sheet around, there will be a lot of John Hancock's on it and some Mickey Mouses and that sort of thing. The other one said, what we do sometimes is completely ignore the substitute; no matter what she or he says, we don't do anything they tell us.

I can remember going back to my high school years, as I sat here listening to the debate, how we used to change seats, and I can remember one particular woman, as Don Hall would say, God love her, she had a hearing aid. She had quite a bad hearing problem, and every time she would come into the class, we would start to whisper and we would see her flip the hearing aid up so she could hear a little better and then we would all go (loud humming noise) like that and she would figure that the hearing aid had gone haywire and the next time we would start shouting and she would flip the lever back. Last year one time when I was coming into a study hall, and they had had a substitute, and she left before the kids did. Just as soon as the bell rang, she went out the door. She was so glad to get out of there. When I came in, the wastebasket, somebody had thrown a match in the wastebasket and the wastebasket was on fire and I had to get the fire extinguisher.

The last thing that ran through my mind was of a boy that I graduated from high school with in Old Town who really developed something to a science. What he used to do was, he used to hyperventilate when there was a substitute around. Then he would hold his breath and pass out. At the time we didn't have an ambulance service and the funeral home director used to bring the hearse up and they would haul the kid off to the hospital. He did that almost every time we had a substitute, and he got that going so well that when he wasn't ready for a test, he would also do it. Johnny Jones in the back of the room would say, watch it, he's got a test today and he is not ready and he is going to pass out, and soon, bang, he was right on the floor.

Substitutes have to put up with a lot, they really do. Twenty-five dollars a day isn't very

much.

My school board and my school superintendent sent Representative Paradis a note and he shared it with me; they are opposed to this bill. I am sorry that they are, because I really don't think \$5 more a day is going to break anybody. I understand that, I think I would have been opposed to the bill had it been in its original form, but it has been changed to \$30 a day and I would urge you to support it.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: My good friend from Old Town, Mr. Pearson, was very sympathetic in his remarks for the substitute teachers and said, you would be surprised about the horror shows that were put on when a substitute teacher was there.

I harked back to my high school days. I just think of some of the horror shows I put on for some of my regular teachers. When I went to high school, we had one period, from 8 to 5, with a break about 10:15, and sometime between 8 and one, I was either thrown out of the class or else I was told something that would keep me quiet for awhile, and that is somewhat difficult to do. But, you know, I was just thinking, Representative Pearson, that even at my age, when we did something wrong, we were sent to the principal's office and told to come back at two o'clock for one or two periods, two to three or three to four. Even at my age, some of the things I did to my teachers, God love them all, if I had gone back every day that I was told to go back—what I used to do is turn left and go down with the janitor and smoke a pipe with him or something like that, but if I had gone back every time I was told to go back, I would still be going back. That is why I am going to vote for this bill.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. Murphy.

Mr. MURPHY: Mr. Speaker and Members of the House: I would like to thank the gentleman from Old Town and Mr. Jalbert for their comments. I, too, in 13 years of teaching, have seen many horror stories—men break down and cry, a man carried out on a stretcher, I think a victim of a heart attack.

I think there were points raised by the gentleman from Auburn that have to be addressed. In 13 years of teaching, I have never met a substitute teacher who works five hours—six, seven, eight hours, plus outside work if the individual would be substituting again the following day.

I disagree with her comments about substitute teachers being free spirits. In 13 years of teaching, the substitute teachers I have come in contact with have been men and women who wanted to improve their teaching skills and wanted to add to their family budget. In no way would they categorize themselves as free spirits.

Also, I think she misrepresented the legislation by saying that all substitutes would be eligible for the \$30 a day minimum. The statutes are very clear—four years of education beyond high school, a bachelor's degree, and certification to qualify for the minimum level.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Brown.

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: With the Representative from Old Town, Mr. Pearson's, remarks, and the Representative from Lewiston, Mr. Jalbert's, remarks, I didn't realize this was going to be confession day in the Maine State Legislature. I am sure we would all have some great confessions to make, stories to tell about what we have done to our substitute teachers and to our regular teachers.

We have heard some real horror stories about what happens in a classroom, and I can assure you, as one who has been a classroom teacher, both substitute and full time, and an administrator, as I said before, those horror

stories occur whether you are a substitute or a full-time, regular teacher. I don't think we should let that cloud the issue.

My good friend from Kennebunk, Mr. Murphy, and he is my good friend, laid out some strategy for you to consider. Mr. Murphy is a very valuable member of this legislature, I think he articulates the issues extremely well. Frankly, I am very proud to be able to serve with him, but he is way off base on this issue, he is way off. The real issues are as follows: This is a local policy issue. Employee pay rates should be determined by local school board members, and that becomes part of the total school budget. The question is, do we as a legislature—we have the right, yes, but do we have the moral right, I guess I am saying, to always tell our local people what they must and must not do.

Secondly, most school systems pay their substitutes on a regular salary schedule after that substitute has served for more than 10 consecutive days. Most systems already pay in excess of \$20 a day; in fact, most of them are paying \$25 and \$30 and some even more than \$30, even to non-degree substitutes. In fact, high school graduates are often permitted substitute status.

Another very important point for you to consider, if the new \$30 a day rate is approved and if it results in a hardship to some of the local districts, this may actually result in a long-term reduction of pay for those folks who stay on longer than 10 consecutive days. School boards may start to reevaluate that option.

Finally, and I think this is very important, because the law was placed on the books in 1967 is not an excuse, is not a reason for increasing the effects of that law today. In fact, I would have much preferred to have seen that section of the law removed. We are passing laws this session which will be repealed maybe next session, maybe ten sessions from now. Just because it is a matter of statute doesn't mean that it is right and always correct.

Again, ladies and gentlemen, I urge you very strongly—cast your vote today for local control and local option.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mrs. Martin.

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Brown is way off. The bill wouldn't be here if the towns were paying.

I sponsored a similar bill last session. It died on the Appropriations Table for lack of \$3,000. I hope this one will go the whole way this time.

I can't believe Mr. Brown's way of thinking, being a teacher. There are babysitters who are making more money a week than substitute teachers. Besides making more money, they have the right to raid the refrigerator where they substitute.

Seriously, substitutes are underpaid. I hope you will consider voting for this bill for many of the good reasons that were stated on the floor this morning.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker and Members of the House: I would like to respond briefly to a few comments that have been made.

Perhaps the Auburn School District is the best place in Maine to teach, I don't really know; however, I frequently did teach at Edward Little High School only five hours a day, sometimes five and a half, but quite frequently only for five hours.

Secondly, most of us who do teach at Edward Little are "free spirits"—people who want a flexible job that we can quit at a moment's notice.

But I would like to point out something much more serious about this bill. It has been clearly pointed out to you that in order to qualify for this minimum wage, one must have four years' minimum of college and a certification. I strongly believe that most substitute teachers

in the State of Maine would not qualify under these standards and therefore this bill really wouldn't do anything to help them, since most of them do not have teacher's certification and many of them do not have four years of college.

If a substitute teacher can make more money as a babysitter, perhaps she should consider changing her job. At the same time that I worked as a substitute teacher, I also worked as a clerk in a store, and I can assure you that I made much more money as a substitute teacher than I did as a store clerk.

I would like to close my remarks by posing one question, and that is that it is my understanding that after a regular teacher has used up his or her sick leave and needs an extra day off, it is the teacher himself who pays out of his pocket for the substitute teacher? Could someone please respond to this question.

The SPEAKER: The Chair recognizes the gentleman from Harrison, Mr. Leighton.

Mr. LEIGHTON: Mr. Speaker and Members of the House: I can't answer that question. I would like to say first that I can hardly wait to see how the Horseblanket shows the noise that Representative Pearson made. Then I would like to pose a question to the Speaker, if I could.

Since there are state funds involved in reimbursement of local units, does this L. D. require a fiscal note?

The SPEAKER: The Chair would advise the gentleman that it doesn't really matter at this point. The Chair can check it out, but if a fiscal note is required, it need only be applied at the time of second reading.

The Chair recognizes the gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker, to further amplify on the answer to the question—the fiscal note was inadvertently left off the committee amendment. There is a House Amendment to the Committee Amendment that will be distributed that gives us the fiscal note as soon as we vote on acceptance of the report.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mr. Richard.

Mr. RICHARD: Mr. Speaker and Members of the House: In answer to Miss Lewis's question, I believe if she were to check, she would find that it is illegal for a person to pay for this substitute in the Maine school system.

Secondly, I don't think this is the day for one-upmanship. Having spent 30 years in secondary education, all walks of it, from a teacher on up through to an administrator, and being from a rural area of Maine, I can very much appreciate the problem and how difficult it is to get substitute teachers in our area. I think this should very much be voted on, and it will do a great deal of good.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Portland, Mr. Connolly, that the Majority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

92 having voted in the affirmative and 34 having voted in the negative, the motion did prevail.

Thereupon, the Bill was read once. Committee Amendment "A" (H-80) was read by the Clerk.

Mrs. Gowen of Standish offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-94) was read by the Clerk and adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

The bill was assigned for second reading tomorrow.

#### Divided Report

Majority Report of the Committee on Health and Institutional Services reporting "Ought to Pass" as amended by Committee Amendment

"A" (H-81) on Bill "An Act Providing for Pupil Screening for Scoliosis and Related Spinal Abnormalities" (H. P. 273) (L. D. 319)

Report was signed by the following members:

Senators:

GILL of Cumberland  
BUSTIN of Kennebec

—of the Senate.

Representatives:

PRESCOTT of Hampden  
BRODEUR of Auburn  
KETOVER of Portland  
MANNING of Portland  
McCOLLISTER of Canton  
RICHARD of Madison  
BOYCE of Auburn  
HOLLOWAY of Edgecomb  
RANDALL of East Machias

—of the House.

Reports were read.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Senator:

HICHENS of York

—of the Senate.

Representative:

MacBRIDE of Presque Isle

—of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Presque Isle, Mrs. MacBride.

Mrs. MacBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I am very much in favor of scoliosis screening, but I signed this bill, as you can see, "ought not to pass." This, indeed, does seem to be the day for the schools, but this is another mandate for the schools, and I am sure we are going to have many more mandates before the legislative session ends.

With increased inflationary costs and less money, school boards are trying to cut their budgets. In my area right now, school board members are debating on cutting the amount of school busing, with the parents protesting. A short while ago, it was to cut kindergarten or to continue it for a full day in order to save money.

Every mandate from us creates an additional burden. I am in favor of all the things we can do to make our children healthier and better able to cope with life, but shouldn't the parents be assuming some responsibility for the health of their children? Or, as I have stated in the past, if the state is going to mandate these programs, I think the state should fund them. If the Governor would include this program in his budget to pay for the additional works for the schools, I would have no problem at all with this bill. However, I don't think the answer for the schools is another mandate without funding.

We have worked hard on this bill in committee, all of us. Everyone gave a lot of consideration to the mandate and, consequently, we are allowing either the schools or their agent, such as the Rotary Club, Kiwanis and so forth, to do the screening. The Department of Human Services must provide assistance in training, and the test is a simple test; however, the schools are responsible. They must inform the parents, distribute the information, they must see that the tests are performed and keep the records. I think we are asking too much of the schools—more programs and no funding for them. What will be our next demand?

For these reasons, I voted against this bill.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mrs. Ketover.

Mrs. KETOVER: Mr. Speaker, Ladies and Gentlemen of the House: I, too, am in favor of

scoliosis. Too many of us don't know what scoliosis is. The bill allows a three-year phase in of screening. One school district saw 100 students in one hour. Schools could cooperate with physical, hearing and vision tests; it takes only 30 seconds to screen, it is simple. First you take a look at the shoulders, the hips and they bend forward; we are screening, not diagnosing; no need to touch a child. No one has ever been taken into court for checking posture, no case nationally has been litigated. Forms can go home and be signed or can be refused for screening.

This bill provides schools with training, consultation, technical assistance, which is necessary. Maternal and child health is a prevention.

Blue Cross and Blue Shield in Massachusetts shows \$2.5 million spent in 1977 to cover hospital costs for 495 scoliosis surgery, not including physician costs, state costs to welfare if parents aren't able to work for one year, state costs to medicare for surgery, unnecessary. Single parents with scoliosis with loss of job, state pays for unemployment or workmen's compensation. Costs to school districts to provide for special tutors, transportation and so forth costs school districts \$1,200 and as they must provide education, it costs more than a school screening program.

If the child is diagnosed early on, they may not suffer later on. This is why we should screen in schools. If a child needs surgery, they could miss up to a year of school.

I urge you to support L. D. 319, because I have seen many children who have had to go through this terrible ordeal.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Men and Women of the House: I have been looking forward to speaking on this bill. Since we are all reminiscing, I would like to reminisce about the good old days on Munjoy Hill where I grew up. Not everybody who grew up on Munjoy Hill is downstairs on the second floor.

I went to the Shailer School, and twice a year Miss Cutts would come to school and Miss Cutts would line us up, boys on one side and the girls on the other, and we all had to bend over and she would walk around and look at our backs and then we would stand up straight and tall and she would say, well now, that right shoulder is a little higher than the left — when you go to the store, do you carry the bundles on your left arm or your right arm and we would tell her and she would say, well, if you are right handed, start carrying your bundles in the left hand and we would go back to the classrooms. It didn't take very long and then we would get weighed and we got three kinds of cards. You got a blue card if you were overweight and you got a white card if you were just right and you got a red card if you were underweight. Of course, the red card meant that your mother really wasn't doing very much on your behalf or whatever and that was kind of embarrassing; the blue card was embarrassing too. Those were the good old days. Miss Cutts came around twice a year and she didn't touch us and when we got done, she would look at us and say, you sit straight and tall and we all felt kind of special about that.

The other day I was reminiscing with a classmate who is now a doctor, as matter of fact, he is the president of the Maine Medical Association, we were reminiscing about Miss Cutts and about this bill and how important it was, so important to all of us. We both said how wonderful it was to have Miss Cutts come twice a year. I am sorry that my children, who were in public schools, did not have that opportunity but they were lucky. They went to camp every summer so they were forced to have a physical examination every year. There are many children who don't go to camp and therefore do not go to a doctor to be examined.

I hope you will vote for this bill. It is a very

important bill; it is important to the children who are in school now and for the children to come.

Thereupon, on motion of Mrs. Prescott of Hampden, the Majority "Ought to Pass" Report was accepted and the Bill read once. Committee Amendment "A" (H-81) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

#### Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" on Bill "An Act Relating to the Licensing of Pin Ball Machines" (H. P. 503) (L. D. 554)

Report was signed by the following members:

Senator: SHUTE of Waldo  
— of the Senate.

Representatives:

COX of Brewer  
STUDLEY of Berwick  
PERRY of Mexico  
STOVER of West Bath  
McSWEENEY of Old Orchard Beach  
DUDLEY of Enfield  
TREADWELL of Veazie

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-79) on same Bill.

Report was signed by the following members:

Senators:

VIOLETTE of Aroostook  
CHARETTE of Androscoggin  
— of the Senate.

Representatives:

GWADOSKY of Fairfield  
SWAZEY of Bucksport  
SOULAS of Bangor  
— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Soulas.

Mr. SOULAS: Mr. Speaker, Ladies and Gentlemen of the House: I would ask for a division. I hope you will vote against the motion and give us a chance to accept Committee Amendment "A".

The bill, in its entirety, covers more than its original intent. The intent of the bill was to shift the decision-making authorities for licenses from the clerk to the municipal officers. I will just read to you about the bill.

"Notwithstanding any other provisions of this Chapter to the contrary, a municipality may provide by ordinance that the issuance denial and revocation of pinball licenses be handled by the municipal officers."

Right after that, somebody added a phrase — "such an ordinance may also contain additional licensing requirements." We checked this out with our attorney on the committee and he said to us, you positively do not need this section in the law, that we have enough guides, we have enough laws to cover this. So, all we are doing is taking out that section and then we are going to be voting, hopefully, for the bill on its original intent.

I don't want you to feel that we are trying to kill the bill because we are not trying to do that, but my experience on Legal Affairs has been, it is better to leave things just as they are. Sometimes even one word can change the whole bill.

We are dealing with pinball machines. With the many new kinds that are being produced, who knows what "additional requirements" could mean? It could be interpreted to mean more machines or less, and it could also include gaming or video machines. It is the old story, a little leak in the dike and Niagara Falls

could come flowing in. So, let's not look back next year and have someone say, I told you so. Let's keep the original intent of the bill and vote no on this motion and then we can accept the bill by voting yes on the committee amendment.

The SPEAKER: The Chair recognizes the gentleman from So. Portland, Mr. Macomber.

Mr. MACOMBER: Mr. Speaker, Members of the House: I rise to support the Majority "Ought to Pass" Report. I am the sponsor of L. D. 554. It is not a partisan issue, as you can see by the committee report, neither is it a labor bill. It is an issue that should be resolved on its own merits. It speaks to two issues, one allows the transfer of the licensing authority from the city clerk to the elected officials of the community. As you can see by the report, this poses no problem. The problem lies with the nine words in the bill that say, "Such an ordinance may also contain additional licensing authority." I think you can translate these nine words to two words. These two words would be "local control".

Any of you who are now municipal officials, or who have been in the past, know the frustration of seeing something happen in your community that you know is not in the best interest of the community and not being able to do anything about it. These nine words allow the people who are most directly affected, the people who live in the community, to have a say in their own affairs. It is very important to note that it is a local option bill. If you don't need or want the authority in your own town or city, you are in no way obligated to use it. I think it is a good bill and I would urge your support.

In closing, in responding to Mr. Soulas, his attorneys are saying that this is not necessary. I would point out to him that at this very time the city of South Portland, the town of Durham, the town of Windham, and it is happening very rapidly in Kennebec, are all in court at the present time over this very issue, whether or not the towns and cities have any control over their own destinies.

I would urge you to vote for this measure.

The SPEAKER: The Chair recognizes the gentleman from Fairfield, Mr. Gwadosky.

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I also hope you will oppose the pending motion before the House to accept the Majority Report, and I would like to offer a few reasons why.

I think the gentleman from South Portland, Mr. Macomber, has given you a very good reason in giving the analysis that he would like to have this bill before us. During the hearing on this bill before the Committee on Legal Affairs, he told us of the problems that they were having in South Portland with a particular grocery store which desired to put some pinball machines in, especially the new video machines in their store. They had problems because several people in that particular city felt that they were getting a little out of control. They didn't know how many pinball machines or video machines you could put into a supermarket before it became an arcade. They were also concerned with the type of crowd that might appear with the presence of these particular machines in a grocery store.

It was learned today that under present law your town clerks issue the permits for a pinball license, even though your board of selectmen or town council are the people who actually set the fees. The purpose of this bill today is to allow towns the local option to allow towns that would like to have more widespread consideration in this aspect, to allow their town councils or board of selectmen to make this decision rather than the town clerk. I don't think anybody on the committee had a problem with that.

Even though the reason the bill was put in has already been solved because that particular grocery store has gone out of business, we felt that the concept was a very good concept

and a valid concept. I, however, and several other members of the committee were concerned about one particular sentence in the bill and, as Mr. Soulas has mentioned, that particular sentence says, "such an ordinance may also contain additional licensing requirements." It is my contention today that that particular sentence is a separate issue altogether. It may very well be not appropriately before us at all. I think it is so vague and so all encompassing that that particular issue should be subject to a public hearing all by itself.

The pinball industry, especially the video machine industry now, is becoming immensely popular. It is an extremely lucrative type of business, but during the testimony, we heard no problems of abuses, nothing that can't already be handled by local ordinances. If they want to increase the fees in a certain town to discourage people from putting in 50 video machines in a particular location, they can do that already. I feel that to put this, at this time, in a bill like this, to put in this sentence, it would be inappropriate for us to do this and it really just flies in the face of our national policy now, which is characterized by a trend towards deregulation. I hope you would oppose the pending motion.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Brown.

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I hesitate to get up twice in the same day, but I rise to support my good friend from South Portland, Mr. Macomber.

For those of you who may not be awfully concerned about the aspects of this bill, it is probably because you don't have one of these kinds of establishments in your community. I think of all of the issues back home that my folks are most concerned about, especially my home town of Livermore Falls, it is the issue of an arcade and the inability of the local officials to be able to deal with that properly, to be able to impose their own kind of restrictions that are necessary to keep that kind of an establishment in line with good operating and good business practices.

We have one of these facilities in our town, and I have got to say that in a year's operation it has caused a degradation of our main street, our business section, and I firmly believe that the local people need some additional language in the statutes to provide them with the authority to develop their own ordinances which will at least give the local people in the communities a greater handle on what is going to be coming into their town and what kind of effect it is going to have on the business district.

I urge you to go along with the "ought to pass" recommendation.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Soulas.

Mr. SOULAS: Mr. Speaker, Ladies and Gentlemen of the House: I just want to state something that has not been said. The business in question at the time that was brought up at the hearing didn't have one machine in it. Again, I can't see why the bill is even here. That place didn't even have a machine. I just wanted you to know that.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to address the point that has been raised that this particular sentence which is being removed by the minority report—the point has been raised is that it is not properly part of this bill. I would simply call attention to the title of the bill, which says "An Act Relating to the Licensing of Pin Ball Machines." My interpretation is that anything that relates to the licensing of pin ball machines is properly part of this bill.

The SPEAKER: The Chair recognizes the gentleman from Bucksport, Mr. Swazey.

Mr. SWAZEY: Mr. Speaker, Members of the House: I came out with the minority report on this also, because I am a believer in local

option. What we are legislating here today really never existed. It was actually anticipated, and I should say that the particular store involved governed itself, you might say, because they were having people come there that were undesirable and the customers did not want to go to this store and the store closed down. So, I say let it take care of itself without all this legislation. We have all kinds of books here, as you can see, and I don't think we need to make legislation when we don't really need it.

I hope you will vote against the motion and for the amendment.

The SPEAKER: The Chair recognizes the gentleman from Wells, Mrs. Wentworth.

Mrs. WENTWORTH: Mr. Speaker and Members of the House: Just for clarification—the clerk may issue the license, but she issues it on the authorization of the licensing board of the town, which is the selectmen, the clerk and the treasurer.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Brewer, Mr. Cox, that the Majority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

98 having voted in the affirmative and 17 having voted in the negative, the motion did prevail.

Thereupon, the Bill was read once and assigned for second reading tomorrow.

#### Consent Calendar First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day.

(H. P. 467) (L. D. 519) Bill "An Act to Establish Guidelines for the Issuance of Concealed Weapon Permits"—Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-88)

(H. P. 356) (L. D. 404) Bill "An Act to Provide for Direct Payment to Municipalities of Fines Collected Under Certain Laws Relating to Animals"—Committee on Local and County Government reporting "Ought to Pass"

(H. P. 603) (L. D. 680) Bill "An Act to Authorize the Designation of a Municipal Development District"—Committee on Local and County Government reporting "Ought to Pass"

No objections being noted, the above items were ordered to appear on the Consent Calendar of March 13, under the listing of Second Day.

#### Consent Calendar Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day.

(S. P. 209) (L. D. 574) Bill "An Act to Amend the Charter of the Portland Water District"

(S. P. 171) (L. D. 421) Bill "An Act Prohibiting Businesses from Raffling or Giving Away Live Animals, Fowl or Reptiles as Fund-raising Device"

(S. P. 174) (L. D. 454) Bill "An Act to Continue the Joint Select Committee on Decommissioning of Nuclear Generating Facilities" (C. "A" S-36) (Reconsidered)

(H. P. 695) (L. D. 809) RESOLVE, Designating the Picnic Area on State Route 23 in Dexter as the Harold Keyte Memorial Picnic Area (C. "A" H-82)

(H. P. 551) (L. D. 627) Bill "An Act to Create a Lake Restoration and Protection Financial Aid Program"

(H. P. 315) (L. D. 345) RESOLVE, Authorizing the Bureau of Public Lands to Convey the State's Interest in Certain Public Lands in Milford, Penobscot County (Mr. Tarbell of Bangor was excused from participation and voting pursuant to the rules).

(H. P. 550) (L. D. 626) Bill "An Act to Con-

form and Strengthen the Law Concerning the Burning of Debris"

(H. P. 552) (L. D. 628) Bill "An Act to Provide for Determination of the Economic Effects of the Cobscook Bay Tidal Power Project" (C. "A" H-83)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were passed to be engrossed in concurrence and the House Papers were passed to be engrossed and sent up for concurrence.

On motion of Mr. Davies of Orono, the House reconsidered its action whereby Bill "An Act to Continue the Joint Select Committee on Decommissioning of Nuclear Generating Facilities," Senate Paper 174, L. D. 454, was passed to be engrossed, pursuant to Consent Calendar Rules, as amended by Committee Amendment "A" (S-36).

Thereupon, the Report was accepted and the Bill read once. Committee Amendment "A" (S-36) was read by the Clerk and adopted in concurrence and the Bill assigned for second reading tomorrow.

#### Passed to Be Engrossed

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Waldo County for the Year 1981 (Emergency) (H. P. 1030) (L. D. 1195)

Was reported by the Committee on Bills and in the Second Reading, read the second time, passed to be engrossed and sent up for concurrence.

#### Amended Bill

##### Later Today Assigned

Bill "An Act to Establish a Sign on the Maine Turnpike for the University of Southern Maine" (S. P. 212) (L. D. 577) (H. "A" H-86 to C. "A" S-34)

Was reported by the Committee on Bills in the Second Reading and read the second time.

On motion of Mr. McHenry of Madawaska, tabled pending passage to be engrossed in concurrence and later today assigned.

#### Passed to Be Enacted

An Act to Clarify Certain Provisions of the Municipal Election Laws (S. P. 150) (L. D. 358)

An Act Pertaining to Election Officials (S. P. 156) (L. D. 364)

An Act to Modify Certain Rules of the Road to Conform with the Uniform Vehicle Code (H. P. 32) (L. D. 37) (C. "A" H-70)

An Act to Amend Current Law to Limit Additional Fees Charged to Handicapped Persons for Special Motor Vehicle License Plates that Display Handicapped Symbols (H. P. 297) (L. D. 327) (C. "A" H-69)

An Act Relating to Boilers and Pressure Vessels and their Operation (H. P. 325) (L. D. 353) (C. "A" H-68)

An Act Relating to the Size of Scallop Drags in Certain Coastal Waters (H. P. 329) (L. D. 356)

An Act to Provide for Reciprocity with other States under the Cosmetology Statutes (H. P. 370) (L. D. 408)

An Act to Include Industrial and Medical Gas Installations as Personal Property Employed in Trade under Exceptions for Purposes of Personal Property Taxes (H. P. 403) (L. D. 446)

An Act to Abolish the Panel of Physicians under the Workers' Compensation Act (H. P. 525) (L. D. 591)

An Act Relating to the Excise Tax Transfer Fee and Excise Tax Maximum (H. P. 533) (L. D. 599)

An Act Concerning Intestate Estates (H. P. 557) (L. D. 632)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

#### Orders of the Day

The Chair laid before the House the first

tabled and today assigned matter:

HOUSE DIVIDED REPORT—Majority (12) "Ought Not to Pass" — Minority (1) "Ought to Pass" — Committee on Judiciary on Bill, "An Act to Permit Blood Specimens to be Taken to Determine Blood-Alcohol Level Without the Defendant's Consent when the Defendant is Unconscious or Unable to Give Consent" (H. P. 274) (L. D. 306)

Tabled—March 10 by Representative Hobbins of Saco.

Pending—Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, I move acceptance of the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: This bill, 12 to 1, and I might as well give you the other sad part of it—the sponsor herself is opposing the bill.

What must be my starting point when we talk about this bill? This bill should not just slide under the hammer. Each one of you here will have to pass the face-to-face test on this bill, and you might get into an extended debate on this bill and I might be the little guy here trying to move the immovable.

You might hear quotes from the studies, but before we start this out, let me tell you that I have often said there is only one valid study that I have ever seen up here, and that was that study several years ago when we decided to study why that little chicken crossed the street. You know, we studied that chicken, we weren't in session and it didn't cost us anything. You know what we learned? We learned that that chicken never crossed the street, she only went out to the center. That chicken went out to the center of the road so she could lay it on the line.

Now, today, that is my task, I have got to lay this bill on the line, and it is a very simple bill and this is how it is going to affect you. It is the operating under the influence bill. It could be in my town and it could just as easily be in your town—that drunken driver barreling down the road and hits that school bus. Two children might be laid out in the road, no longer will they breathe. The police arrive, yes, they will take that driver who has ended up wrapped around the pole, they will take him down to the hospital. They want some blood to test. They will go in and ask for a blood sample, like they do now and in most cases get it. This bill will clarify that.

Yes, if you vote against this bill, the doctor at that hospital will inform the law enforcement officer, your law enforcement officer, that he can't take that blood. It will probably be his duty to go back and tell the parents, when they complain about that drunken driver, they will have to say, he must walk free because we can't give him a blood test. People will get excited, call their legislators—why did my child have to die and every day I must watch and see that driver drive past my house—somehow this is not right.

Yes, the implied consent that we have in this state now, every person that drives a car, whether he is a tourist or whether he is a resident, the fact that he is behind the wheel, he is mandated by law that he must adhere to the implied consent law.

Yes, we have a problem with the drunken driver and, you know, last week I met a police officer that I worked with many years ago and he said to me, remember that night we had to go down the turnpike on that armed robbery? The New Hampshire police arrested the fellows we were chasing in Rye, New Hampshire, and, you know, I had trouble, and that was the big case, I had trouble remembering that case, but I will tell you in this House that I have no trouble remembering those many days and nights when I had to go up and lift up that child who had been hit by that drunken driver. No, I

don't think a week goes by that you don't recall incidents like that, for I have for 30 years prayed for some of those children that I had to pick up. All this bill asks for is a little justice.

You are going to hear the arguments—oh, what a dastardly thing it is to take that blood, take that blood from an unconscious person. You know, even to me it looks as though there might be a little wrong there. But 15 years ago, on the exact same day that the Miranda case was handed down by the United States Supreme Court, the Schmerber versus California case came down, and in that case, a police officer had ordered a doctor to take blood in the accident ward of a hospital in California. Mr. Schmerber, laid out on the table, said, nobody is taking my blood. The police officer insisted. Mr. Schmerber's lawyer was in the room, the doctor took the blood, the case went to the United States Supreme Court.

Justice Brennan wrote the majority saying that there was nothing wrong there and he got in to explain although Schmerber had his rights there, that there was a greater right of the public, the people out there. The people out there have a right to Schmerber's blood to prosecute him or to find him innocent on the basis of that blood test. Yes, they will get up and I know they won't explain to you some of the theories in law, such as proprietary rights. You might have rights but if my rights are greater I should prevail.

This bill, yes, this is a problem that will help us greatly to get that drunken driver off the road. I urge you to vote against that motion made by my good friend, my chairman, and when he gets up, as I am sure he will, he will address you as my chairman, but bear in mind and you know, Mr. Speaker, at times like this, I wish that the rules would permit me, when I address that fine gentleman, to say, my son. He will, when he stands up, besides being my chairman, he will be, as an attorney, an officer of the court, and I hope that he speaks to you today as an officer of the court.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Members of the House: This bill has been called the Vampire Bill, and rightly so. I wonder who in the world could have been dumb enough to put in a bill like that?

Actually, I am afraid that I am going to have to stand here today and say that I made a mistake. I am not perfect. I know perhaps there are people here who would question that statement, like the Speaker of the House, but I did put the bill in and I did put it in for a reason. The reason was, basically, that the law was not clear on this topic. It is really not something addressed. If someone who has not yet been arrested and who is found in an unconscious, state and there is probable cause to believe that person would be guilty, would be OUI because of alcohol on their breath or something like that, or if someone had been arrested and then become unconscious, if a blood sample could be taken for the purpose of determining the alcohol level within that blood, so the law is not clear. But by our action today, going along with Chairman Hobbins and the eleven other members of the Judiciary Committee who support an "Ought Not to Pass" on this bill, it will be very clear that the legislature does not want this type of vampirism to be able to occur in Maine as it does today.

We have had a problem in our particular county in which our district attorney has more or less demanded that some of the hospitals perform this type of test and give the blood level of alcohol as evidence to the district attorney's office, so we do need a clarification and by going along with Representative Hobbins you would be making clear that that is the case.

Actually, I must explain why I put language in in that manner. I thought it would be found unconstitutional and leadership did go along

with tabling for a couple of days while we were waiting for an attorney general's opinion and now the time has come and we should act. This, definitely, will be a determination of law.

I do urge you not to go along with this terrible vampire bill. I urge you to go with the motion before us of the Majority "Ought Not to Pass" from the Committee on Judiciary.

The SPEAKER: The Chair recognizes the gentleman from Island Falls, Mr. Smith.

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I have a son who is a state trooper, I have a son-in-law who is a state trooper, I know that this bill would be a great help to them to better serve you. I urge you to support this bill and reject the "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker, Ladies and Gentlemen of the House: If you haven't had your moment of meditation today, you better have it right now even if it is for just one minute or five minutes while I am speaking because I think this bill is awful. It is an awful bill. The main issue of this particular bill has been by-passed. It is not how you carry a child into the hospital and how everybody cries or how you pick up a dead child—this is not the issue—the issue of this particular bill is not death. The issue of this particular bill is one of your most prized rights that you have, and that is one of consent — either to consent or not to consent.

To explain to you what consent is, and I know you know probably better than I do what it is, but from the law dictionary, consent is a concurrence of will, voluntary, yielding to the will or the proposition of another; acquiescence is a compliance thereof.

I ask of you on that particular angle of regular consent, how can you have a concurrence of will when you are out and you don't know where you are at, you are unconscious or are unable to give consent. I believe that you can't and I think the law upholds that proposition.

On the other hand, we have come to the proposition of implied consent. The implied consent I don't believe does carry when you buy your license. It is said that it is, but the Secretary of State told me himself that it did not imply consent. You can imply all the consents that you want, I can imply that you are here because you want to be here but that is not the truth. The thing is, a lot of you would like to be out of here by now.

I say to you, ladies and gentlemen, this is a very, very serious bill. For those of you who have been here before, we have had some bills about drawing blood out of kids, out of minors, without their parents' consent. I think when you are fooling around with blood, you are really talking about something very serious. Some of them have good blood, some of them have had blood and that is why we don't want to have them mixed.

Very seriously, I think and most lawyers might not think so, that there is an old Latin maxim which would apply here and it goes like this "voluntas fit injuria" and means, my friends, that he that consents is not legally wrong. In other words, it sounds foolish, if you don't consent, such as the opposite of what this bill says, you can be legally wrong. I mean wrong, you can have damages done to you. I think basically and morally that this bill is wrong. I don't think we should take advantage of people at any time, to have to use their consent and stick a needle in them to get their blood.

I can be accused probably on this particular stand that maybe I want to protect the drunk drivers, and this isn't so and my record will show that it isn't so. It will show that it is not so in the many years that I have been here, and it will show in this legislature that I have two or three bills in here already and I have been asked recently this morning to cosponsor an-

other bill against the drunk drivers and I think we should take of them. It all depends on the approach, but I will not condemn or approve an approach on drunk drivers that will take the main right of consent away from them. I think we are talking about adults, we are not talking about minors, I hope we are talking about adults.

Let me talk to you very briefly about this California case that was mentioned this morning. This California case, as was said, actually the judge, whoever it is, apparently puts the value of society ahead of the value of the life of an individual. This is what was said this morning, and this is what this case says.

Let me also tell you, ladies and gentlemen, those who pursue law, or those who have to know law without pursuing it, it is a California decision. In the first place, it is a 1966 decision. Can you imagine what happened 15 years ago, and to make it worse, it happened in California. I hope there isn't anybody in here from California, but, you know, California is and has been, and I have been there before, it has been a dumping station for misfits, prisoners, anything that you want to do that you can't do here, you head for the west coast. This is true, just as true as I am here, and you will get away with it.

The main fact is that nobody, no lawyer with any intellect, that knows better, whenever he fights a case, he never uses a California decision, because the California decisions, under the law today and under the cases, do not prevail in a courtroom. As a matter of fact, most lawyers won't use it even if it is all they have, a California decision to go by.

This decision actually makes the party guilty without the test being done; this is what it does. It is not a good decision and it is not a good place to get a decision from.

I submit to you that this is not a good law, that we should not write the thing that we are writing, the situation uphill by passing this law, because actually we will be going downhill, that is what we will be doing.

If you are concerned about your family and you are concerned about all your relatives and about the good people of this state, I don't think that you should, under any circumstances, pass this bill, and I suggest that you vote "ought not to pass."

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I feel compelled to rise again. The case that I referred to, the State of California vs. Schmerber, is a decision that was handed down June 20, 1966, by the United States Supreme Court. We are not talking about the laws in our different colonies; we are talking about the law of the land. The Schmerber case is an outstanding case that is still very much alive.

As far as the remarks made about our implied consent law in Maine, we have a pure implied consent law in this state. It had some loopholes in it but, you know, that great 109th Legislature closed the loopholes. The law now reads, Title 29, Section 1312, I will only read a few lines of it and you can follow from there.

"Any person who operates or attempts to operate a motor vehicle within the state shall be deemed to have given consent to a chemical test to determine his blood alcohol level."

Yes, the sponsor rose and told you, and no doubt told you sincerely, that this is the Vampire Bill. You know, it would be well for each and every one of us to remember that phrase, the Vampire Bill, and to think and look inward on this. When those children, and they are the sad ones in this operating under the influence, when one of your constituents pays that price of losing a child to the drunk driver and they can't take that blood test from that driver in the hospital, are you going to turn to the grieving mother and say, oh, this the Vampire Bill? No, you couldn't say that, I couldn't say that,

but this is the type of bill, and you know we have many types here, when you go home and next summer people will ask you, how did you vote on a certain bill? You know, you can't keep track of all the bills up here. I often say as a stark answer—I voted for that because the Speaker voted for it. People in Portland accept that. And if I check and I didn't vote the way the Speaker voted, I always said—you know, we have got a very reasonable Representative down in Scarborough, that Mr. Higgins, and I followed him. The people of Portland accept that, but, on this type bill, I won't have that option, because before I vote, I have got to look into my heart because I feel someday I will have to account for this vote, as each and every one of you, you will have to say—I voted on this the way I believe and nobody here, I hope, wants to see that drunk driver going up and down the street and the broken bicycle is perhaps still on the lawn.

I urge that you vote against the motion before us and then we will get a motion before us to do something about that person out there that is pushing that car around the streets while he is drunk and cares not about your life, cares not about the child and cares not even about the poodle. I ask you, don't look out at the reports, look inward and throw your switch.

The SPEAKER: The Chair recognizes the gentleman from Belfast, Mr. Drinkwater.

Mr. DRINKWATER: Mr. Speaker and Members of the House: Briefly, I move indefinite postponement of this Bill and all its accompanying papers.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: You have just offered a copout. I want you, whichever way you decide to vote, to stand and be counted. Stand proudly on this bill, and I want the yeas and nays, Mr. Speaker.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Belfast, Mr. Drinkwater, that this Bill, L. D. 306, and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Aloupis, Armstrong, Austin, Beau-lieu, Bell, Benoit, Boisvert, Bordeaux, Brenerman, Brodeur, Brown, D., Brown, K. L.; Cahill, Carrier, Carter, Clark, Cox, Cunningham, Damren, Davies, Davis, Diamond, G. W.; Diamond, J. N.; Drinkwater, Dudley, Erwin, Fitzgerald, Foster, Gavett, Gillis, Gowen, Gwadosky, Hanson, Hayden, Higgins, Higgins, L. M.; Hobbins, Ingraham, Jackson, Jacques, Jalbert, Jordan, Kany, Lancaster, LaPlante, Laverriere, Livesay, MacBride, MacEachern, Martin, A.; Martin, H. C.; Master-ton, Matthews, McHenry, McPherson, Michael, Mitchell, E. H.; Murphy, Nelson, A., Nelson, M., O'Rourke, Paradis, E., Pearson, Perkins, Perry, Peterson, Post, Prescott, Randall, Reeves, J.; Reeves, P.; Richard, Ridley, Roberts, Rolde, Salsbury, Small, Smith, C. W.; Soulas, Soule, Stover, Studley, Tarbell, Telow, Theriault, Twitchell, Walker, Wentworth.

NAY — Baker, Berube, Boyce, Brannigan, Brown, A.; Callahan, Carroll, Conary, Conners, Connolly, Crowley, Curtis, Day, Dexter, Dillenback, Fowlie, Hall, Hickey, Holloway, Hutchings, Joyce, Kane, Kelleher, Ketover, Kiesman, Kilcoyne, Leighton, Lewis, Lisnik, Locke, Lund, Macomber, Mahany, Manning, Masterman, McCollister, McGowan, McKean, McSweeney, Michaud, Mitchell, J.; Moholland,

Nadeau, Norton, Paradis, P.; Paul, Racine, Sherburne, Smith, C. B.; Thompson, Treadwell, Tuttle, Vose, Webster, Weymouth, The Speaker.

ABSENT — Chonko, Huber, Hunter, Pouliot, Stevenson, Strout, Swazey.

Yes, 88; No, 56; Absent, 8.

The SPEAKER: Eighty-eight having voted in the affirmative and fifty-six in the negative, with eight being absent, the motion does prevail.

The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker, having voted on the prevailing side, I now ask for reconsideration and hope you vote against me.

The SPEAKER: The gentleman from Westbrook, Mr. Carrier, having voted on the prevailing side, now moves that we reconsider our action whereby this Bill and all its accompanying papers were indefinitely postponed. All those in favor will say yes; those opposed will say no.

A viva voce vote being taken, the motion does not prevail.

Sent up for concurrence.

The Chair laid before the House the second tabled and today assigned matter:

BILL, "An Act to Establish a Revolving Fund for the Maine State Library" (S. P. 185) (L. D. 463)

Tabled—March 11 by Representative Higgins of Scarborough

Pending—Passage to be Engrossed.

Mr. Higgins of Scarborough offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-92) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker and Members of the House: This amendment simply adds the fiscal note that was brought to the House's attention yesterday.

Thereupon, House Amendment "A" was adopted.

The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

The Chair laid before the House the third tabled and today assigned matter:

BILL, "An Act Relating to Pesticide Registration" (H. P. 4) (L. D. 4) — In House, Passed to be Engrossed on March 4 — In Senate, Majority "Ought Not to Pass" Report Accepted in non-concurrence.

Tabled—March 11 by Representative Mahany of Easton.

Pending—Further Consideration.

On motion of Mr. Mahany of Easton, retabled pending further consideration and specially assigned for Monday, March 16.

The Chair laid before the House the following matter:

Bill "An Act to Establish a Sign on the Maine Turnpike for the University of Southern Maine" (S. P. 212) (L. D. 577) (H. "A" H-86 to C. "A" S-34) which was tabled earlier in the day pending passage to be engrossed.

On motion of Mr. McHenry of Madawaska, the House reconsidered its action whereby Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

On further motion of the same gentleman, the House reconsidered its action whereby House Amendment "A" to Committee Amendment "A" was adopted, and on on motion of the same gentleman, the Amendment was indefinitely postponed.

The same gentleman offered House Amendment "B" to Committee Amendment "A" and moved its adoption.

House Amendment "B" to Committee Amendment "A" (H-95) was read by the Clerk and adopted.

Committee Amendment "A" as amended by House Amendment "B" thereto was adopted. The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Michael of Auburn, Adjourned until tomorrow at 12:30 in the afternoon.