

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Tenth
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

MAY 4, 1981 to JUNE 19, 1981

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HOUSE

Tuesday, June 9, 1981
The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Wilson Hickam of the Calvary Temple of Waterville.

The members stood at attention during the Pledge of Allegiance to the Flag.

The journal of the previous session was read and approved.

Papers from the Senate

The following Communication:
The Senate of Maine
Augusta

June 3, 1981

The Honorable Edwin H. Pert
Clerk of the House
110th Maine Legislature
State House
Augusta, Maine 04333
Dear Clerk Pert:

The Senate today voted to Adhere to its former action whereby it Indefinitely Postponed Bill and Papers of Bill, "An Act Concerning the Suspension of a Drivers License for Operating a Motor Vehicle under the Influence of Alcohol or Refusing to Submit to a Blood or Breath Analysis," (H.P. 637) (L.D. 727).

Respectfully,
S/MAY M. ROSS

Secretary of the Senate

The Communication was read and ordered placed on file.

Orders

On motion of Representative Diamond of Windham, the following Joint Order (H.P. 1618)

WHEREAS, vocational rehabilitation is an important and integral component of the Workers' Compensation Law of the State; and

WHEREAS, the present provisions of the Workers' Compensation Act have been interpreted by the courts to provide protection only for those injured workers who are least likely to derive benefit from vocational rehabilitation; and

WHEREAS, the interests of all parties to the Workers' Compensation system are best served by an effective process of vocational rehabilitation in order to help injured workers regain earning capacity and to help curtail the costs of compensation insurance; now, therefore, be it

ORDERED, the Senate concurring, that the Chairman of the Workers' Compensation Commission is respectfully directed to study the area of vocational rehabilitation; and be it further

ORDERED, that the chairman report his findings and recommendations, together with all necessary implementing legislation to the Legislative Council for submission in final form at the Second Regular Session of the 110th Legislature; and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to the Chairman of the Workers' Compensation Commission.

The Order was read and passed and sent up for concurrence.

On motion of Representative McKean of Limestone, the following Joint Resolution: (H.P. 1626) (Cosponsors: Representatives Matthews of Caribou and Martin of Eagle Lake and Senator Carpenter of Aroostook) (Was approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 35)

Joint Resolution Memorializing
Congress to Endorse the Concept
of Providing Health Care Services
in a Central Facility in Aroostook County
Under the Auspices of the
Veteran Administration Center in Togus
We, your Memorialists, the House of Repre-

sentatives and Senate of the State of Maine of the One Hundred and Tenth Legislature, now assembled, most respectfully present and petition your Honorable Body, as follows:

WHEREAS, as early as 1946, Aroostook County Veterans have felt the need for the establishment of a specific Veterans Medical Care Facility centrally located in Aroostook County, but in spite of numerous efforts and proposals such a facility has not yet come to pass; and

WHEREAS, utilization of the Veterans Administration Medical Facility at Togus by Aroostook County Veterans is 1/3 that of veterans throughout the remainder of the State; and

WHEREAS, the cost and personal hardship of driving 600 or more miles, many times in dangerous weather conditions, from Aroostook County to Togus for outpatient work, post-operative work, physical examinations, prehospital physicals, physical therapy, or other outpatient services, is most substantial; and

WHEREAS, a satellite facility located within an existing medical facility in central Aroostook County would show a substantial savings in travel expenses paid to veterans, while at the same time making the services more available to the veterans; and

Whereas, hospitals in Aroostook County, such as Cary Medical Center, are equipped with adequate medical technology, physician specialists and medical equipment to provide quality medical care on an outpatient basis for the veterans; now therefore, be it

RESOLVED: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to consider and approve provisions for health care services to veterans in a central facility in Aroostook County, State of Maine, under the auspices of the Veterans Administration Center, Togus, Maine; and be it further

RESOLVED: That a duly authenticated copy of this Memorial be immediately submitted by the Secretary of State to the President of the Senate and Speaker of the House of the Congress of the United States and to each member of Congress from this State.

The Resolution was read and adopted and sent up for concurrence.

On motion of Representative Baker of Portland, the following Joint Resolution: (H. P. 1627) (Cosponsor: Senator Sewall of Lincoln) (Was approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 35)

**Joint Resolution Regarding
The Wages and Benefits
of Employees in Private
Long-Term Care Facilities
and Service Agencies**

WHEREAS, employees in private sector, long-term care facilities and service agencies are paid wages at or near minimum wage level with virtually no fringe benefits; and

WHEREAS, the serious problem of long-term care recipients cannot be addressed until wage levels and fringe benefits are at least equivalent to those of workers in state institutions; and

WHEREAS, these programs are funded through state and federal moneys and the wages and benefits are determined by the State in the reimbursement contracts; and

WHEREAS, the Governor's Task Force on Long-term Care concluded that the present situation is unacceptable; and

WHEREAS, the task force concluded that in the long run there would be substantial savings in training costs by having a stable work force; and

WHEREAS, quality care, which the task force concluded is the most critical element in long-term care for Maine citizens in need, would obviously be improved; now, therefore, be it

RESOLVED: That We, the Members of the

110th Legislature, declare that it should be the policy of the State that wage scale levels and fringe benefits for employees of long-term care facilities and agencies in the private sector should be similar to wage levels and fringe benefits for similar positions in the public sector, without a resultant loss of positions or decreased availability of long-term care services.

The Resolution was read.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: This resolution is on your calendar in behalf of the entire Labor Committee. It is the direct result of an L.D. that was brought to our committee. The L.D. number was 1168.

At the hearing on that bill, some 60 people involved in long-term care facilities and service agencies attended our hearing. There is no doubt in the minds of the members of the Labor Committee that these people are inadequately compensated. These employees are at or near minimum wage level and fringe benefits are virtually non-existent.

The Governor's Task Force on Long-Term Care has concluded definitely that this situation is totally unacceptable.

There are 26 group homes in this state. These homes are Medicaid reimbursed and state reimbursed and virtually exist because of various court decrees and 85 percent of the clients in these homes are state wards.

Letters have been pouring in to various members of the Labor Committee from Bangor, Orrington, Hallowell and many other communities. The major factor and contention is the pay level. The morale is low, the turnover in these homes is extremely high. They have been able to document as much as 93 percent turnover in supportive staff situations. In one instance, a husband and wife team run a home for 13 patients. Eleven of these patients are wheelchair patients. She earns \$130 a week; yet, her husband, who works at Pineland, earns \$194 a week with all benefits. There is an almost 30 percent disparity between our institutional workers and these providers.

In many other instances, we were told that the cost to take care of one patient in such a home is about \$6,500 a year for the care of the patient, compared to triple that amount for those in institutions.

In effect, ladies and gentlemen, the state is contracting the services, as they claimed, at enormous savings to the state. How they do it is through contracting. The contracting specifies the rules and regulations, and in some of these contracts, it definitely states that only minimum wages will be paid. We find that is unacceptable and unrealistic and wrong.

Some of these homes are under the direction of people with as many as four degrees, and let me assure you, if they were institutional workers, their pay levels would be much higher. We can further document other instances where many of the people providing these services are extremely underpaid.

We chose not to accept the L.D. as written because we felt the state simply could not afford it. L.D. 1168 would have cost the state \$3 million in state funds and would have commanded an additional \$6 million in federal funds just to put these people on line as recipients of wages and fringe benefits equivalent to the wages and fringe benefits in state facilities. That, to us, is the major documentation of the underpaid situation for these providers.

The risk of group homes closing is imminent, high turnover, in our opinion, puts our Maine people at risk. This situation needs to be addressed, it needs to be addressed very soon, and the resolution before you has serious intent and purpose. We are hoping you will help us support it and trustingly the Department of Mental Health and Corrections and Human Services will begin to do something to alleviate

these situations so that our Maine people will no longer be at risk.

Thereupon, the Resolution was adopted and sent up for concurrence.

The following paper appearing on Supplement No. 2 was taken up out of order by unanimous consent:

On motion of Representative Martin of Brunswick, the following Joint Order: (H.P. 1629)

WHEREAS, the problem of occupational disease and hearing loss is an important and complex subject; and

WHEREAS, it is the policy of the Legislature and the State to protect Maine's workers from these hazards and to provide adequate relief from subsequent loss of earning capacity; and

WHEREAS, these objects would best be met through a comprehensive and integrated Occupational Disease Law; now, therefore, be it

ORDERED, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Labor shall study the area of occupational disease and hearing loss; and be it further

ORDERED, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the Second Regular Session of the 110th Legislature; and be it further

ORDERED, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

The Order was read and passed and sent up for concurrence.

By unanimous consent, the preceding Orders and Resolution were ordered sent forthwith to the Senate.

Special Sentiment Calendar

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

Recognizing:

Elisa Beth Whittier, of Auburn, who represented Maine in Seventeen Magazine's Tennis Tournament of Champions, and qualified into the Pro-Am Division; (H.P. 1620) by Representative Boyce of Auburn.

Ray Thibodeau, Laurie Delano, Mark Durgin, Tina Clark, Brad Limoges and Kathy Pombriant of East Auburn School, who won certificates of honor at the 5th Annual Student Film Festival in Portland; (H.P. 1621) by Representative Boyce of Auburn. (Cosponsors: Representatives Lewis of Auburn and Senator Trafton of Androscoggin)

Sheri Chicoine, Jeff Hess, Roland Camire, Lorna Cote, Philip McLean, Debie MacDonald, Brigitte Poulin, Stuart Beddie, Jennifer Lee, Maurice Bernaiche, Maria Clements, Lynne Hill, Danielle Lemieux, Laura Tyler, Lisa Cyr, Alicia Hubbel, Heidi Merrill, Kellie Sweet and Scott Morris of Central School in Auburn, who won certificates of honor at the 5th Annual Student Film Festival in Portland; (H.P. 1622) by Representative Boyce of Auburn. (Cosponsors: Representatives Brodeur of Auburn, Michael of Auburn and Senator Trafton of Androscoggin)

Elizabeth Chavey, Valedictorian of Ellsworth High School, Class of 1981; (H.P. 1623) by Representative Foster of Ellsworth.

Ann Moore, Salutatorian of Ellsworth High School, Class of 1981; (H.P. 1624) by Repre-

sentative Foster of Ellsworth.

The Mexico High School girls' softball team, which won the 1981 State Class C Championship; (H.P. 1628) by Representative Perry of Mexico. (Cosponsor: Senator O'Leary of Oxford)

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

House Reports of Committees

Divided Report

Majority Report of the Committee on Taxation on Bill, "An Act Concerning Homestead Tax Relief" (H.P. 1307) (L.D. 1512) reporting "Ought to Pass" in New Draft (H.P. 1625) (L.D. 1687)

Report was signed by the following members:

Senator:

WOOD of York

— of the Senate.

Representatives:

HAYDEN of Durham
POST of Owl's Head
HIGGINS of Portland
DAY of Westbrook
KILCOYNE of Gardiner
TWITCHELL of Norway
KANE of South Portland
INGRAHAM of Houlton

— of the House.

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

Report was signed by the following members:

Senators:

TEAGUE of Somerset
EMERSON of Penobscot

— of the Senate.

Representatives:

BROWN of Bethel
MASTERMAN of Milo

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, I move we accept the Majority "Ought to Pass" Report.

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

Mr. DAY: Mr. Speaker, Ladies and Gentlemen of the House: This bill is an attempt to help older people be able to stay in their homes. If you are over 70 years of age, you will be able to stay in your home with your taxes frozen. The amount of the frozen tax will be kept as a tax lien against the property to be paid later when the property is disposed of, only the increase in tax. It is an attempt on the part of the Taxation Committee to help keep older people in their homes for as long as they would like to stay there and it is somewhat similar to what some banks are offering in terms of a reverse mortgage, that you can use up some of the equity in your house.

Thereupon, on motion of Mrs. Post of Owl's Head, the Majority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading later in the day.

Divided Report

Later Today Assigned

Majority Report of the Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-546) on Bill, "An Act to Amend the Maine Tree Growth Tax Law" (H.P. 801) (L.D. 955)

Report was signed by the following members:

Senators:

TEAGUE of Somerset
EMERSON of Penobscot

— of the Senate.

Representatives:

BROWN of Bethel
HIGGINS of Portland
MASTERMAN of Milo
DAY of Westbrook

INGRAHAM of Houlton

TWITCHELL of Norway

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-547) on same Bill.

Report was signed by the following members:

Senator:

WOOD of York

— of the Senate.

Representatives:

POST of Owl's Head
KANE of South Portland
HAYDEN of Durham
KILCOYNE of Gardiner

— of the House.

Reports were read.

On motion of Mrs. Post of Owl's Head, tabled pending acceptance of either Report and later today assigned.

Second Readers

Later Today Assigned

Bill "An Act to Continue the Maine Turnpike Authority" (S. P. 650) (L. D. 1676)

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

On motion of Mr. Jalbert of Lewiston, tabled pending passage to be engrossed and later today assigned.

Emergency Measures

Later Today Assigned

An Act Making Supplemental Appropriations from the General Fund for the Fiscal Years Ending June 30, 1981, June 30, 1982, and June 30, 1983 (S. P. 666) (L. D. 1686)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Mrs. Mitchell of Vassalboro, tabled pending passage to be enacted and later today assigned.

An Act to Stabilize the Maximum Weekly Benefits under the Workers' Compensation Act" (S. P. 225) (L. D. 613) (H. "A" H-512)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Mrs. Beaulieu of Portland, tabled pending passage to be enacted and later today assigned.

Passed to be Enacted

Emergency Measure

An Act Concerning the Regulation of Atlantic Salmon (H. P. 474) (L. D. 538) (C. "A" H-497)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 125 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

Later Today Assigned

An Act to Restructure the Public Utilities Commission (S. P. 637) (L. D. 1652) (H. "A" H-533)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Mr. Davies of Orono, tabled pending passage to be enacted and later today assigned.

Passed to be Enacted

Emergency Measure

An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine (S. P. 649) (L. D. 1677) (S. "A" S-314 as amended by S. "A" S-315; "B" S-317; "C" S-138; "D" S-319; "E" S-320; "F" S-321; "G" S-322 "H" S-334; and H. "A" H-522; "B" H-525; "C" H-526; "D" H-527; "E" H-529; and "F" H-532)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of same and 4 against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Make Corrections and Clarifications in the Education Laws (H. P. 220) (L. D. 298) (C. "A" H-509; H. "A" H-530)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 121 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act Concerning Information Provided by Insurers Prior to Rate Approval (S. P. 345) (L. D. 988)

Was 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.

An Act to Provide a Special Muzzle-loading Hunting Season (H. P. 218) (L. D. 255) (Com. of Conf. Amendment "A" (H-519)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. Mr. Peterson of Caribou requested a vote.

The SPEAKER: The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

89 having voted in the affirmative and 30 having voted in the negative, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Protect Farmers' Right to Farm (H. P. 1175) (L. D. 1399) (S. "A" S-313 to C. "A" H-500)

An Act Providing for Certain Public Utility Bond Financing by the Maine Municipal Bond Bank (H. P. 1558) (L. D. 1668) (S. "A" S-316; H. "A" H-507)

An Act to Amend the Workers' Compensation Second Injury Fund, to Assist Handicapped Workers in Returning to Employment and to Reduce Multiple Injury Litigation (H. P. 524) (L. D. 590) (H. "A" H-511)

An Act to Amend Provisions Concerning the Operation of the Operation after Suspension and Habitual Offender Laws and Certain Non-sentencing Provisions of the Operating under the Influence Law (H. P. 556) (L. D. 635) (S. "A" S-325 to C. "A" H-501; S. "A" (S-310)

An Act Relating to Aquaculture (H. P. 1128) (L. D. 1345)

An Act Establishing a Voluntary Income Protection Program for Shellfish Harvesters (H. P. 1450) (L. D. 1590) (C. "A" H-510)

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.

Later Today Assigned

An Act to Create an Appellate Division of the Workers' Compensation Commission, to Require the Commission to Conduct a Data Systems Study and to Expedite the Filing of Medical Reports (H. P. 1252) (L. D. 1476) (S. "A" S-326 to H. "A" H-514)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. On motion of Mr. McHenry of Madawaska, tabled pending passage to be enacted and later today assigned.

An Act to Reform the Statutes Relating to Driving Under the Influence of Intoxicating Liquor or Drugs (H. P. 1585) (L. D. 1681)

Was reported by the Committee on En-

grossed Bills as truly and strictly engrossed, passed to be engrossed, signed by the Speaker and sent to the Senate.

Later Today Assigned

An Act to Recodify and Amend the Maine Guarantee Authority Laws (H. P. 1563) (L. D. 1671) (S. "A" S-331)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Mr. Diamond of Windham, tabled pending passage to be enacted and later today assigned.

An Act to Reform the Regulation of Carriers of Passengers and Freight (H. P. 1576) (L. D. 1678) (H. "A" H-534; H. "B" H-535; S. "A" S-323)

Was 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.

The following paper appearing on Supplement No. 5 was taken up out of order by unanimous consent:

Passed to Be Engrossed

Bill "An Act Concerning Homestead Tax Relief" (H. P. 1625) (L. D. 1687)

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

Mrs. Post of Owl's Head offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-552) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: In committee, we changed the age at which individuals can become eligible for this relief to after age 70. This is a technical amendment that makes that second change in the question that goes out to referendum vote in each municipality.

Thereupon, House Amendment "A" was adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

By unanimous consent, all matters acted upon were ordered sent forthwith to the Senate, with the exception of those held.

The Chair laid before the House the following matter:

Bill "An Act to Continue the Maine Turnpike Authority" (S. P. 650) (L. D. 1676) which was tabled and later today assigned pending passage to be engrossed.

Mr. Jalbert of Lewiston offered House Amendment "B" and moved its adoption.

House Amendment "B" (H-548) was read by the Clerk.

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

Mr. JALBERT: Mr. Speaker and Members of the House: Several from both sides of this measure have gotten together and come to some understanding. It probably isn't the best; it probably isn't the worst. The hour is late and I am not going to go into a two hour hassle like Wednesday night.

We have a letter that we are satisfied with concerning the Lewiston-Auburn access roads that is signed by the Commissioner of Transportation. The amendment itself is explanatory. Mr. Speaker, I move passage of House Amendment "B" and request a division.

The SPEAKER: The pending question is on the adoption of House Amendment "B". All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

75 having voted in the affirmative and 31 having voted in the negative, House Amendment "B" was adopted.

Mr. McHenry of Madawaska offered House Amendment "C" and moved its adoption.

House Amendment "C" (H-551) was read by the Clerk and adopted.

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

By unanimous consent, ordered sent forthwith to the Senate.

The Chair laid before the House the following matter:

An Act to Create an Appellate Division of the Workers' Compensation Commission to Require the Commission to Conduct a Data Systems Study and to Expedite the Filing of Medical Reports (H. P. 1252) (L. D. 1476) (S. "A" S-326 to H. "A" H-514) which was tabled and later today assigned pending passage to be enacted.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following matter:

An Act to Recodify and Amend the Maine Guarantee Authority Laws (H. P. 1563) (L. D. 1671) (S. "A" S-331) which was tabled and later today assigned pending passage to be enacted.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, the previous enactors were ordered sent forthwith to the Senate.

On motion of Mrs. Erwin of Rumford, Recessed until one o'clock in the afternoon.

After Recess

1:00 p.m.

The House was called to order by the Speaker.

At this point, the rules were suspended to permit members to remove their jackets for the remainder of the session.

The following papers appearing on Supplement No. 7 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Kevin Albert, of Millinocket, Valedictorian of Stearns High School, Class of 1980; (H. P. 1630) by Representative Clark of Millinocket. (Cosponsors: Senator Pray of Penobscot and Representative Michaud of East Millinocket)

Scott Ingalls, Salutatorian of Stearns High School, Class of 1980; (H. P. 1631) by Representative Clark of Millinocket. (Cosponsors: Senator Pray of Penobscot and Representative Michaud of East Millinocket)

Beth Debernardi, of Portland, Valedictorian of Deering High School, Class of 1981; (H. P. 1632) by Representative Ketover of Portland. (Cosponsor: Representative Brannigan of Portland)

Camilla Nicholas, Stephanie Lundeen and Sherrie Weeks of Central Aroostook High School, chosen for the Pepsi All Aroostook All-Star Basketball Team for 1981; (H. P. 1633) by Representative Smith of Mars Hill. (Cosponsor: Senator Carpenter of Aroostook)

Patricia Lynn Daigle, daughter of Mr. and Mrs. Richard Daigle of Van Buren, Co-valedictorian of Van Buren District Secondary School, Class of 1981; (H. P. 1634) by Representative Martin of Van Buren. (Cosponsor: Senator Violette of Aroostook)

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

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 6 was taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act to Establish a Fund to Implement the Hazardous Waste Program in Lieu of a General Fund Appropriation" (S. P. 447) (L. D. 1303) on which the Majority "Ought to Pass" in New Draft under New Title Bill "An Act to Establish a Hazardous Waste Response Fund and to Facilitate the Development of Needed Waste Facilities" (S. P. 660) (L. D. 1684) Report of the Committee on Energy and Natural Resources was read and accepted and the New Draft passed to be Engrossed in the House on June 3, 1981.

Came from the Senate with that Body having adhered to its previous action whereby the Minority "Ought to Pass" in New Draft under New Title Bill "An Act to Establish a Hazardous Waste Response Fund and to Facilitate the Development of Needed Waste Facilities" (S. P. 661) (L. D. 1685) Report of the Committee on Energy and Natural Resources was read and accepted and the New Draft passed to be Engrossed in non-concurrence.

In the House: On motion of Mr. Hall of Sangerville, tabled pending further consideration and later today assigned.

The following paper appearing on Supplement No. 11 was taken up out of order by unanimous consent:

Ought to Pass as Amended

Representative Jalbert from the Committee on Appropriations and Financial Affairs on Bill "An Act to Fund and Implement Certain Collective Bargaining Agreements and to Fund and Implement Benefits for State Employees Excluded from Collective Bargaining" (Emergency) (H. P. 1598) (L. D. 1683) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-553)

Report was read and accepted and the Bill read once. Committee Amendment "A" (H-553) was read by the Clerk and adopted. Under suspension of the rules the Bill was read the second time, passed to be engrossed as amended and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 12 was taken up out of order by unanimous consent:

The following Joint Resolution: (S. P. 672)
Joint Resolution

Expressing Concern and Disapproval of the Issuance of an Experimental Discharge Permit to the Bowdoin College Marine Research Laboratory

WHEREAS, the Department of Environmental Protection has issued an Experimental Discharge Permit to the Bowdoin College Marine Research Laboratory to conduct tests and experiments in Searsport Harbor; and

WHEREAS, these tests will include spilling hundreds of gallons of oil into the harbor this summer; and

WHEREAS, questions arise as to whether the potential dangers and uncertainties of the project outweigh any valuable scientific benefits that may be derived; and

WHEREAS, the greater potential danger is the possible impact on marine resources which include a proposed mussel farm in the immediate area; and

WHEREAS, inadequate consideration may have been given to finding alternate sites where less risk and concern would have been created; now, therefore, be it

RESOLVED: That the 110th Legislature hereby expresses its grave concern and disapproval of the action of the Department of Environmental Protection in approving the experimental discharge permit to the Bowdoin College Marine Research Laboratory; and be it further

RESOLVED: That a copy of this resolution be transmitted forthwith to the Commissioner of Environmental Protection.

Came from the Senate read and adopted.

In the House, under suspension of the rules, the Resolution was read and adopted in concurrence.

The following papers appearing on Supplement No. 8 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

William "Bill" Tulloch, formerly of Augusta, on the anniversary of his birth; (S.P. 673)

Beth Ann Cormier, daughter of Mr. and Mrs. Richard Cormier of Van Buren, Salutatorian of Van Buren District Secondary School, Class of 1981; (H.P. 1635) by Representative Martin of Van Buren. (Cosponsor: Senator Violette of Aroostook)

David John Lebel, son of Mr. and Mrs. Omer Lebel of Van Buren, Co-valedictorian of Van Buren District Secondary School, Class of 1981; (H.P. 1636) by Representative Martin of Van Buren. (Cosponsor: Senator Violette of Aroostook)

Toni Farrenkopf, of Bangor, who has been named Athlete of the Year for 1980-81, at John Baptist Memorial High School; (H.P. 1637) by Representative Diamond of Bangor. (Cosponsors: Representatives Soulas of Bangor, Aloupis of Bangor and Senator Trotzky of Penobscot)

Sherri Weeks, of Central Aroostook High School, winner of the most Valuable Player Award for 1981, and member of Central Aroostook State Championship basketball team; (H.P. 1638) by Representative Smith of Mars Hill. (Cosponsor: Senator Carpenter of Aroostook)

There being no objections the above items were considered passed in concurrence or sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 9 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Michelle Hallett, of Central Aroostook High School, who has established a new state record for the mile and 2 mile run in track and field; (H.P. 1639) by Representative Smith of Mars Hill. (Cosponsor: Senator Carpenter of Aroostook)

Christopher Jon Delogu, of Portland, Valedictorian of Portland High School, Class of 1981; (H.P. 1640) by Representative Manning of Portland. (Cosponsors: Representatives Brenerman of Portland and Nelson of Portland)

Deanna DeSimon, of Portland, Salutatorian of Portland High School, Class of 1981; (H.P. 1641) by Representative Manning of Portland. (Cosponsor: Representative Brenerman of Portland)

Ed and Sis Manning, on their 25th anniversary as owners of the Shamrock Cafe; (H.P. 1642) by Representative Manning of Portland. (Cosponsor: Representative Brenerman of Portland)

Mr. and Mrs. Abraham I. Passman, of Portland, on their 50th wedding anniversary, March 3, 1981; (H.P. 1643) by Representative Manning of Portland. (Cosponsor: Representative Brenerman of Portland)

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

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 10 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Pelle Lindbergh, Maine Mariner goaltender, who was selected as the 1981 American Hockey League Rookie of the Year and Most Valuable Player; (H.P. 1644) by Representative Higgins of Portland. (Cosponsors: Representatives Nelson of Portland, Brenerman of Portland and Senator Usher of Cumberland)

Alfred N. Savignano, who is retiring after 31 years of distinguished service as a principal and teacher in Auburn; (H.P. 1645) by Representative Lewis of Auburn. (Cosponsors: Representatives Boyce of Auburn, Brodeur of Auburn and Michael of Auburn)

Gerald S. Alden, Sr., who is retiring after 31 years of distinguished service as a principal and teacher in Auburn; (H.P. 1646) by Representative Lewis of Auburn. (Cosponsors: Representatives Boyce of Auburn, Brodeur of Auburn and Michael of Auburn)

Amy Ashton, Marian Cook, Jean Curtis, Margery Dyer, Frances Fairfield, Bertrand Fernald, Lawrence "Doc" Hersom, Jessie Hosman, Dorothy Hunter, Richard Michaelson, Rose Mottram, Isabel Niles and Marjorie Wellman who are retiring after distinguished service as teachers in Auburn; (H.P. 1647) by Representative Lewis of Auburn. (Cosponsors: Representatives Boyce of Auburn, Brodeur of Auburn and Michael of Auburn)

No objections having been noted, the above items were considered passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 15 were taken up out of order by unanimous consent:

The following Communication:
COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS

June 9, 1981

The Honorable John L. Martin
Speaker of the House
Maine House of Representatives
State House

Augusta, Maine 04333

Dear Speaker Martin:

The Committee on Appropriations and Financial Affairs is pleased to report that it has completed all business placed before it by the first regular session of the 110th Legislature.

Total number of bills received — 65

Unanimous reports — 56

Leave to Withdraw — 14

Ought Not to Pass — 13

Ought to Pass — 9

Ought to Pass as Amended — 17

Ought to Pass New Draft — 3

Divided Reports — 8

Held Over for Next Session — 1

Respectfully submitted,
S/MICHAEL D. PEARSON
House Chairman

The Communication was read and ordered placed on file.

The following papers appearing on Supplement No. 14 were taken up out of order by unanimous consent:

On motion of Representative Nelson of Portland, the following Joint Resolution: (H. P. 1654) (Cosponsors: Representative Erwin of Rumford, Senators Teague of Somerset and Carpenter of Aroostook)

Joint Resolution in
Support of Efforts to
Return American Servicemen
Held in Vietnam

WHEREAS, the frustrations of war can frequently linger long after the conflict ceases; and

WHEREAS, a great many American families are faced with the daily frustration of uncertainty because family members are still listed as missing in action in Vietnam; and

WHEREAS, several organizations, both public and private, are working to confirm reports that American prisoners, and the bodies of American servicemen killed in action, have been sighted in Vietnam; and

WHEREAS, through the efforts of these groups and through a clear expression of public support it will be possible to achieve a reconciliation of the differences which have prevented the governments of Vietnam and the United States from bilaterally addressing this issue; now, therefore, be it

RESOLVED: That We, the Members of the 110th Legislature, on behalf of the people of Maine, hereby express our absolute support for, and encouragement of, the efforts being made to secure the release of American servicemen held as prisoners or missing in action in Vietnam.

Under suspension of the rules, the Resolution was read.

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

Mrs. NELSON: Mr. Speaker, Men and Women of the House: It is believed that the Vietnamese in the United States are on the threshold of coming together to mend long-standing differences which have thus far obstructed the release and recovery of our prisoners and missing in action. However, in Washington, Congress, the Senate and the President need affirmation of America's readiness to endure some of the truths and pain which may aspire during negotiations.

In Vietnam, Laos and Cambodia, the governments therein need declarative evidence that we as Americans still value all 2,500 POW's and MIA's we left behind.

In view of the Vietnamese Foreign Minister's recent offer to begin negotiating with the POW and the MIA issue with President Reagan, demonstrating Maine's support with this resolution is imperative.

Thereupon, the Resolution was adopted and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 13 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Brian Kane, Lee Marquis, June LaRoche, Mary Woodman, Suzanne Powers, Susan Flynn, Nancy Rand and Katherine Penley of Auburn, who are among the top 10 students at Edward Little High School, class of 1981; (H. P. 1648) by Representative Boyce of Auburn. (Cosponsors: Senator Traflet of Androscoggin, Representative Michael of Auburn and Brodeur of Auburn)

Elizabeth Keene, daughter of Mr. and Mrs. Hugh W. Keene of Auburn, who is one of the top two students of Edward Little High School, Class of 1981; (H.P. 1649) by Representative Boyce of Auburn. (Cosponsors: Senator Traflet of Androscoggin, Representatives Michael of Auburn and Brodeur of Auburn)

Christopher Scales, son of Mr. and Mrs. L. Damon Scales, of Auburn, who is one of the top two students of Edward Little High School, class of 1981; (H.P. 1650) by Representative Boyce of Auburn. (Cosponsors: Senator Traflet of Androscoggin, Representatives Michael of Auburn and Brodeur of Auburn)

Portland High School and Coach Fred James, upon winning their third consecutive State Class A Baseball Championship; (H.P. 1655) by Representative Brennerman of Portland. (Cosponsors: Representatives Manning of Portland and Higgins of Portland)

Pamela Beal, of Old Orchard, Salutatorian of Old Orchard High School, class of 1981; (H.P. 1656) by Representative McSweeney of Old Orchard Beach.

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

rence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 17 was taken up out of order by unanimous consent:

Divided Report

Nine Members of the Committee on Judiciary on Bill "An Act to Create a Board of Review of the Judiciary" (H. P. 1306) (L. D. 1511) report in Report "A" that the same "Ought Not to Pass"

Report was signed by the following members:

Senators:

DEVOE of Penobscot
KERRY of York

— of the Senate.

Representatives:

LUND of Augusta
JOYCE of Portland
REEVES of Newport
DRINKWATER of Belfast
O'ROURKE of Camden
SOULE of Westport
LIVESAY of Brunswick

— of the House.

Three members of the same Committee report in Report "B" that the same "Ought to Pass" as amended by Committee Amendment "A" (H-554)

Report was signed by the following members:

Senator:

CONLEY of Cumberland

— of the Senate.

Representatives:

BENOIT of South Portland
HOBBS of Saco

— of the House.

One Member of the same Committee reports in Report "C" that the same "Ought to Pass" as amended by Committee Amendment "B" (H-555)

Report was signed by the following member:

Representative:

CARRIER of Westbrook

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: I move acceptance of Report C.

The SPEAKER: The gentleman from Pittston, Mrs. Reeves, moves that Report C, "Ought to Pass" as amended by Committee Amendment "B" be adopted.

The gentleman may proceed.

Mrs. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: The opposition to this bill appears to be fearful of something that is not there. The opponents have a high regard for our court, as we all have a high regard for the court, and they see this bill as somehow denigrating the integrity of this separate but equal branch of government. This is not the intention of this bill and it is not what the bill is about.

This bill removes the apparent conflict of interest created when our legislature asks the Supreme Judicial Court to appoint a committee to review the conduct of the judges.

The purpose of the bill is to provide an independent review board to determine the validity of a complaint regarding a judge's conduct or disability. It does not conflict with the constitutional requirement for separation of powers between legislative, judicial branches and executive branch, because this board, like the existing board, will have no power except to receive complaints, investigate, hold hearings, report and recommend. These are the exact functions of the present Committee on Judicial Responsibility and Disability.

The changes that this bill proposes are small ones, but they are extremely important in regard to maintaining public confidence in our

judiciary. Public confidence in the integrity of the judicial system is absolutely essential to the functioning of our society, and anything that our legislature can do to enhance and maintain that confidence is of great benefit and worthy of our action.

Respect and obedience of the law can't be expected unless the exercise of judicial power is accepted as legitimate. This is the reason for the judicial disciplinary system, to give the people confidence in the judiciary.

So this bill is not an attempt to excoriate our judges or the system, just the opposite, that is why these three small changes are so important.

First of all, the bill establishes the board of review in statute rather than by rule-making.

Secondly, the board will file its reports and recommendations with the Governor and the Joint Standing Committee on Judiciary, as well as with the Supreme Judicial Court, and also it may conduct public hearings.

Thirdly, most essential in removing the apparent conflict of interest in the present situation, the members of the board will be appointed by the Governor.

The establishment of an independent board of review was indirectly recommended last year by former Attorney General Cohen when he found his office called on to review the conduct of our Supreme Court Chief Justice. This review would more appropriately have been conducted by an independent review board. In the report, he stated that the review should have been conducted by the Committee on Judicial Responsibility, but since this committee had such little public confidence, his office was doing the report.

I urge you to vote for Report C.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: The bill before us at this time is a bill that certainly does not belong in this House.

The good lady mentioned separation of powers — that is what it is all about, the three separate co-equal branches of government. We are the legislative branch. We have enough to do to take care of legislative business. I am sure that the executive branch is in the same position as this body; they have enough to do with their business. Why should we attempt to cross over the line and speak to control or discipline of that other branch of government?

Our committee fooled with this for a long time. We waltzed it around for many an afternoon up there the latter part of the session. I guess we tried everything to get us off the hook. They even wrote a letter to the Attorney General and posed some questions to him. Let me tell you one of the questions — what power, if any, does the legislature have to discipline judges aside from those enumerated in Article IX of the Maine Constitution?

The Maine Constitution says this House, and solely this House, has the impeachment procedure to remove a judge.

You know what the Attorney General also told us? He said, it is our opinion that the legislature has no constitutional authority to discipline a judge, except that I just cited to you.

Yes, we are getting into strange forests by hailing a bill like this down here. I just had a personal feeling; the only reason this bill is before us is to make an open season on judges. They have had a tough year and I don't think they should get that one more whack from this body.

Yes, there were other questions and they cited cases, they cited the Ross case and how the legislature didn't have any authority. I could go through all these questions and line them out for you, but it boils right down, and I will let anybody have the letter that wants to read it. You know, on the 99th day of this legislative session, I don't want to bore anybody by the long speeches.

We have gone over 201 bills in the prestigious Judiciary Committee, and I will tell you this, this is the worst one of the 201.

Mr. Speaker, to make it short and sweet, if the Chair permits, I would ask for the indefinite postponement of this bill and all its accompanying papers, and I ask for the yeas and nays.

The SPEAKER: The gentleman from Portland, Mr. Joyce, moves that this Bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the gentleman from Augusta, Mr. Paradis.

Mr. PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: It is always with a great deal of fear that I rise when I am in opposition to the motion of my good friend, the gentleman from Portland, Mr. Joyce. He is one of the most respected members of this House and he certainly is a very close friend of mine.

Most of his life was spent as a police officer, a dedicated, loyal and good police officer in the City of Portland. Police officers have a tendency not to criticize or question judges, and I think that is right in their position. I think today our good friend and colleague, Mr. Joyce, rose in that spirit of dedication and trust when he addressed us, but I think he is wrong when he speaks on this bill as solely an idea of separation of powers doctrine and how this House and the other body must address the whole issue of judicial conduct and responsibility.

This is not a question of separation of powers, for clearly the judiciary branch of our government is a distinct, equal, co-equal partner of government, as the executive is, with the legislative. That is not the issue. The real issue is one of who guards the public responsibility, who guards the public welfare? Is it the Governor, is it the Chief Justice or is it the Legislature?

I believe that when the real question is faced, those of us in this House will answer that it is the elected representatives of the people. We are the only ones who are elected by each and every voter of our district. We, and we alone, face them every two years to receive their public trust. We take an oath to uphold and defend the Constitution, but with the judiciary branch of our government, they are not elected. Very few of them, only in the Probate Courts, are elected. They are nominated by the Governor, as we all know, and confirmed by the Judiciary Committee. For that reason, and that is a major reason, I think they need this type of a judicial board of review.

Who among the law community of this state wishes to challenge the Justice or any other sitting judge of our courts? Who among them wishes to judge their actions, judge their conduct, when he has to work before them, when he has to rely on their scrutiny, on their intellectual prowess the next day? I am not saying that they lack the courage or the motivation, but they are completely human, as we are. They have trepidation and fear in their hearts, as I do right now opposing the good gentleman from Portland, but I have my responsibility and we have our responsibility to make sure that there is a board of review, that there is a group of private citizens who are willing to question the judiciary and not feel the heat on the back of their necks after doing so, not feel that their private profession might suffer, or their private lives might be in jeopardy from being too diligent or being too nit-picking.

The real issue is, we have a responsibility to the public, not to the judiciary, not to the Chief Executive; we have the responsibility to the public to make sure that they have, as we do and as the Governor does, someone looking over their shoulders to make sure that if there is any misconduct, any possibility of misconduct, that there is an impartial board of review not answerable to them, not answerable to us, not answerable to the Governor, answerable to

the people of the State of Maine.

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

Mrs. KANY: Mr. Speaker and Members of the House: I, too, rise to oppose the motion of indefinite postponement of this bill. I think many people would agree that it is absolutely essential that the citizens of the state have faith in their judicial system, and this certainly is a step in that direction and would assure that impartial review which Representative Paradis spoke of.

Basically, I am on my feet to say that I believe very strongly that there is a true separation of powers here in that there would be an independent body of review but that body would indeed only be making recommendations to that separate branch. I think that is very important to realize, that we would not have a separation of powers problem in this bill.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

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

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

Mr. CARRIER: Mr. Speaker, Ladies and Gentlemen of the House: This is an extremely important bill and I don't know what the reason is for the lateness of this bill, because I didn't think right from the start that it was that complicated a bill. I hate to think that there is a reason why it wasn't brought in sooner because we really could have explained it to you at length.

The main thing about the bill is that there is a need for a change from the present judicial system which acts as a judge of the judges. That particular committee is the Committee on Judicial Responsibility and Disability. One of the reasons I am in favor of this bill is because I believe, and facts will show, that they haven't been doing the job that they are supposed to. I doubt that they have done the job at all. It has been ineffective and inefficient.

At the hearing, the people from that particular committee—we had a bill before this, three or four months ago, similar to this bill which we killed in committee, but on this bill, the second time around, the people on this Judicial Responsibility and Disability Committee did not have the guts to come up here and talk to us and confront the people that wanted a bill such as this. Instead, we had to grant them a personal interview, which was against my better judgment, for them to come back and tell us they did what they should do and what they should have done. I resented this very much. Upon questioning, it was very clear that they do not do the job under the present system. They hide and hedge under the assumption that they should not act or consider negligent cases. Any cases of this type would involve negligence, so they hide from that and say, we do not have the control of that and we are not the ones to decide on that. This is the present committee that we have now.

It is a seven member committee, the new proposal will also have seven members, but instead of judging their own peers, they will be appointed by the Governor instead of being appointed by the Supreme Court judge.

It seems that we have had a few cases in the last six months or so and as unpleasant as it is, I think it is essential that we do consider and talk about it. The main one is the McKusick case, which we had probably back in January or February, which all of you are familiar with and what it involves. At that particular time, the Attorney General found him not guilty of what they call "serious complaints of serious nature."

If you look at most of these bills, they always

have a "serious" clause in there. What is serious? You really have to do something extremely bad? We don't work on degrees here and I don't think they should have worked on degrees then either. I am not the one to decide as to what should have happened or what should have been done then, but it does leave an image with the people of this state that they are not getting a fair shake and they are not getting the best people that they can on judiciary, and I agree with them. They are not getting the best that they should be getting. We are paying them plenty and we are going to pay them some more in two or three days. We are going to pay them to the tune of half a million bucks more.

I think whatever they accepted and whatever they used it for, at that particular time the Attorney General himself said that the Chief Justice was not guilty of gross misconduct, gross, serious misconduct. I will buy that but on the other hand, he also said he was guilty of breaking the Ethical Code. Under the Ethical Code, they could have done something to him. We are not here to do something to somebody, but justice is justice. This is what happens when you have a board of the same people that are judging and appointed by the Supreme Law Court Chief.

This particular bill provides for an independent review to determine the validity of the complaints regarding the judges, conduct on disability. They should also include the negligence. Being guilty of the Ethical code of the Bar Association is just as guilty as being guilty of taking money from someone else, and this is what has happened. I think in that case, the committee itself did not do its job because they should have recommended some kind of punishment for that particular act. If we don't act over here, we get our punishment, if we don't get it here, we get it somewhere else.

So, this particular committee that we have now is ineffective and they also work in conflict of interest because they judge their own peers.

Let's talk about another case that we had, the one involving Judge Ross—this all comes under the same committee, that is why we bring this up here. It comes under the duties of the present committee that we have, and in this case, and I don't even know Judge Ross, but I admire his stand. I admire his stand because he got up there and it was put in all the editorials that he was a wise, independent and very capable man. Whatever his approach was, that was another thing, but in some cases, you have to have that kind of an approach. It is the only effective approach that some people understand.

In that particular case and in the McKusick case, why is it that it took those people on that committee from 90 to 120 days before they came out with a decision? They could have come out with a decision within two weeks and have Judge Ross back on the bench and pay him \$750 a week and we could have had some work from him. We lost three months' work out of him. They handle roughly about 1,000 cases a month.

This is not the way to do it. In regard to the opinion by the Attorney General on certain questions, the questions are hedging and the opinion didn't amount to anything. There was another question asked of the Attorney General about the constitutionality of this particular bill, and there is no precedent whatsoever to say that it is all right or not all right. So you assume that it is all right until somebody challenges it.

I also want to say on the image, and this is what we are talking about, not just the image but justifying the position and what is happening to people when they go to court. From last January until last week or the week before, we had lost one of the judges and it took them exactly four months before they even appointed somebody to the position, before we had it in Judiciary, usually we swear them in on the same day but that time we didn't, we lost an-

other two weeks. So we were over four months without anybody in that position. When this particular bill came before the Judiciary Committee, they talked about the need of a new judge and all this but, you know something, the day they came up there and talked about that need, but if you sat there that particular day and listened carefully to what they offered, we had one judge that was dead, we had one judge in the hospital, we had one judge that was suspended and we had two judges at the hearing. There are five judges, but on that particular day, you never had their services, you paid for it, and what about the backlog of cases that are piled up and then they come over here and they ask for additional judges, which the legislature gave them.

This probably would not solve all the problems but it would be a start because you would be bringing back to the people and bringing back to the Governor the right of appointment, and maybe with a chance and with a prayer, something would be changed in the judicial system that would make it operate more efficiently and make the people feel that they are getting their money's worth. You must realize how expensive this is.

I feel that this is a good bill, a good start, this brings it back to the people, I think that is where it should be and I hope you vote against the motion to indefinitely postpone.

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: I rise today to oppose the pending motion to indefinitely postpone this bill.

Presently in the State of Maine, we have a mechanism whereby our judicial branch of government is policed, and that is through the Committee on Judicial Responsibility and Disability. I personally believe that this committee has not done a very good job of public relations. However, I don't believe that in their overall duties they have acted irresponsibly.

My major reason for opposing the pending motion, which would, in essence, allow us to decide two different reports and what approach we would like to take, is because I feel as a person who deals with the third branch of government, our co-equal branch of government, that there is, in fact, a situation which exists in our society whereby we feel that we don't have the confidence or people feel that they don't have confidence in the third branch of government, our judiciary. I don't believe that. I have confidence because I am an officer of the court as an attorney and I do have confidence in our third branch of government. However, when I go down to the coffee shop or when I go down to the post office or when I go to an athletic event or when I go to the Maine Legislature, it is very obvious to me that my position is not the position the people have held it out to be. They feel that the present system demonstrates an implied conflict. People that I have talked to feel that the perception of the third branch of government is not what they think it should be.

I would hope that we could defeat the pending motion to allow us to look at the two committee amendments, Report B and Report C. I am in support of and signed out of the Committee Report B, which allows the Governor to appoint the three public members. This proposal states that the public members will not be attorneys or members of the judiciary, that they would be appointed by the Governor. I guess this is the in between step of what Report C is, which is basically the original bill in amended form and the "Ought Not to Pass" Report.

I think that something has to be done, even if it is a token step, by this branch of government to help instill confidence that I think does not exist in our constituencies in regards to the third branch of government. If we don't accept Report C, then I hope we would fall back and accept Report B, which is the proposal which I support along with the gentlelady from South

Portland, Ms. Benoit, and the gentleman from Portland, Senator Conley. I urge you to oppose the pending motion.

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

Mr. KELLEHER: Mr. Speaker, I would like to pose a question through the Chair to the good chairman of Judiciary or any other member on it, because I am not a lawyer, I am just one of those lay people like the public outside that wonders why — my question is, what was the difference, in seriousness, between Judge Ross's misconduct and the alleged misconduct of Judge McKusick?

The SPEAKER: The Chair will not allow that question to be put to the gentleman from Saco, Mr. Hobbins.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Just being a simple old member in this body and trying to get all the facts so I could pass judgment intelligently on this issue, it seems to me that the requests that were made by the gentlewoman from Pittston, in her report, is a reasonable one. It is like the foxes won't be guarding the chicken house; in other words, if the court is making the appointments, someone or somebody may be a little more cautious in rendering a decision. It seems to me to appreciate the third branch of government, as I do and I know you do and people of this state do, and to give it as much protection as possible, I think they should solicit support in this issue, that we should listen to the remarks made by the good gentlelady from Kennebec and support the one signature on this report, as I understand it to be.

The SPEAKER: The Chair recognizes the gentlewoman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I hesitate to speak on the 99th day so I will try to be brief. I did sign out Report B, as Representative Hobbins has already stated, and I want to tell you why I did that.

I had a very hard time with this bill and we did debate it for a long time in committee. I tried to look at other groups of people that are judged by an independent board and when I did, I couldn't find one that quite measured up to what Mrs. Reeves was suggesting. The real problem that I have with this bill is not who is going to do the judging, who is going to be on this review board; as a matter of fact, I sympathize with those that have spoken before, the problem that I have with Report C is that it states that once the investigation is done, once there has been a determination made by this review board prior to any hearings, but once that is made and it goes to a hearing, that the hearing will be made public. To me, this was almost analogous to a grand jury, that they present evidence, you have a hearing, grand jury hearings not open to the public. A determination is made behind closed doors as to whether this should be tried in court and that is what happens with the Judicial Board of Review. They make a decision as to whether there is cause to recommend a hearing by the Supreme Judicial Court.

I am not sure whether it is right that this hearing should be made public and that, of course, is the decision here that you all have to make. Maybe Representative Reeves is right, maybe the hearing should be in public but, to me, this was almost like putting someone through a trial before it has been deemed that the person should even be charged with a crime or with misconduct.

I guess I would urge you not to vote for the indefinite postponement and then we could deal with either Report C or Report B.

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

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: Several of the speakers on this bill have mentioned incidents that have occurred recently concerning several of the members of our judiciary. I just want to say that my interest in this bill occurred long

before any of these interests or incidents. Some six or seven years ago, during the 107th Legislature, I put in legislation to establish a board that would be similar to the California Judicial Review Commission. At that time, the Attorney General's Office told me I had to have a constitutional amendment, and I am pleased to see that the Attorney General, at least in this instance, has said that we could go along with a bill. I hope you will support the bill.

I don't know if any of you noticed the editorial from the Maine Sunday Telegram that has been passed around to everyone, and if your desks look like mine, you probably don't see where it is, but I will just read a few comments that were made in the Sunday Telegram. It says "The legislature can do a big favor for the Maine judiciary this week by rescuing a bill to create an independent board of judicial review. The bill is being sent out of the Judiciary Committee with a Majority 'Ought Not to Pass' Report but the legislature as a whole can and should reject the committee's advice and pass this important measure. Under the current system, the judiciary is, in effect, the sole judge of its own behavior and the process is a secret one. A special committee on judicial responsibility charged with reviewing complaints against judges is now appointed by and answerable to the Maine Supreme Court."

Skipping over, "As a result, the public has no assurance that complaints against judges are fairly and effectively investigated. That is unfair not only to the public but to the judiciary itself. The disposal of such cases in secret merely invites public suspicion and undermines confidence in the court."

Finally, and this is a sentiment that I heartily agree with, "The legislature has a chance to change all that by bringing the process out into the open."

The SPEAKER: The Chair recognizes the gentlewoman from Augusta, Ms. Lund.

Ms. LUND: Mr. Speaker, Men and Women of the House: I would like you to sit back for just a minute and think about this body, the legislative body, and I would like you to think about the Supreme Court sitting together one day and saying to themselves, don't you think that the legislature should have a group that governs it, that looks over its membership's behavior and that it should be done in public so we would be sure that the legislature acts promptly. I think if the Supreme Court said that to us, we would be very angry. We would be saying, what right do they have to tell us how to run our business.

What I am saying to you is, this bill is doing just exactly that to the judiciary. We are trying to tell the judiciary, which is a separate and equal branch of government, how to do their business.

It seems to me that there are two major cases that have happened during the past year, neither one of them has been pleasant, both of them have gone to the Committee on Judicial Responsibility and Disability, which has been set up by the Supreme Court to govern itself. The outcome of these cases was not perfect but there was an outcome and there was publicity. It was made public at the proper time. We all had a chance to follow and judge what the Committee on Judicial Responsibility and Disability was doing.

There is absolutely no need for us to set up a separate body. As soon as you appoint two lawyers, what kind of relationship are they going to have to the rest of the judiciary in front of whom they have to practice? That is a terribly difficult place to put two lawyers appointed by the Governor.

There has never been any question of integrity of the integrity of the people who are serving on the board currently. There has been absolutely no question that they have received complaints and they have discharged them to their full responsibility and not the entire satisfaction of the public but to a very high degree of satisfaction.

People who serve as judges of the State of Maine have taken a high oath. They have promised to serve, they have promised to be honest, they have promised to be ethical. They hold those oaths very, very seriously.

I think it would be a slap in the face to the judiciary if we as a legislature were to say to them, we don't believe you are governing yourself well enough. I think it is fair for us to say, perhaps you should add some members or perhaps you should do your hearings a little more in public, something like that is certainly fair, and let them hear that we are not entirely satisfied.

But for us to pass legislation that calls for sort of a super board over the judiciary to determine whether they are behaving well, I think that is ridiculous. I hope that you will indefinitely postpone this bill.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I felt I had to rise a second time to face the young youth from Augusta and thank him for the kind words "retired old gentleman."

I perhaps should speak by facing my House chairman, but then again, we never agreed from the beginning on this one.

I just would like to pick up a few words from Page 3 of the Attorney General's letter of this year when he pointed once again to Article III of the Maine Constitution, pointed to Sections 1 and 2. Section 1: "The power of the government shall be divided into three distinct departments, the legislative, the executive and the judicial." You know, that wasn't unfamiliar to me. I remember that from the 4th grade, and I bet those in this House that took that course in American government from the good gentleman from Eagle Lake, they got that same message. You know, it hasn't changed since I was in the 4th grade, we have still got those three co-equal branches.

The Attorney General must have foreseen today, he is a bright young fellow down there, because he went beyond Maine law and he pointed to the separation of powers doctrine and he cited the case of Nixon vs. the Administrator of General Services, and for the five, I believe, lawyers, five remaining lawyers that we have in the House, the citation is 433, U.S. 425, 1977 case. In that case it says, "It does operate to prohibit one branch of government from unduly impeding the operation of a coordinate branch of government." Then he went on and pointed to a federal case. Mr. Tierney down there probably figured there must be a few doubting Thomas's and I will also have to go up there and explain it to them, but instead he gave us another federal case and the federal case explained the constitution system of checks and balances, "The Separation of Powers doctrine seeks to preserve the independence of each branch of government and to protect each from undue interference by the other."

It is not really a complicated question. The question wasn't even on my final exam in the 4th grade.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Portland, Mr. Joyce, that this Bill 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, Bell, Berube, Bordeaux, Brown, D.; Brown, K.L.; Cahill, Callahan, Crowley, Cunningham, Curtis, Damren, Day, Dillenback, Drinkwater, Dudley, Foster, Gavett, Gillis, Hall, Hanson, Higgins, L.M.; Hunter, Hutchings, Ingraham, Jordan, Joyce, Kelleher, Ketover, Kiesman, Kilcoyne, Lewis, Lisnik, Livesay, Lund, MacBride, Manning, Masterman, Masterton, Matthews, McSweeney, Murphy, Nelson, A.; Nelson, M.; Norton, O'Rourke, Paradis, E.;

Paul, Perkins, Peterson, Randall, Reeves, J.; Roberts, Salsbury, Sherburne, Small, Smith, C.W.; Soule, Stevenson, Stover, Strout, Studley, Tarbell, Telow, Treadwell, Tuttle, Walker, Webster, Wentworth, Weymouth.

NAY—Austin, Baker, Beaulieu, Benoit, Boisvert, Boyce, Brannigan, Brennerman, Brodeur, Brown, A.; Carrier, Carroll, Carter, Chonko, Clark, Conary, Connors, Connolly, Cox, Davies, Davis, Diamond, G.W.; Diamond, J.N.; Erwin, Fitzgerald, Fowlie, Gowen, Gwadosky, Hayden, Hickey, Higgins, H.C.; Hobbins, Huber, Jackson, Jacques, Jalbert, Kane, Kany, Lancaster, LaPlante, Laverriere, Locke, MacEachern, Macomber, Mahany, Martin, A.; Martin, H.C.; McCollister, McGowan, McHenry, McKean, McPherson, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Nadeau, Paradis, P.; Pearson, Perry, Pouliot, Prescott, Reeves, P.; Richard, Ridley, Rolde, Smith, C.B.; Soulas, Swazey, Theriault, Thompson, Twitchell, Vose, The Speaker.

ABSENT—Holloway, Post, Racine.

Yes, 71; No, 76; Absent, 3; Vacant, 1.

The SPEAKER: Seventy-one having voted in the affirmative and seventy-six in the negative with three being absent, the motion does not prevail.

Thereupon, on motion of Mrs. Reeves of Pittston, Report C was accepted and the Bill read once.

Committee Amendment "B" (H-555) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read the second time, passed to be engrossed as amended and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 19 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Kristin Dinsmore, of Portland, Salutatorian of Deering High School, Class of 1981; (H. P. 1657) by Representative Ketover of Portland. (Cosponsor: Representative Brannigan of Portland.)

No objections being noted, the above item was considered passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

In Memory of:

The Honorable Harry P. Glassman, of Portland, Associate Justice of the Maine Supreme Judicial Court; (H. P. 1651) by Representative Hobbins of Saco. (Cosponsors: Senators Devoe of Penobscot, Conley of Cumberland, Kerry of York, Representatives Joyce of Portland, Carrier of Westbrook, Benoit of South Portland, Soule of Westport, Drinkwater of Belfast, Lund of Augusta, Reeves of Newport, Livesay of Brunswick and O'Rourke of Camden)

No objections being noted, under suspension of the rules, the above item was considered adopted and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 21 was taken up out of order by unanimous consent:

The following Communication:

Committee on Judiciary

June 9, 1981

The Honorable John Martin

Speaker of the House

State House

Augusta, Maine 04333

Dear Speaker Martin:

The Committee on Judiciary is pleased to report that it has completed all business placed before it by the First Regular Session of the 110th Legislature.

Total number of bills received in committee —

194

Unanimous reports
Ought to pass — 18
Ought to pass, amended — 41
Ought to pass in new draft — 5

Ought to pass in new
draft and new title — 3
Ought not to pass — 22
Leave to Withdraw — 74

Divided — 30

Held for study — 1

Recommitted bill held for study — 1

Respectfully submitted,

S/BARRY J. HOBBINS

House Chairman

The Communication was read and ordered placed on file.

The following paper appearing on Supplement No. 20 was taken up out of order by unanimous consent:

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act Concerning Probation for Certain Persons Convicted of Driving while Intoxicated" (H.P. 1184) (L.D. 1408)

Report was signed by the following members:

Senators:

KERRY of York

DEVOE of Penobscot

CONLEY of Cumberland

— of the Senate.

Representatives:

DRINKWATER of Belfast

REEVES of Newport

JOYCE of Portland

O'ROURKE of Camden

LIVESAY of Brunswick

LUND of Augusta

CARRIER of Westbrook

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" an amended by Committee Amendment "A" (H-556) on same Bill.

Report was signed by the following members:

Representatives:

SOULE of Westport

HOBBINS of Saco

BENOIT of South Portland

— of the House.

Reports were read.

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

Mr. HOBBINS: Mr. Speaker, I move acceptance of the Minority "Ought to Pass" Report.

Whereupon, Mr. Higgins of Scarborough requested a roll call vote.

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

Mr. HOBBINS: Mr. Speaker, Men and Women of the House: I will give you a little background about the bill before you. I had a conference with a Superior Court Judge and he told me of a situation, a Catch-22 that presently exists when you are dealing with operating under the influence. It was this judge's belief that the court should have a hold over a person more than a year in instances where it is possible to have alcoholic treatment or rehabilitation or some type of counseling program. It was this judge's position, and the position which I put forth today, that in instances where a person is convicted, this is besides the, under the present bill if it is passed, mandatory jail sentence, so this isn't an easy way out, but this would give the court the discretion to impose conditions of probation after the mandatory sentence, if the mandatory sentence bill passes, where the court would have a hold over an individual in order that that person could take a treatment course or a counseling course.

It was his feeling that the court should have the right to require as a condition for probation the participation in a course. Unfortunately, some of these courses could take more than a

year, and under present Maine law, a person can only be put on probation for one year, no matter whether it is the person's 20th offense under the operating under the influence statutes.

I took the proposal which the judge outlines, and I presented it to the committee and now I present it to you as the minority report. I urge you to accept the minority "ought to pass" report.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I wasn't going to get up on this one today and I am going to sit down within the minute. I just wanted to let the body know that this gem came out 10 to 3 from our committee "ought not to pass."

We listened, and I certainly appreciate on the 99th day that my chairman didn't give you the long speech he gave us, but you can see where this bill is going to go. On Supplement 20, it seems like all the good guys are on there to kill this bill. Take a good look at it; we won't see it again.

I urge you to vote against the measure before us now of "ought to pass" so that we can send this down to the other body. By looking at the bill, you know what will happen down there.

The SPEAKER: A roll call has been requested. 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 Saco, Mr. Hobbins, that the Minority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Baker, Benoit, Brannigan, Brodeur, Connolly, Cox, Cunningham, Davies, Fitzgerald, Gowen, Gwadosky, Hobbins, Kany, Kilcoyne, Manning, McCollister, McGowan, Michael, Michaud, Mitchell, J.; Nelson, N.; Paradis, P.; Reeves, P.; Richard, Soulas, Soule.

NAY—Aloupis, Armstrong, Austin, Beaulieu, Bell, Berube, Boisvert, Bordeaux, Boyce, Brown, A.; Brown, D.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, Carter, Clark, Conary, Conners, Crowley, Curtis, Damren, Davis, Day, Dexter, Diamond, J.N.; Dillenback, Drinkwater, Dudley, Erwin, Foster, Gavett, Hall, Hanson, Hickey, Higgins, H.C.; Higgins, L.M.; Holloway, Huber, Hunter, Ingraham, Jackson, Jacques, Jordan, Joyce, Ketter, Kiesman, Lancaster, LaPlante, Laverriere, Lewis, Lisnik, Livesay, Locke, Lund, MacBride, MacEachern, Mahany, Martin, A.; Martin, H.C.; Masterman, Master-ton, Matthews, McHenry, McKean, McPherson, McSweeney, Murphy, Nadeau, Norton, O'Rourke, Paradis, E.; Paul, Perkins, Perry, Peterson, Post, Pouliot, Prescott, Randall, Reeves, J.; Ridley, Roberts, Rolde, Sherburne, Small, Smith, C.B.; Smith, C.W.; Stevenson, Stover, Strout, Studley, Swazey, Tarbell, Theriault, Thompson, Treadwell, Tuttle, Vose, Walker, Webster, Wentworth, Weymouth.

ABSENT—Brenerman, Chonko, Diamond, G.W.; Fowlie, Gillis, Hayden, Hutchings, Jalbert, Kane, Kelleher, Macomber, Mitchell, E.H.; Moholland, Nelson, A.; Pearson, Racine, Salsbury, Telow, Twitchell, The Speaker.

Yes, 26; No, 104; Absent, 20; Vacant, 1.

The SPEAKER: Twenty-six having voted in the affirmative and one hundred four in the negative, with twenty being absent, the motion does not prevail.

Thereupon, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The Chair laid before the House the following matter:

Bill "An Act to Establish a Fund to Implement the Hazardous Waste Program in Lieu of a General Fund Appropriation" (S.P. 447) (L.D. 1303) on which the House accepted Majority "Ought to Pass" in New Draft under New Title Report on Bill "An Act to Establish a Hazardous Waste Response Fund and to Facilitate the Department of Needed Waste Facilities" (S.P. 660) (L.D. 1684) and the New Draft was passed to be engrossed. In Senate, adhered to its action whereby it accepted the Minority "Ought to Pass" in New Draft under New Title Report on Bill "An Act to Establish a Hazardous Waste Response Fund and to Facilitate the Development of Needed Waste Facilities" (S.P. 661) (L.D. 1685) and the New Draft passed to be engrossed in non-concurrence.

Tabled earlier in the day and later today assigned pending further consideration.

On motion of Mr. Hall of Sangerville, the House voted to recede and concur.

By unanimous consent, ordered sent forthwith to Engrossing.

(Off Record Remarks)

On motion of Mr. Diamond of Windham, Recessed until the sound of the gong.

After Recess

6:05 p.m.

The House was called to order by the Speaker.

The following paper appearing on Supplement No. 18 was taken up out of order by unanimous consent:

Divided Report

Majority Report of the Committee on Taxation reporting "Ought to Pass" Pursuant to Joint Order (H. P. 1619) on Bill "An Act to Fund the Highway Allocation Act for Fiscal Years 1981-'82 and 1982-'83" (Emergency) (H. P. 1653)

Report was signed by the following members:

Senator:

WOOD of York

— of the Senate.

Representatives:

POST of Owl's Head
HAYDEN of Durham
KILCOYNE of Gardiner
TWITCHELL of Norway
KANE of South Portland
HIGGINS of Portland

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" pursuant to Joint Order (H. P. 1619) on Bill "An Act to Create a Fuel Efficiency Adjustment Program and Other Highway Revenue Adjustments" (Emergency) (H. P. 1652)

Report was signed by the following members:

Senator:

EMERSON of Penobscot
TEAGUE of Somerset

— of the Senate.

Representatives:

INGRAHAM of Houlton
DAY of Westbrook
MASTERMAN of Milo
BROWN of Bethel

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

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

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

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I would request a roll call vote.

The issue is clear, we have two proposals in front of us. One of them calls for an adjustment in the way in which our gas tax is computed. It raises around \$13 million. The other proposal, which we are voting on right now, makes some adjustments in the allocation act, mostly cuts, \$2.5 million, raises some additional fees on trailers and calls for an appropriation of over \$9 million from the General Fund.

I know that this is an amended version of the Governor's plan that he sent up to us some time ago. I think the objections that I held then are the same objections that I hold now, and very simply stated they are: Do we fund our highway system by people who utilize the roads, including out-of-state residents and out-of-state truckers, or do we place the entire burden on Maine people? That is the bottom line. If you agree that people who are using the roads ought to pay for them, you will vote against this committee report that is in front of you now. I happen to think that they should. That is the bottom line issue, the philosophical issue that we must address at this point in time.

The other more substantive issue is, very simply stated, is the money there? Can we take \$10 million from the General Fund and use that money to help fund our highway system? I guess my statement is, no, we cannot. Perhaps someone from the Appropriations Committee wants to tell us if that money is there, I would like to hear that in plain English right now — yes or no, is the money there? I think the answer will come back something like this, maybe it won't, but the way I look at it, and I have done some research in addition to some of the handouts that I have received, as many of you have from the Appropriations Committee, saying that yes, the money is there, but in parentheses it ought to say right now, there has been so much talk by members of the Appropriations Committee over the last six months that we are in real bad shape.

When we came into this session back in January, every single member of the Appropriations Committee, members of leadership, said "we don't have the money." We might just as well start out right at the bottom line — we don't have the money to take from the General Fund and give it to the Highway Fund to fund state police or any other program. I don't think anything has changed in the last five months to change my particular feeling about this.

We have all kinds of cuts that we have been hearing about coming down from Washington to the tune of \$75 million, maybe more, maybe less; it is a lot of money and that is what is important. It is certainly more than \$10 million.

In addition to that, I would say that the revenue estimates that we have used are perhaps liberal in their nature. Perhaps they're not and are not here to question that except to make light of the fact that some of the additional revenues that the Governor has used in his estimates are pretty hefty, 12½ percent. In the last few years, we have been receiving maybe 18½ or 19½ percent additional revenues, and now, all of a sudden, we are to believe that there is 12½ percent there. I am not sure that there is.

Even if you use that, even if you take \$8 million or \$10 million that we expect to receive over and above what we expected to this year and you put that into the next year of the biennium, that money still has a cloud over it, and that cloud is, how much are we going to get hurt from Washington? We take this money out now, how are we going to put it back later? Is it the Governor's intent to take that money out now and when the cuts come from Washington say, ah, it's Washington's fault. I say, let's think ahead a little bit. We know it is coming, we know these cuts are coming. Why appropriate every single nickel we have got now in the hope that it won't when we know that they are.

There have been a lot of proposals, there have been a lot of funding measures that this House has wanted to pass, there have been a lot of bills, a lot of you have had bills in here that we have killed, good bills that just haven't made the grade because every member of the Appropriations Committee has said, we don't have the money to fund these programs. Yet, now we have a proposal saying we have got \$10 million we can throw around. I don't think we do.

We had a bill in here that the Appropriations Committee did not fund, and that was an additional \$2 million for leeway to keep our property taxes back home the same as this year. We had a debate on the floor of the House and it passed by many votes. We all wanted to fund that program so that we could say we kept leeway at the same percentage as we did this year, and by not doing so, we admitted, and if I am wrong I want the Appropriations Committee to tell me so, but when they failed to fund that measure, they said property taxes are going up \$2 million, and I am saying to you, instead of taking that \$10 million out of the General Fund to fund highways, let's take some of that money and fund some of the programs that are going to help our local property taxpayers and let's let the burden of the highways fall on those people who are going to use them.

I want someone from Appropriations to stand up and tell me what has happened in the last five months that would lead me to believe that we have \$10 million more now than we did then.

The SPEAKER: The Chair recognizes the gentleman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: Essentially what you have before you today are two reports and two bills as members of the Taxation Committee have sought to comply with the Joint Order that was passed by this legislature.

We have two ways of coping with our highway funding solution. The Majority Report is essentially learning to live within our own resources, and the Minority Report is an increase in the gas tax. You can call it whatever you want to, but that is how it works. Essentially what will happen is, as the cars become more fuel efficient, the tax will increase, it will increase automatically without this body ever having to take a vote on it. It will increase probably 3 cents in the next biennium, and that is both the tax increases which will take place without this legislature or future legislatures ever taking a vote.

I think the question is how we want to deal with the situation that is before us. The gentleman has mentioned several times that we ought to talk about our highways being funded by people who use them, and that is essentially what is being done in Report A. We are not particularly taking money out of the General Fund, passing it over to the Department of Transportation and saying, here, use it how you want to, use it to cut trees, make ditches, plow roads. We are not doing that, we are not taking General Fund money and putting it into the Highway Fund. What we are proposing to do in the Majority Report is to have the General Fund pick up a higher percentage of state police. The people who have been responsible for the General Fund will continue to do that. The people who have always been responsible for the funding of highway police and looking over their budget will continue to do that. We are not taking General Fund money and just plugging it over to the building across the street to let them spend the way they want.

We have agreed on many of the issues before us. The basic issue that comes down, what we have tried to do in Report A, we have made cuts in the allocation act, we have accepted some of the provisions which have been proposed in the Republican proposal and by the several transportation committees, bills which individual members of this legislature have put in and which there has been general agreement

on, and we have included two other provisions for increases in registration fees. That gives us a balanced budget and that gives us a point at which we can leave this session of the legislature having dealt with the General Fund, having dealt with the issue of the Highway Fund, going home with a balanced budget.

I am not about to say that we have to leave this particular body in June or pass a gas tax in June because of something that might happen in the fall. We have been assured by the people in Washington that whatever cuts may come in reductions of monies will be more than made up with the flexibility that we will have in this legislative body. I am willing at this point to believe those promises. I don't believe that we have to ask the people of the State of Maine to pay an increase in gas taxes because those promises might be broken by next fall.

We have a balanced proposal before you, we believe the money is there, it is one that the people of Maine can live with. We have had to make some cuts in the allocation act, we have protected our municipalities. The state aid is still in there, the block program is in there at the level proposed by Maine Municipal Association. The cuts that we have made are in areas where we think those cuts can be absorbed.

I would hope that you would vote in favor of Report A, and by doing that will vote against a gas tax increase.

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

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I would like to begin by commending a good many people in this body for some very hard work that they have done at trying to arrive at a compromise package. People that I commend are on both sides of the aisle and come from several committees, the Transportation Committee, the Taxation Committee, the Appropriations Committee and the Joint Select Committee that was appointed. They have worked very hard to arrive at a long-term solution to a very severe problem but, unfortunately, these good folks have not had the proper tools with which to come up with the kinds of creative and innovative program that is needed at this point.

While these good folks have been working very diligently and very hard to arrive at a compromise package, the second floor has been totally inactive. This problem has been with us for a long time, and the Governor, better than a year ago, promised this body and this legislature that he would be providing a long-term, comprehensive package to fund the highway program. He has not done so. In fact, the second floor has been very inactive over the past several months, pushing all of the responsibility onto this body.

The gentlelady from Owl's Head says that we have two ways to deal with the problem. I think that we have three ways, and one of those includes some activity from the executive branch.

The problem that we have before us is the result of a number of problems which have been eloquently defined on the floor. If this were a business that we were looking at that was being hit with the kinds of problems that the highway budget is being hit with, we would find that in order for that business to survive, we would have to come up with some innovative and some creative solutions, we would have to come up with some solutions that perhaps go beyond some of the solutions that we have arrived at in the past; they would be creative, indeed. Simply, a business obviously couldn't operate that way.

The Governor and the executive branch has the tools with which to come up with the kind of innovative and kind of long-sweeping changes that are needed in the highway program, because, obviously, some changes are needed and needed very desperately.

I am not voting for a system of fee increases, an 18 percent increase in the truckers' fees,

and all of those other increases that are going to hurt most of the Maine people. I am not voting for a plan that includes \$10 million out of the General Fund that we don't even know exists. Ladies and gentlemen, I am not voting for an increase in the gas tax.

Some of you say we can't go home and face the voters having left the highway department in disarray. I maintain that I can go home and face my constituents proudly, because it is high time that the Governor and the executive branch dealt with the problem as the executive branch should deal with the problem, whether we are talking about the executive branch in government or whether we are talking about the executive branch in business. It is time that bureaus and agencies in the state, including the state highway department, began to be run more efficiently and as a business. There are too many questions, too many unanswered solutions. It is time for the Governor and the executive branch to attack those solutions and provide us with a little assistance instead of thinking it is a one-way street.

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

Mrs. MITCHELL: Mr. Speaker and Members of the House: Some very interesting comments have been made on the floor of the House today. I was particularly intrigued by the last comments when we started throwing apples and oranges at somebody else. Ladies and gentlemen, the Governor of this state presented to us a funding plan in January. If we didn't like it, it was our responsibility to change it. But frankly, as we come down to the last few days of this session, what we have done with this plan is, we have funded Part I, we have funded Part II, we have dealt with the appropriations process and we have also dealt with the allocation act by taking some money from the General Fund. Why would you want a gas tax in addition to that when you have funded everything that you were sent down here to fund? It is a little bit perplexing.

You are always preaching live within your means, and it sounds strange to me that members of the opposition party are talking about raising money with another tax.

I was also intrigued by the issue of leeway and certain things that we could not afford from the Appropriations Committee. As I understand it, Republicans and Democrats on the Appropriations Committee, even those Republicans who were not considering taking money from the General Fund to fund the Highway Act, did not support including leeway.

Yesterday, when leadership met to discuss the things that the Appropriations Committee did, I did not notice the gentleman from Scarborough or any of the other members of the Republican leadership moving in in an attempt to reverse the decision of the Appropriations Committee concerning leeway. So it is a little bit interesting to me that we are talking about that here today, because, frankly, it has nothing to do with it. There was no support for funding that matter with or without using the General Fund for the highway budget.

Let's focus on the issue at hand. The question is, we can fund the allocation act, we can fund a reasonable amount of state government, we can live within our means without a tax. And, ladies and gentlemen, to me, that is the message of the 1980's.

The SPEAKER: The Chair recognizes the gentleman from Corinth, Mr. Strout.

Mr. STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to take issue with the gentlelady from Owl's Head, Mrs. Post. I don't think she is really telling us the whole story here this afternoon when she says that reductions in the block grant program will take care of the sufficient needs at the local level. I think you are way off base.

I am going to give you an example of a small town in Penobscot County because I happen to know exactly what it cost in 1980 for winter

maintenance. I think we are a small community that has an average cost. The average cost is \$667 a mile, that is for winter maintenance. For summer maintenance, the average cost is \$2250 based on 1980 costs.

I want to remind you that in the package that I supported up until this one came out was \$2750 across the board. I would also like to remind the members of this House that the \$40,000 that our little town will get under the block grant program is minus \$19,000 from what we got last year from the state, so we are getting a net result of \$21,000. When you divide that by 15 miles you are not getting \$2750 and you are not getting told the whole story. You are getting on the average maybe \$1400 to \$1500.

DOT will tell you that it costs them between \$1400 and \$1500 to maintain their roads in the State of Maine, and I don't disagree with that figure. Why they can do it is because when you have a large number of miles of road and divide it by the cost, there are a lot of miles out there that are not being maintained each year. So, yes, they will get a lower figure, but when you turn these miles of road back to the municipalities, and that is what is at issue here in one of these proposals, when you turn these back, we are looking at, in 1981 and 1982, a 10 percent increase cost this year for calcium, for salt purchase, for culverts. I can tell you that \$2750 isn't even going to cover it.

Also, the state will tell you in one of their stories that they are going to take over miles and miles of road, complete summer maintenance. Let me give you an example up in my town. Yes, they are going to take back two roads, but I can assure you, and a lot of you people ought to check back with your municipalities, because those two roads that the state is going to assume responsibility for, we have done absolutely no maintenance on the town level in the last 10 years. What has been done there is nothing but summer maintenance, there has been no reconstruction as far as the state aid is concerned. All the state aid money that has gone back into a lot of your municipalities in the last few years was to build up or reconstruct. Those miles of roads that the state is going to assume, and I haven't said it before, but those miles, the state has been doing most of it for the last 10 years, and you can check with your municipalities anytime you want.

Mrs. Post says that people who use are going to pay under this Majority Report. I would assume that she is thinking that the truck registration increase of 18 percent is saying that the truckers of the State of Maine are the ones who use the roads.

I know the AAA has said that the automobile people don't pay their fair share — excuse me, the truckers are not paying their fair share. I can tell you that I am not going to support any 18 percent increase, and I am not going to support 10 percent during this session for any truck registration.

My position is very clear, and I am going to say it right now — it is the gas tax. I am not afraid. The people who use the roads should pay.

When the Majority Report came out this afternoon and showed me a block grant reduction of a million dollars, ladies and gentlemen, this is hitting the small towns in the state of Maine. Why wasn't it put in here to cut the state aid program, the program that hits the larger communities in the state of Maine? No, because you want those large community votes.

It doesn't take me long around here to find out what is being cut and what is being proposed. Summer maintenance reduction, a half a million dollars, that is the cut in the skinny mix program. Bridge improvement reduction — I am surprised that the members of the Transportation Committee from the other party who, over the last five months have worked as hard as we have to come out with a unanimous allocation, is going to support something that came out here this afternoon.

I am not concerned about the \$10 million coming out of the General Fund, I can live with that, but what is bothering me is two very clear issues. One is a truck registration increase of 18 percent, and the other is the reduction in the program that we worked to put the budget together over the last five months. I think we have got a good allocation. There will be some people who will say that there are still frills in there. If there is, I think maybe next session some of the people who feel there are frills ought to be on the Transportation Committee.

Whatever you do in this L.D., as far as I am concerned, is nothing but a property tax increase at the local level.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: First of all, I think we ought to clarify exactly what we are voting on today. The original motion that I made was to accept Report A. Report A, in this particular bill, does not include, Mr. Strout, the provision for reductions in the highway allocation act. Those, as is appropriate, will be coming along at a later time because the amendment has to be presented to the highway allocation act itself, and that will be done by the chairman of the Transportation Committee.

This bill here that we are talking about does include some areas which we have heard that you might be able to support, and that is money for the General Fund. It does include also some of the registration increases which we have all agreed either ought not to be sunsetted or we ought to let continue.

However, as we have had debate here today, I have heard many people say that they want to vote in favor of a gasoline tax. I don't think we need one, but I am willing to allow everyone a chance to vote for a gasoline tax increase, which is exactly what you are voting for here today if you accept Report B. I don't think we need one, I don't think the State of Maine needs one and has to pay for one, especially when we know this can be funded. I will ask you to vote against it, but I will withdraw my motion to accept the Majority Report and would offer the opportunity for somebody to accept the Minority Report, so we can, in fact, give everyone an opportunity who wants to vote for a gas increase to do so.

The SPEAKER: The gentlewoman from Owl's Head, Mrs. Post, withdraws her motion to accept the Majority Report.

The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: I move we accept Committee Report B and I ask for the yeas and nays.

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 in favor 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 gentlewoman from Owl's Head, Mrs. Post, that the Minority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Armstrong, Austin, Bordeaux, Brown, K.L.; Cahill, Conary, Connors, Cunningham, Curtis, Damren, Davis, Day, Dexter, Dillenback, Drinkwater, Foster, Gavett, Gillis, Gowen, Gwadosky, Higgins, L.M.; Holloway, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kiesman, Lancaster, Livesay, Lund, MacBride, Masterman, Masterton, Matthews, McPherson, Nelson, A.; O'Rourke, Paradis, E.; Perkins, Peterson, Randall, Salsbury, Sherburne, Small, Smith, C.W.; Stevenson, Strout, Tarbell, Treadwell, Walker, Wentworth, Weymouth.

NAY—Baker, Beaulieu, Bell, Benoit, Berube, Boisvert, Boyce, Brannigan, Brenerman, Brodeur, Brown, A.; Brown, D.; Callahan, Carrier, Carroll, Carter, Chonko, Clark, Connolly, Cox, Crowley, Davies, Diamond, G.W.; Diamond, J.N.; Erwin, Fitzgerald, Fowlie, Hall, Hanson, Hayden, Hickey, Higgins, H.C.; Hobbins, Huber, Jacques, Jalbert, Joyce, Kane, Kany, Kelleher, Ketover, Killoynne, LaPlante, Lewis, Lisnik, Locke, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H.C.; McCollister, McGowan, McHenry, McKean, McSweeney, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, M.; Norton, Paradis, P.; Paul, Pearson, Perry, Post, Pouliot, Prescott, Reeves, J.; Reeves, P.; Richard, Ridley, Roberts, Rolde, Smith, C.B.; Soulas, Soule, Stover, Studley, Swazey, Telow, Theriault, Thompson, Tuttle, Twitchell, Vose, Webster, The Speaker.

ABSENT—Dudley, Laverriere, Racine.

Yes, 54; No, 93; Absent, 3; Vacant, 1.

The SPEAKER: Fifty-four having voted in the affirmative and ninety-three in the negative, with three being absent, the motion does not prevail.

The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: I move acceptance of the Majority "Ought to Pass" Report and ask for the yeas and nays.

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 Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to make two brief comments. My first one is in rebuttal to the good gentlelady from Vassalboro, Mrs. Mitchell, and that is that I think we are talking about taking money from one fund and putting it in the other. If we didn't have that money spent for the highways, we would have that money to spend for lowering the property tax, any other number of issues that we feel are important to the people of this state. Or, perhaps we would be able to save that money for a rainy day, if you will. I find it rather ironic that the good gentlelady from Owl's Head, Mrs. Post, believes so sincerely in the feeling that Congress is going to be so generous in sending back all this money to the state. To me, from what we have been hearing from the Department of Mental Health and Corrections and Human Services, there are going to be some significant cuts, there are going to be some significant dislocations, if you will, for a while that we will have to adjust to.

The second point I want to make is, I have still not yet heard anyone from the Appropriations Committee tell me how come we have got \$10 million now that we didn't have when we got here in January.

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

Mr. KELLEHER: Mr. Speaker and Members of the House: As a member of the Appropriations Committee, our estimates in terms of revenues were a lot better in June than they were back in February, for one thing. Information that we got from our Finance Office dealing with some items that were on the table as revenue losers were revenue producers that came up with five and some-odd million dollars. That is one reason why myself and others who accepted the problems with the highway department found that there was additional monies to be sought and to be funded. That is why they are there, Mr. Higgins, because of an

error that we got from our Finance Office dealing with some revenue losses and because revenues were higher than our expectations.

But there is one point you have been talking about here this evening dealing with what is going to happen in Washington. I would suggest you contact your party in Washington and urge them not to go for those recommended cuts coming from a Republican Administration.

Mr. Brown here this afternoon didn't have any problem at all taking his handcuffs off and talking about a Democratic Administration and a Democratic Governor, but he was just as silent as a cave when it came to what is happening in Washington, and, you know, we have four Congress people down there, three of them are not of my party, and there is one person down there that has been arguing what the potential cutbacks are coming from Washington.

His complaint was that the Governor didn't present a budget that was workable. Well, in January he presented one, and like everything else, once it gets into the legislature, it becomes our property, not his, and the changes that were made because we thought we could make some adjustment and improvements. They may not have been perfect, but, nevertheless, as Mrs. Mitchell has said today, we passed a Part I, we got a Part II out of here, a number of L.D.'s were funded, a number of L.D.'s weren't funded. Everybody can't have everything.

There is one thing I learned here this afternoon, the opposition party was talking about one particular program that they were satisfied with. Mrs. Post gave them an opportunity to present that proposal, and there was silence in here. No one stood up and moved it. Mrs. Post gave you an opportunity and we all found out where we were coming from.

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

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: Just so Mr. Kelleher won't think that caves are always silent, I would like to respond a little bit.

I have never been so amazed as I have in the last few months at how much a 5 percent reduction in proposed increases can mean to the State of Maine — 5 percent reduction in proposed increases, ladies and gentlemen, if we believe what Mr. Kelleher and others are telling us, means that we are all going to be left out on the limb to wither and die.

I would like to pose a question through the Chair to the gentleman on the Appropriations Committee from Bangor, Mr. Kelleher. As a member of that Appropriations Committee, Mr. Kelleher, you seem very sure of yourself in terms of the money that is going to be available in the General Fund. You seem to be very cocky, in fact, that this has been a banner year and Maine fares very well. Can we assume, then, that from this point on portions of the highway funding is going to be a General Fund item?

The SPEAKER: The gentleman from Livermore Falls, Mr. Brown, has posed a question to the gentleman from Bangor, Mr. Kelleher, who may answer if he so desires, and the Chair recognizes that gentleman.

Mr. KELLEHER: Mr. Speaker, the gentleman can assume anything he wants to.

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

Mr. DAVIS: Mr. Speaker, Ladies and Gentlemen of the House: Things have been mentioned about Washington here and about funding. I would like to tell Mr. Kelleher and others that I heard the Secretary of Transportation tell us last month this — some of the members of our group were asked about the financing, and this is what he said: "Would you rather have us collect the dollars down here and give you back 75 or 80 cents, or would you rather collect it on the home front and have a full dollar?" That is what they are telling us in Washington. We don't want all your money

down there. Collect it here and use it here because it will not deteriorate before it gets back to us.

It is easy to see where the \$10 million is coming from. All you have got to do is look at this sheet that we got this week. Individual income tax — \$14 million over the estimate. How did we get it, not by telling the people we were going to take it out of their pockets but by a sneaky way. We look at sales tax — down \$4 million. Why? Because the people of Maine have been unable to pay \$80 million for goods and services that they usually buy. That is why we want to have the gas tax. Let's go at it right. Let's get that 20 to 30 percent from our summer visitors and our fall hunters and so forth. Why should the people of Maine, the taxpayers of Maine and the property tax go up because we haven't got the guts to face it right here?

The SPEAKER: The Chair recognizes the gentleman from Princeton, Mr. Moholland.

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: I think I would like to give you two or three comments on the trucking here. I think I am going to be hit about the hardest of anybody in this House. We were up here Monday and had some meetings. I got on the phone and I spent about \$30 of the state's money and I called 25 truckers. As far as I am concerned on this 18 percent, this is going to cost me for registration at the end of the year \$2684. As for the trailers, the 50 trailers that I own, or the finance company owns, they are going to cost me another \$2500. So it is going to cost me \$5184 to register my trucks this coming year, and if we put this fuel tax on, gas tax, and our big trucks get 4.1 miles to the gallon, if they put this efficiency program on, all your truckers are going to be out of business and they are not going to be able to haul any of this stuff that you people have to eat.

I wish you would all go along and give us a green light on this Report A.

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

Mrs. MITCHELL: Mr. Speaker and Members of the House: Although we have all had our chance at partisan bickering, I believe very sincerely the time has come to put that aside.

We had a vote in this House; 93 people voted against the package which included the gas tax. That package is gone. Tomorrow is the 100th legislative day. You have heard a lot of arguments about robbing all this money from the General Fund. I am surprised at the Appropriations Committee. We are talking about \$5 million in the first year out of \$546 million; in the second year, \$5 million approximately out of another approximate \$550 million. Let's spend one percent.

It is time to deal with the problem. We have a reasonable solution before us, and I sincerely ask those of you who plan to vote against this bill, would you please share your alternatives with the rest of us.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I guess the problem I have with the way we are addressing this as a legislative body is, we are not putting this problem in its true historical perspective. We have been fudging around with a chronic problem of highway funding now for over four years. It started under the Longley Administration when we jacked up every fee in sight and it continued for another three years, to the current day, under the Brennan Administration.

Many people on this floor who were here in the last legislative session held their noses and voted for a measure that took all of the funding increases out of the hides of the taxpayers of the people of Maine exclusively last year with the promise that we would have a long-term solution to this problem so we weren't faced with this predicament year after year after year.

We didn't have the long-term solution pro-

posed to us back in January. The proposal was to take over \$25 million, at that time, out of the General Fund, and now it is whittled down to \$10 million out of the General Fund. The proposal was rejected back then by both parties on the grounds that they objected to the principle of bailing out the highway fund with the General Fund.

What we have before us is a measure that is going to have the state taking over, as I understand it, taking back 4,000 miles of roads that the state is assuming for maintenance and repair that it is not even covering under this biennium under this budget. What are you going to do with that 4,000 miles?

In addition to that, the block grant program that is under this measure that is before us now, Report A, is cutting down the dollars to the local rural areas under the block grant program, and even that is only funded for one year, it is not a two-year budget funding. So where are you going to fund 4,000 miles and a two-year block grant program as we continue on down the road? Is that going to come out of the General Fund, too, \$10 million this time under this proposal? In addition to \$10 million this time around, what are we going to have to do the next time around? Where is that going to come from? The income tax? That is an automatic tax increase to the tune of about \$34 million a year.

Why is it so wrong to have out of staters help share the cost of running on our roads and dilapidating our roads? Why should we take it all out of fees and out of funds from the Maine people? If you are a little old lady and you pull your car out for a thousand miles a year to run to the grocery store and back and do your errands, you have got to pay the increased fees on your registration, your motor vehicle, your driver's license renewal, even if you only drive a thousand miles. Is that fair to her?

The proposal that was voted on recently was the only stabilizing proposal in funding of the highways that we have seen yet. It was going to guarantee that if you drove 1,000 miles a year or 10,000 miles a year with your vehicle over the roads and dilapidated them by that much, you would pay a fixed tax rate for doing that, regardless of the fuel economy or efficiency of your vehicle.

Right now, we are, and out of staters are, paying less and less revenues to cover the maintenance of our roads, even though we are driving the same amount of miles and dilapidating the same amount. And that measure before you would have said that if you drove a thousand miles and you paid \$15 in gas tax and you bought another vehicle that got you a little greater gas mileage but you still drove a thousand miles over our roads, you will still pay \$15 in gas taxes. If you regard that as a tax increase, okay, but it was a constant, stabilizing factor to the highway fund. And you know and I know, particularly people who have been on this floor and through this same predicament for three or four years, we will be right back here with the problem again and again and again until we stabilize it. What is going to stabilize it? More General Fund dollars?

We have a principle before us today, a significant principle, a landmark principle, in which we are going to start to bail out a system that does not have any stabilizing funding out of our General Fund. We are going to fund block grant for only one year so that when we come back for a biennium, we are going to have to double it. Where is it going to come from, the General Fund? We are going to have the same problem when the state finally has to take those 4,000 miles that it is going to neglect and it is going to have to come back and finally repair and maintain those roads.

We are establishing a precedent today. It is not a \$10 million precedent, it is going to rise and increase exponentially. If you want it all to come out of the hides and the pockets of the Maine people, then vote for it.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. McKEAN: Mr. Speaker, Ladies and Gentlemen of the House: Since the gentleman got into some facts and figures, and I thought it was very interesting, so I was sitting there doodling there a little bit and I found out that my friend from Bangor made a couple of statements, I think one of them was about we are going to ask for an increased fee. I have to say this, what the other package was asking for was an increased fee, because that is also in that package plus the gas tax, so we have got to have that on top.

Some other figures that I thought were very interesting, and everybody seems to allude to the fact that we are going to the General Fund and say "please give us monies which actually may not belong to us." I would like to maybe enlighten you a little bit on some figures about the General Fund.

I went back to 1970, because you have got to have a period to start from, and I went up through 1980, and do you know what I came up with? The expenditures and resources for the General Fund have gone from \$400 million to over \$1,100 million. In small figures we will say \$1.1 billion. Meanwhile, the highway fund, as a percent of the total state operating funds, has gone from 22 percent of that total down to 15. So while the General Fund has continued to climb, the Highway Fund has had to go down. I find that very interesting.

Another figure that seemed very interesting to me, nobody has yet mentioned in this debate that in the year 1980, just last year, which isn't that long ago so we can't forget too easily, there was \$38.9 million that went from highway related items into the General Fund. Let's just take one figure alone — \$3,237,000. That was fines generated by the state police that went into the General Fund, fines, and those fines came from highway police operating on our highways against those people who abuse the highways. Yet, we don't speak of that.

Another thing I find very interesting, people seem to be bothered about the fees. Well, you know, in my particular area, we are not very wealthy up in Aroostook County, we have a lot of people that can't afford the \$9,000 it takes to buy that little car. They have to be satisfied with the clunker, the one that gets around 15 miles to the gallon if they are lucky. I know, I just bought one because I couldn't afford the 20 percent down and the outrageous payments and the outrageous insurance I had to put on that little, tiny car.

Interestingly enough, the average mileage driven a year in the State of Maine is around 15,000. That takes in those cars that the workingmen, which we have an awful lot of in this state, have to operate with, they will take around a thousand gallons of gas. Now you are talking \$20 each year in tax to the citizens of the state that drives that car, \$20 a year.

If you go along with the other report that we had and you go to that increased gas tax each year, 3 cents a gallon, now it is going to cost you \$30 a year. Well, I will tell you, those kinds of figures don't appear in our report, in the Majority Report. In ours it is going to cost you about a dollar and a half if you have to buy that license, a dollar and a half versus \$30 a year. It seems clear to me which report I would rather have.

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: It seems as though, even though we have rejected that Report B, we are still talking about these two proposals before us and comparing them. The gentleman from Bangor, Representative Tarbell, did that, and talked about the poor little old lady who was going to have to pay increases in fees. Well, she will only have to pay increases in fees in Report A if she drives a truck or motorcycle or happens to have a boat trailer. Under Report B, she would

have had to pay an increase in gas tax, 2 cents a gallon, every time she fills her gas tank. That was the difference between the two proposals.

What we have before us now we obviously know we can fund. It means some cuts; those we will have to accept. It means some increases in fees; those we need to accept to get a balanced proposal before us. Ninety-nine days, we have a balanced proposal here. Now what we hear are arguments that we ought to reject it because maybe in the next biennium there won't be enough money to fund it. Well, I am not willing to have the people of the State of Maine pay a 2 cent gas tax increase this year, another cent next year, and put into a system a gas tax that will automatically go up with fuel efficiency, as cars become more fuel efficient, because we might run into problems two years from now.

I am willing to accept what we have heard from Washington that with whatever cuts are coming our way, we will have more flexibility so that we will be able to deal with those cuts, and I am willing to live without a gas tax increase.

I hope that you will accept this proposal.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Miss Aloupis.

Miss ALOUPIS: Mr. Speaker and Members of the House: From the first day, and we are in our 99th day, having sat on Appropriations, the message that we seemed to be receiving all the way around was, it is going to be a rough year, folks, it is going to be rough serving on this committee, there is no money.

It seemed in the past several weeks that we have had several issues come before us, such as the 4 percent increase in retirees' benefits, raising leeway, and I have heard members of our committee get up and say that there is no money. They are good programs, our people need them back home, but remember, we have no money.

It ceases to amaze me that all of a sudden within two days, three days, suddenly, magically, there seems to have appeared this money. I guess I just feel that we are going to have some decisions to be made in October, they are decisions that the people have decided, they did elect a President who espoused those feelings, so we do have those decisions to make in October, and I guess I would just say to you, whether it is called a premium or users' fee, the increase in the gas tax is the way to go and not to rob the General Fund with so many problems that we have coming before us.

The SPEAKER: The Chair recognizes the gentleman from Limerick, Mr. Carroll.

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: On my first day here upon reconvening the 110th Legislature, I stood up and told you that you owed us \$5 million. Do you remember it? That was a debt you didn't pay. I gave you notice that you owed me \$5 million, the Transportation Department, and now we are asking you for \$10 million. Are you having any trouble with your hearing? Well, I'm not, and I will tell you right now what we have gone through these months, prudent management, prudent management, that is it, and I didn't go to Washington, made a trip down there, a fellow got up and talked but he is one of those city slickers, you know, he spoke, he hurried like heck, and you couldn't ask him any questions and get any answers — that is the Washington talk.

They want to take my Social Security away now because I am 62 — that is Washington for you. They have got quite a record down there, got a movie actor for a President, what a record, what a record.

Ladies and gentlemen of this House, I want to tell you something right now, you owe us \$10 million in black and white, and we are asking you for it. Don't you tell us to pass a gas tax so I can go home and take the food off my neighbor's table, because that is what a gas tax does. When sales are decreasing and you are not sell-

ing more of a product, you don't go up on the price and get more volume in your tax register. If sales are decreasing, you go up on your price, you just don't ring in the sales.

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

Mr. KANE: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to take up anymore time, but I did want to respond very briefly to the remarks of the gentleman from Bangor, Mr. Tarbell, with regard to his dire prediction that we may have to come back here next year and deal with this matter again, and we may have to come back the year after that even and deal with it again. I just can't reconcile those arguments with the arguments made by the same gentleman with regard to indexing just within the last two weeks. I was wondering whether or not this was called the reverse indexing argument with regard to gasoline taxation?

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentlewoman from Owl's Head, Mrs. Post, that the Majority "Ought to Pass" Report, H. P. 1653, be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Baker, Beaulieu, Benoit, Berube, Boisvert, Brannigan, Brenerman, Brown, A.; Carrier, Carroll, Carter, Chonko, Clark, Connolly, Cox, Crowley, Davies, Diamond, G. W.; Diamond, J. N.; Dudley, Erwin, Fitzgerald, Fowlie, Gwadosky, Hall, Hayden, Hickey, Higgins, H. C.; Hobbins, Jacques, Jalbert, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H. C.; McCollister, McGowan, McHenry, McKean, McSweeney, Michael, Michaud, Mitchell, E. H.; Mitchell, J.; Moholland, Nadeau, Norton, Paradis, P.; Paul, Pearson, Perry, Post, Pouliot, Prescott, Reeves, P.; Richard, Ridley, Roberts, Rolde, Smith, C. B.; Soule, Swazey, Theriault, Thompson, Tuttle, Twitchell, Vose, Webster, The Speaker.

NAY — Aloupis, Armstrong, Austin, Bell, Bordeaux, Boyce, Brodeur, Brown, D.; Brown, K. L.; Cahill, Callahan, Conary, Connors, Cunningham, Curtis, Damren, Davis, Day, Dexter, Dillenback, Drinkwater, Foster, Gavett, Gillis, Gowen, Hanson, Higgins, L. M.; Holloway, Huber, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kiesman, Lancaster, Lewis, Lisnik, Livesay, Locke, Lund, MacBride, Masterman, Masterton, Matthews, McPherson, Murphy, Nelson, A.; Nelson, M.; O'Rourke, Paradis, E.; Perkins, Peterson, Randall, Reeves, J.; Salsbury, Sherburne, Small, Smith, C. W.; Soulas, Stevenson, Stover, Strout, Studley, Tarbell, Telow, Treadwell, Walker, Wentworth, Weymouth.

ABSENT — Laverriere, Racine.

Yes, 78; No, 70; Absent, 2; Vacant, 1.

The SPEAKER: Seventy-eight having voted in the affirmative and seventy having voted in the negative, with two being absent, the motion does prevail.

Thereupon, the Bill was read once. Under suspension of the rules, the Bill was read the second time, passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 23 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Matt Loomis, of Troop 307, Kittery, upon achieving the high honor and distinction of becoming an Eagle Scout; (S. P. 674)

Tim Bryant, of Troop 307, Kittery, upon achieving the high honor and distinction of becoming an Eagle Scout; (S. P. 675)

Rick Stacy, of Troop 307, Kittery, upon achieving the high honor and distinction of be-

coming an Eagle Scout; (S. P. 676)

Gary Smith, of Troop 307, Kittery, upon achieving the high honor and distinction of becoming an Eagle Scout; (S. P. 677)

The Houlton High School "Shiretowners" girls' softball team and coach Steve McDonald, Aroostook League Class A champions for 1981; (S. P. 678)

Houlton High School Shiretowners and Coach John Donato, winners of the Aroostook County Class A Baseball League Championship for 1981; (S. P. 679)

There being no objections, the above items were considered passed in concurrence.

The following papers appearing on Supplement No. 24 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

John Romkey, class of 1981, Bangor High School, who was awarded the Charles E. French Medal, given annually to the four seniors with the highest grade-point averages; (H. P. 1658) by Representative Diamond of Bangor.

Jennifer Lown, class of 1981, Bangor High School, who was awarded the Charles E. French Medal, given annually to the four seniors with the highest grade-point averages; (H. P. 1659) by Representative Diamond of Bangor. (Cosponsors: Representative Aloupis of Bangor and Senator Trotzky of Penobscot)

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

The following papers appearing on Supplement No. 28 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

The Maranacook Black Bears' Track Team and Coach Stan Cowan, upon winning the 1981 Boys Class C State Championship in track and field; (S. P. 681)

Major General Robert A. Rushworth, of Madison, America's second winged astronaut and noted space exploration pioneer, upon his retirement from the United States Air Force; (H. P. 1661) by Representative Richard of Madison.

Agnes B. Abrahamson, head and assistant librarian, Falmouth Memorial Library for 30 years, on the occasion of her retirement; (H. P. 1662) by Representative Huber of Falmouth. (Cosponsor: Senator Huber of Cumberland)

Joseph E. Buckley, Jr., Falmouth Superintendent of Schools, 1976 - 1981; (H. P. 1663) by Representative Huber of Falmouth. (Cosponsor: Senator Huber of Cumberland)

Jeannine Irwin, class of 1981, Bangor High School, who was awarded the Charles E. French Medal, given annually to the four seniors with the highest grade-point averages; (H. P. 1664) by Representative Diamond of Bangor. (Cosponsors: Representatives Kelleher of Bangor and Tarbell of Bangor)

There being no objections, the above items were considered passed in concurrence or sent up for concurrence.

The following papers appearing on Supplement No. 31 were taken up out of order by unanimous consent:

Special Sentiment Calendar

Recognizing:

Janet Craig, class of 1981, Bangor High School, who was awarded the Charles E. French Medal, given annually to the four seniors with the highest grade-point averages; (H. P. 1665) by Representative Diamond of Bangor. (Cosponsors: Representatives Aloupis of Bangor, Kelleher of Bangor and Senator Trotzky of Penobscot)

Stephen Nadeau, Class of 1981, Bangor High School, who was awarded the Charles E. French Medal, given annually to the four se-

niors with the highest grade-point averages; (H. P. 1666) by Representative Diamond of Bangor. (Cosponsor: Representative Soulas of Bangor)

Bernard E. Littlefield, of Hampden Highlands, Valedictorian of Hampden Academy, class of 1981; (H. P. 1667) by Representative Prescott of Hampden. (Cosponsor: Senator Emerson of Penobscot)

Jeffrey Garneau, of Hampden, Salutatorian of Hampden Academy, class of 1981; (H. P. 1668) by Representative Prescott of Hampden. (Cosponsor: Senator Emerson of Penobscot)

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

The following papers appearing on Supplement No. 27 were taken up out of order by unanimous consent:

Non-Concurrent Matters

Bill "An Act Concerning Homestead Tax Relief" (H. P. 1307) (L. D. 1512) on which the Majority "Ought to Pass" in New Draft (H. P. 1625) (L. D. 1687) Report of the Committee on Taxation was read and accepted and the New Draft Passed to be Engrossed as amended by House Amendment "A" (H-552) in the House on June 9, 1981.

Came from the Senate with the Minority "Ought Not to Pass" Report of the Committee on Taxation read and accepted in non-concurrence.

In the House: The House voted to adhere.

Bill "An Act to Provide a Special Muzzle-loading Hunting Season" (H. P. 218) (L. D. 255) (Com. of Conf. Amendment "A" (H-519) which was Passed to be Enacted in the House on June 9, 1981.

Came from the Senate Failing of Passage to be Enacted in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker, I move that the House adhere.

The SPEAKER: The Chair recognizes the gentleman from Caribou, Mr. Peterson.

Mr. PETERSON: Mr. Speaker, I move that we recede and concur.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Caribou, Mr. Peterson, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Peterson of Caribou requested a roll call vote.

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 Chair recognizes the gentleman from Caribou, Mr. Peterson.

Mr. PETERSON: Mr. Speaker, Ladies and Gentlemen of the House: The reason I have asked for this is because I feel that the people with muzzle-loaders can hunt all during the hunting season. I think it will deplete our herd and I hope you will show your vote.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Jacques.

Mr. JACQUES: Mr. Speaker and Members of the House: I was hoping that we could let Fish and Game die for one year, but apparently we can't.

This particular L. D. we are voting on is the bill that was reported out of the Committee of Conference having to do with the special muzzle-loader. It gives the commissioner the authority to close down the season at any time that the herd is depleted. That is in the L. D.

There were three questions that the Senators had that we met with in a Committee of Conference and resolved. This will not deplete the deer herd, it is right in the L. D. If the gentleman from Caribou, Mr. Peterson, would care to take the time to read it, the specific statute is in there giving the commissioner the authority to close down the special muzzle-loading season if the herd is in danger. It gives him the authority to close it if there is too much snow. It gives him the authority to close it if the woods are too dry and there is danger of fire.

This was a unanimous committee report. The other body had some problems with it. We resolved those problems, and I hope you will go along with the gentleman from Lincoln, Mr. MacEachern, in his motion to adhere.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Caribou, Mr. Peterson, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Armstrong, Austin, Bell, Brown, D.; Callahan, Connolly, Davis, Day, Dexter, Dillenback, Drinkwater, Fitzgerald, Foster, Gowen, Higgins, H. C.; Holloway, Huber, Hunter, Hutchings, Ingraham, Jordan, Kiesman, Lancaster, Livesay, MacBride, Martin, A.; Masterman, Masterton, Matthews, McHenry, Nelson, A.; O'Rourke, Paradis, E.; Perkins, Perry, Peterson, Randall, Reeves, J.; Ridley, Salsbury, Sherburne, Small, Smith, C. W.; Stevenson, Stover, Tarbell, Walker, Webster, Weymouth.

NAY — Baker, Beaulieu, Benoit, Berube, Boisvert, Brodeau, Boyce, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, K. L. Cahill, Carrier, Carroll, Carter, Clark, Conary, Connors, Cox, Crowley, Cunningham, Curtis, Damren, Davies, Diamond, G. W.; Dimond, J. N.; Dudley, Erwin, Fowlie, Gavett, Gillis, Gwadosky, Hall, Hanson, Hayden, Hickey, Higgins, L. M.; Hobbins, Jackson, Jacques, Jalburt, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, Lewis, Lisnik, Locke, Lund, MacEachern, Macomber, Mahany, Manning, Martin, H. C.; McCollister, McGowan, McKean, McPherson, McSweeney, Michaud, Mitchell, E. H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, M.; Norton, Paradis, P.; Paul, Pearson, Post, Pouliot, Prescott, Reeves, P.; Richard, Roberts, Rolde, Smith, C. B.; Soulas, Soule, Strout, Studley, Swazey, Telow, Theriault, Thompson, Treadwell, Tuttle, Twitchell, Vose, Wentworth, The Speaker.

ABSENT — Chonko, Laverriere, Michael Racine.

Yes, 50; No, 96; Absent, 4; Vacant, 1.

The SPEAKER: Fifty having voted in the affirmative and ninety-six in the negative, with four being absent, the motion does not prevail.

Thereupon, on motion of Mr. MacEachern of Lincoln, the House voted to adhere.

By unanimous consent, all matters acted upon were ordered sent forthwith.

The following paper from the Senate appearing on Supplement No. 26 was taken up out of order by unanimous consent:

Bill "An Act to Clarify Exceptions Relating to Security Interests in Residences in Bankruptcy Cases" (S. P. 680)

Came from the Senate, under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed.

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

Mr. BRANNIGAN: Mr. Speaker, I move that this Bill be indefinitely postponed.

The SPEAKER: The gentleman from Portland, Mr. Brannigan, moves that this Bill be indefinitely postponed.

The gentleman may proceed.

Mr. BRANNIGAN: Mr. Speaker and Members of the House: A request was made to the Council. This deals with the bankruptcy bill that was passed by all bodies and is now a law, and an approach was made to the Council to allow this bill in this afternoon with the agreement, I believe, with the Council that all the parties that worked on the original bankruptcy bill agreed to this change in language. All parties, including the person who asked that it be let in, now agree this is too substantial and is not what they thought it was and have asked that it be indefinitely postponed.

Thereupon, the Bill was indefinitely postponed in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 16 was taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act Promoting Alcoholism Prevention, Education Treatment and Research" (H. P. 1540) (L. D. 1655) which was Passed to be Enacted in the House on June 3, 1981.

Came from the Senate Failing of Passage to be Enacted in non-concurrence.

In the House: On motion of Mr. Rolde of York, the House voted to recede.

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

House Amendment "A" (H-558) was read by the Clerk.

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

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: This is the alcoholism bill that this House has supported by an overwhelming majority of 114 votes on one occasion and 108 on another occasion.

The amendment that I am offering today keeps faith with the position that we have been following all along, which was the one cent per fluid ounce premium on alcohol to help create a fund to deal with problems of alcohol prevention and education. The reason that I am offering the amendment is that this offers a somewhat more workable administrative process for doing exactly what we wanted to do with the one cent per fluid ounce, and it is just worked out on a cent per gallon basis, which is what our liquor tax is already worked out on. It will make it a little bit easier for those, including those in private industry, that have to administer it, and for that reason I am offering this amendment and I hope you will go along with it.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: One reason why the good gentleman is offering this amendment is that it, I believe, ran into some problems in the other body.

He can call it a premium, but it is a tax as far as I am concerned, and I would urge this House not to support it. It is a tax increase, and I request the yeas and nays on the amendment.

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 adoption of House Amendment "A" (H-558). All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Baker, Beaulieu, Bell, Benoit, Boisvert, Bordeaux, Brannigan, Brenerman, Brodeur, Brown, A., Brown, D.; Brown, K. L.; Cahill, Callahan, Clark, Connolly, Cox, Crow-

ley, Cunningham, Davies, Davis, Day, Dexter, Diamond, G. W.; Diamond, J. N.; Drinkwater, Erwin, Fitzgerald, Foster, Fowlie, Gowen, Gwadosky, Hanson, Hayden, Higgins, H. C.; Higgins, L. M.; Hobbins, Holloway, Huber, Hunter, Hutchings, Ingraham, Jordan, Joyce, Kane, Kany, Ketover, Kiesman, Kilcoyne, LaPlante, Lisnik, Livesay, Locke, Lund, MacBride, MacEachern, Macomber, Manning, Martin, A.; Martin, H. C.; Masterman, Matthews, McCollister, McGowan, McHenry, McKean, McSweeney, Michael, Mitchell, E. H.; Murphy, Nadeau, Nelson, A.; Nelson, M.; Norton, O'Rourke, Paradis, E.; Paradis, P.; Paul, Pearson, Perkins, Perry, Post, Pouliot, Randall, Reeves, J.; Reeves, P.; Richard, Ridley, Roberts, Rolde, Salsbury, Sherburne, Small, Smith, C. B.; Smith, C. W.; Soulas, Soule, Stevenson, Stover, Swazey, Tarbell, Theriault, Thompson, Treadwell, Tuttle, Twitshell, Vose, Walker, Wentworth, Weymouth.

NAY — Aloupis, Armstrong, Austin, Berube, Carrier, Carroll, Carter, Connors, Curtis, Damren, Dillenback, Dudley, Gavett, Hall, Hickey, Jackson, Jacques, Jalbert, Kelleher, Lancaster, Lewis, Mahany, Masterton, McPherson, Michaud, Moholland, Peterson, Studley, Telow, Webster.

ABSENT — Boyce, Chonko, Conary, Gillis, Laverriere, Mitchell, J.; Prescott, Racine, Strout, The Speaker.

Yea, 110; No, 30; Absent, 10; Vacant, 1.

The SPEAKER: One hundred ten having voted in the affirmative and thirty in the negative, with ten being absent, the motion does prevail.

Thereupon, the Bill was passed to be engrossed as amended by House Amendment "A" in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 29 was taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act to Create a Board of Review of the Judiciary" (H. P. 1306) (L. D. 1511) on which Report "C" "Ought to Pass" as amended by Committee Amendment "B" (H-555) Report of the Committee on Judiciary read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "B" (H-555) in the House on June 9, 1981.

Came from the Senate with Report "A" "Ought Not to Pass" Report of the Committee on Judiciary read and accepted in non-concurrence.

In the House: On motion of Mr. Hobbins of Saco, the House voted to recede.

The SPEAKER: The Chair recognizes the gentleman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, I move that we accept Report B.

Whereupon, Mr. Tarbell of Bangor requested a roll call vote.

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 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 Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I won't belabor this, but would warm my heart. I did want to get the gentleman away from the phone for a little while, because I feel sometimes that when I rise to speak, I am the most important person in this House and when I am not given that respect, that is why I like to raise the issue.

This bill, since it was first here probably two hours ago, maybe four, but two hours means

four hours today, this bill had a journey down this long and narrow hall. It met its demise down there, it went under the hammer. The bill, just about nearly dead, they sent it back here and now they want us to join the funeral. I just ask now, and I forgive you, those that didn't help the fourth graders in your family, when that issue came up of separation of powers. It is something that should really be close to your heart and this bill attacks that separation of powers.

I ask that you vote against the measure before us.

The SPEAKER: The Chair recognizes the gentleman from So. Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I hope you will recede. I just want to remind you that Report B merely allows the Governor to appoint the three public members of the Judicial Board of Review. They could not be attorneys but they would be members of the public, and rather than be appointed by the judiciary as they are now, they would be appointed by the Governor. This was an attempt on the part of the few members of the committee, who didn't feel comfortable with what Mrs. Reeves was trying to do, to do something for the public to give them the feeling perhaps of a little bit more credibility on this judicial board of review, so I hope that you would accept Report B.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Members of the House: I would like to do something for the public. The one thing they have asked me more than anything, not to put any more people on the payroll.

I also don't want to get involved in another department's affairs. I wouldn't like it if they came over here and tried to direct me on what to do, and I suspect they would feel the same way if we try to direct them in their affairs. So I think we would be doing the people that we represent a favor if we stop putting people on commissions and boards, they have all got to be paid, and I hope this whole business meets with defeat, this amendment and the entire bill.

The SPEAKER: The Chair recognizes the gentleman from So. Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I just want to correct one thing, the board is already in place. This judicial board has been in place, it is still and is going to continue to be. We are just offering a different method of appointment, nothing to do with pay or more pay.

The SPEAKER: The Chair recognizes the gentleman from Camden, Mr. O'Rourke.

Mr. O'ROURKE: Mr. Speaker, Ladies and Gentlemen of the House: Some 200 years ago, our forefathers fought and gained our independence and some very wise men established a form of government for us that would last and has lasted us for some 200 years.

It is easy to talk about attorneys and judges and what is wrong with the system and there is always some group that is ready to ask for a change. But when America gained its freedom, some very wise men, and I am talking about Benjamin Franklin and Mr. Adams and Mr. Jefferson and John Hancock, they worked long and hard to try to devise a form of government that would last us for generations to come, and in order to do that, they developed the three separate branches of government system, the legislative, the executive and the judicial. What they said in the Constitution and what they meant in the Constitution was that each of these branches would be separate and would be independent, and no one branch of government would interfere or dominate the other branch of government.

Make no mistake, this is a separation of powers issue. If you have any question about that, I can refer you to a letter that was received by all members of the Judiciary, by the

executive branch, a letter dated June 2, 1981. It was directed to the Honorable James Tierney, Attorney General, in which the executive branch said that there were serious questions in both the bill and with the amendment concerning the separation of powers.

On more than one occasion during my lifetime, I have had occasion to be held in wonderment at the actions of these wise gentlemen that acted 205 years ago in establishing this form of government, and down through the years, efforts have been made for one branch of our government to dominate or control one of the other branches. To date, fortunately, they have not been successful.

We have seen what has happened in other countries, and I could call your attention to Germany where one branch gained control of the legislative branch or the Reichstag and abolish them and we needn't dwell on what happened from there on.

I would also call your attention to what has happened in the Philippines, in Korea, and many other countries throughout the world.

We have, on occasion, in our own country been faced with situations that one branch of our government has attempted to dominate or control another branch of government. One of the earliest records involved a case known as Marbury versus Madison, that goes back to 1803. It happened early in our history when Mr. Madison, who was then our President, attempted to prove that the executive branch of government was the dominant and more important branch of government. He attempted to place his own interpretation of the Constitution to override actions of the legislature, of the Congress, and to force the judicial branch to accept and adopt his point of view. This, the judicial branch, refused to do, at which point the President attempted to forcefully remove Chief Justice Marshall from the Supreme Court, minding that he was the higher authority. For those of you who are familiar with history, Chief Justice Marshall locked himself in the Supreme Court building and he stayed there for five days and he proved once and for all that the judicial, the legislative and the executive were separate and equal branches of government.

Some of you may be old enough to remember the story of the nine old men. I am, I was a young man at the time, when our President decided that the Supreme Court was not acting the way he thought they should, and he used every method within his power to try to force those men to resign, which they refused to do. If you recall, it had to do with the old NRA, National Recovery Act. Failing to do that, he then attempted to pack the Supreme Court by raising the number from nine to twelve, which he was unsuccessful in doing.

In more recent times, President Nixon, when he was faced with Watergate and the cover-up scandal, he attempted to influence and control the Supreme Court.

I am not, for a moment, suggesting that there is any ulterior motive in this House in an attempt of one branch to regulate and control another branch of the government, but what I am saying is that we should exercise with very great care and judgment to see that no law is made or any action taken that could in any way reduce the effectiveness of our three separate but equal forms of government.

I don't think we should permit ourselves as a legislative body to be manipulated, to be used or abused by any special interest group in taking action that would hurt this government of ours that has served us for over 200 years.

The judicial branch of government in this State of Maine is not perfect, they have their problems, but I can tell you that I have been a member of the Maine State Bar for more than 20 years but I have also been a member of the Minnesota Bar and I have practiced in many other states, in New Hampshire, in Massachusetts, New York and in Missouri and in Washington, D.C., and I can tell you that there is

nowhere, in all the 50 states, any judicial system that is as good or better than ours.

If one of us sincerely feels that there is a serious problem with the judicial system, the Constitution makes a very effective provision — anyone can bring a petition before the legislative body, before this House, and start impeachment proceedings. That is the proper remedy to be followed, not one branch to be interfering with another branch of the government.

I would also suggest that we not place a burden on the executive branch of our government that they do not want to shoulder. It is very clear in my mind from this letter that they don't want what we are suggesting that they do.

As it stands right now, in establishing this board of review that is in existence at the present time, if my understanding is correct and I believe it is, the Governor now can provide the list for citizen persons, I believe it is five in number but I could be incorrect on that, and from those five people the Chief Justice selects three, so the Governor does have an input. What they are suggesting now is that it go direct.

I suggest that we vote against Amendment B, so we will then be in a position to have this bill and all its accompanying papers voted out of this House.

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

Mrs. KANY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to point out to the House and to the previous speaker that the two examples on the Presidents attempting to write the law, actually, they really had nothing to do with the legislative responsibility of designing the law in this area. The amendment being offered at this time would simply amend the law which we in the legislature have designed, really a very, very short little law on Committee on Judicial Responsibility and Disability, and would just really add a single sentence to that. It is indeed the duty of the legislature to write the law and I would just like to remind you of that.

The SPEAKER: The Chair recognizes the gentleman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: The opponents of this bill requested an Attorney General's opinion ostensibly for information regarding the bill, but instead they asked a series of five questions which were not relevant to this bill. It was a clever fishing expedition to cast doubts on the bill. These are questions that could have been answered by any high school government student. For example, one, what power does the legislature have to discipline judges except for address and impeachment. The answer is, it is, not other powers, but this bill does not imply any such new powers. The proper question would have been, does the bill give the executive or legislative branches any new powers to discipline judges other than those enumerated in Article 9, Paragraph 5 of the Constitution? The answer is clearly, no, it does not.

Question two was basically the same question; the answer again is, this bill will not change the exercise of disciplinary powers in any way.

Question three, does the impeachment or address powers of the legislative or executive branch imply that it has other disciplinary powers? The proper question would have been, does this bill imply any such other powers? And the answer would have been, no, this bill does not.

Question four, can the legislature expand or limit the power of any branch of government to discipline judges beyond the Constitution? Of course not. If it had been concerned with the bill, the question would have asked, does the bill expand or limit any power to discipline judges, and the answer is no.

Question five asks if the Supreme Judicial

Court can discipline judges and create its own disciplinary agency? The answer is yes, but the proper question would have been, does this bill in any way interfere with the Supreme Court's inherent powers to discipline judges in any way? The answer to this is no, it does not.

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

Mr. CARRIER: Mr. Speaker, Men and Women of the House: To quote a few points of interest — in the first place, as it is now the Governor has nothing to do with the appointments and it reads from the book, which is the Committee on Judicial Responsibility and Disability, just three lines: "There is hereby established a Committee on Judicial Responsibility and Disability consisting of seven members appointed by the Supreme Judicial Court" and that is the way the situation is right now. What we would like to do is to have lay people on that committee and be appointed by the Governor instead of being appointed by the judge himself or the Chief Justice.

It was mentioned here about separation of powers and it can be a long subject but I will make it very short. At one of our hearings, we had former federal prosecutor Peter Mills, most of you know him, he was a former federal prosecutor for 20 years, I think, and he was also a former Senator and also a former judiciary member, and part of his statement was that this particular bill is in conflict with constitutional requirement for separation of powers between the legislative and judicial branches.

Just to repeat briefly what was said earlier, before we got on the bill earlier today I had talked with the Attorney General and he says that there is nothing at present as far as a constitutional question because there is no precedent and as far as he is concerned, until it is challenged and proven, the bill is very legitimate and very good.

There is not much more I can say except my amendment, which I thought was the best, but the other body refused to even consider this amendment. I think it was very gross on their part just to put it under the hammer. I don't like that and I let them know that I didn't like that. I think most of the bills, whether they are mine or someone else's, they deserve some consideration, but they didn't do it.

I am going a little against my belief but I am willing to concede and accept this particular amendment in good conscience and hope that you do too. Then it will give them a chance again to notice the bad way they went this afternoon, and then recognize that this bill has some value and pass it.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Paradis.

Mr. PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I thank the gentleman from Camden for his very eloquent, very distinguished address to this body on the separation of powers and the founding fathers' concept of constitutional government, but I have a question I would like to pose through the Chair to any member of the Judiciary Committee.

Speaking about separation of powers, did any member of the judiciary contact any member of our Judiciary Committee regarding the bill that is presently before this House, regarding its content, regarding its chances for passage?

The SPEAKER: The gentleman from Augusta, Mr. Paradis, has posed a question through the Chair to any member of the Judiciary Committee who may respond if they so desire.

The Chair recognizes the gentleman from Augusta, Ms. Lund.

Ms. LUND: Mr. Speaker, Ladies and Gentlemen of the House: I happened to be having dinner with the Chief Justice of the Maine Supreme Court who said to me, it would be inappropriate for him to comment on any of the legislation before this body, that that was our business, and following his tradition of separa-

tion of powers, it was for us to work out.

The SPEAKER: The Chair recognizes the gentleman from Camden, Mr. O'Rourke.

Mr. O'ROURKE: Mr. Speaker, Ladies and Gentlemen of the House: Thank you for your indulgence earlier, I will not take a great deal of your time. I would just like to respond to the gentlelady from Pittston's remarks that were made a moment ago in which she read certain questions and then gave answers, so there will be no mistake. It was not my understanding that those were answers that were given by the Attorney General.

I refer you, and I referred you earlier, to a letter dated June 2, 1981 from the Office of the Executive Department in which they indicated, and if I just might read two short paragraphs: "As you know, serious questions have arisen with respect to constitutionality of L. D. 1511 because of possible conflicts under the separation of powers doctrine. Currently, it is our understanding that two amendments to the legislation are being considered." They also raised the same questions, asked for an opinion, and we have received no answer as of this moment.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentlewoman from Pittston, Mrs. Reeves, that the House accept Report B "Ought to Pass." Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Austin, Baker, Beaulieu, Benoit, Boisvert, Boyce, Brannigan, Brennerman, Brodeur, Carrier, Carroll, Carter, Chonko, Clark, Connors, Connolly, Cox, Davies, Dexter, Diamond, G.W.; Diamond, J.N.; Erwin, Fitzgerald, Gwadosky, Hayden, Hickey, Higgins, H.C.; Hobbins, Jacques, Jalbert, Kane, Kany, Ketover, Kilcoyne, LaPlante, MacEachern, Macomber, Mahany, Martin, A.; Martin, H.C.; McCollister, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Moholland, Nadeau, Paradis, P.; Pearson, Perry, Post, Pouliot, Prescott, Reeves, P.; Richard, Rolde, Smith, C.B.; Soulas, Swazey, Thompson, Twitchell, Vose, The Speaker.

NAY—Aloupis, Armstrong, Bell, Berube, Bordeaux, Brown, A.; Brown, D.; Brown, K.L.; Cahill, Callahan, Conary, Crowley, Cunningham, Curtis, Damren, Davis, Day, Dillenback, Drinkwater, Dudley, Foster, Fowlie, Gavett, Gillis, Gowen, Hanson, Holloway, Huber, Hunter, Hutchings, Ingraham, Jackson, Jordan, Joyce, Kelleher, Kiesman, Lancaster, Lewis, Lisnik, Livesay, Locke, Lund, MacBride, Manning, Masterman, Masterton, Matthews, McKean, McPherson, McSweeney, Mitchell, J.; Murphy, Nelson, A.; Nelson, M.; Norton, O'Rourke, Paradis, E.; Paul, Perkins, Peterson, Randall, Reeves, J.; Ridley, Roberts, Salsbury, Sherburne, Small, Smith, C.W.; Soule, Stevenson, Stover, Strout, Studley, Tarbell, Telow, Theriault, Treadwell, Tuttle, Walker, Webster, Wentworth, Weymouth.

ABSENT—Hall, Higgins, L.M.; Laverriere, Racine.

Yes, 64; No, 82; Absent, 4; Vacant, 1.

The SPEAKER: Sixty-four having voted in the affirmative and eighty-two in the negative, with four being absent, the motion does not prevail.

The Chair recognizes the gentleman from Newport, Mr. Reeves.

Mr. REEVES: Mr. Speaker, I now move acceptance of Report A, "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 think we have had our fourth grade course in the separation of powers in this body today. I will be proud and feel well educated when I return home Thursday, Friday, Saturday or Sunday and tell my grandchild when she goes into the fourth grade next year, we will work together and we will pass

that course.

I ask now that you vote in favor of the motion before us, Report A, which was the Majority Report from the Judiciary Committee, that it "ought not to pass."

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

Mr. HOBBS: Mr. Speaker, I would like to pose a parliamentary inquiry?

The SPEAKER: The gentleman may state his inquiry?

Mr. HOBBS: If the pending motion is defeated, would we be in the posture to accept the original bill or any other reports?

The SPEAKER: The Chair would answer in the affirmative.

The Chair will order a vote. The pending question before the House is on the motion of the gentleman from Newport, Mr. Reeves, that the House accept Report A, "Ought Not to Pass" in concurrence. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

76 having voted in the affirmative and 29 in the negative, the motion did prevail.

The following paper appearing on Supplement No. 30 was taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act to Create the Public Advocate to Represent the Interests of Utility Customers" (H.P. 1578) (L.D. 1673) (Emergency) which was passed to be Engrossed in the House on June 3, 1981.

Came from the Senate passed to be engrossed as amended by Senate Amendments "A" (S-335) and "B" (S-341) in non-concurrence.

In the House:

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

Mr. CONNOLLY: Mr. Speaker, I move that the House recede.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker, I object to receding and I urge people not to recede.

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

Mr. CONNOLLY: Mr. Speaker, Ladies and Gentlemen of the House: The purpose for my motion to recede is to present an amendment, and I think whether or not you support the amendment, you should at least be allowed to hear the reasons for the amendment, so I would hope that you would vote to allow me to recede.

The SPEAKER: The pending question is on the motion of the gentleman from Portland, Mr. Connolly, that the House recede. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Connolly of Portland requested a roll call vote.

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 Portland, Mr. Connolly, that the House recede. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Armstrong, Baker, Beaulieu, Benoit, Berube, Boyce, Brannigan, Brennerman, Brodeur, Brown, D.; Callahan, Carrier, Conary, Connors, Crowley, Damren, Davis, Dexter, Fitzgerald, Gowen, Gwadosky, Hanson, Higgins, H.C.; Jackson, Joyce, Kelleher, Ketover, Kilcoyne, Lewis, Locke, Mahany, Manning, Martin, A.; McHenry, McSweeney, Michael,

Michaud, Mitchell, J.; Murphy, Nelson, A.; Norton, Paul, Perry, Post, Prescott, Randall, Reeves, P.; Salsbury, Sherburne, Smith, C.B.; Soule, Strout, Theriault, Tuttle, Wentworth.

NAY — Aloupis, Austin, Bell, Boisvert, Bordeaux, Brown, A.; Brown, K.L.; Cahill, Carroll, Chonko, Clark, Connolly, Cox, Cunningham, Curtis, Davies, Day, Diamond, G.W.; Diamond, J.N.; Dillenback, Drinkwater, Dudley, Erwin, Foster, Fowlie, Gavett, Gillis, Hayden, Hickey, Hobbins, Holloway, Huber, Hunter, Hutchings, Ingraham, Jacques, Jalbert, Jordan, Kane, Kany, Kiesman, Lancaster, LaPlante, Lisnik, Livesay, Lund, MacBride, MacEachern, Martin, H.C.; Masterman, Masterton, Matthews, McCollister, McGowan, McKean, McPherson, Mitchell, E.H.; Moholland, Nadeau, Nelson, M.; O'Rourke, Paradis, E.; Paradis, P.; Pearson, Perkins, Peterson, Pouliot, Reeves, J.; Richard, Ridley, Roberts, Rolde, Small, Smith, C.W.; Soulas, Stevenson, Stover, Studley, Swazey, Tarbell, Telow, Treadwell, Twitchell, Vose, Walker, Webster.

ABSENT — Carter, Hall, Higgins, L.M.; Laverriere, Macomber, Racine, Thompson, Weymouth, The Speaker.

Yes, 55; No, 86; Absent, 9; Vacant, 1.

The SPEAKER: Fifty-five having voted in the affirmative and eighty-six in the negative, with nine being absent, the motion does not prevail.

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

Mr. CONNOLLY: Mr. Speaker, having voted on the prevailing side, I now move we reconsider whereby we failed to recede, and I would like to speak to that briefly.

The SPEAKER: The gentleman from Portland, Mr. Connolly, now moves that we reconsider our action whereby this body failed to recede.

The gentleman may proceed.

Mr. CONNOLLY: Mr. Speaker and Members of the House: The reason that I made the motion to recede, and many of you were not in the chamber at the time, was in an attempt to offer an amendment to this particular L. D. that deals with the bill that would create a public advocate to protect consumer interests in proceedings before the Public Utilities Commission. Since it is not proper to debate the contents of the amendment while the motion to recede is before us, I was simply asking for the opportunity to be allowed to present the amendment.

I would hope that the House would reconsider its vote so that we might be allowed to recede. Then I could offer the amendment, and if you disagree with the contents of the amendment, you can vote against the amendment at that time, but it seems that I should be allowed the opportunity to at least present the amendment.

The SPEAKER: The pending question is on the motion of the gentleman from Portland, Mr. Connolly, to reconsider whereby the House failed to recede from its action whereby this Bill was passed to be engrossed. All those in favor of reconsideration will vote yes, those opposed will vote no.

A vote of the House was taken.

65 having voted in the affirmative and 64 having voted in the negative, the motion did prevail.

Thereupon, the House receded from its action whereby the Bill was passed to be engrossed.

Senate Amendment "A" (S-335) was read by the Clerk and adopted in concurrence.

Senate Amendment "B" (S-341) was read by the Clerk and adopted in concurrence.

Mr. Connolly of Portland offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-557) was read by the Clerk.

The SPEAKER: The Chair recognizes the

gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker and Members of the House: The bill, as I explained before, is a bill that would create a public advocate to represent consumer interests in proceedings before the Public Utilities Commission. There is a provision in the bill now, as it is currently drafted and as it came out of committee, the so-called repeal provision that says in effect that if the initiated referendum that is to go to the voters in the fall were to pass, in the manner in which the PUC has been selected is to be changed, then the public advocate would be repealed, would be put out of business.

The amendment that I am offering would delete this so-called repealer provision.

I am in favor of a public advocate, but I am also in favor of the initiated referendum that would go out to the voters in the fall. If the bill's emergency preamble is correct, it says that there is an emergency because there is a lack of public representation and a lack of public intervention in proceedings before the Public Utilities Commission. There is soon to be rate cases filed before the PUC, Central Maine Power is about to file a request for a \$50 million rate increase and they already have pending a \$38 million rate request that hasn't been decided on. If those actions which justify the emergency preamble on this legislation are correct, there seems to me to be no reason why the repealer provision that is in this bill should be there.

This morning, there were a series of meetings that took place between the people who support the initiated referendum and those who are opposed to the referendum, representatives of the Attorney General's Office and those representatives of the utility companies who have an interest one way or the other in this referendum and in this particular piece of legislation. It came to light that the repealer provision that is in this bill was produced in large part by the Central Maine Power and utility lobby. They have a direct interest in this particular piece of legislation because, as Representative Kelleher told you the other day about the snow job in July, the entire purpose on some people's part for having this particular bill before us is to diffuse or to in part defeat the referendum that will go to the voters in the fall.

Last Thursday, we requested an Attorney General's opinion, asking several questions about this bill and the other bill, the bill that has been referred to as the staggered term bill. The Attorney General stated in his opinion that he didn't believe that this particular bill could be a competing measure but that there was a possibility that if challenged before the law court of this state, that it was possible, because of this repealer provision, that this legislation could be deemed to be a competing measure and could be placed on the ballot, despite the intentions of the legislature, to help defeat that referendum in the fall. This particular amendment would debate that repealer provision and would guarantee that if this bill passes or if it fails, that referendum question that goes to the voters in the fall will stand on its own. If the legislature were to enact tomorrow the public advocate bill and the initiated referendum bill were to pass in the fall, this legislature could have before it next January another bill to, at that time, repeal the public advocate.

The purpose of this amendment is to guarantee that when that initiated referendum is voted on by the people this fall, that there will not be any chance that there can be a competing measure that would stand with it.

This, as I understand it, was the wish of the entire Public Utilities Committee, both those who favored the initiated referendum and those who were opposed to it.

I would hope at this point that this body would support the amendment that is before it.

It has been pointed out that there is an amendment that has been attached to the bill

by the other body that deals with legislative intent, but attorneys have said that even though that language is on the bill, that is no guarantee that should a challenge be brought before the law court, that the law court would decide that this bill is, in effect, the competing measure, because that repealer provision ties this public advocate bill to the initiated referendum.

I would hope that in the interest of fairness and in the interest of seeing that initiated bill stand by itself in the fall, that the House would support this amendment.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker, I move the indefinite postponement of House Amendment and would speak very briefly to my motion.

The SPEAKER: The gentleman from Orono, Mr. Davies, moves that House Amendment "A" be indefinitely postponed.

The SPEAKER: The gentleman may proceed.

Mr. DAVIES: Mr. Speaker and Members of the House: I find myself in a somewhat uncomfortable position, because my seatmate and good friend, Representative Connolly, and I are on opposite sides of this issue and, frankly, I don't usually find myself in that situation, but in this case, it becomes a matter of interpreting an opinion of the Attorney General and the simple facts of court ruling and previous attorney general ruling on this question of whether emergency legislation in fact is exempt from the question of a competing measure.

Representative Connolly would like to be absolutely certain that the bill he is supporting is not going to have a competing measure in November. My desire also is to see to it that that bill, when it is voted on by the people, is not confused by other matters on the ballot at the same time, but I am convinced by the Attorney General's opinion that we received, and by further discussions with the Attorney General and his staff since that opinion came out, that in fact there is no chance whatsoever, that as long as the emergency stays on the bill and as long as that emergency can be justified under the terms of previous court decisions that are cited in the opinion, that there is no risk whatsoever that there will be a competing measure, whether it is this bill or any other bill that is enacted in a similar fashion.

I would like to read to you a very brief section of the Attorney General's opinion dealing with the question on emergency legislation. In the second paragraph of the section, on Page 4 of the opinion, it says: "As explained by the law court in *Maas vs. Goss*, 147 Me., 89, 1951, Judicial review of the sufficiency of an emergency preamble is limited to two areas of inquiry. The first is whether the legislature has expressed the fact or facts." That is in the bill, so there is no question that that has been complied with. "The second is whether such facts constitute an emergency within the meaning of the Constitution. On the other hand, it is within the exclusive power of the legislature to decide whether the expressed facts do constitute an emergency. To put it more simply, judicial review focuses on the question of whether the facts recited in the preamble can be deemed to demonstrate an emergency, and not on the question of whether an emergency actually exists."

The language that exists in the preamble is accepted by all parties who have discussed it, that in fact what it states does come under this provision that I have just read to you that the Attorney General has cited. Since that is accepted by myself and by other parties who are involved in this, we are convinced that it is not necessary to make any additional changes in the bill, because the court cannot look any further than what the contents of that emergency preamble say. It is not within their purview to look into the bill, look into the intention of the legislature, unless the intent that is specified in the bill is unclear.

Language was added on in the Senate that says specifically that this bill is not a competing measure. It is in the Senate Amendment that is on your desks.

The bill has an emergency on it. That also guarantees, as long as the emergency stays on the bill, that it will not be a competing measure, and it is quite clear from previous decisions of the Supreme Court. So it becomes a question, do you want to rely on the Attorney General's opinion, which assures us that there will not be a competing measure if the legislature enacts this bill with an emergency measure on it, or whether you are going to go with Representative Connolly's proposal, which will take out the only section that offers even the glimmer of possible competition with the initiated bill without the emergency on it, but with the emergency on it, there is no glimmer whatsoever.

I believe that Representative Connolly is being too concerned, that he is perhaps reacting too much to his distrust of the utilities. I have never been a particularly good fan of the utilities, but I think in this case they have recognized the inevitable, that they are not going to have a competing measure. This bill will not be a competing measure, that if anyone were to appeal this bill to the Supreme Court asking whether or not it should be a competing measure, that the court will not consider it a competing measure and the Attorney General will, in fact, be acting to defend the actions of this legislature if that is challenged.

I urge you to defeat the amendment.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: As I understand it, Representative Connolly is trying to buy some insurance, simple as that.

Representative Davies says that there is no problem with the possibility of a competing measure. He has assured this House that he doesn't want a competing measure. The Attorney General apparently, as far as his legal opinion is concerned, his opinion says that it can't be challenged and this is unnecessary, this amendment that is being offered.

I would urge the House to support the amendment. Personally, I don't like the bill at all. Most of the major cases in the past two years have ended up in the law court, and you know what is going to happen if we pass a public advocate bill, they are still going to end up in the law court. That is exactly what is going to happen.

This is just a cosmetic approach, in my humble opinion, to hoodwink the public. The public advocate's concern is going to be nothing but a PR relationship for the Governor's office, and who are they going to be interviewing for, the public or the Chief Executive of this State?

As far as the amendment is concerned, and I accept in good faith the arguments presented by my good friend from Orono, he doesn't want a competing measure. Personally, I don't think it matters what we put out there, because the public is going to vote for that bill that the Reeves people have, and they have been fooled long enough. But let's not fool them anymore by saying we are going to put a public advocate office downstairs and they are going to be representing the public. Who's representing the public if it isn't the PUC? This is just a cosmetic approach to a problem that seems to be insoluble because there is not a great deal of public trust for the PUC.

I would urge you, and I don't have any great love for the amendment, because I would only hope that when it comes time in this House, we will kill the bill, but if Mr. Connolly needs some assurance or insurance, and Mr. Davies doesn't seem to think it is really necessary, then what is the big problem with accepting the amendment?

The SPEAKER: The Chair recognizes the

gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker and Members of the House: I appreciate the skills of my friend from Bangor, Mr. Kelleher. He is very good at trying to work his way upon this legislature. I think, however, what he is trying to do now is, he is trying to hoodwink us.

He has stated quite clearly that he is in opposition to the bill; yet, he wants to add an amendment to it that will destroy what is, in many ways, a very fragile coalition that is supporting it, because the utilities and people like myself, who oftentimes are at the opposite extremes of most matters, feel that for whatever reason it may be, whether you think a public advocate is a good idea, whether you want to see the referendum defeated or anything in between, there is a very fragile coalition that exists that is supporting this bill.

If this amendment is added, the result is that the utilities that have been supporting it to this point have indicated that they will withdraw their support, therefore making it virtually impossible for this legislature to enact something that I feel is very important for us to enact.

Don't follow the lead of Representative Kelleher. He is obviously opposed to the bill. Let's not allow him to urge support of an amendment that makes that bill even less likely to pass. I urge you to defeat this motion.

The SPEAKER: The pending question is on the motion of the gentleman from Orono, Mr. Davies, that House Amendment "A" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

63 having voted in the affirmative and 30 having voted in the negative, the motion did prevail.

Thereupon, the House voted to concur.

By unanimous consent, ordered sent forthwith to Engrossing.

House At Ease

Called to order by the Speaker.

The following papers appearing on Supplement No. 32 were taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act to Place a Maximum Limit on the Inflation Adjustment under the Workers' Compensation Act" (S. P. 281) (L. D. 789) on which the Bill and Accompanying Papers were Indefinitely Postponed in the House on June 3, 1981.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-340) in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell. Mrs. MITCHELL: Mr. Speaker, I move the House adhere.

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

Miss LEWIS: Mr. Speaker, I move that the House recede and concur and I wish to speak briefly to my motion.

The SPEAKER: The gentlewoman from Auburn, Miss Lewis, moves that the House recede and concur.

The gentlewoman may proceed.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: We have talked about a cap on inflation many, many times in this body. I think tonight we have seen that highway funding might not be solved in this legislature, but it is still within our power to solve the workers' compensation problems.

The Senate has sent along to us a compromise amendment, and I personally don't like it as well as the original 5 percent cap, but it is certainly better than the cap that has been offered before in this body. This cap will probably save between 7½ and 8 percent on rates.

Basically, what the Senate Amendment does

is, number one, restore predictability to the reserving system. We have said many times in this body that the problem of reserves is what makes the inflation adjuster so expensive.

Number two, this particular amendment will provide meaningful relief to all Maine employers whether they are insured or self-insured.

Number three, it will restore incentives to return to work without imposing a hardship either upon injured employees or upon their dependents.

For these reasons, I urge you to vote in favor of this amendment by receding and concurring, and I request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, Men and Women of the House: This cap you have just heard described to you starts to sound like the one that we proposed that passed in this House last week. What our concern was last week was the fact that those people who are on workers' comp for a long period of time or for life, they were not going to be protected, they would fall behind year after year after year, because what we said was, we were going to put a cap on the first three years. If you are on workers' comp more than three years, then we will exempt you from that.

What this amendment is saying is, maybe that is a pretty good idea, and the amendment is saying we are going to go, with those people who are on more than three years, we are going to cap them not at 5 but at 7 percent. Well, the problem is, we still have the same problem, and that is those people who are on workers' comp for a long period of time, who are getting two-thirds of their salary anyway, are going to continue to fall behind if the inflation goes beyond 7 percent. So even though the intent was to come closer to what we were concerned about, and that is the long-term person on workers' comp, it still does not solve the problem for that long-term person.

We were told last week that this version, 553, what we passed, would only save 2½ percent and that the other version would save 8 percent, L.D. 789, and then we hear today that the amendment, which is going to put a cap on those who are on more than three years at 7 percent, that is still going to save between 5½ and 8 percent. I think more realistic might be down around 5 percent. So what we are talking about is a difference between 2 and 3 percent.

Again, the question that I would pose is that those people who are on workers' comp a long time, getting two-thirds of their salary, is that 2 or 3 percent worth it, given what they are going to go through in terms of financial hardship?

I would urge you to dispose of this one cap.

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

Miss LEWIS: Mr. Speaker and Members of the House: In answer to the assistant majority leader's question, I would point out that in 35 states there is no inflation adjuster whatsoever.

I think we are all very familiar with the arguments, and I would only like to further point out that in the other body today....

The SPEAKER: Please do not discuss what took place in the other body.

Miss LEWIS: Well, bipartisan support is available on this amendment, and I do hope that we will see that today.

The SPEAKER: A roll call has been requested. 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 gentlewoman from Auburn, Miss Lewis, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Gorham, Ms. Brown.

Ms. BROWN: Mr. Speaker, I request permission to pair my vote with Representative Racine from Biddeford. If he were here and voting, he would be voting nay, if I were voting, I would be voting yea.

The SPEAKER: The Chair recognizes the gentlewoman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker, I request permission to pair my vote with the gentleman from Sangerville, Mr. Hall. If he were present and voting, he would be voting nay and I would be voting yea.

ROLL CALL

YEA—Aloupis, Armstrong, Austin, Bell, Berube, Bordeaux, Brown, D.; Brown, K.L.; Cahill, Callahan, Canary, Connors, Curtis, Damren, Day, Dexter, Dillenback, Drinkwater, Foster, Gavett, Gillis, Gowen, Higgins, L.M.; Holloway, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kiesman, Lancaster, Lewis, Livesay, Lund, MacBride, Masterman, Masterton, Matthews, McPherson, Murphy, Nelson, A.; O'Rourke, Paradis, E.; Paul, Perkins, Peterson, Randall, Reeves, J.; Salsbury, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soulas, Stevenson, Strout, Studley, Tarbell, Telow, Treadwell, Twitchell, Walker, Webster, Wentworth.

NAY—Baker, Beaulieu, Benoit, Boisvert, Brannigan, Brenerman, Brodeur, Carroll, Chonko, Clark, Connolly, Cox, Crowley, Davies, Diamond, G.W.; Diamond, J.N.; Erwin, Fitzgerald, Fowlie, Gwadosky, Hayden, Hickey, Higgins, H.C.; Hobbins, Jacques, Jalbert, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, Lisnik, Locke, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H.C.; McCollister, McGowan, McHenry, McKean, McSweeney, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Nadeau, Nelson, M.; Norton, Paradis, P.; Pearson, Perry, Post, Pouliot, Prescott, Reeves, P.; Richard, Ridley, Rolde, Swazey, Theriault, Thompson, Vose, Tuttle, Mr. Speaker.

ABSENT—Boyce, Carrier, Carter, Cunningham, Davis, Dudley, Hanson, Laverriere, Roberts, Stover, Weymouth.

PAIRED—Hall-Huber, Brown, A.-Racine. Yes, 65; No, 70; Absent, 11; Paired, 4; Vacant, 1.

The SPEAKER: Sixty-five having voted in the affirmative and seventy in the negative, with eleven being absent and four paired, the motion does not prevail.

Thereupon, on motion of Mrs. Mitchell of Vassalboro, the House voted to adhere.

By unanimous consent, ordered sent forthwith to the Senate.

Non-Concurrent Matter

Bill "An Act Concerning Workers' Compensation Cost Containment" (H.P. 502) (L.D. 553) on which the Bill was Substituted for the Report and the Bill passed to be engrossed as amended by House Amendment "A" (H-515) in the House on June 2, 1981.

Came from the Senate with the "Leave to Withdraw" Report of the Committee on Labor read and accepted in non-concurrence.

In the House:

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

Mrs. MITCHELL: Mr. Speaker, I move the House Adhere.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Webster.

Mr. WEBSTER: Mr. Speaker, I move that the House recede and concur.

The SPEAKER: The gentleman from Farmington, Mr. Webster, moves that the House recede and concur.

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

Mr. HIGGINS: Mr. Speaker, and Members of the House: I know the hour is late, but we have been dealing with a number of issues here today and this is the first time that we have talked about workers' comp. I guess I wish that we could get a brief explanation of what this bill originally intended to do, and perhaps then we could get a handle on what motion we actually should make here. It would seem to me that if the House recedes and concurs, we have killed the bill, and I am not sure that I want to vote to do that right now unless someone can tell me why.

The SPEAKER: The gentleman from Scarborough, Mr. Higgins, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentlewoman from Portland, Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: This was a unanimous "leave to withdraw" report from the Committee on Labor. Why it has been resurrected, I have no idea. The motion to adhere is in order and I ask for a division.

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

Mrs. MITCHELL: Mr. Speaker and Members of the House: The hour is indeed late. The bill that we are talking about deals with attorneys' fees, L.D. 553. It is called An Act Concerning Workers' Compensation Cost Containment. I am wrong — it is the cap that this House said was a fair way to deal with injured workers. It is our cap which is in place for only the first three years, the five percent cap. After three years, those who are 50 percent or more disabled return to the system of adjustment based on the weekly wage increases in the state.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, I owe the House an apology.

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

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: This is one of the things I think happens around here when it gets to be late at night and the last day or two of the session. We get a little confused as to exactly what we are dealing with.

I am going to vote against the motion to recede and concur, and then I would hope that perhaps we could insist and ask for a Committee of Conference, or somehow get some people to sit down and deal with this issue directly in a room that are interested in coming up with a compromise.

I know that many of us here, I know I have and I know the gentlelady from Vassalboro has, talked at great length about the issue of a cap. It is apparent that the House's version is not going to be accepted in the Senate, and it is apparent that the Senate's version is not going to be accepted in this body.

I feel very strongly that we should do everything within our power to make sure that we don't leave any stone unturned in attempting to solve a very, very serious problem for Maine's economy, really. So I am going to vote against the motion to recede and concur and I would hope that you might join with me and I would hope also that we might be able to resolve this predicament, if you will, that we are in by placing a few people in a room somewhere hoping that they might be able to come up with a resolution to this problem.

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

Mrs. MITCHELL: Mr. Speaker, I applaud the gentleman's optimism and I really hope that he is right, but I think of the many conversations that took place in the 99 days of this legislature and produced this choice or the other choice that we just defeated in this body. I

would like to pose a parliamentary inquiry to the Chair. If this House does accept the motion to adhere, does that kill the bill?

The SPEAKER: The Chair would advise the gentlewoman in the negative. The other body could recede and concur.

The Chair will order a vote. The pending question is on the motion of the gentleman from Farmington, Mr. Webster, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

5 having voted in the affirmative and 113 having voted in the negative, the motion did not prevail.

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

Mr. HIGGINS: Mr. Speaker, I move that the House insist and ask for a Committee of Conference and would like to speak to my motion.

The SPEAKER: The gentleman from Scarborough, Mr. Higgins, moves that the House insist and asks for a Committee of Conference.

The gentleman may proceed.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: The reason I have made that motion, while I may not be as optimistic, or perhaps the gentlelady from Vassalboro isn't as optimistic as I am, I still feel that somewhere there must be a solution. I hate to adhere to any bill and send it down to the other end with the feeling that perhaps they will adhere and we will go out of here with nothing.

I submit to you, if the other body is sincere in its efforts and we are sincere in our efforts, perhaps people could come up with something that is agreeable.

If we send this down to the other end and it is an all or nothing situation, and I don't like playing chicken, somehow I just feel that there must be a resolution to this real serious problem. I am sincere in that. I am not trying to fool around. I am not trying to out-manuever anybody here, I am sincere.

There are a lot of people around here who are concerned with this problem. I don't like saying, you accept my version or no one else's. That is what we are saying to the other body, they have said it to us, and I would just as soon try to come to some sort of agreement before we cash our chips in and go home.

If it can't be resolved, perhaps the Committee of Conference will come back and say the only thing we can agree on is the House's version and we are willing to accept that. That is not without some possibility and without some merit.

I make that motion, I hope you will go along with me, and I would hope also that the other body would follow in our footsteps if we do go along with it, and so I hope you vote yes on the pending motion.

Mrs. MITCHELL: Mr. Speaker and Members of the House: I welcome the refreshing news from the other corner, and I encourage my caucus to join in the motion to insist and ask for a Committee of Conference.

Thereupon, on motion of Mr. Higgins of Scarborough, the House voted to insist and ask for a Committee of Conference.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 25 was taken up out of order by unanimous consent:

Bill "An Act to Establish Temporary Minimum Prices to be Paid to Milk Dealers and Retailers and to Facilitate Compliance of the Milk Commission with Recent Cases before the Maine Courts" (H. P. 1660) (Emergency) (Presented by Representative Sherburne of Dexter) (Cosponsors: Representatives Jalbert of Lewiston, Locke of Sebec and Jacques of Waterville) (Approved for introduction by the Majority of the Legislative Council pursuant to Joint Rule 27)

Committee on Agriculture was suggested.

Under suspension of the rules, the Bill was read twice, passed to be engrossed without reference to any committee and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 3 was taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act Relating to Attorney's Fees Under the Workers' Compensation Law" (H. P. 565) (L. D. 641) which was passed to be engrossed as amended by House Amendment "A" (H-513) as amended by House Amendment "A" (H-524) thereto in the House on June 2, 1981.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-327) in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, I move the House adhere.

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

Miss LEWIS: Mr. Speaker, I move that the House recede and concur and I would request a roll call vote.

The SPEAKER: The gentlewoman from Auburn, Miss Lewis, moves that the House recede and concur.

The gentlewoman may proceed.

Miss LEWIS: Mr. Speaker and Members of the House: I know that the hour is late; however, this supplement has been on our desks since the early hours of this morning and we could have been dealing with it all day long. Because I feel that this is an extremely important matter, I feel that we must address it one more time.

As you all know, the present law that we have on our books has become known as the lawyers' relief act. Under the present law, attorneys are paid in the win, lose and draw situations.

The original bill that we were debating in this House would say that attorneys would only be paid when they won the case, and we heard very eloquent speeches on this subject. When the Speaker himself spoke on this subject, we learned why he is called The Speaker, because he is, indeed, eloquent.

The major argument that he made at that time was that everybody deserves counsel. This argument is such an important argument that if we recede and concur, we will be receding and concurring to a position in which everyone, indeed, will receive that counsel.

What the recede and concur motion will do, it will say that every injured worker, as he enters the system, is given \$200 worth of free legal counsel. That means that he can pass by agreements by an attorney to make sure that the attorney thinks it is a good agreement. It also means that he can find out from an attorney what his chances are of winning this case in the future.

Injured workers who are going to have a long, drawn out battle and are going to win their cases will still have their attorneys paid for them every single step of the way. Other workers who don't have a strong case will still get \$200 worth of free legal counsel.

If we can pass this bill, we will be taking a major step forward, and for that reason, I urge you to recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, Ladies and Gentlemen of the House: The bill that we passed last week was a good bill, and the reason we wanted to adhere today is because the amendment that was put on in the other body is certainly no better than the bill that we did away with last week and they concurred with this week.

The problem is that the attorneys for the employees will not get paid on the first step, petition for award, and that was our idea, we liked it. What the amendment says that is now on this bill is, if after the first step or second step or the third step or the fourth step the employee loses, then the attorney will only get \$200 maximum. The trouble with that is, if the employer's lawyer — the employers aren't bad guys and employees good guys, I am just pointing out something — the employer's lawyer at the second step or third step or fourth step, or all of those, will be getting paid thousands of dollars, possibly, while the employee's attorney might just get \$200. So the reason why the \$200 ticket is not a buyable ticket is because if the employee loses and the attorney knows this might happen at the second, third or fourth step, then he is not going to get paid. So the employee is then left with an attorney who may or may not want to represent him or her because the employer's attorney is going to get paid all the way through. I am not sure that is exactly fair; in fact, I am quite sure it is not fair. What happens with that dichotomy is that the employer's lawyer is going to get his full salary all the way through and the employee's lawyer, if he loses, will not.

I certainly don't mind having the employee's attorney not get paid, which we want to adhere to, if he loses the first step, that is fair and that goes after the incentive built into the system now where it says that attorneys possibly are jumping on every case coming around. But, my word, we can't go as far as to say that at the second, third, fourth or fifth steps that the employee's attorney won't get paid if he loses, because the other guy is going to get paid. So you have got thousands of dollars worth of attorneys going against \$200 max. That is what is wrong with it, so I would ask you to adhere.

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

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of this amendment is to provide every employee in the state with at least \$200 worth of attorneys' services to judge and assess the merits of the employee's case. It doesn't matter at what step, whether it is right after the injury, after the employee has been injured and he goes to an attorney and says, I think I have got a good workers' comp claim, will you take a look at my medical reports and will you help me file a petition for award? They take a look at the case and they say, let's go forward. They bring their petition and they win, they not only get the \$200 for attorneys' fees paid by the insurance company, they get it all. If they lose, they only get the \$200. It applies at every step of the way, whether it is a petition for review or whatever later on.

The reason for the \$200 is that it will provide an opportunity for the employee and the attorney to sit down with all the medical reports and assess the merits of the employee's case. That gives you five or six hours worth of time with your attorney to sit down and figure out if you have got a good case. If you have got a good case, you will go forward and you will probably win, and you will not only get the \$200 paid by the insurance company, you will get it all, whatever the attorney's fee may be.

If you have got a weak case, the employee has a weak case and the attorney says, look, it is iffy, don't know if we can win but if you want to go, we will go forward, I don't think it is that strong but we can go forward, they do so at their own risk. If they lose, they only get their \$200 for the attorney's fee.

If the attorney says to his client, the employee, look, you just don't have a case, I have spent four or five hours with you, I have looked at all your medical reports from your doctors, I have sent you to extra doctors, the insurance company pays for all those doctors and everything, we have got it all here, we are looking at it and you just don't have a case and I don't

think you should push this with a petition any further. The attorney still gets paid by the insurance company for the \$200 worth of time for him to render that decision and that assessment of the employee's case for him.

What this does, it attempts to strike a balance where every employee will get at least five hours, that is about what \$200 represents, of services from his attorney of his choice to assess the merits of his case, to decide whether or not they go forward. If they go forward and win, they get it all, everything. If they lose, then they just get the \$200 to assess the merits of the case. This at least protects every employee who wants to go to an attorney, may not have the money because he is injured to pay for it, but at least get five hours of attorney's services to assess his case. That is all it does.

The SPEAKER: A roll call has been requested. 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 Chair recognizes the gentleman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I would also like to briefly point out to you that there is a good chance that the House Amendment adopted last week is unconstitutional. That amendment says that "No attorney representing or advising an employee under this Act may receive any fee." Is it constitutional to say that someone does work in this state and is not able to accept any fee?

I do encourage you to vote for a fair compromise. Please recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Webster.

Mr. WEBSTER: Mr. Speaker, Ladies and Gentlemen of the House: I rise to ask you to support the recede and concur motion. I inadvertently mistook the previous issue before this body as being this lawyer's fee issue.

I feel very strongly that the version presented by the other body as a compromise is a good version. I believe that I want to go home, and I hope many of you do, go home and say we have taken some positive steps to address the problem.

I would ask you why Maine should be the only state to pay for lawyers' fees out of the 50 states in this union. I feel very strongly that we should move to recede and concur, and I would ask you to do so.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, I would point out that this is a compromise and the other side not necessarily was. So the answer is quite clear on the last dialogue that you heard, and we feel strongly, many people I know on both sides, it is certainly a compromise measure.

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

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I applaud the remarks of the gentleman from Windham, but a compromise is, I guess, in the eyes of the beholder, and perhaps in this case he may have compromised himself, but I am not sure that we might not be able to come to some other agreement.

The issue is simple, and I am not really going to apologize for standing up here because the hour is late, because I think we all know the issue of workers' comp is a real serious one. We have said that many times on the floor of this House.

I really see nothing wrong with the original version of the bill that came down, it was presented at a hearing, that unless you won the case, you got nothing. The House has amended that to say that unless the initial case, you get nothing unless you win that case.

But for the other more delicate, if you will, cases, you still are going to be guaranteed, the attorney is still going to be guaranteed their salary. We have sent that bill to the other body and they have come back with an amendment that goes a little bit further maybe than the House's version, but it still doesn't go all the way to the original bill that said you got nothing unless you won.

I think the issue is very clear that an injured employee is going to be guaranteed access of \$200 to have an attorney look his case over and make a decision on that issue. They are going to go to the commission, present their case; if they win, they get it all; if they lose, they get the \$200 anyway, no matter what.

I think this is a fair compromise, I think it is a reasonable one. We are not denying anyone access to an attorney, which was some of the concerns that other people had when we were dealing with this issue before, and we are just saying, let's help all those people out there and let's help the workingman, because I feel that if the attorney does not have that incentive in front of him to represent his case adequately, the employee is the one that is going to get hurt, and they aren't going to be represented as best they could be unless we pass this bill.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Auburn, Miss Lewis, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentleman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker, I request permission to pair my vote with the Representative from Sangerville, Mr. Hall. If Mr. Hall were here and voting, he would be voting no; I would be voting yes.

The SPEAKER: The Chair recognizes the gentleman from Gorham, Ms. Brown.

Ms. BROWN: Mr. Speaker, I request permission to pair my vote with Representative Racine from Biddeford. If he were here and voting, he would be voting nay; if I were voting, I would be voting yea.

ROLL CALL

YEA—Aloupis, Armstrong, Austin, Bell, Berube, Bordeaux, Boyce, Brown, D.; Brown, K.L.; Cahill, Callahan, Conary, Connors, Curtis, Damren, Davis, Day, Dexter, Dillenback, Drinkwater, Foster, Gavett, Gillis, Gowen, Hanson, Higgins, L.M.; Holloway, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kiesman, Lancaster, Lewis, Livesay, Lund, MacBride, Masterman, Masterton, Matthews, Murphy, Nelson, A.; O'Rourke, Paradis, E.; Perkins, Peterson, Randall, Reeves, J.; Salsbury, Sherburne, Small, Smith, C.B.; Smith, C.W.; Stevenson, Studley, Tarbell, Telow, Treadwell, Twitchell, Walker, Webster, Wentworth.

NAY—Baker, Beaulieu, Benoit, Boisvert, Brannigan, Brennerman, Brodeur, Carroll, Chonko, Clark, Connolly, Cox, Crowley, Davies, Diamond, G.W.; Diamond, J.N.; Erwin, Fitzgerald, Fowlie, Gwadosky, Hayden, Hickey, Higgins, H.C.; Hobbins, Jacques, Jalbert, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, Lisnik, Locke, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H.C.; McColister, McGowan, McHenry, McKean, McSweeney, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Nadeau, Nelson, M.; Norton, Paradis, P.; Paul, Pearson, Perry, Post, Pouliot, Prescott, Reeves, P.; Richard, Ridley, Roberts, Rolde, Soulas, Soule, Strout, Swazey, Theriault, Thompson, Tuttle, Vose, The Speaker.

ABSENT—Carrier, Carter, Cunningham, Dudley, Laverriere, McPherson, Stover, Weymouth.

PAIRED—Brown, A.-Racine, Hall-Huber. Yes, 63; No, 75; Absent, 8; Paired, 4; Vacant, 1.

The SPEAKER: Sixty-three having voted in

the affirmative and seventy-five in the negative, with eight being absent and four paired, the motion does not prevail.

Thereupon, on motion of Mr. Diamond of Windham, the House voted to adhere.

By unanimous consent, ordered sent forthwith to the Senate.

House at Ease

Called to order by the Speaker.

On motion of Mrs. Mitchell of Vassalboro, the following matter was removed from the Unassigned Table:

HOUSE DIVIDED REPORT — Majority (8) "Ought Not to Pass" — Minority (5) "Ought to Pass" — Committee on Labor on Bill "An Act to Revise the Method for Paying Permanent Impairment Benefits under the Workers' Compensation Act" (H. P. 878) (L. D. 1047)

Tabled — May 18 by Representative Mitchell of Vassalboro.

Pending — Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell. Mrs. MITCHELL: Mr. Speaker, I move that we accept the Majority "Ought Not 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 urge you to vote against the Majority "Ought Not to Pass" Report so that we then may move to accept the "Ought to Pass" Report.

L. D. 1047 is called An Act to Revise the Method for Paying Permanent Impairment Benefits under the Workers' Compensation Act. Right now, if somebody is permanently injured, for example, loses an arm or whatever, in addition to weekly workers' compensation payments, that injured worker gets a permanent lump sum of money to pay for that injury. What this bill would do is change that lump sum to the installment plan. In other words, you would get installments. You would end up getting the exact same amount of money but you would get this in installments rather than as a lump.

There are several reasons why this would be a good thing to do. First of all, this could serve as an incentive to return to work, because under this bill what we say is that you will get your sum in installments unless you return to work. If you return to work, you may have that lump sum immediately.

Secondly, this bill would change the permanent impairment to the same method in which other sums are paid under workers' comp. For example, if a husband dies, a woman gets installments the rest of her life to pay for the death of her husband. And this, we were told at the hearing, was a good thing, because it guards against spending sprees and it really helps people regulate that source of money that they get.

What we are suggesting in this bill is that what is good for the goose is good for the gander, and if getting your money in installments is a good thing to do when your husband dies, then why isn't this also a good thing to happen if you, yourself, have been permanently injured?

I do hope that you will make this change to these installment plans. I really think this is in the best interest of our injured workers.

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

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: Miss Lewis made it sound like she was buying a pig in a poke or buying a piece of furniture, one dollar down and one dollar a week.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, Men and Women of the House: L. D. 1047 does some

things that I think are not right. If you lose a limb at the work place, you are valued a certain sum of money, say \$10,000 for a hand. While you are recovering from that injury from that work place accident, you are paid workers' comp right along.

When you are healthy and allowed to go back to work, what this bill says is, we will not give you a lump sum, that \$10,000 for your hand, if, indeed, you don't accept the job that you should. That sounds fine on the surface; however, you go one step further and what it does not say is, if there is not a job available, you still do not get the lump sum — mistake number one. Number two, the person who is out of a job to go back to will not get the lump sum, because the incentive is to put him back to work and there is no job to go to. Beyond that, there is a lot of money, interest that is going to be built up, if the person is paid over five years that \$10,000. He receives the \$10,000 over a five-year period and he is losing, or somebody else is gaining out there, the interest on all that money. In other words, they are using somebody's money free and gaining the interest.

You have two things wrong. Number one, if there is no job to go back to, you still are going to get the lump sum and the incentive seems to be dead-ended. Secondly, if you don't go back to work, you don't get the lump sum and that money, which is spread over five years, that is money that is used by somebody interest free to gain more money someplace else.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Beaulieu.

Mrs. BEAULIEU: Mr. Speaker, I request a roll call vote.

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 gentlewoman from Vassalboro, Mrs. Mitchell, that the Majority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker, I request permission to pair my vote with the gentleman from Sangerville, Mr. Hall. If he were present and voting, he would be voting yea; I would be voting nay.

ROLL CALL

YEA — Baker, Beaulieu, Benoit, Boisvert, Boyce, Brannigan, Brenerman, Brodeur, Brown, A.; Carroll, Chonko, Clark, Connolly, Cox, Crowley, Davies, Diamond, G. W.; Diamond, J. N.; Erwin, Fitzgerald, Fowlie, Gwadosky, Hayden, Hickey, Higgins, H. C.; Hobbins, Jacques, Jalbert, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, Lisnik, Locke, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H. C.; McCollister, McGowan, McHenry, McKean, McSweeney, Michael, Michaud, Mitchell, E. H.; Mitchell, J.; Moholland, Nadeau, Nelson, M.; Norton, Paradis, E.; Paradis, P.; Paul, Pearson, Perry, Post, Prescott, Reeves, P.; Richard, Ridley, Roberts, Rolde, Smith, C. B.; Soule, Strout, Swazey, Theriault, Thompson, Tuttle, Twitchell, Vose, Webster, The Speaker.

NAY — Aloupis, Armstrong, Austin, Bell, Bordeaux, Brown, D.; Brown, K. L.; Cahill, Callahan, Conary, Curtis, Damren, Davis, Day, Dexter, Dillenback, Drinkwater, Foster, Gavett, Gillis, Gowen, Hanson, Higgins, L. M.; Holloway, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kiesman, Lancaster, Lewis, Livesay, Lund, MacBride, Masterman, Masterton, Matthews, McPherson, Murphy, Nelson, A.; O'Rourke, Perkins, Peterson, Randall, Reeves, J.; Salisbury, Sherburne, Small, Smith,

C. W.; Stevenson, Studley, Tarbell, Telow, Treadwell, Walker, Wentworth.

ABSENT — Berube, Carrier, Carter, Connors, Cunningham, Dudley, Laverriere, Pouliot, Racine, Soulas, Stover Weymouth.

PAIRED — Hall-Huber.

Yes, 79; No, 57; Absent, 12; Paired, 2; Vacant, 1.

The SPEAKER: Seventy-nine having voted in the affirmative and fifty-seven in the negative, with twelve being absent and two paired, the motion does prevail.

By unanimous consent, ordered sent forthwith to the Senate.

(Off Record Remarks)

On motion of Mrs. Ingraham of Houlton, Adjourned until ten o'clock tomorrow morning.