

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

**OF THE**

***One Hundred and Tenth***

***Legislature***

**OF THE**

**STATE OF MAINE**

**SECOND REGULAR SESSION**

**January 6, 1982 to April 13, 1982**

**INDEX**

**FOURTH SPECIAL SESSION**

**April 28, 1982 and April 29, 1982**

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**FIFTH SPECIAL SESSION**

**May 13, 1982**

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**SECOND CONFIRMATION SESSION**

**July 16, 1982**

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**HOUSE**

Tuesday, February 23, 1982

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

Prayer by the Reverend Sherman Morrell of the Methodist Church, Mechanic Falls.

The members stood at attention during the playing of the National Anthem by the Hall-Dale High School Stage Band, Farmingdale.

The journal of the previous session was read and approved.

**Papers from the Senate**

Bill "An Act to Provide for Identifying Seed Potatoes" (S. P. 869) (L. D. 2014)

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

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

Bill "An Act to Amend the Terms of the Directors of the Auburn Water and Sewerage Districts" (Emergency) (S. P. 868) (L. D. 2013)

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

In the House, referred to the Committee on Public Utilities in concurrence.

Bill "An Act to Facilitate Acquisition, Improvement and Construction of Housing Financed through the Maine State Housing Authority" (Emergency) (S. P. 867) (L. D. 2015)

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

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

**Non-Concurrent Matter**

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Kennebec County for the Year 1982 (Emergency) (H. P. 2000) (L. D. 1958) which was passed to be engrossed in the House on February 17, 1982.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-387) in non-concurrence.

In the House: The House voted to recede and concur.

**Petitions, Bills and Resolves****Requiring Reference**

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

**Aging, Retirement and Veterans**

Bill "An Act to Revise the Military Laws of the State" (H. P. 2072) (Presented by Representative Hickey of Augusta) (Cosponsor: Representative Drinkwater of Belfast) (Submitted by the Department of Defense and Veterans Services pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

**Business Legislation**

Bill "An Act to Prevent Abuses in Certain Land Installment Contracts" (H. P. 2073) (Presented by Representative Thompson of South Portland) (Cosponsors: Representatives Masterton of Cape Elizabeth, Telow of Lewiston and Senator Bustin of Kennebec) (Governor's Bill)

(Ordered Printed)

Sent up for concurrence.

**Taxation**

Bill "An Act to Index Annually the Standard Deduction Provision of the Maine Personal Income Tax and to provide for a Statutory Referendum" (H. P. 2074) (Presented by Representative Post of Owl's Head) (Cosponsors: Senators Pierce of Kennebec, Teague of Somerset and Representative Benoit of South Portland) (Governor's Bill)

(Ordered Printed)

Sent up for concurrence.

**Transportation**

Bill "An Act Relating to Maintenance and Snow Removal in Compact Areas" (Emergency) (H. P. 2075) (Presented by Representative Carroll of Limerick) (Cosponsor: Senator Emerson of Penobscot) (Governor's Bill)

(Ordered Printed)

Sent up for concurrence.

**House Reports of Committees****Divided Report**

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-600) on RESOLVE, Authorizing the City of South Portland to Bring a Civil Action against the State (Emergency) (H. P. 1782) (L. D. 1772)

Report was signed by the following members:

Senator:

VIOLETTE of Aroostook

— of the Senate.

Representatives:

SOULAS of Bangor

McSWEENEY of Old Orchard Beach

STOVER of West Bath

PERRY of Mexico

DUDLEY of Enfield

STUDLEY of Berwick

— of the House.

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

Report was signed by the following members:

Sensors:

CHARETTE of Androscoggin

SHUTE of Waldo

— of the Senate.

Representatives:

TREADWELL of Veazie

COX of Brewer

SWAZEY of Bucksport

BOISVERT of Lewiston

— of the House.

Reports were read.

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

Mr. COX: Mr. Speaker, I move that the House accept the Minority "Ought Not to Pass" Report.

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

Mr. MACOMBER: Mr. Speaker and Members of the House: I rise this morning to oppose the motion that has just been made and ask you to accept the Majority "Ought to Pass" as amended report.

This is a bill that perhaps is a little difficult to understand, and I would like to give you a little background on it if I may. It regards an audit that was performed by the Department of Audit of the State of Maine in a contract with the City of South Portland in 1975. The City of South Portland contracted in 1975 for the sum of \$3691 for the state to perform an audit on their financial books. The state did perform such an audit and they did report to us that our books were in satisfactory condition. As it turned out later, the sum of \$289,000 was lost somewhere in the audit.

As many of you know, one of the standard operating procedures in an audit are letters of confirmation that are sent out to banking establishments, any of the establishments that the city has done financial business with. These are standard operating procedures in all audit performances.

The contention of my city of South Portland is that they were negligent in sending out these letters of confirmation; therefore, the embezzlement was permitted to take place.

At the first hearing, public hearing, there was a gentleman representing the Department of Audit, a Mr. Redmond. He was asked by one

member of the committee if these letters of confirmation had been sent out. His answer was no, they had not been sent out.

Two weeks later, at a workshop, Mr. Rainville, the head of the Department of Audit, appeared. He stated, when asked the same question, yes, these letters of confirmation had been sent out, and he held them aloft like this—but then immediately he said, "But I can't allow anybody here to look at these papers." These papers, of course, were public knowledge; in fact, they were developed by the money that the City of South Portland paid to the state, but yet we were told that we were not able to look at these.

We conferred with Mr. Rainville after the meeting. We made our point that these were papers that we should have access to. He told our representatives to come back on the following Tuesday and they would be allowed to see them. They came back the following Tuesday and they were not allowed to see them. They came back the Tuesday after that and they were not allowed to see them. This past Friday, with help from the Attorney General's Office, we were allowed to see the audit papers. Two very important letters of confirmation had never been sent out.

On the audit report that we received from the state, there was a notation that they recognized the problem with the manner in which the investments were handled. In other words, somewhere there they could see that there was a problem. Our contention is that they should have gone forward, investigated these charges and found out what the problem was—they did not do this.

The two letters of confirmation that I refer to, one would have been sent to the EPA, which was the funding mechanism for a treatment plant which we were developing. If they had sent this letter, they would have found out that in September of 1975 a check was sent to the City of South Portland for \$289,000; they did not do this.

The second letter of confirmation that was very important that was not sent out would have been sent to the Northern National Bank, an affiliate of Casco Bank. This letter would have revealed that the sum of money that had been embezzled was in the bank. The fact of the matter was, the gentleman, Mr. Rainville, said to us, "On some occasions we did not send out letters of confirmation unless we feel there has been a significant amount of business done by the city."

In February of 1975, the City of South Portland purchased a certificate of deposit for \$1 million. In May of 1975, we purchased another certificate for \$1 million. In September, we purchased a certificate for \$300,000. I would say that \$2,300,000 is a significant figure in any man's book.

If you will vote with me on this motion, the city is not here to say you will be giving us any money. All you will be doing is permitting the City of South Portland to its day in court. We feel that we are deserving of this; we feel that any citizen is deserving of this.

I think one of the problems that we are looking at, the Department of Audit has chosen, of their own volition, to go out into the private sector and compete with auditing departments doing private business. If they are making the selection to go out and compete with the private sector, I think they also have to assume the responsibility that the private sector would assume. I don't think you can go out and compete and then come back and say, if there is a problem, we have state sovereignty and you can't bring suit against us. We feel that if they are going to compete, they should be as responsible as anyone else is.

Very briefly, I would summarize that if you support my position here today, you are not giving the City of South Portland one nickel. If you support my position here today, you are giving the City of South Portland their day in

court, and that is all we ask.

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

Mr. COX: Mr. Speaker and Members of the House: I would like to explain the position of those who are on the minority report.

First, we have to realize that we have the Tort Claims Act which, basically, forbids people to sue the State. I think there are people here who remember when the Tort Claims Act was passed, and it was passed largely at the behest of municipalities who were afraid people were going to be suing them.

In this particular case, I am not sure that the fine points of whether notification was sent or not is the important thing. I think in order for us to override the Tort Claims Act and make the citizens and taxpayers of the State of Maine, in effect, responsible for what happened in South Portland would have to be a particularly glaring injury and a particularly glaring negligence. If we are going to let everyone, private citizen or municipality, who believes they have a case, as the people in South Portland do, if we are going to let them sue the state, what we will be doing is tying up the state's funds to the point where the state will not know whether it's going to be able to pay its bills or not. I realize this one bill will not do this, but once we take the position that we are going to let everyone sue who believes they have a case, this will be the end result, because the state's finances will simply be tied up.

So, the Legal Affairs Committee has been given the responsibility of screening these bills. One of the things that we look at is whether or not the person who claims injury could have done anything themselves to have prevented this injury.

The situation is that this money came into the city of South Portland from the federal government in 1975, much earlier than it could have been expected to have come in since, as we understand it, the sewerage plant had not proceeded in its development to the stage where the federal government ordinarily sends checks.

Furthermore, in 1976, when the check probably reasonably could have been expected to have been sent to South Portland, the city had changed auditors, these auditors did not inquire as to what happened to the check. In fact, the city fathers never inquired why no check had appeared from the federal government. It was not found that this money had been embezzled until the federal government, in 1978, performed its own audit of the project, and then it was found that there was no record that the city had ever received the check.

Furthermore, the City of South Portland had a treasurer handling millions of dollars who was only under a performance bond of \$40,000. Had their treasurer been properly bonded, they could have collected from the bonding company and would not be asking the taxpayers of the State of Maine to be responsible for this.

For all of these reasons, the fact that the City of South Portland, I feel and the members of the minority report feel, itself was negligent enough to the point that they could have at least inquired where the check from the government was, and they failed to do this.

Fine points of law or a procedure as to whether notices have been sent out or not would be matters, I think, for a court. There seems to be some question during the testimony. The people from South Portland said that notice should have been sent to the Casco Bank; the auditors said notices had been sent to the Casco Bank. Now we are told that it was not the Casco Bank but the Northern National Bank. So this whole area of whether or not notices should have been sent out seems a little questionable to me in that I think it was brought out that auditors do not perhaps ordinarily send out confirmation letters unless the records show that there is money in a particular bank, and the records apparently did not

show that there was at that time, when the audit was done, money in this particular bank. I think it is a fine point of law as to whether the auditors were negligent in not sending out notice, but be that as it may, one of the provisions of the Tort Claims Act says that the state should not be responsible for failure to perform an act.

I think I have said enough on this bill.

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

Mr. DUDLEY: Mr. Speaker and Members of the House: I signed the "Ought to Pass" Report because I believe in justice, and I believe the majority of this House feels the same as I do. If this had been the small town of Enfield, I would expect the same treatment. Just because it is the big city of South Portland, that doesn't cut any ice with me.

The Constitution of Maine says "Equal justice for all." I suspect they meant whether you lived in a small town or a big city.

They are not asking the taxpayers of Maine to bear any burden, they are asking for justice to the extent of being heard before the court of this land. I have confidence in the court of the State of Maine. If the city of South Portland is not entitled to this charge, they will not be paid. And even at that, the city of South Portland would lose interest. In our committee they have already taken the interest off the amount of money involved. I think South Portland has been very fair and only want to be heard in court.

This doesn't have to be decided by this legislature. All we have to do, if we believe in justice, is let the court decide, let them have their day in court. I don't think that is asking too much of this body.

I hope that you will accept the majority report, because the majority, I think, felt the same as I did.

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

Mr. KANE: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to take issue with a couple of points made by the House Chairman, Representative Cox. The first one is that there is a huge amount of confusion about whether it was Casco Bank or whether it was Northern National. As it turns out, the attorney did say Casco Bank; Northern National is an affiliate of Casco Bank. So I think that point was rather overblown.

Mr. Cox also said that there are fine points of law that are confusing people on the committee. There's not only fine points of law, there's points of fact that the 13 members of the committee simply cannot agree on, and that seems to me to be the most optimum case for a court. This thing really doesn't belong in Legal Affairs any longer, it belongs in a court.

Mr. Cox also said that the dominant question is whether or not the injured party could have done anything to prevent the injury. I really don't think that that is the point. I think Representative Macomber was right on the money, if you will excuse the expression, when he said that the question is whether or not the Audit Department did its job that it was hired by the City of South Portland to do a job to audit its books, to drop the ball, and I don't think there is any question about that.

During the hearing, Representative Stover ask the Deputy State Auditor how many people were sent down to do it, and the man replied, "Two." And he asked them if the letters of confirmation had been sent out, and the man said no. So then Representative Soulas said, "Well, I guess it would be fair to say that they didn't do their job." The Deputy State Auditor replied, "That's a good statement." It seems to me that they have practically given up their defense.

The following week, there was some confusion again. Representative Macomber seemed to think there was a bit of a turnaround, and I feel like I got a bit of a turnaround myself when

I ran into the State Auditor on Tuesday of last week when a lawyer and an accountant from the City of South Portland were supposed to come up and review these disputed materials. I asked if they had come and he said yes, but they hadn't gotten anywhere and they were probably going to return on Friday. I asked why they hadn't made any progress, and he said, well, as chance would have it, he had left all of those papers at home and they weren't in the files of the Department of Audit that day to be reviewed.

The whole point to me is that my constituents have been injured. They have been injured to the tune of about a dollar on the tax rate. I think it is almost impossible for us, for 151 of us in this body, or 33 in the other body, to gather all the facts to examine the disputed facts to examine the disputed points of law to make a just decision on this.

The thing is, my constituents were injured. It may have been partially the fault of the City of South Portland, partially the fault of the Department of Audit of the State of Maine, and the fault may lie altogether with one party or the other. I think that is a perfectly legitimate question for a court to decide, and I urge you to support the majority report.

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

Mr. DAVIS: Mr. Speaker, I would like to pose a question of questions to Representative Macomber. In your testimony you indicated that the Department of Audit competed with the private sector in this profession. Does this statement mean that this auditing work was let out to bid and the State Department of Audit got the bid?

Secondly, did they voluntarily choose the state department to do this work?

The SPEAKER: The gentleman from Monmouth, Mr. Davis, has posed a question through the Chair to the gentleman from South Portland, Mr. Macomber, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. MACOMBER: Mr. Speaker, I didn't hear the second part of the question, but regarding the first part of the question, are they in competition with the private sector. I don't know what the policy of many cities is, but in our city we have a policy of changing auditors every two years. We feel that if you had the same auditor for 20 consecutive years, if there was wrongdoing, they would certainly not be the people that would bring it up.

The second question I didn't hear.

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

Mr. DAVIS: Mr. Speaker, I just wanted to know if they voluntarily chose the state department of Audit, but I guess you mentioned that you change every two years and occasionally use the state department along with people from the private sector.

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

Mr. MACOMBER: Mr. Speaker, yes, that is correct. We do have a policy of changing every two years. We feel it is a safeguard.

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

Mr. COX: Mr. Speaker, I just want to address the remarks of the gentleman from Enfield, Mr. Dudley, in which he says we are only interested in justice. This seems to be a consistent position of Representative Dudley, that we are only interested in justice. The fact of the matter is, if we are going to take this position, what Mr. Dudley is trying in a sense here is not the case of South Portland versus the State, but he is trying the Tort Claims Act itself. The Tort Claims Act, by its very nature, admittedly prevents justice, because it prevents anyone who believes they have a case from suing the state. If we are going to accept this position that anyone in the pursuit of justice, who appears to

have a case, is going to sue the state, what we should be doing is repealing the Tort Claims Act and getting the Legal Affairs Committee out of this position of having to stand between the State of Maine and people who want to sue the state.

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

**MR. SOULAS:** Mr. Speaker, Men and Women of the House: I have to agree with my Chairman, Representative Cox. However, you will notice that I signed the "Ought to Pass" Majority Report.

Let me tell you something about the Tort Claims Act. There is also a little clause in that act that states that under unusual circumstances the state can be sued, and I absolutely feel that this is one time where I do see unusual circumstances. The testimony we received is very confusing, as you can tell from the testimony today. It has been confusing to the committee. Much information was not given to us, and I actually feel that this is one time where the Tort Claims Act is circumvented by unusual circumstances and I feel that this issue can only be settled in the court.

I hope you will vote against the motion and give us an opportunity to vote for the "Ought to Pass."

**THE SPEAKER:** The Chair recognizes the gentleman from West Bath, Mr. Stover.

**MR. STOVER:** Mr. Speaker, Ladies and Gentlemen of the House: I usually take the stand that I am here to protect the taxpayers of the state and I look with a jaundice eye on most of these claims.

I gave this a great deal of self-searching and what Mr. Macomber said is very true — the state didn't do their job, as I see it. They didn't send out the verifications. To my mind, one of the main reasons for having an audit is to make sure there is no fraud.

Bookkeeping — yes, that is important, but the big thing is, and you know every time, not every time but quite often we pick up the papers and even in this day of computer age, money has been absconded with, so I took that into consideration. But I think the thing that really clinched it with me was that when I went home, I called up my accountant and said, "Do you people have any sort of insurance to protect you in case you are found inept or inefficient in doing your work?" He said, "Of course, we do." He said, "I know cases where auditors have been brought to court and have had to pay."

So the State Audit Department was competing with a private enterprise and they were offering a service and said that we will do this job and we can do it presumably as well or better than some other. South Portland took them at their word, hired them, they trusted them to do their job as they should have and, if this had been private enterprise, there would be no question that if South Portland thought they had a case and was going to cost South Portland something to prepare this case, they are going to have to hire attorneys so they are gambling to some extent but if they did feel they had a case, there would be no problem at all, they would go right ahead and sue this private firm. I don't see why the State Department of Audit should be able to hide behind this particular type of act, so that was the reason why I voted "Ought to Pass."

**THE SPEAKER:** The Chair recognizes the gentleman from South Portland, Mr. Macomber.

**MR. MACOMBER:** Mr. Speaker, Ladies and Gentlemen of the House: If I could reply to a couple of the questions that the gentleman from Brewer raised. I think the Tort Act question has already been answered by Mr. Soulas. The Tort Act is to restrict frivolous claims and things of that nature against the state but it does leave openings which we are trying to avail ourselves of right now. If the legislature, in its wisdom, allows the city to go ahead and proceed, the Tort Claim does allow that.

proceed, the Tort Claim does allow that.

**MR. COX** makes a point that the auditors the next year did not pick up the mistake. If any of you are familiar with the practice of an audit, if they came in, we will say, the next year, in 1976, they do not go back into the 1975 figures, they accept the figures that were left from the 1975 audit and that is their starting point.

Regarding the bonding, I think whether or not the city of South Portland was bonded for \$5 or \$500,000 is not the point; what the city was bonded for is really not relevant in any way to this particular question.

One statement Mr. Cox made—I hope you all heard it very clearly—he said it was a question that the court should be settling. That is exactly our point, that is all we ask, just the right to go to the court and have our due day in court.

I would request a roll call.

**THE SPEAKER:** For the Chair to order a roll call, it must have the expressed desire of more than 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 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 Brewer, Mr. Cox, that the House accept the Minority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

**YEA**—Aloupis, Bell, Berube, Brown, K.L.; Conners, Cox, Drinkwater, Gwadosky, Huber, Hunter, Jordan, Kany, Lancaster, LaPlante, Livesay, Martin, H.C.; Masterman, Paradis, P.; Perkins, Reeves, J.; Ridley, Stevenson, Swazey, Tarbell, Treadwell.

**NAY**—Armstrong, Austin, Baker, Beaulieu, Benoit, Boisvert, Bordeaux, Boyce, Brannigan, Brenerman, Brodeur, Brown, A.; Brown, D.; Cahill, Callahan, Carrier, Carroll, Carter, Chonko, Clark, Conary, Connolly, Crowley, Cunningham, Curtis, Damren, Davies, Davis, Day, Dexter, Diamond, G.W.; Diamond, J.N.; Dillenback, Dudley, Erwin, Fitzgerald, Foster, Gavett, Gillis, Gowen, Hall, Hanson, Hickey, Higgins, L.M.; Hobbins, Holloway, Hutchings, Ingraham, Jackson, P.T.; Jackson, P.C.; Jacques, Jalbert, Joyce, Kane, Kelleher, Ketover, Kiesman, Kilcoyne, Laverriere, Lewis, Lisnik, Locke, MacBride, MacEachern, Macomber, Mahany, Manning, Martin, A.; Masterton, Matthews, McCollister, McGowan, McHenry, McPherson, McSweeney, Micahel, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, A.; Nelson, M.; Norton, O'Rourke, Paradis, E.; Paul, Pearson, Perry, Peterson, Pines, Post, Pouliot, Racine, Randall, Reeves, P.; Richard, Roberts, Rolde, Salsbury, Sherburne, Small, Smith C.B.; Smith, C.W.; Soulas, Soule, Stover, Strout, Studley, Telow, Theriault, Thompson, Tuttle, Twitchell, Vose, Walker, Webster, Wentworth, Weymouth.

**ABSENT**—Fowlie, Hayden, Higgins, H.C.; Lund, The Speaker.

Yes, 25; No, 120; Absent, 5; Vacant, 1.

**THE SPEAKER:** Twenty-five having voted in the affirmative and one hundred twenty in the negative, with five being absent, the motion does not prevail.

Thereupon, the Majority "Ought to Pass" Report was accepted and the Bill read once.

Committee Amendment "A" (H-600) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

#### Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought Not to Pass" on RESOLVE, Authorizing David Condon to Bring Suit Against the State (H. P. 1830) (L. D. 1812).

Report was signed by the following members:

Senators:

CHARETTE of Androscoggin

VIOLETTE of Aroostook

— of the Senate.

Representatives:

McSWEENEY of Old Orchard Beach

TREADWELL of Veazie

STOVER of West Bath

SWAZEY of Bucksport

PERRY of Mexico

BOISVERT of Lewiston

STUDLEY of Berwick

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-599) on same Bill.

Report was signed by the following members:

Senator:

SHUTE of Waldo

— of the Senate.

Representatives:

SOULAS of Bangor

DUDLEY of Enfield

COX of Brewer

— of the House.

Reports were read.

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

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

**THE SPEAKER:** The Chair recognizes the gentleman from West Bath, Mr. Stover.

**MR. STOVER:** Mr. Speaker, Ladies and Gentlemen of the House: As you note, I am on the opposite side of the question with Mr. Cox on this bill. In this case, I don't feel that Mr. Condon should be given the right to sue the state.

This case was brought before us last session and it was defeated and has been brought back again in another form.

Just to briefly go over it, Mr. Condon did some undercover work for the State of Maine. We had some fires in the Lubec area and he put a recording device secretly on his person and went down to the people that set the fires and got some evidence and he went to the State of Maine and said, look, I have got something here of value to you, and it was, and they negotiated a price and they paid him for what he did.

Then he got into the drug area, and this is what this particular case is all about. Down in the town of Woolwich, apparently there was a man down there that was dealing in drugs and Mr. Condon said, look, I am very friendly with this man and if you people want to pay for it, I can take one of your undercover men down there and we can convict this man for what he is doing. So again they negotiated the price and they went down and he introduced them to this Mr. Rheal who was selling the drugs and eventually, because of that, they were able to convict Mr. Rheal, who is now serving time in jail. However, while Mr. Rheal was out on bail, before his conviction, apparently he put two and two together and decided that Mr. Condon had been a stool pigeon and he looked him up, threatened him to death and did shoot a couple of his dogs, etc. He put the fear of God into him and Mr. Condon, I believe, is now living out-of-state somewhere under an assumed name.

However, I maintain that Mr. Condon knew what he was doing when he did this, he knew that this was a dangerous game. Anybody that is a stool pigeon is asking for problems and sooner or later somebody will blow the whistle on you. He got paid for what he was doing and I don't see why he should be in any position where he should feel that the state of Maine owes him any more money. That is the reason why that I signed the "Ought Not to Pass" Report.

When the vote is taken, I would ask for a division.

**THE SPEAKER:** The Chair recognizes the gentleman from Stockton Springs, Mr. Crowley.

Mr. CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: This case of L. D. 1812 is a very simple case. It would allow Mr. Condon to bring civil action against the state.

I think we have to be careful about judging Mr. Condon for things that were said in kind of a hearsay way at the hearing. I don't think we are here to judge Mr. Condon, we are here to judge this particular case that is at hand and everything accompanying it.

In September of 1980, the Division of Special Investigation sent a Sergeant to Mr. Condon's house and asked David and Deborah Condon if they would help in apprehending a drug trafficker in the lower part of the state. They agreed to assist in setting up this drug trafficker. They promised the Condon's that the person that they introduced to this drug trafficker to set him up would be far removed from the actual arrest when it came time to arrest, if they could set this drug ring up. So the officer that went to the Condon's house, that the Condon's introduced to this drug trafficker, was the same officer that went and bought and set up and arrested the man who is now in jail. Just think of that, we got a drug trafficker in jail.

They were not going to let this young fellow hang on a wind, they were going to keep him protected, keep his identity protected, which they did not do. Again I say, let's not judge these people, let's judge this case, especially if we are going to judge him on hearsay evidence, and the fact that we have a convicted criminal in jail may be a step in the right direction.

The Commissioner of Public Safety testified against Mr. Condon in this civil case. I think it is a shame that the State Police, if they want other people to work with them as informants, don't stand behind them and give them the protection that they promise them.

It is a very simple case. All they want to do is go to court and get restitution for what it cost them to set this drug trafficker up, and what actually happened was, this fellow was let out on bail, the fellow that is now in jail, he came after the Condon's with a couple of friends and shotguns and the whole bit, went into their house, shot two dogs, two dobermans, they were prized dogs, beat the wife with a bat and so forth, tied her up. The husband came home, they chased him through the woods but through a malfunctioning gun, shotgun, they couldn't fire the shotgun, it didn't belong to them, they borrowed it from the Condon house when they were in there and they couldn't fire the gun, they couldn't get the safety released, so Mr. Condon isn't dead today. Now they have to live out-of-state. He is in bad shape, he is also a person, because of an injury, is handicapped and isn't able to carry full-time work. So I say, would you help the State Police if this is the way they are to treat you for apprehending a criminal? Would you stand up and say, "I can put a finger on that person who raped that woman or killed that man, etc." and then they let you hang in the wind and won't even allow you to get your case and your day in court.

So let's not take the law in our hands. Let's pass this L. D. and let the judgement receive the proper due process of the law. This is the least we can do for these people that put drug traffickers in jail, and I would ask for a roll call.

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

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: This seems to be my day for defending minority reports and I think I should explain why I am reporting this "Ought to Pass".

I do not attempt to judge Mr. Condon. I do not attempt to judge the police and why they chose to send the man who Mr. Condon introduced to the drug trafficker to make the actual arrest. What I am concerned with largely is the testimony of the head of the Department of Safety, Mr. Stilphen, before the committee. He testified that Mr. Condon was very very good at

being an informer. This was the second time that he helped the police put someone behind bars. You can draw whatever inferences you want from this statement that Mr. Condon was a very very effective informer should be very valuable to the state and to the police.

Mr. Stilphen also said that Mr. Condon knew what he was getting into, he knew that they could not guarantee protection. He was paid and he took his chances. I have no quarrel with these as facts, but I do have a quarrel with them as policy of the state. When the state police have a very very effective, by their own testimony, very very effective informant, and when things go wrong they say he knew what he was getting into, there were no guarantees and we have done all we are going to do.

Last year when we had the bill before us, it was not for suing the state, Mr. Condon wanted reimbursement, simply wanted reimbursement for his expenses. Again, I am making no judgment as to whether Mr. Condon deserves the \$35,000 that he is suing for or not. My interest in this strictly as a matter of state policy. I believe that it should be the policy of the state to encourage people to come forward and help the police, whatever their motives, and that is why I am voting in favor of this bill, because I do not believe that everything with this policy is going to encourage people, regardless of their motives or their backgrounds, to come forward and help the police. Therefore, I am hoping that the Minority "Ought to Pass" Report will be accepted for the good of the state.

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 Brewer, Mr. Cox, 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, Baker, Beaulieu, Benoit, Bordeaux, Boyce, Brannigan, Brennerman, Brown, A.; Brown, K.L.; Cahill, Carrier, Carroll, Chonko, Clark, Conary, Connolly, Cox, Crowley, Davies, Day, Dexter, Diamond, G.W.; Diamond, J.N.; Dillenback, Drinkwater, Dudley, Erwin, Fitzgerald, Foster, Gillis, Gowen, Gwadosky, Hall, Hanson, Hickey, Higgins, L.M.; Hobbins, Hutchings, Ingraham, Jackson, P.C.; Jacques, Kane, Kelleher, Ketover, Kiesman, Kilcoyne, Lancaster, LaPlante, Laverriere, Lisnik, Locke, MacEachern, Macomber, Mahany, Manning, Martin, A.; Martin, H.C.; Masterton, McCollister, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, M.; Norton, Paradis, E.; Paradis, P.; Paul, Pearson, Perry, Peterson, Pines, Post, Pouliot, Racine, Reeves, P.; Richard, Rolde, Salsbury, Sherburne, Smith, C.B.; Soulas, Soule, Stevenson, Strout, Tarbell, Telow, Theriault, Thompson, Twitchell, Vose, Webster, Wentworth.

NAY—Austin, Bell, Boisvert, Brodeur, Brown, D.; Callahan, Carter, Connors, Cunningham, Curtis, Damren, Davis, Gavett, Holloway, Huber, Hunter, Jackson, P.T.; Jalbert, Jordan, Joyce, Kany, Lewis, Livesay, MacBride, Masterman, Matthews, McPherson, McSweeney, Nelson, A.; O'Rourke, Perkins, Randall, Reeves, J.; Ridley, Roberts, Small, Smith, C.W.; Stover, Studley, Swazey, Treadwell, Tuttle, Walker, Weymouth.

ABSENT—Berube, Fowlie, Hayden, Higgins, H.C.; Lund.

Yes, 100; No, 44; Absent, 5; Vacant, 1.

The SPEAKER: One hundred having voted in

the affirmative and forty-four in the negative, with five being absent, the motion does prevail.

Thereupon, the Resolve was read once.  
Committee Amendment "A" (H-599) was read by the Clerk and adopted and the Resolve assigned for second reading tomorrow.

#### Consent Calendar First Day

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

(H. P. 1732) (L. D. 1717) Bill "An Act to Amend Certain Provisions of the Elevator Laws"—Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-602)

(H. P. 1840) (L. D. 1854) Bill "An Act Concerning the Preservation of Archaeological Sites"—Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-603)

(H. P. 1726) (L. D. 1711) Bill "An Act to Protect Maine Milk Producers from Abrupt Loss of Markets"—Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-601)

There being no objections, these items were ordered to appear on the Consent Calendar of February 24 under the listing of Second Day.

The following paper appearing on Supplement No. 1 was taken up out of order by unanimous consent:

#### Consent Calendar First Day

(H. P. 1750) (L. D. 1740) Bill "An Act to Provide for Withdrawal of Certain Lands from the Spruce Budworm Suppression Program—Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-604)

There being no objections, this item was ordered to appear on the Consent Calendar of February 24, under the listing of Second Day.

#### Consent Calendar Second Day

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

(H. P. 1775) (L. D. 1765) Bill "An Act to Establish a Uniform Hunting Season for Rabbits"

(H. P. 1722) (L. D. 1707) Bill "An Act Relating to Control of Nuisance Wildlife"

(H. P. 1723) (L. D. 1708) Bill "An Act to Define Open Firearm Season on Deer"

(H. P. 1920) (L. D. 1902) Bill "An Act to Remove the Interstate Business Exemption from the Unfair Trade Practices Act"

(H. P. 1907) (L. D. 1882) Bill "An Act to Amend the Maine Traveler Information Services Act" (C. "A" H-598)

(S. P. 767) (L. D. 1825) Bill "An Act Concerning Grandfather Provisions with the Oil Burnerman's Licensing Law" (C. "A" S-386)

(S. P. 753) (L. D. 1756) RESOLUTION, Proposing an Amendment to the Constitution of Maine to Limit the Life of Bond Issues (C. "A" S-385)

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

#### Passed to be Enacted Emergency Measure

An Act to Authorize Lincoln County to Withdraw from the Maine State Retirement System (H. P. 1820) (L. D. 1805)

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. 134 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 Allowing Variations on Interest Reflecting Conventional Interest Rates on Overdue Employer Contributions to the Bureau of Employment Security (H. P. 1741) (L. D. 1730)

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 Clarify the Deposit Authority and Conversion Procedures of Savings and Loan Associations (H. P. 1773) (L. D. 1763) (H. "A" H-586 and H. "C" H-589 to C. "A" H-584)

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

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

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I just want to make sure that we all know what we are voting on here.

This conversion of the banks, before you had to have the vote of two-thirds of all the eligible members of the bank. Now this says that if you are not present and you are not voting, that your vote will be considered as an affirmative vote. If you are not present at that meeting, you are considered as an affirmative vote of that two-thirds vote. This is supposed to be a democracy. We are supposed to vote and count every vote, but this is saying that if you are not able to attend, you will be considered as voting yes. You can change the charter of any town or city by just changing a few lines like we are doing here in the banking industry.

I certainly hope that the people here can see that we are setting a precedent as far as I am concerned. It has been done in the past, but I talked with the members of the Business Legislation Committee, and I have to admit that the ones I talked to didn't know that this was in the merger law.

I hope that we do not accept this bill. I am not going to ask for indefinite postponement, but I am going to ask for a division, and I hope the members of this House know that each and everybody's vote should be counted.

All I asked for at first, I just wanted to give the person who could not attend a proxy vote, but they wouldn't accept that. What is going on? I certainly feel there is something wrong here, and I am not comfortable with it and I just wanted to tell you. I am asking for a division.

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

Mr. BRANNIGAN: Mr. Speaker, Men and Women of the House: This deals with a very limited situation. First of all, it's a mutual company, a mutual bank, which means that anybody who has a deposit in that bank is a member in a sense.

In votes of this kind, a person who has \$5 in the bank has the same amount of vote, the vote has the same weight and counts as someone who has \$5000 or \$500,000, if anyone had that amount of money in a mutual bank.

The law has always been that in cases of merger, since the banking code was set, in the case of merger, you did not have to go out and get two thirds of all of these people, \$5 people, \$50 people, or \$5000 people, to vote.

In the case of a company deciding to go from a mutual to a stock company, they did have to, which made such a move almost impossible. So this law would take care of that.

If somebody wants to register, as we said before, a negative vote, it has been suggested by our superintendent of banking that when he reviews this, and any kind of change like this has to be reviewed by the superintendent of banking, than anyone who is dissenting, whether they are \$5 depositors or \$50 or \$5000 depositors, they should make their concerns known to him, and they can do that by being present at

this hearing, they can do that in writing, and that is where their vote will be most effective, so I encourage passage of this bill.

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

Mr. COX: Mr. Speaker, I would like to request through the Chair an answer to this question. That is, what practical effect would a mutual bank merging with a stock company bank have on the depositors in that mutual bank?

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

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

Mr. BRANNIGAN: Mr. Speaker, to clarify this, this bill does not deal with mergers. It deals with only when a bank which is now a mutual bank wishes to change to being a stock company.

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

Mr. BRODEUR: Mr. Speaker and Members of the House: I would like to pose a question. I want to make sure that what I understand is correct. Instead of allowing the people the right to vote negatively on this, that their negative opinion, will have to rely on the decision of a bureaucrat, somebody in a state government office, is that correct?

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

The SPEAKER: The Chair recognizes the gentleman from Yarmouth, Mr. Jackson.

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: To recap again, we are talking about two things; the first thing is merging and the second thing is converting. We are not changing the merger law, that is as it presently stands. If you plan to merger, to register your negative vote you have to come to the meeting; if you don't do anything, it is considered positive. This would change the law as far as the question of converting to the same thing. Traditionally, for merging, it has always been that way; this would move it the other way as far as converting.

The problem of representation I don't see as a very heavy problem here because, first of all, in a mutual bank, everybody who owns has five cents in the bank is considered to have a vote and it is very hard to get these people in and it is very costly. A lot of these banks are in very serious financial problems in the state right now and are having to just save themselves and the people who have deposits in them, they make the banks viable and help the state's economy and everything else having to work out plans and work out mergers and conversions and this bill will allow that to go much more smoothly. I really don't think anyone is being seriously disenfranchised by it.

I hope you will support the unanimous committee position on this.

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

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I still don't think I have an answer to my question as to what the effect of conversion from a mutual bank to a stock bank is going to have on the depositors. I am a depositor in both mutual and stock banks, and I understand there is quite a bit of difference in the way money in a mutual bank is handled, the profits of a mutual bank are handled and the way the profits of a stock bank are handled or distributed. I should say?

The SPEAKER: The gentleman from Brewer, Mr. Cox, has posed a question through the Chair to anyone who may care to respond.

The Chair recognizes the gentleman from Yarmouth, Mr. Jackson.

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: The effect on the people with deposits in the bank may be that

the bank will stay in business and therefore still be a viable financial institution. That may be the effect of this.

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

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: Let's make it very simple and factual as to what we are doing here. We are saying that no matter how the people are going to vote, it is what the Banking Superintendent says that will go. What is the sense of sending out the ballots? What is the sense of telling the people you have the right to vote, because their vote will have no effect.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. LaPlante.

Mr. LaPLANTE: Mr. Speaker. I would like to pose a question through the Chair.

Under the notification for conversion and mergers, are the people notified that if they do not attend—does it explain on the notification that if they do not attend, that they are, in fact, voting for the merger of the conversion? Are the meetings held, the annual meeting or the special meeting, are they held at a time when people are working?

The SPEAKER: The gentleman from Sabattus, Mr. LaPlante, has posed a question through the Chair to anyone who may respond if they so desire.

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

Mr. BRANNIGAN: Mr. Speaker and Members of the House: I believe the notice is explained. I couldn't tell you when different banks would meet. This has never been done before, actually, and so I couldn't tell you when. Different banks meet at different times. I am sure it is different.

The SPEAKER: The Chair will order a vote. The pending question before the House is on passage to be enacted. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

96 having voted in the affirmative and 37 in the negative, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Repeal the Sunset Provision of the Family Abuse Law (H. P. 1828) (L. D. 1810)

An Act to Change the 30-day Notice concerning State Agency Liquor Stores (H. P. 1829) (L. D. 1811) (C. "A" H-592)

An Act to Transfer Certain Responsibilities for Insect Nuisance Identification from the Department of Conservation to the Department of Agriculture, Food and Rural Resources (S. P. 741) (L. D. 1726)

An Act to Clarify the Fees for the Registry of Deeds (S. P. 761) (L. D. 1819) (C. "A" S-381)

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.

An Act Providing Greater Flexibility on the Use of State Public Transportation Funds for Operating Assistance to Public Transportation Providers. (H. P. 1747) (L. D. 1736)

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

The SPEAKER: The Chair recognizes the gentleman from Eliot, Mr. McPherson.

Mr. McPHERSON: Mr. Speaker, Ladies and Gentlemen of the House: I still feel that there are many unanswered questions on this bill. It supposedly is a transfer of money, but still I am hearing reports of districts that are being subsidized where their average number per trip is one. I realize that it is General Fund money, it is not in the Transportation Fund, but I just feel that there are better places that we could use this money than subsidizing these districts.

Mr. Speaker, I would request that when the vote is taken, it be taken by roll call.

The SPEAKER: The Chair recognizes the gentleman from Presque Isle, Mr. Lisnik.

Mr. LISNIK: Mr. Speaker, Ladies and Gentlemen of the House: Mr. McPherson is absolutely right. This is a dedicated appropriation. It is simply used to transfer money. It is not money that can be used for the highway program. This allows the department to assist in the operating cost of public transportation. This would give the department flexibility by simply transferring monies that are used for capital investment to public transportation and allow for a greater share to be used for the operating costs if the need exists. If they do not need to do this but if the need is there to assist in operating costs, you can transfer the money that is not needed for capital investments to public transportation.

I hope you will go with "Ought to Pass."

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

Mr. BROWN: Mr. Speaker, I would like to pose a question through the Chair.

I questioned this bill last time when it first appeared before the House, and to date my questions haven't really been answered. I am wondering if someone from the committee, the sponsor perhaps, could enlighten me and this body as to where these public transportation facilities are located. I have yet to really pin that down and I would like a little more information on that if I could, please?

The SPEAKER: The gentleman from Livermore Falls, Mr. Brown, has posed a question through the Chair to anyone who may care to respond.

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I have here a list: Biddeford-Old Orchard Beach-Saco Transit Co.; Downeast Transportation, Inc.; Arrostook Regional Transportation System, Inc.; Kennebec Valley Community Action Program; City of Bangor, the Bus; Charlotte White Ctr.; Bangor Regional Rehabilitation Center; Katahdin Friends of Retarded; Town of Sanford; York County Commissioner; City of Bath Regional Transportation Program, Inc.; Western Maine Transportation Services; Elder Services, Inc.; Waldo County Committee for Social Action; Central Senior Citizens Association; Coastal Bus Service; Bangor and Arrostook Railroad, Lewiston-Auburn Transit; Public Transportation Inc.; Passamaquoddy Tribe, Pleasant Point Reservation; Washington Planning Commission; the Sunrise Workshop.

At a time when the federal subsidies are being cut, and being cut drastically, we cannot take away the opportunity of keeping the services and we know that in some areas perhaps they are not utilized to the fullest but we also know that our people out there are unemployed, they are losing their jobs every day. You pick up the paper, people are becoming more and more unemployed, and they are going to have to turn to public transportation due to the high cost of energy today, and I can assure you that allowing them to use this money for part of their operating costs is not anything unusual. It is something that is compassionate. Many elderly citizens, many senior citizens depend upon this transportation program and I am just a little surprised that anybody would question this legislation.

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

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Carroll should understand that when someone poses a question to a bill, he or she is not necessarily questioning the justification of that bill, merely what it does. I would recall that when this bill first hit this floor a couple of weeks ago, some of these questions were asked and Mr. Carroll remained in his seat, the question wasn't answered. I appreciate the explanation, and based on the explanation, I intend to vote for the bill. But I think it is important that when a

member of this body has a question relative to a piece of legislation, that question should be able to be asked without the inference being made of those who presumably do not care.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mrs. Berube.

Mrs. BERUBE: Mr. Speaker, I might have misunderstood Representative Carroll, but I thought he mentioned L & A Transit?

The SPEAKER: The Chair would answer in the affirmative.

Mrs. BERUBE: Mr. Speaker, Ladies and Gentlemen of the House: It is my understanding that the public transportation in Lewiston, public transportation, I should say, is not receiving subsidy at this time. I therefore am wondering who makes the determination of which of those many non-profit agencies will receive monies and how do they determine what percentage will go to each one? As I see the same sum of money being appropriated, namely \$400,000, I am wondering how they are going to be able to pick up the operating costs, which I also understand are constantly going up? There is one question that I wish someone could answer and that is, what are we going to do or is the department going to do next year to replace equipment, for instance, capital expenditures, what are they going to do in that case when the need arises to replace those vehicles?

I guess my final question is, in view of the fact that the General Fund of the state is subsidizing this, or would subsidize up to half of their operating costs, would everyone be eligible to ride those particular buses, everyone irrespective of income eligibility?

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: The Lewiston-Auburn Transit District did receive money in 1980, but in 1981 they didn't request or make known that they did not need anymore subsidy. There were two on this list not authorized any longer; otherwise, the list stands as read.

I would like to tell the gentledady from Auburn that we have determined that there is some equipment through another source of funding in the Urban Mass Transportation Administration, and therefore we do have another source for capital equipment.

I would also like to answer Representative Brown, and I think he is a fine young man, that I respect his question and I never meant to make any inference or any snide remark about your questions, sir. I think questions are asked on the House floor and we answer them. There is a certain amount of give and take and sometimes you get carried away with give and we don't think we have to take. I think I have been properly scolded this morning and I accept it in the spirit that it was given, and I thank you, Representative Brown, in the spirit in which you gave this reprimand to me.

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

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to speak briefly to the Lewiston-Auburn experience that the Representative from Lewiston, Mrs. Berube, has just pointed out to you.

In Lewiston and Auburn, our bus line, Hudson Bus Lines, was being subsidized, and they recently made the decision to no longer receive any subsidized money. The reason why they chose not to receive subsidized money was that these subsidies came with strings attached and those strings were encouraging waste. Hudson was being forced to run half empty or nearly empty buses and they were also told that they must increase their rate. They felt if they increased their rates, they would be severely affecting low-income people who would no longer be able to afford to ride the buses at all. When they stopped receiving subsidies, they were able to reduce the rate that they were charging for riding on buses, and they have also discovered that in January of 1982, the first month

that they have been operating without subsidies, they have been able to do this much more economically and yet they have carried the same number of riders that they carried in 1981, in January, when they were subsidized.

At the same time the Hudson Bus Lines decided that it would no longer accept subsidies, the CAP agency in our area, Western Maine Transportation, decided that they would increase their bus service. Public outcry was so great against the increase of this service, that Western Maine Transportation was unable to expand their service because the people just wouldn't go with this.

Just yesterday in the Lewiston Daily Sun, we saw the results of a survey taken at a senior citizens meeting, and in that survey, we read that senior citizens in the Lewiston-Auburn area, because this was a meeting of the entire Androscoggin County, were against subsidized buses.

I think this bill gives us a chance to re-examine our policy in terms of subsidized buses. On the one hand, the energy policy in the state of Maine says that we must conserve energy; on the other hand, subsidized buses are forcing us to burn up a scarce resource. The Lewiston and Auburn experience shows us that we can economically serve the needs of individuals.

For these reasons, I hope you will vote against this bill.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, would the Clerk please read the committee report?

Thereupon, the Report was read by the Clerk.

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

Mr. NADEAU: Mr. Speaker and Members of the House: Just one very brief further point of clarification on the Hudson Bus Lines issue, that they, indeed, are not totally without subsidy. You must remember that when the bus line withdrew from the arrangement they have at the Lewiston-Auburn Transit Committee, the buses that Hudson Bus Lines currently is running and was running then were owned by the Transit Committee through a federal grant. Those buses that are currently being used are being leased to Hudson Bus Lines to the tune of about a dollar a year, or some such arrangement. Therefore, the buses that are currently being used are, indeed, owned by a public group, so to speak, and they are not totally without subsidy. At some point when these units have got to be replaced, I am not quite sure what course of action they will take. At one time they thought perhaps bringing the old buses back would be appropriate in terms of cost effectiveness, but they are in very poor condition.

In a spirit of cooperation, the Twin City Transit Committee agreed to lease these new buses to the bus lines and it has worked out very well. I just wanted that pointed out for further clarification.

The SPEAKER: The Chair recognizes the gentleman from Presque Isle, Mr. Lisnik.

Mr. LISNIK: Mr. Speaker and Members of the House: I would just like to respond to the second part of Representative Berube's question, which is, what do we do when capital investment is needed? The bill simply gives the flexibility to use the monies in either direction. If capital investment is needed, it can be used in that direction. If operating monies are needed, it can be used in that direction.

I think what has happened in the past is that over the years we have used the money for capital investment. Most of these companies have their rolling stock, and what is needed now is the flexibility to use that money to assist in the operating cost.

This got a good reading. We have bipartisan support on this, and I hope you'll vote "Ought to Pass."

The SPEAKER: A roll call has been request-



ed. 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 passage to be enacted. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Aloupis, Armstrong, Austin, Baker, Beaulieu, Benoit, Boisvert, Boyce, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, D.; Cahill, Carrier, Carroll, Carter, Clark, Connolly, Cox, Crowley, Dexter, Diamond, G.W.; Diamond, J.N.; Drinkwater, Erwin, Fitzgerald, Foster, Gillis, Gowen, Gwadosky, Hall, Hayden, Hobbins, Huber, Ingraham, Jacques, Jalbert, Joyce, Kane, Kany Kelleher, Ketover, Kilcoyne, LaPlante, Laverriere, Lisnik, Livesay, Locke, MacEachern, Macomber, Mahany, Manning, Martin, H.C.; Masterman, Master-ton, Matthews, McCollister, McGowan, McHenry, McSweeney, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, M.; Norton, O'Rourke, Paradis, E.; Paradis, P.; Paul, Pearson, Perry, Peterson, Pines, Post, Pouliot, Racine, Randall, Reeves, P.; Richard, Roberts, Rolde, Small, Smith, C.B.; Soulas, Soule, Stevenson, Stover, Swazey, Telow, Theriault, Thompson, Treadwell, Tuttle, Vose, Walker, Webster, The Speaker.

NAY—Bell, Berube, Bordeaux, Brown, K.L.; Callahan, Conary, Conners, Cunningham, Curtis, Damren, Davis, Day, Dillenback, Dudley, Gavett, Hanson, Higgins, L.M.; Holloway, Hunter, Hutchings, Jackson, P.T.; Jackson, P.C.; Jordan, Kiesman, Lancaster, Lewis, MacBride, Martin, A.; McPherson, Nelson, A.; Perkins, Reeves, J.; Ridley, Salisbury, Sherburne, Smith, C.W.; Strout, Studley, Tarbell, Twitchell, Wentworth, Weymouth.

ABSENT—Chonko, Davies, Fowlie, Hickey, Higgins, L.M.; Lund.

Yes, 102; No, 42; Absent, 6; Vacant 1.

The SPEAKER: One hundred two having voted in the affirmative and forty-two in the negative, with six being absent, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

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

An Act Relating to Weight Tolerance for Certain Vehicles Under the Motor Vehicle Law (S. P. 757) (L. D. 1815) (C. "A" S-380)

An Act to Allow the Transfer of Venue of Civil Actions without the Agreement of the Parties (S. P. 780) (L. D. 1848)

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

#### Orders of the Day

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

RESOLVE, For Laying of County Taxes and Authorizing Expenditures of Lincoln County for the Year 1982 (Emergency) (H. P. 2001) (L. D. 1959)

TABLED—February 18, 1982 by Representative LaPlante of Sabattus.

PENDING—Final Passage.

On motion of Mr. LaPlante of Sabattus, retabled pending final passage and specially assigned for Thursday, February 25.

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

HOUSE DIVIDED REPORT — Majority (10) "Ought to Pass" as Amended by Commit-

tee Amendment "A" (H-597) Minority (3) "Ought Not to Pass" —Committee on State Government on RESOLUTION, Proposing an Amendment to the Constitution of Maine Prohibiting Bond Issues of Less than \$2,000,000 (H. P. 1792) (L. D. 1782)

TABLED—February 19, 1982 by Representative Mitchell of Vassalboro.

PENDING—Acceptance of either Report.

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

Mrs. KANY: Mr. Speaker and Members of the House: I move acceptance of the 10 to 3 Majority "Ought to Pass" Report.

The SPEAKER: The gentlewoman from Waterville, Mrs. Kany, moves that the Majority "Ought to Pass" Report be accepted.

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

Mr. PEARSON: Mr. Speaker, when this bill was originally introduced, it was introduced as a constitutional amendment. It has now been radically changed, and in view of that, Mr. Speaker, I would pose a question to the Chair as to whether this bill is properly before this body, and specifically if it is in violation of Rule 31 and ask you to consider Rule 52.

The SPEAKER: This matter will be tabled pending a ruling from the Chair.

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

Bill, "An Act Relating to Harness Racing at Agricultural Fairs, the State Stipend and Pari-mutuel Pools" (Emergency) (S. P. 864) (L. D. 2006)

— In Senate, Referred to Committee to Taxation on February 18, 1982.

TABLED—February 19 by Representative Post of Owl's Head.

PENDING—Reference in concurrence.

On motion of Mrs. Post of Owl's Head, the Bill was referred to the Committee on Agriculture in non-concurrence and sent up for concurrence.

#### (Off Record Remarks)

On motion of Mr. Michael of Auburn, Adjourned until nine-thirty tomorrow morning.