

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

**STATE OF MAINE**

**Volume I**

**FIRST REGULAR SESSION**

**December 1, 1982 to May 13, 1983**

**HOUSE**

Tuesday, March 29, 1983

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

Prayer by the Reverend Bruce Hudson of the Highland Avenue Methodist Church, Gardiner.

The journal of yesterday was read and approved.

Bill "An Act to Apportion the Maine Senate, House of Representatives and Congressional Districts" (H. P. 1020) (L. D. 1320) (Presented by Representative Kelleher of Bangor) (Cosponsors: Senators Sewall of Lincoln, Collins of Knox and Representative Mitchell of Vassalboro) (Submitted by the Apportionment Commission pursuant to the Constitution of the State of Maine, Article IV, Part Third, as amended (Section 1-A) and M.R.S.A. 21 § 1571-A)

Thereupon, the Bill was read once and assigned for second reading later in the day.

**Papers from the Senate**

Bill "An Act Concerning State Assistance to Areas Affected by Indo-chinese Immigrants" (S. P. 424) (L. D. 1286)

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

In the House, was referred to the Committee on Education in concurrence.

Bill "An Act to Require Swimming Pools to be Enclosed" (S. P. 425) (L. D. 1287)

Bill "An Act to Provide a Special Liquor Permit for Fraternities and Sororities" (S. P. 426) (L. D. 1288)

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

In the House, were referred to the Committee on Legal Affairs in concurrence.

**Ought to Pass in New Draft**

Report of the Committee on State Government on Bill "An Act Concerning Guidelines for State Contract Process and Appeal of Decisions" (S. P. 310) (L. D. 924) reporting "Ought to Pass" in New Draft (S. P. 437) (L. D. 1316)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

In the House, the Report was read and accepted in concurrence, the New Draft given its first reading and assigned for second reading Wednesday, March 30.

**Ought to Pass in New Draft/New Title**

Report of the Committee on Appropriations and Financial Affairs on Bill "An Act Making Additional Authorizations and Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Year Ending June 30, 1983" (Emergency) (S. P. 198) (L. D. 620) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Making Additional Appropriations, Authorizations and Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Year Ending June 30, 1983" (Emergency) (S. P. 432) (L. D. 1295) (Representative Jalbert of Lewiston — of the House — abstaining)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

In the House, the Report was read and accepted in concurrence, the New Draft given its first reading and assigned for second reading later in the day.

**Non-Concurrent Matter**

Bill "An Act Relating to Claims to Real Property" (H. P. 973) (L. D. 1271) which was referred to the Committee on Judiciary in the House on March 21, 1983.

Came from the Senate referred to the Committee on Taxation in non-concurrence.

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

Bill "An Act to Deny Certain State Funds to Any Person Who Refuses to Register under the United States Military Selective Services Act" (H. P. 652) (L. D. 820) on which Report "B" "Ought to Pass" of the Committee on Legal Affairs was read and accepted and the Bill passed to be engrossed in the House on March 25, 1983.

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

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

RESOLVE, Authorizing Larry R. Coffren of Strong to bring Civil Action against the State of Maine (H. P. 735) (L. D. 944) on which the Minority "Ought to Pass" Report of the Committee on Legal Affairs was read and accepted and the Resolve passed to be engrossed as amended by House Amendment "A" (H-89) in the House on March 25, 1983.

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

In the House: On motion of Mr. Dexter of Kingfield, the House voted to adhere.

**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:

**Passed to be Engrossed**

Bill "An Act to Establish the Cost of the 1983 Spruce Budworm Suppression Project" (Emergency) (H. P. 1028) (L. D. 1342) (Presented by Representative Michaud of East Millinocket) (Cosponsors: Senators McBrearty of Aroostook, Pray of Penobscot and Representative Masterman of Milo) (Committee on Appropriations and Financial Affairs 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.

**Appropriations and Financial Affairs**

Bill "An Act Making Appropriations and Allocations for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1984 and June 30, 1985" (Emergency) (H. P. 1029) (Presented by Representative Carter of Winslow) (Cosponsor: Senator Najarian of Cumberland) (Submitted by the Department of Finance and Administration pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

**Later Today Assigned**

Bill "An Act to Permit the Public Advocate to Participate in Insurance Rate Filings" (H. P. 1030) (Presented by Representative Mitchell of Vassalboro) (Cosponsors: Representative Diamond of Bangor, Rolde of York, and Senator Charette of Androscoggin) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Committee on Business Legislation was suggested.

On motion of Mr. Brannigan of Portland, tabled pending reference and later today assigned.

**Election Laws**

Bill "An Act Regarding Contributions to Political Campaigns" (H. P. 1031) (Presented by Representative Michael of Auburn) (Cospon-

sors: Representatives Rolde of York and Brown of Gorham)

Bill "An Act to Improve and Strengthen the Referendum Process" (H. P. 1032) (Presented by Representative Andrews of Portland) (Cosponsors: Senator Bustin of Kennebec and Representative Reeves of Pittston)

(Ordered Printed)

Sent up for concurrence.

**Health and Institutional Services**

Bill "An Act to Establish a State Board of Prison Terms and Supervised Release" (H. P. 1033) (Presented by Representative McHenry of Madawaska) (Cosponsor: Senator Violette of Aroostook)

(Ordered Printed)

Sent up for concurrence.

**Judiciary**

Bill "An Act to Protect Works of Art" (H. P. 1034) (Presented by Representative Nelson of Portland) (Cosponsors: Representatives Masterton of Cape Elizabeth, Cote of Auburn, and Senator Wood of York)

Bill "An Act to Amend Various Provisions of the Maine Criminal Code" (H. P. 1035) (Presented by Representative Soule of Westport) (Cosponsor: Representative Crouse of Washburn)

(Ordered Printed)

Sent up for concurrence.

**Labor**

Bill "An Act Concerning Attorneys' Fees in Workers' Compensation Cases" (H. P. 1036) (Presented by Representative Zirkilton of Mount Desert) (Cosponsor: Senator Perkins of Hancock)

(Ordered Printed)

Sent up for concurrence.

**Marine Resources**

Bill "An Act to Permit Municipalities to Regulate Shellfish Harvesting Within State Park Lands" (H. P. 1037) (Presented by Representative Mitchell of Freeport) (Cosponsors: Representatives Allen of Washington, Vose of Eastport, and Cahill of Woolwich) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Bill "An Act to Revise the Composition of the Marine Resources Advisory Council" (H. P. 1038) (Presented by Representative Carter of Winslow) (Cosponsors: Representatives Vose of Eastport, Paul of Sanford, and Senator Duremble of York) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(Ordered Printed)

Sent up for concurrence.

**Taxation**

Bill "An Act to Amend the Law Relating to Tax Increment Financing" (H. P. 1039) (Presented by Representative Hayden of Durham) (Cosponsors: Representatives Murray of Bangor, Masterman of Milo, and Senator Wood of York)

Bill "An Act to Provide a Sportsman's Income Tax Checkoff for Voluntary Support of Fish and Game Management" (H. P. 1040) (Presented by Representative Paul of Sanford) (Cosponsors: Senator Usher of Cumberland and Representative Masterman of Milo) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(Ordered Printed)

Sent up for concurrence.

**Orders**

On motion of Representative McSweeney of Old Orchard Beach, it was

ORDERED, that Representative Louis Jalbert of Lewiston be excused March 29, 1983 for Personal Reasons.

AND BE IT FURTHER ORDERED, that Representative Sharon B. Benoit of South Port-

land be excused March 31, 1983 for Personal Reasons.

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

Representative Soucy from the Committee on Education on Bill "An Act to End the School Year by June 15th" (H. P. 755) (L. D. 986) reporting "Ought Not to Pass"

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

#### Unanimous Leave to Withdraw

Representative Michael from the Committee on Energy and Natural Resources on Bill "An Act Concerning Access Roads to Great Ponds and Lakes" (H. P. 685) (L. D. 865) reporting "Leave to Withdraw"

Representative Crouse from the Committee on Education on Bill "An Act to Permit Inhabitants of Unorganized Territories to Vote in School Administrative Districts" (H. P. 726) (L. D. 935) reporting "Leave to Withdraw"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

#### Ought to Pass in New Draft

Representative Higgins from the Committee on Taxation on Bill "An Act to Provide a Uniform Excise Tax on Watercraft" (Emergency) (H. P. 582) (L. D. 730) reporting "Ought to Pass" in New Draft (Emergency) (H. P. 1041) (L. D. 1343)

Representative Beaulieu from the Committee on Labor on Bill "An Act to Provide for the Negotiation of Seniority Provisions for Teachers" (Emergency) (H. P. 304) (L. D. 363) reporting "Ought to Pass" in New Draft (Emergency) (H. P. 1043) (L. D. 1350)

Reports were read and accepted, the New Drafts read once and assigned for second reading later in the day.

#### Ought to Pass in New Draft/New Title

Representative Higgins from the Committee on Taxation on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide that the State may Enact Property Tax Exemptions not Subject to Fifty Percent Reimbursement so Long as the Exempt Property is Subject to an Excise Tax and Municipalities Receive the Excise Tax Revenues (H. P. 679) (L. D. 862) reporting "Ought to Pass" in New Draft under New Title RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide that the State may Enact Property Tax Exemptions Relating to Watercraft not Subject to Fifty Percent Reimbursement (H. P. 1042) (L. D. 1349)

Report was read and accepted, the New Draft read once and assigned for second reading later in the day.

#### Divided Report

Majority Report of the Committee on Education on Bill "An Act to Prohibit Hazing on College Campuses and on Property Used for Educational Purposes" (H. P. 384) (L. D. 467) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Prohibit Hazing at Post-secondary Institutions" (H. P. 1023) (L. D. 1324)

Report was signed by the following members:

Senators:

HICHENS of York  
HAYES of Penobscot

— of the Senate.

Representatives:

MURPHY of Kennebunk  
MATTHEWS of Caribou  
LOCKE of Sebec  
THOMPSON of South Portland  
SMALL of Bath  
RANDALL of East Machias  
BOTT of Orono

BROWN of Gorham

— of the House.

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

Report was signed by the following members:

Senator:

CLARK of Cumberland

— of the Senate.

Representatives:

CROUSE of Washburn  
SOUCY of Kittery

— of the House.

Reports were read.

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

Mrs. LOCKE: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" Report of L.D. 1324 and wish to speak to my motion.

Mr. SPEAKER: The gentleman from Sebec, Mrs. Locke, moves acceptance of the Majority "Ought to Pass" in New Draft Report. The gentleman may proceed.

Mrs. LOCKE: Mr. Speaker, Men and Women of the House: L.D. 1324 requires post-secondary schools to adopt rules prohibiting injurious hazing which can harm the mental or physical health of the student.

The bill defines what injurious hazing is along with other definitions, such as institution, trustees, violators, explains why rules should be adopted and penalties for violations of the rules established.

It also contains language to encourage schools to enforce the rules once adopted.

The majority of the Education Committee felt that this bill, if passed, might serve as a deterrent to hazing that could result in severe mental and physical injury and even death. And if there is a case where it fails to deter such injury, the student and family would at least have a statute to relate to when seeking redress.

I hope that you will support the majority report.

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair. I notice on the first page of the bill it talks about injurious hazing, and it says it means any action or situation which recklessly or intentionally endangers the mental or physical health of a student. I guess I am kind of curious about who is going to be determining what endangers the mental or physical health of a student and what exactly does that mean?

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

The Chair recognizes the gentleman from Bath, Ms. Small.

Ms. SMALL: Mr. Speaker, Ladies and Gentlemen of the House: That would be up for the board of trustees to establish what would be injurious hazing.

This legislature is not designed to stop or halt some of the rituals that go on with fraternities and sororities initiations. Its intentions are not to prevent pledges from waiting on brothers or sisters in the cafeteria. It is designed to prevent some of the accidents that I have listed here — just for a few, these are within the last few years: Steve Call, University of Lowell, Massachusetts died of heat exhaustion after grueling calisthenics for initiation; Joseph Parella, Ithaca College, died of heat exhaustion after grueling calisthenics of running, pushups and workouts in a hot room during initiation — this was my brother's fraternity; Laurie Ballou, University of South Carolina, died of alcoholic poisoning; Kevin Gainer, University of Illinois, suffered kidney failure after being paddled; Paul Callahan, Harvard University, remains paralyzed after initiation in which pledges wrestled on a beer-

coated gym floor. I have got about 15 or 20 examples here of injurious hazing.

As we said, that would be up to the university to set up guidelines, but it would, as Representative Locke said, set up some sort of recourse if a parent of a child wants to come and have some sort of day in court against that organization or people that are involved in their child's accident or mishap.

I think already now most schools do have some sort of rules set up to prohibit hazing; unfortunately, these are not enforced. Indeed, the University of Maine has rules that are more stringent than this legislation, but many of us who have had some sort of dealings with the university, have gone there, know that hazing still does go on there, so the rules are not being enforced. This would put it on the books so that the trustees would have to enforce some sort of anti-hazing rules and regulations.

If you have any further question, or if I haven't answered sufficiently, I would be happy to.

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

Mr. BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I have always objected to passing legislation creating new laws which possibly aren't needed, and I guess I view this one as falling into that category.

I would like to pose a question through the Chair, if I may, to the gentlelady from Bath, and that is in response to some of the items that she just read to us which I will agree are most unpleasant circumstances that should never happen anywhere. Have those kinds of things — do we have documentation that any of those kinds of activities or any of those kinds of very distressing situations have actually occurred on Maine campuses?

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

The Chair recognizes the gentleman from Bath, Ms. Small.

Ms. SMALL: Mr. Speaker, yes — well, as far as written documentation, no, but I know for a fact that paddling did and still does go on at the university campuses as part of a fraternity initiation rite and in itself that might seem harmless until you read about the pledge that had kidney failure as a result of paddling.

Some of these other things, perhaps we don't have anyone who has fallen off a tower and died, but the alcohol poisoning incidents and the incidents here of excessive alcohol being consumed and then pledges or initiates killed in a car crash. When I attended the university, it was not uncommon to require pledges and new initiates to consume large amounts of alcohol as part of the initiation. At the time, it seemed quite funny to have a new pledge or a new member get themselves stinking drunk — what is funnier than watching someone get up and make a fool of themselves, and at the time you don't realize the damage or the real harm that can come of that. I can remember, and I kind of hate to confess, drinking large quantities of beer and then going out in my car and driving back other members to the university. I guess I am very fortunate to be here today. I would hate to think that other people would do the same stupid acts that I did, but it was part of my sorority initiation and I was very excited to become a member and I was certainly going to follow any of the rules and regulations that went along with getting in.

So, yes, I have seen these things. Here we are trying to stop the carnage on the highways and yet some of our state-supported institutions are continuing with this tradition that involves alcohol in great quantities being consumed. So yes, I would say that there are at least — I can document activities going on and that continue to go on, and I would think that with the colleges now taking a real stand against the alcohol consumption that they have been trying

to, this is just another step in maybe getting the students to safely get through their four years of college.

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

Mr. BROWN: Mr. Speaker and Members of the House: I am certain that there is not a one of us that would condone any of the activities that the good gentlelady has described, but as an alumnus of the University of Maine and having lived under that system and seeing how that administration enforced its rules, I think it did an excellent job.

My big objection is passing new legislation, creating new laws, which is going to provide more direction, I guess, or more action on the part of the university trustees when I don't believe they need it at this point. Mr. Speaker, I would ask for a division.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Dillenback.

Mr. DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: I guess I am an example of what has happened to people who have been hazed. I was in the Alpha Phi Fraternity in Deering High School, and then I was a member of Theta Chi, Alpha Phi Chapter, at the University of Alabama, and I went through all of the hazing and I understand that. But you know, I think it is too bad that perhaps we have to create legislation to control everything in this world. Perhaps we should legislate not to have football; people are killed in football. Let's legislate not to have baseball. What about the poor boy that is hit in the head with a baseball and dies? These things do happen and I just don't believe you can legislate everything in this country. It is still a free country and I think it is a growing up process to go into a fraternity and be hazed.

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

Mr. HANDY: Mr. Speaker, Men and Women of the House: I rise to address some of the concerns raised by my good colleague, Mr. Brown. Having been a product of the University of Southern Maine and having graduated from that institution in 1980, I can attest to the fact that hazing is still a part of college life. First of all, I would like to say that it doesn't just happen in fraternities, it also happens in sororities and it is not just restrained to those areas, it goes far beyond that to just general college life.

I would like to relate to you an alleged incident that happened earlier this year at Phi Mu Delta house, and I emphasize an alleged incident, of a rape that took place there, and that is currently being investigated and possible charges will be brought.

I would submit to you that an atmosphere which condones violence, and that is what hazing is, that violence can be perpetuated; hence, such incidents that have been reported by Representative Small and the alleged incident at USM earlier this year.

I belonged to a fraternity that has a national policy and has issued a statement opposed to hazing in all forms. I would also submit to you that this piece of legislation is not unnecessary, it is something that we should have on the books so we can point out to people that this is against the law and it does provide an atmosphere which condones violence and hence perpetuates it.

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

Mr. CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I have had a little experience also with hazing in colleges, having been the Dean of Students at the University of Maine system, and this legislation, I think, is very necessary not only for the physical hammering that kids deal out to each other, and being a dean of students I saw a lot of this, but the mental stress placed on those youngsters is a lot worse than the physical. In the university

system, the public system, it is more difficult to control these things because we have a different set of standards and laws that we seem to have to go by. Private schools can handle things nicely; they just throw you out of school. But when you are in a public university, your hands are tied on things like this.

I think this is not only desirable, I think it is necessary legislation.

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I apologize for getting up a second time. I am surprising myself, actually, to be involved in this bill.

I don't think there is any question that some of the problems and some of the individual incidents that have been mentioned by Representative Small and Representative Handy have occurred and will continue to occur whether this bill is passed or not. One of the things that I think is important to remember is that hazing doesn't take place outside in the public, a lot of this hazing is in buildings, is behind closed doors. I don't see how we are going to enforce this type of hazing simply by putting a bill on the books, such as this would do.

I guess I also have a concern about allowing the school to adopt some rules and regulations to prohibit this, because it seems to me that if a parent is thinking about taking action, the parents are going to end up taking action on the schools who aren't enforcing these rules and regulations that they have adopted to prohibit hazing. So I have some very real problems with this. It seems to me that we have got a very real problem that we are trying to solve but we are going about it backwards in trying to resolve it.

I think that I would join with Representative Brown in saying that I would really think twice before we pass this.

The SPEAKER: The pending question is on the motion of the gentlewoman from Sebec, Mrs. Locke, that the House Accept the Majority "Ought to Pass" in New Draft Report. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

80 having voted in the affirmative and 37 having voted in the negative, the motion did prevail.

Thereupon, the New Draft was read once and assigned for second reading later in the day.

#### Consent Calendar First Day

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

(H. P. 665) (L. D. 848) Bill "An Act to Create the Maine Lemon Law" — Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-93)

(H. P. 712) (L. D. 903) Bill "An Act to Change the Jurisdiction for Regulation of Schools of Barbering and Schools of Hairdressing and Beauty Culture" — Committee on Business Legislation reporting "Ought to Pass"

(H. P. 771) (L. D. 1001) Bill "An Act to Clarify the Use of Vocational-technical Institutes' Facilities by Others" — Committee on Education reporting "Ought to Pass"

No objections being noted, the above items were ordered to appear on the Consent Calendar, Second Day, later in today's session.

#### Consent Calendar Second Day

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

(H. P. 340) (L. D. 399) Bill "An Act Relating to Unreasonable or Unjust Rent in Mobile Home Parks"

(S. P. 221) (L. D. 658) Bill "An Act to Amend

the Statutes Relating to Coordination Services for Preschool Handicapped Children"

(H. P. 745) (L. D. 957) Bill "An Act to Transfer Residual Jurisdiction of the Public Utilities Commission Over Municipal Transit Districts to the Department of Transportation"

(H. P. 748) (L. D. 960) Bill "An Act to Amend the Act Restricting Rate Increase Proposals by Public Utilities"

(H. P. 749) (L. D. 961) Bill "An Act to Require the Public Utilities Commission to Expediently Process Consumer Complaints"

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

#### Passed to Be Engrossed

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1984, and June 30, 1985" (Emergency) (S. P. 423) (L. D. 1285)

Bill "An Act to Permit Persons Under 18 years of age Who Pass the Test for General Educational Development to Receive a High School Equivalency Certificate at that Time" (H. P. 1022) (L. D. 1323)

Bill "An Act to Provide for Consideration of the Age of the Victim in Sentencing Criminal Offenders" (H. P. 1027) (L. D. 1328)

RESOLVE, Authorizing the State Director of Public Improvements to Convey a Right-of-way Across the Elizabeth Levinson Center in Bangor (H. P. 1018) (L. D. 1315)

RESOLVE, Authorizing the Conveyance of a Certain Unused Building and Land Owned by the State to the Town of Wells for \$10,000 (H. P. 1024) (L. D. 1325)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was passed to be engrossed in concurrence and the House Papers were passed to be engrossed and sent up for concurrence.

#### Amended Bill

Bill "An Act to Prohibit Shooting within 100 Yards of any Dwelling During Hunting Season" (H. P. 167) (L. D. 198) (C. "A" H-90)

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

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

Mr. MacEACHERN: Mr. Speaker, I move the indefinite postponement of this Bill and all its accompanying papers and I would like to speak briefly.

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

The gentleman may proceed.

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: Something happened yesterday, I don't know what, but somehow this bill got passed in this body. I can't understand it. I can't think of anything or any good point that the bill has. It is unenforceable, it is an exaggeration of the unenforceable law that we have on the books now for 100 feet. If safety is in mind with this bill, then probably we ought to make it a mile, because most rifles are effective within one mile. If we do that, we might as well cancel all hunting in organized townships in the State of Maine.

I just don't see the reasoning behind passing this bill, and I would hope that common sense would prevail here today and maybe we can send this down the tube where it belongs.

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

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, hope that common sense will prevail today, and for that reason I hope that you will vote against the motion to

indefinitely postpone this very needed piece of legislation.

I would like to read to you very briefly the current law in regards to shooting guns in hunting season. It says: "A person is guilty of discharging a firearm near a dwelling if he discharges a firearm within 100 feet of a residential dwelling without the permission of the owner, or, in his absence an adult occupant of that dwelling." I think this is very self-explanatory. The only change that this bill makes is, it changes 100 feet to 100 yards in order to get these people out of your yard and into the woods behind your house.

The committee amendment then goes on to give us a little further protection, actually protection for the hunter in this case. What the committee amendment says is: "This subsection shall not apply to a person or his guests discharging a rifle or handgun on property owned by that person."

This is a very simple bill. I think that it is very easy to understand that nonhunters do not want hunters in their yards. I think that hunters, if they see that this law is on the books, will continue to hunt in a responsible manner, because I tell you, if we can't pass this type of legislation, we might see a time as the chairman of the committee suggested, that perhaps those of us that don't hunt will perhaps move to outlaw hunting in the State of Maine. Let's not get to that extreme; let's just get a little bit of responsibility into everyone so that we all can enjoy the fall in the State of Maine.

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

Mrs. ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: At the hearing on this bill, we had a member of the department there who explained to us, after many years of being in the warden service, that the current law on the books, 100 feet from a dwelling, is unenforceable and 100 yards would just make it 100 times harder to enforce.

Mr. MacEachern of Lincoln 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 Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, I would like to ask a question through the Chair. How many times have the wardens arrested a person for shooting within a hundred feet?

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

The Chair recognizes the gentleman from Wilton, Mr. Armstrong.

Mr. ARMSTRONG: Mr. Speaker, Men and Women of the House: Several years ago, I guess six or seven years ago, I purchased an old garage building and at some expense had it moved to the back of my cottage in Chesterville. Not too long after it was moved there, I was awakened in the middle of the night with a gnawing sound and didn't know what was going on and found the next day some porcupines had been gnawing away at the garage floor. I tried about every way I could to stop them from gnawing the building down, but after they had gnawed a hole through the floor big enough to put me through without any problem, I finally sat up late at night with a 12 gauge shotgun and when at about one o'clock in the morning I heard some gnawing I got my wife out of bed — she gets extremely ugly when she gets out of bed at one o'clock in the morning — she went out and held the flashlight while I used the 12 gauge shotgun on the porcupine. Since that

time, at nighttime I have shot nine porcupines at different times gnawing away at my garage building, all in the middle of the night.

The problem is, there are other cottages on the pond and on both sides of me they are within 100 yards of me. One hundred yards, incidentally, you are all aware is the length of a football field — that is a long ways away. Well, if this law passed, the way I understand it either of my neighbors could have me arrested for shooting porcupines that are chewing down my garage building in the middle of the night.

My neighbors are all aware of what I am doing now because I have shot so many times at nighttime, but if one of them decided they didn't like me, they could certainly haul me into court.

I think the 100 yards is an unreasonable distance. It is the length of a football field, it is a long ways away.

If the safety factor is important, as Representative MacEachern pointed out, a high caliber rifle or a 30.06 or a 3.08 can carry, I understand, up to three miles, so there is no small distance that you can set as a safety factor.

I would say that there are many cases like mine, I am sure, where you are not damaging other people's property, you are not hurting other people — in this case I figured I was protecting my own investment, and I would urge you to vote against changing the 100 feet to 100 yards in this bill.

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

Miss LEWIS: Mr. Speaker, I would like to answer the gentleman from Wilton's comments. If he will read the committee amendment, it says: "This subsection shall not apply to a person or his guests discharging a rifle or a handgun on property owned by that person." In other words, you may hunt as close to houses as you like if you own those houses yourself or if you have gotten permission of the owner or the adult occupant of those homes.

All this bill does is it protects those of us who don't want hunters right in our yards. This is a very good piece of legislation.

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

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: Seeing as no one has answered my question as to 100 feet, I don't see any reason for this 300 feet, which is still worse and harder to enforce.

I would go along with the indefinite postponement of this bill.

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

Mr. CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: A hundred feet is about from me to that wall over there, and in my backyard I have a clothes line where my wife has to go out in the winter, and I have counted as many as 17 hunters within a half a mile of my house. I don't know what they are hunting because they very seldom get a deer out there, but once that season opens, it is absolutely impossible to move around our backyard.

Also, we do have two gardens and we do tend them, rototill them and so forth, and we have late crops out there, even carrots that seem to survive through November, and we don't even dare to go out and get them unless we dress up like a hunter and make a lot of noise.

I think a hundred yards is little to ask of these hunters to stay away from our backdoors. I don't like them looking in my bedroom window while they are carrying a 30-30; I think a hundred feet is much too close.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Lincoln, Mr. MacEachern, that L.D. 198 and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

## ROLL CALL

YEA—Allen, Armstrong, Baker, Beaulieu, Bell, Brannigan, Brown, A.K.; Brown, K.L.; Carroll, G.A.; Carter, Clark, Conary, Cooper, Cote, Cox, Day, Drinkwater, Dudley, Erwin, Gauvreau, Hall, Hayden, Hickey, Higgins, H.C.; Ingraham, Joseph, Kelleher, Lehoux, MacEachern, Macomber, Manning, Martin, H.C.; Maybury, McCollister, McGowan, McHenry, McSweeney, Melendy, Mitchell, E.H.; Moholland, Murray, Nadeau, Norton, Paradis, P.E.; Parent, Pouliot, Racine, Ridley, Roberts, Roderick, Rotondi, Scarpino, Soule, Stevens, Strout, Tammaro, Telow, Theriault, Vose.

NAY—Ainsworth, Anderson, Andrews, Bost, Bott, Brodeur, Brown, D.N.; Cahill, Callahan, Carrier, Carroll, D.P.; Cashman, Chonko, Connors, Connolly, Crouse, Crowley, Curtis, Daggett, Davis, Dexter, Diamond, Dillenback, Foster, Greenlaw, Gwadnosky, Handy, Higgins, L.M.; Hobbins, Holloway, Jacques, Joyce, Kane, Kelly, Ketover, Kiesman, Kilcoyne, LaPlante, Lebowitz, Lewis, Lisnik, Locke, MacBride, Martin, A.C.; Masterman, Masterton, Matthews, K.L.; Matthews, Z.E.; McPherson, Michael, Mitchell, J.; Murphy, Nelson, Paradis, E.J.; Paul, Perkins, Perry, Pines, Randall, Reeves, J.W.; Reeves, P.; Richard, Rolde, Salsbury, Seavey, Small, Smith, C.B.; Smith, C.W.; Soucy, Sproul, Stevenson, Stover, Swazey, Thompson, Walker, Webster, Wentworth, Weymouth, Willey, Zirkilton.

ABSENT—Benoit, Bonney, Jackson, Jalbert, Livesay, Mahany, Mayo, Michaud, Sherburne, Studley, Tuttle, The Speaker.

Yes, 59; No, 80; Absent, 12.

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

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

## Passed to Be Enacted

An Act Substituting the Board of Overseers of the Bar as the Keeper of the Records of Members of the Bar in Place of Administrative Assistant to the Chief Justice (S. P. 147) (L. D. 438)

An Act to Require Participation in Good Faith in Fact Finding (S. P. 179) (L. D. 546)

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.

## Enactor Indefinitely Postponed

An Act Relating to Payment by an Employer when a Physician's Certification of Illness is Required (S. P. 240) (L. D. 682) (S. "A" S-31)

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

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Willey.

Mr. WILLEY: Mr. Speaker, Ladies and Gentlemen of the House: I ask that this Bill, L.D. 682, and all its accompanying papers be indefinitely postponed.

If you recall, we debated this bill twice last week. Just to refresh your memory, it takes away the necessity of negotiating this sort of thing in your union contracts. It also removes a very valuable tool from all employers insofar as controlling absenteeism is concerned. It also removes the right of the employer to designate which doctors these people shall go to in order to get a return to work certificate.

I ask you also to remember that the municipalities and the state government would be the ones most affected by this legislation.

Last week, on Monday, we managed to defeat this bill by about eight or nine votes. After considerable lobbying on Tuesday and Wednesday morning, the bill passed by a meager two votes. It seems to me that in an instance like this, where the vote was so close either



time and where the incidence of effect on the State of Maine and all employers is so great, we owe it to ourselves to vote on this issue again, and I request a roll call.

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

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: I would ask you not to vote for the indefinite postponement of this bill. We have had two days of debate. I will opt not to debate it but I am asking you not to indefinitely postpone this bill.

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

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I am going to vote along with my good friend from Hampden to indefinitely postpone this bill and I want to tell you why.

If this bill passes, what we will be doing is compounding the problem of those that abuse sick leave, and when you do this, what you are doing is you are creating a problem in the work force, because everytime an employee is out, somebody must fill in to do his work or his job.

I contacted the city officials in Biddeford to see how they felt about this bill and they were very much opposed to it on the basis that they do have some problems in this area. I don't want to convey the idea that all employees abuse sick leave, that is not the case, there are some, and those that abuse it, there should be a management tool available to curb these problems.

I was also informed by city officials that they were negotiating a contract with the fire department and this was an item that was being debated, whether or not the city of Biddeford should pay the physician when they require someone to visit a physician to prove that they were sick. After many days of deliberation on this particular subject, the city of Biddeford came back to the union and said yes, you may, we will pay for the physician's certificate providing we designate which physician will provide that certificate. That was the last that they heard about that one.

This should be negotiated by collective bargaining, not mandated, so I will vote against this bill and I hope you do likewise.

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

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: Everybody that is getting up and talking about this bill, they don't have a soul working for them. I have 25 people working for me down in Washington County and I can tell in a minute when one of them is sick. When they come in and tell me they are sick and I know they have been out drinking and have got a big head and I am going to lose \$2,000 on a load of lumber going to New York somewhere, I don't think that I should turn around and pay another \$40 or \$50 just to prove that guy is sick.

I hope that you will go along with Mr. Willey and send these papers down the tube or back to Washington County, or wherever you want to send them.

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

Mr. AINSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: I am very interested to hear the conversation going on this morning; we are right back again talking about organized labor. Most of the speakers that have gotten up this morning have been talking about organized labor and we are talking about 20 percent. What about the 80 percent of the people here in the State of Maine? Is this one more shot that you are going to get at the little fellow? Don't forget, we are talking about the state that ranks 43rd.

My friend across the aisle over here said the other day he didn't think 43rd was too bad; well, I do. I am sorry about that, I think it is time we gave the little fellow a chance. And the thing I can't understand is the fact that we are

giving the employer the tool, we are giving him a chance to get the certificate to use against his employee. As I mentioned on the floor the other day, we will have two tools to work with, he'll have the man's work record that he has accumulated over the years to throw at that man when he comes in the office or calls him in the office to talk to him. He will also have the tool of the certificate that he got from the doctor. Now he is going to say to this gentleman, let's take a look at the both of them.

Isn't it funny that you are tying this in with your day off? Isn't it also funny that the doctor couldn't find anything wrong with you? In other words, what you have been doing, you have been stealing from me because you haven't been sick, you have been on a little toot. I am saying to you, you are going to change your work ethics around 180 degrees and if you don't, I am going to fire you. It is as simple as that.

At this point I say, let's give the little fellow a chance and give him a chance for that 180 degrees. If he doesn't come around, then take care of him.

The employer has the tools, he has 99 percent of the say of his help anyway, we all know that, so let's give the little fellow a little bit of a break here and say he is going to pay for that certificate, which he can afford to pay for if he is in that 80 percent and he is in the non-union bracket.

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

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question through the Chair to Representative Ainsworth. What happens if that physician comes back and says yes, that person was sick, because the physician is so busy he just says yes, go ahead, sign it out. I am sure that happens and I am sure that that isn't going to be a help in the situation.

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

Mr. GAUVREAU: Mr. Speaker, I think that my distinguished colleague's question more or less indicates why you should vote for enactment of this bill. He is saying that essentially procuring a doctor's certificate is a waste of time in many cases because the doctor will not give adequate attention to the matter and will simply sign any certificate that is presented before him. I think he is probably right. That only shows that futility in mandating or requiring employees to go out and get doctors' certificates.

While I am on my feet, I want to address another question that was raised or a point that was raised by Mr. Willey. In his remarks, he indicated that under this L.D. the employer would be divested of his right to secure which physician he or she would require. That is not true. There is nothing in this bill at all which would in any way inhibit or restrict the employer's right to secure the doctor of his or her own choice if a certificate is required.

This bill basically boils down to one thing, and that concept is fairness. If we have got a situation where someone has to see a doctor, who is best situated to bear the cost? The person requesting the certificate, the employer, or the person who is being required to go, even when that person most likely is not a member of a union, most likely is not securing sick leave benefits and has to bear the double penalty of one losing a day or two of wages and also, on top of that, having to pay for the doctor's bill.

I urge enactment of this bill.

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

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: Let's address that fairness today. Let's address the person who comes to work day in and day out, might have a cold like I have today, or might have the flu but still goes to work; let's address the person who doesn't go to work, who takes that Friday off or

takes that Saturday off, if you are working six or seven days a week; let's address that person who comes to work every single day and gets sick and tired of seeing people taking 12 extra days a year which the unions have in their contracts both in the state, the city and the county now. What about that person who works hard and sees that person taking 12 extra days? Don't you think that is a little unfair for that person?

I told you the example about the woman down in Human Services. Every Monday and Friday, she says it is ironic, the blue flu hits Human Services, and it doesn't only hit the lower echelon, it hits the upper echelon. Who does she turn to? She turns to me. She says to me, can't you do anything about it? So I addressed the Maine State Employees Association. You know what their answer was — that is management — instead of sitting there and saying, hey, get on the stick, get back to work, let's help out your fellow employee, because that person that goes home on a Friday afternoon is dead tired because she has got to pick up the slack for you.

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

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: The example given to you by Representative Manning is what we are talking about. Management has the prerogative to make that employee who doesn't show up for work to prove it, and he is now going to have a better and more effective tool to prove that the employee was not sick, that could call for discharge of that person. As a matter of fact, they could do something like that right now — if management is falling down on the job, I can't feel any sympathy for them. But through this bill it cuts both ways, and I contend, it is more in the favor of the employer than the employee. The example given to you, management is at fault in that situation, he should make the employee prove it and we are giving him another legitimate tool to use to prove it.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Willey.

Mr. WILLEY: Mr. Speaker, Ladies and Gentlemen of the House: Some of the things that have been said, I think, are a little bit misleading in that a lot of employers, both union and non-union, presently use the system of sending the individual to the doctor to get a return to work certificate. It is not an uncommon practice at all and is something that is done virtually universally. The problem is, in this bill, it leaves the door wide open. There is no restriction. According to this bill, the individual can go to any doctor that he wants to go to, or she wants to go to, and there is no restriction on what it is going to cost. If the company has picked out a doctor and has an agreement with him for return to work slips for say \$15 or \$20, which is a common figure today, there is nothing to prevent this individual from going to a doctor that costs the company \$100, and you think of that in the instance of a sickout in a given community or in the state of Maine. I think there should be an impact statement attached to this thing as to what it is going to cost the state because they are the biggest employer in the state, the one who has the most to win or gain in this thing.

It simply gives a wide open door for abuse, there is no way the company can abuse it, there is no problem there, it is only in the instance where an employee wants to step out of line a little bit where we have no strings attached at all, the door is wide open.

I urge you to defeat this bill once and for all today.

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

Mr. MURPHY: Mr. Speaker, I would like to pose a question to the Chair to anyone who might care to answer.

Mr. Speaker, since this bill would have a cost

to the municipalities as an employer and to the state as an employer, is there a fiscal note attached?

The SPEAKER: The Chair would advise that a fiscal note deals with state government and not with municipalities and revenues.

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

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: We had no problem paying for the medical certificate every three years. The ICC says that we have to have our men examined every three years in order to travel over the highways, so I think we are paying quite enough when we pay \$45 or \$50 for the certificate when we are traveling over the highways.

A lot of these boys will have their wives make out the certificate and have the wife sign it, they will bring it in and say, here is my certificate. I call up the doctor's name on the bottom and they have never even heard of him. I think we are going to get hoodwinked into a lot of money here, especially the small businessmen.

I hope and urge that you go along with Mr. Willey and dispose of this bill.

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

Mr. DUDLEY: Mr. Speaker, Members of the House: Very briefly, I understand this bill and it doesn't say that the employer must do this, he may; in other words, it would only be on rare occasions that he would have to resort to asking them to have a certificate. First of all, that is all we are talking about, a very rare occasion.

I am concerned about state employees. In my area, we have some that work for the warden force, for instance, and you see him not doing his job and you confront him about it, that is his day off. The next time you see him, now he is on sick leave but he doesn't have to prove he is sick to anyone and so I consider this as being a bad blow to state government, to some of the people, a very small minority, of course, but we are talking about minority groups here all the time, and I think this could cost the state government a lot of money as well as the municipalities.

In my area, they have an excuse now that it is their day off. We don't pin them down as to what day they are going to have off, so anytime you find them not on the job, that is their day off. The next day you see them, they are on sick leave. I think we should be careful in this area.

I know that it would hurt small employees, having been one myself. I think I was a reasonable man. I never would ask someone for a certificate from a doctor — you can tell by looking at a person if he is not well. When you know he was out running a skidoo or going fishing, he couldn't have been very sick if he was out all day fishing and still says he was sick, these are the things that are insulting almost to a small employer.

I hope in your good judgment, and I know you have good judgment, that you will put this bill down the hatch.

The SPEAKER: The Chair recognizes the gentleman from Mt. Desert, Mr. Zirkilton.

Mr. ZIRKILTON: Mr. Speaker, Ladies and Gentlemen of the House: The proponents of this bill have nothing but good intentions in mind, but there is a very good reason why I am opposing this bill and I would like to tell it to you.

I don't believe this bill is going to help the situation, I believe it is going to hurt it, and the reason I believe it is going to hurt the situation is because, as Representative Dudley mentioned, it is not going to require the employers to require a doctor's certificate to prove that an employee was absent with just cause. What probably will happen is that the employer isn't going to require it at all because he doesn't want to bear the cost of the doctor's certificate. What is probably going to happen is that he is just going to decide in his own mind whether he believes the employee or not. So instead of

having the employee have the right to get the doctor's certificate to prove that they were absent with just cause, you are going to take away that person's ability to do that and instead let them be totally at the mercy of the employer who is just going to decide — maybe I believe him, maybe I don't. I think it is going to do a lot more harm than good.

Mrs. Beaulieu of Portland was granted permission to speak a third time.

Mrs. BEAULIEU: Mr. Speaker, Ladies and Gentlemen of the House: This bill would not be here if we did not have evidence that the employers are indeed demanding this certificate. They are demanding it and the employee is made to pay.

To respond on sickouts and things like blue flu and what not, that would be appealable.

Secondarily, the amendment to this bill makes it very clear that the only thing the employer would pay for would be the securing of the certificate, not ensuing treatment for the cause if the employee was legitimately ill.

I repeat again, we would not have brought this bill forward if we could not substantiate that the employers are demanding it, that it is abused in some instances, that it is used as a harassment tool on the employee and the employee is solely made to pay for the certificate and in some instances losing a day's pay in order to obtain it. It is inconceivable that we should see a situation where a man cannot return to work, a man who is not abusing it, unless he goes out and shells out dollars to prove that he was not sick. There has got to be responsibility on both sides, and in this instance we can contend that assuming the responsibility for the cost gives management a better tool to deal with the employee who is abusing.

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 having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Canton, Mr. McCollister.

Mr. MCCOLLISTER: Mr. Speaker, will employer's who are representatives be in conflict on this vote?

The SPEAKER: The Chair would respond in the affirmative, if they are employers and that matter is purely observatory on the part of the Chair. Remember the law, if you think you have a conflict, you should be asking that request from the Advisory Commission. The Chair would advise the gentleman you can proceed to vote any way you want to. The Chair's personal opinion is yes.

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

Mr. MURPHY: Mr. Speaker, I would like to pose a question.

Would members of this House who are employees be in conflict?

The SPEAKER: The Chair would answer in the same manner.

The pending question is on the motion of the gentleman from Hampden, Mr. Willey, that this bill and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

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

Mr. MACOMBER: Mr. Speaker, I would ask permission to pair my vote with the gentleman from Sanford, Mr. Tuttle. If Mr. Tuttle were here and voting, he would be voting no; I would be voting yes.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, I request permission to pair my vote with the gentleman from Lewiston, Mr. Jalbert. If Mr. Jalbert were here

and voting, he would be voting no; I would be voting yes.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Hampden, Mr. Willey, that this Bill and all its accompanying papers be indefinitely postponed in non-concurrence. Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Anderson, Armstrong, Bell, Benoit, Bott, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, G.A.; Conary, Conners, Curtis, Davis, Day, Dexter, Dillenback, Drinkwater, Dudley, Foster, Greenlaw, Gwadosky, Hickey, Higgins, L.M.; Holloway, Ingraham, Joyce, Lebowitz, Lehoux, Lewis, MacBride, Manning, Martin, H.C.; Masterman, Masterton, Matthews, K.L.; McPherson, McSweeney, Melendy, Mitchell, J.; Moholland, Murphy, Nelson, Paradis, E.J.; Parent, Paul, Perkins, Pines, Pouliot, Racine, Randall, Reeves, J.W.; Roberts, Roderick, Salsbury, Scarpino, Seavey, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Sproul, Stevenson, Stover, Strout, Tammaro, Telow, Walker, Webster, Wentworth, Weymouth, Willey, Zirkilton.

NAY—Ainsworth, Allen, Andrews, Baker, Beaulieu, Bost, Brannigan, Brodeur, Carroll, D.P.; Cashman, Chonko, Clark, Connolly, Cooper, Cote, Cox, Crouse, Diamond, Erwin, Gauvreau, Hall, Hayden, Higgins, H.C.; Hobbins, Jacques, Joseph, Kane, Kelleher, Kelly, Ketover, Kilcoyne, LaPlante, Lisnik, Locke, MacEachern, Martin, A.C.; Matthews, Z.E.; McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Murray, Nadeau, Norton, Paradis, P.E.; Perry, Reeves, P.; Richard, Ridley, Rolde, Rondoni, Stevens, Swazey, Theriault, Thompson, Vose, The Speaker.

ABSENT—Bonney, Crowley, Daggett, Handy, Jackson, Kiesman, Livesay, Mahany, Maybury, Mayo, McCollister, Sherburne, Studley.

PAIRED—Carter-Jalbert; Macomber-Tuttle. Yes, 76; No, 58; Absent, 13; Paired, 4.

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

Sent up for concurrence.

#### Enactor Tabled and Assigned

An Act Concerning Court Procedures Dealing with Notice in Liability Cases (H. P. 402) (L. D. 485) (S. "A" S-35)

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

On motion of Mr. Hobbins of Saco, tabled pending passage to be enacted and tomorrow assigned.

An Act to Provide for Leaves of Absence for Employees Elected to the Legislature, Excluding Employees Covered under Provisions Dealing with Teachers (H. P. 349) (L. D. 597) (C. "A" H-71)

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.

#### Orders of the Day

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

Senate Report—"Ought to Pass" as amended by Committee Amendment "A" (S-34) — Committee on Business Legislation on Bill "An Act to Amend the Maine Consumer Credit Code" (S. P. 219) (L. D. 656)

Tabled—March 25, 1983 by Representative Murray of Bangor.

Pending—Acceptance of Committee Report.

On motion of Mr. Brannigan of Portland, re-tabled pending acceptance of Committee Report and specially assigned for Thursday, March 31st.



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

An Act to Conform Maine Garnishment Laws to the United States Code, Title 15, Section 1673, the Federal Consumer Credit Protection Act (S. P. 110) (L. D. 262) (S. "A" S-32 and C. "A" S-26)

Tabled—March 28, 1983 by Representative Mitchell of Vassalboro.

Pending—Passage to be Enacted.

On motion of Mr. Connolly of Portland, retabled pending passage to be enacted and specially assigned for Thursday, March 31st.

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

Bill, "An Act Relating to Attorneys Searching and Certifying Title to Real Estate" (H. P. 969) (L. D. 1225) (H. "A" H-86)

Tabled—March 28, 1983 by Representative Mitchell of Vassalboro.

Pending—Passage to be Engrossed.

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

Mr. CARRIER: Mr. Speaker, Members of the House: This particular bill is on the certification of search of title, not so much as to the certification as to search of title but the process itself. This bill you have before you, the new draft, L.D. 1225, relates to this search of title and also in essence protects the attorneys. This is a very serious and very complicated bill. One way or the other, most of you must own a piece of property and if you do, it is very important and essential that you have a clear title to the property. You might be sitting here right now thinking you have a clear title but in fact you haven't.

Most search of titles, when you borrow money from a lending institution, you have to use the lending institution's lawyer. There is a lot of value to that and the value is because the lawyers for the lending institution are bonded. Most lawyers are not bonded unless they work in a specific area where they require bonding.

I have objections to this bill for many reasons. I gave it a lot of thought because I stayed up all night and thought about this bill and about two or three o'clock this morning, I could have given you quite a dissertation.

This is an innocent looking bill and my objection is, ladies and gentlemen, this bill makes it so you have the choice of either having your lawyer search your title and in turn your bank would have to accept it. That is the part of it that I object to. I object to that part because the banks, I am not a banker, I am not for the banks, I am not for the lawyers, so I am talking about things as they are. I am talking for your interest and for your people and your families and your constituents that buy a house today or who have bought one in the past but mostly for the ones in the future. The chances are that a lawyer who is bonded and does a search of title, you have a double protection because if you borrow from the bank and their lawyer does the work and something is wrong along the line, you can go against both of them for relief.

L.D. 1225 is a new draft of L.D. 357. I am always suspicious of new drafts. As a matter of principle, I am against new drafts. I think when you have a bill in committee, it should either be able to be corrected by amendments and not draft a new bill which sometimes is unrelated to what the intent of the sponsor is and this bill is unrelated.

In L.D. 357, which is not before us, that would have given us the intent of what it was all about. In that particular bill, they made the lawyer personally responsible for certification of the search of title. In L.D. 1225, they take it away, he doesn't have to be personally liable anymore, and I think this is where we missed the boat, this is where the dangerous part of buying a piece of property comes in.

They will talk to you, and I am anxious for them to get up here, about the cost. If they

want to talk about the cost, we'll talk about the cost; I will give them a chance to bring that up. But for one minute just think about it — you have a bill presented and you have a new draft made of that bill and then you have a new House Amendment to it by the same members of the committee. This, in itself, is questionable. I have great respect for the members of the committee and I think a lot of them know what this is all about, but you cannot take a course in search of title and its effect in five minutes over here.

Let's take a few examples of what could happen and what did happen, and I am familiar with these two or three cases. In effect what has happened, is we had a case nearby and probably Mr. Day knows about it too, in Westbrook we had a case where somebody bought a house which the bank had apparently acquired title after foreclosure, so they bought it from the bank, got a mortgage from the bank, the usual way to do it, get a search of title by the bank lawyer who is bonded, so you buy the piece of property, you pay your mortgage every month for over three years and when capital improvement had to be made to the house, go back to the same people that have the mortgage, the usual way to do it, and ask them for money. Because of the bad experience that they have had on foreclosure before, they are reluctant and they refuse, and this is a very common thing that they do.

Actually what happens is, you apply to another bank and they take the application and they turn around, make a search of title, find out that the search of title that the first bank gave you in effect is void, no good, and here you have been walking around for over three years paying that particular mortgage.

Ladies and gentlemen, in the course of things this could mean a loss of an awful lot of money to you and to members of your family. You could lose your lifetime earnings in that kind of a deal. And what happened at the end is, it was a loan from the bank, the lawyer was bonded, he, in fact, and the bank together had to make it good, had to make the title good. They did make the title good because it was just a matter of improper advertising.

But take a situation when you have somebody you buy a house from, let's say a man and his wife and he has been married two or three times and somewhere along the line they have six children and they have been married, so the man and his wife die all of a sudden and you want to buy that piece of property. In the course of things, somebody that doesn't get along, a husband and wife, one of them won't sign off, so what happens? If you do have the right attorney to pick that up, you are in trouble if you buy the property. You have got a cloud on the title and you are in trouble and you will be for a long time.

One way the bank and others do business, they give you a quit-claim deed. I think quit-claim deeds should be outlawed. I think that the quit-claim deed, all that it does is release your interest in the property with no guarantee whatsoever. Well, if you put ten or twenty thousand dollars of your equity in the house, you should have some guarantee from whatever party, and they don't do that. This is the way it is done.

My point is, in similar cases where the lawyer is not bonded, does not work for the bank, it will be said that it is in the interest of the customer—naturally it is in the interest of the customer. We all like to choose, but in effect what will happen is that with a bill of this sort it would actually close up the money available for mortgages. I or any other one over here, any person in this House, will not lend money unless you lend it under your conditions and you protect your interest and your equity, and this here is making it almost mandatory that you could do that, forcing a bank to accept a lawyer that is unacceptable to them, accept the certification, the lawyer is not tied up what-

soever, he has no liability, he has no responsibility as far as giving a title, as far as certifying the title, and this is bad.

For many many reasons, I think this is a bad bill. I think if you take a mortgage, you sell me your property and you decide to take a mortgage, does this bill cover it, do I come under that area? It doesn't say. All it says is "by a supervised lender." You tell me what supervised lender is. Do you stand in back of him and look and see if they are doing the right things or not? As an individual taking mortgages, do I come under this law if I decide to lend money to somebody? I don't believe I do. I think I have that choice and I think everybody else should have the same choice.

It also says "by a qualified lawyer." Who is a qualified lawyer? That is a good area.

I didn't object to the amendment yesterday, I let it go, because the amendment itself is useless, it doesn't accomplish anything. All it says is the same thing as the bill as far as certification, excessive costs, which I think is ridiculous, it is really a bill which says "does not require certification of title."

The original bill says so and so does 1225, so actually 1225, the amendment, is useless, it doesn't say anything, it just confuses the issue.

Why does the bill limit it to four families? I don't know, I don't know why they limit it to four families. If you happen to buy a six, seven or eight family unit, what is the difference? Is it because it is considered business property? Well, a four-family is considered business property too, so why limit it to four families.

I have great reservations about those who make search of titles and I can tell you incidents of search of titles that have been done that have been successful, and I feel that it is extremely important, this is one thing in life that is extremely important to you to protect your equity for your family if you die to make sure that there is no cloud on the title and that you get a lawyer to do the job.

I don't believe that anybody who has a mortgage through the VA or right now gets a mortgage through the VA, that the VA will accept the report of any lawyer and the bank still has the choice of refusing to accept that report.

I submit to you that we are all entitled to the best. Let's not open this up for any lawyer to do search of titles. If you buy it on your own, you pay cash between two parties, that is a different thing, but if you want a mortgage, the lending institution is in the driver's seat and I say that this particular area will actually dry up the mortgages, and we just passed some laws a little while ago for the Housing Authority to go millions of dollars in mortgages.

You don't get any affidavit, there is nothing said about an affidavit, about the search of title, of course they don't give you that because they don't want to commit themselves that way.

I move the indefinite postponement of this bill, its papers and everything else with it.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Dillenback.

Mr. DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: I think the gentleman from Westbrook may be half right in his discussion here, but don't forget this—no bank is going to loan any money on anything that there is a risk to.

Number two, if they don't like the lawyer who searched the title, if this should pass, then they are going to require title insurance which is going to cost a great deal more money.

Really, the bill doesn't do anything because the bank is in control, they are going to handle it, and if it isn't handled to their satisfaction, you won't get any money, so I don't think you need the bill, frankly.

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

Mr. BRANNIGAN: Mr. Speaker, Men and Women of the House: Present law allows, it has for several years allowed people in residential

transactions, therefore four units or under, to choose a lawyer of their choice as long as that attorney met the qualifications set down by the bank. One of those qualifications, of course, is that that person have the proper insurance to back up that person's work. This is present law; this bill does not begin anything new. This was begun several years ago in order to free up and correct a situation where some banks gave all of their work to one lawyer in one town. That person still worked for you because you paid the tab, so it was decided by the Business Legislation Committee and by this House, without this kind of debate, that people could choose their own attorney within these bounds. Your title was as safe and as tight as if the banks pointed lawyer—I don't use the word 'appointed'—pointed lawyer did the title search. This bill does not change that.

All this bill does is get around a loophole where some banks, in order to keep their chosen lawyer in the picture, said that the proved attorney that you have chosen could not certify, could not make that final certification, in other words you had to pay twice, and it extends it to mortgage companies. That is the main thrust of this; this is not dealing with the law substantially.

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

Mr. CARRIER: Mr. Speaker and Members of the House: There is much more to this bill in complications, and for those of you who have foresight and who have bought a house before, or more than one, or is about to buy one, there is much more to this bill than what was mentioned.

You can choose your own lawyer, if the bank or the loaning institution agrees to it, but they are still in the driver's seat and there are very few lawyers and very few banks that will accept a lawyer searching a title without him being bonded. Even if they are bonded, they like to have the control within their organization and choose their own people, and I think rightfully so.

As far as the cost is concerned, they tell you that it costs you an awful lot. Well, ladies and gentlemen, it depends on where you live. For one thing, it depends on how far you go to search a title. It actually depends on who your friends are and depends on how far you are going to go on the search of a title. I am convinced, I am sure, and I live by this, that one of the best investments that you can ever make in your lifetime, and there is no question about it, is when you are going to buy a house, get a good title search.

People talk about costs, what are they talking about? They are talking maybe \$50, maybe \$100—to some people that is a lot of money, but when you are spending that kind of money to protect your investment or commitment on a \$20,000, \$30,000, \$40,000 or \$50,000 house, that is peanuts. That is the best investment and you can't do without it. It must be important because the loaning institutions require that you have a search of title. You can buy a house yourself by negotiation with somebody, if they agree to it, you don't have to have a search of title. Neither do you have to register your title if you don't want to, but this is not the way to do things to protect yourself and your equity and your future commitment.

I submit to you that the cost I mentioned, you can always debate it because it depends on how far you go into the title and where you live, but if it costs \$200 or less and maybe more, that is nothing compared to an investment that you make for you and your family for the rest of your life, to get a clear title. You are in a better position to lose a house because of a search of title than you are in getting the house with a cloud on the title.

Let's talk a few minutes on the search of title, okay? The search of title is important because a lawyer does it. If you get a person who has done a lot of title work, assume I want to buy a

house from you today, I would get me a certain type of person, a good lawyer that is going to search the title for me. I want him to go back 40 years. He has already done the title before but let's say the present owner has only had the house five or six years, since he bought the house, so what he does and this is a common thing, he turns around and goes to his files, pulls out about 30 years of what he has already, goes down to the registry of deeds and spends about an hour or two down there to see if there are any liens at all since that time and he can charge you anything he wants.

On the other hand, we have a couple in Westbrook who had their title search by a lawyer and they bought the house but for some reason or other, the old lien, because of sewerage, was put on there and these same people today, when they took the house and the search of title did not include that, sometimes it does not even include taxes and liens, they are stuck with it. I think they are. They are going to take it to court but I think their chances of recovery are very poor. I think a search of title is best and when you have a search of title, make it priority to choose a good lawyer, one that has experience in it and one that knows what he is doing.

I would request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Mechanic Falls, Mr. Callahan.

Mr. CALLAHAN: Mr. Speaker, Ladies and Gentlemen of the House: I want to concede that the gentlemen from Westbrook is 100 percent right. This bill, I am sure, looks good; it gives the customer a chance to pick his own attorney, but I dare say there are many lending institutions that will do this again, not just to protect the banks but their customers. In doing so, the customer may not get another bill for searching the title but certainly they have to put it in somewhere in the upfront money. I think it would be a very expensive bill, it is unnecessary, and I hope you will go along with the gentleman from Westbrook.

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

Mr. KANE: Mr. Speaker, Ladies and Gentlemen of the House: I am not on this committee but I have lately been in the business of looking for a house—in my district, of course. In my experience going to the bank, since I went to a bank, the bank made it very clear that they preferred me to use their attorney, but since I had someone I knew like Representative Hobbins, who happened to be on their list as being insured for a million dollars worth of title insurance, they said, we are legally required to allow you to use someone else. The bank, I don't know, probably would have charged me about 10 times what you are going to charge me, Mr. Hobbins?

In any case, a title search is a title search. It is a little teeny South Portland house, you have to go back 40 years anyway, just to go along with the ethical standards and if instead of going to a bank I had gone to a mortgage company, I would not have had that option. No matter if I knew forty people who had \$10 million worth of insurance, the mortgage company could have just said, well, we insist that you use our lawyer. Believe me, there are a lot of people when they are trying to buy their first home, that additional \$700 might make a difference between being able to make the application and not making it at all.

I urge you to oppose the motion of the gentleman from Westbrook.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Matthews.

Mr. MATTHEWS: Mr. Speaker, Ladies and Gentlemen of the House: I happen to sit in on most of the debate on this bill and I would concur with the good Representative, Mr. Kane, and would ask him to give me the address of that attorney. I think it is very, very important that we have first-time home buyers and people starting out looking to buy a house, and I

would just submit to you that the cost is very, very high and prohibitive and if we can save the consumers a little money, I think it is a good idea.

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

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: We have really moved significantly away from the issue at hand here. I say this because I am the sponsor of the original bill that my good friend from Westbrook, Mr. Carrier, alluded to, and I want to make it very clear to members of the House that the law is already on the books which allows you or your constituent to choose your own title attorney. This bill does not change that in any way. So the comments made by the gentleman from Mechanic Falls and others here as well are a little bit off the issue, and it is confusing, I might add, because the new draft indicates that that is new language. It is not new language; it is in the law already.

The committee made several changes in the bill as far as wording the bill, nothing substantive for the first four, five or six lines, that is already in the law. If you have one to four residential units and you have a qualified attorney, you have the right now to select your own attorney to do that title work for you. This House passed that bill several years ago, it is on the law books, and if you indefinitely postpone this bill today, that is not going to change that part of the statute. So that objection is null and void.

The only thing that this bill does is, it allows an attorney—let me back up for just a minute. We have already said that we will allow the owner, potential owner, to select their title attorney. What has happened in some cases in some lending institutions is that they say, fine, Mr. Homebuyer, we will allow you to choose your own title attorney; however, after they have done the title work, we are going to require our counsel to certify that title and charge you again for it. They are circumventing the intent and the will of this Legislature by doing that. The consumer is paying twice for the same real benefit that he is getting by the title attorney. So in order to correct that, the Business Legislation Committee unanimously came out with a bill that redrafted 357 and it just says that the banks cannot allow you to do it twice, that if I hire the attorney to do the work for me, then I will pay the title attorney to do the work and the bank can't then require me to pay their attorney to do the same thing for certification.

In addition, there is one other issue here and that is the issue of title insurance. There is nothing in this bill that requires title insurance, all right, but it does say that a potential owner can obtain title insurance, certainly. The issue here then becomes, is it beneficial for someone to obtain title insurance? We heard testimony at the hearing that yes, in fact it is, because in many cases, in most cases as far as I know, you can obtain a title search and a title insurance policy for less than or almost the same as having the bank's attorney do the title work for you. You are getting the benefit by that title insurance, you as the potential buyer are getting an insurance policy that says to you that if there is any defect in the title, we will pay you. You don't have that same benefit if the attorney for the bank does it or even if you select your own attorney, you have to go after their insurance, which has been brought up here.

So there are two separate issues—there is nothing that requires title insurance, but at the same time, if you want to get it, it makes it clear that you can't get charged twice for it, once to do the title search, once to have the insurance policy made out in your name, you get nailed twice.

It also eliminates the possibility of your getting nailed twice for doing your own title attorney work and then having the bank's

attorney certify it. Those two issues, as far as I am aware, are the only two issues that this bill addresses. It has nothing to do whatsoever with selecting your own attorney, it is already in the law, and I would hope you would go against the motion to indefinitely postpone.

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.

Mr. Gauvreau of Lewiston requested permission to be excused from voting pursuant to House Rule 19, which was granted.

The SPEAKER: The pending question is on the motion of the gentleman from Westbrook, Mr. Carrier, 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

YEAS—Callahan, Carrier, Carter, McHenry, Reeves, J.W.; Ridley, Roberts, Smith, C.B.

NAYS—Ainsworth, Allen, Anderson, Andrews, Armstrong, Baker, Beaulieu, Bell, Benoit, Bost, Bott, Brannigan, Brodeur, Brown, A.K.; Brown, D.N.; Cahill, Carroll, D.P.; Carroll, G.A.; Cashman, Chonko, Clark, Conary, Conners, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Curtis, Daggett, Davis, Day, Dexter, Diamond, Dillenback, Drinkwater, Dudley, Erwin, Foster, Greenlaw, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Higgins, L.M.; Hobbins, Holloway, Ingraham, Jacques, Joseph, Joyce, Kane, Kelleher, Kelly, Ketover, Kiesman, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lewis, Lisnik, Locke, MacBride, MacEachern, Macomber, Manning, Martin, A.C.; Masterman, Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, McCollister, McGowan, McPherson, McSweeney, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Murray, Nadeau, Nelson, Norton, Paradis, E.J.; Paradis, P.E.; Parent, Paul, Perkins, Perry, Pines, Pouliot, Racine, Randall, Reeves, P.; Richard, Roderick, Rotondi, Salsbury, Scarpino, Seavey, Small, Smith, C.W.; Soucy, Soule, Sproul, Stevens, Stevenson, Stover, Strout, Swazey, Tammaro, Telow, Theriault, Thompson, Vose, Walker, Webster, Wentworth, Weymouth, Willey, Zirkilton.

ABSENT—Bonney, Brown, K.L.; Jackson, Jalbert, Livesay, Mahany, Martin, H.C.; Mayo, Rolde, Sherburne, Studley, Tuttle, The Speaker.

EXCUSED—Gauvreau.

Yes, 8; No, 129; Absent, 13.

The SPEAKER: Eight having voted in the affirmative and one hundred and twenty nine in the negative, with thirteen being absent, the motion does not prevail.

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

The following papers appearing on Supplement No. 4 were taken up out of order by unanimous consent:

#### Passed to Be Engrossed

Bill "An Act to Apportion the Maine Senate, House of Representatives and Congressional Districts" (H. P. 1020) (L. D. 1320)

Bill "An Act Making Additional Appropriations, Authorizations and Allocations Relating to Federal Block Grants for the Expenditures of State Government for the Fiscal Year Ending June 30, 1983" (Emergency) (S. P. 432) (L. D. 1295)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was passed to be engrossed in concurrence and the House Paper passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

#### Second Reader

##### Later Today Assigned

Bill "An Act to Provide a Uniform Excise Tax on Watercraft" (Emergency) (H. P. 1041) (L. D. 1343)

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

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

Bill "An Act to Provide for the Negotiation of Seniority Provisions for Teachers" (Emergency) (H. P. 1043) (L. D. 1350)

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide that the State may Enact Property Tax Exemptions Relating to Watercraft not Subject to Fifty Percent Reimbursement" (H. P. 1042) (L. D. 1349)

Were reported by the Committee on Bills in the Second Reading, 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. 5 were taken up out of order by unanimous consent:

#### Consent Calendar

##### Second Day

(H. P. 665) (L. D. 848) Bill "An Act to Create the Maine Lemon Law" (C. "A" H-93)

(H. P. 712) (L. D. 903) Bill "An Act to Change the Jurisdiction for Regulation of Schools of Barbering and Schools of Hairdressing and Beauty Culture"

(H. P. 771) (L. D. 1001) Bill "An Act to Clarify the Use of Vocational-technical Institutes' Facilities by Others"

No objections being noted, the above items were passed to be engrossed or passed to be engrossed as amended and sent up for concurrence.

By unanimous consent, ordered sent forthwith.

#### Passed to Be Engrossed

Bill "An Act to Prohibit Hazing at Post-secondary Institutions" (H. P. 1023) (L. D. 1324)

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

By unanimous consent, ordered sent forthwith.

The Chair laid before the House the following matter:

Bill "An Act to Permit the Public Advocate to Participate in Insurance Rate Filings" (H. P. 1030) which was tabled and later today assigned pending reference. (Committee on Business Legislation was suggested)

Thereupon, the Bill was referred to the Committee on Business Legislation, ordered printed and sent up for concurrence.

#### (Off Record Remarks)

At this point, the House was at ease until the sound of the gong.

The House was called to order by the Speaker.

The Chair laid before the House the following matter:

Bill "An Act to Provide a Uniform Excise Tax on Watercraft" (Emergency) (H. P. 1041) (L. D. 1343) which was tabled and later today assigned pending passage to be engrossed.

Mr. Scarpino of St. George offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-94) was read by the Clerk.

The SPEAKER: The Chair recognizes the

gentleman from St. George, Mr. Scarpino.

Mr. SCARPINO: Mr. Speaker, Ladies and Gentlemen of the House: In effect what this bill does is make this first year interim tax slightly more equitable to the vessels in the 15 to 50 ton range. What it would do currently—the bill reads that vessels between 10 and 15 ton will pay a per foot tax of \$10 a foot and all vessels from 15 ton up will pay a per foot tax of \$20 per foot. This amendment would change that to read that vessels from 10 to 50 ton would pay a \$10 per foot tax.

What it is meant to address is that there are a fairly large number of small vessels in this state between 10 and 15 ton, which runs roughly between 40 and 60 feet, that don't have the capabilities to run off shore, that don't have the capabilities to stay off shore for a long period of time and that do not have the capabilities to leave the state. Therefore, they have not been able to use that as a bargaining tool in an attempt to get a more equitable tax rate.

With what is going on right now and while I realize the necessity for the excise tax on the larger vessels to keep them in the state, according to the Courier Gazette one owner of a number of large vessels in Rockland, their taxes would be reduced from \$112,000 to \$4,000. If you come down in the town of St. George, you will find vessels that are increased up to 16 times what their current tax rate is. While admittedly St. George probably undervalues its boats, if we went to 100 percent valuation on the value of the vessels, the current \$20 a foot for those vessels in the 40 to 60 foot range would still either double or triple the cost to these boats. When you look at the pay structure, seeing as the state has to reimburse the towns 50 percent because of the change from a property tax to an excise tax, with just that one boat owner in Rockland, the state has to reimburse the city of Rockland \$56,000. You come down to St. George and we will take one vessel that is currently taxed at \$38, at 100 percent valuation it should be taxed approximately at \$300, under the \$20 a foot. This vessel is 47 feet long and 35 years old, she would pay \$970. If the state makes a 50 percent reimbursement to the town of St. George, on the high side they will return to St. George \$150. Then they will have \$820 to subsidize either Rockland or Portland. The reduction to \$10 would not completely resolve this but it would be a figure that the small boats could live with more easily.

The other problem is that the state, by requesting a wharf has put the full burden of responsibility of this problem on the fishermen. The simple fact of the matter is that this problem didn't originate on the wharfs and on the boats; this problem originated in this very building on this floor and on the fourth floor of this building. It has been a problem that has been addressed, and addressed and addressed on this floor and has yet to come to some satisfactory resolution. In effect what this state is doing with this is saying, we have made a mistake in the State House and now you, the working man on the boat, must pay for our mistake. I think it is incumbent upon the state to accept some of the responsibility for their own mistake.

If you will notice, there is a fiscal note on this and that fiscal note says that this will cost approximately \$100,000 to \$150,000 for the one year that it would be in effect. If you look at the fishing industry and how long it has been in this state and the fact that until very recently there was no state subsidies or programs involving the fishing industry, the first settlement in the state of Maine was the Island of Monhegan in 1607 as a fishing community. Right now, we do have proposals for fish piers and we do have a "catch to taste" program, but it has taken from 1607 to 1982 to get this state to do something for the fishermen, while at the same time they are attempting to do some-

thing else to the fishermen that is not, shall we say, as advantageous as the "catch to taste" program for the fish piers.

I would urge your support of this amendment.

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

Mr. HIGGINS: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from St. George, Mr. Scarpino.

The form of government in St. George, is it a city council or board of selectmen and if it is a board of selectmen, are they the assessors for the community?

The SPEAKER: The gentleman from Portland, Mr. Higgins, has posed a question through the Chair to the gentleman from St. George, Mr. Scarpino, who may respond if he so desires.

The Chair recognizes that gentleman.

Mr. SCARPINO: Mr. Speaker, Men and Women of the House: It is a form of government that uses three selectmen and a town manager and yes, the selectmen are the assessors.

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

Mr. HIGGINS: Mr. Speaker, Men and Women of the House: One of the problems that the Taxation Committee has found in the area of property taxation is the assessing of property, that is the valuing of it for tax purposes. One of the biggest problems is with uneducated and unknowledgeable assessors. This is a problem that we not only find with real estate but with boat taxes as well. For this reason, in a number of communities there is disparity in boat taxes right now. One way to clean this up is through the excise tax being proposed.

Mr. Speaker, I move the indefinite postponement of this amendment.

The reason that I am proposing the indefinite postponement is twofold on this amendment. First of all, there is a fiscal note which the Department of Marine Resources estimates to be \$150,000 in this biennium. Before the Appropriations Committee could pass this bill out, it would be June, and we would already have lost our fishing industry, which amounts to \$300 million here in the state of Maine. We must have this bill passed and signed by the Governor prior to March 30th. To have an appropriation on the bill would require it to go past the April 1st deadline.

It is my hope you will follow the committee's lead and pass the bill in its present form and I hope you will support me on my motion for the indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentleman from St. George, Mr. Scarpino.

Mr. SCARPINO: Mr. Speaker, I would request a roll call.

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. 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 Portland, Mr. Higgins, that House Amendment "A" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEAS—Ainsworth, Allen, Andrews, Beau-lieu, Benoit, Bost, Bott, Brannigan, Brodeur, Brown, A.K.; Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Chonko, Clark, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Curtis, Daggett, Day, Diamond, Erwin, Gauvreau, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Hobbins, Joseph, Kelleher, Ketover, Kilcoyne, LaPlante, Lebo-witz, Lehoux, Lisnik, Locke, MacEachern, Mac-comber, Manning, Martin, H.C.; Masterman, Matthews, Z.E.; McCollister, McGowan, Mc

Henry, Melendy, Michael, Michaud, Mitchell, E.H.; Moholland, Murray, Nadeau, Nelson, Nor-ton, Paradis, E.J.; Perry, Pouliot, Racine, Reeves, P.; Ridley, Roberts, Rotondi, Salsbury, Smith, C.B.; Soucy, Soule, Stevens, Tammaro, Theriault, Thompson, Vose.

NAYS—Anderson, Armstrong, Bell, Brown, D.N.; Cahill, Callahan, Conary, Conners, Davis, Dexter, Drinkwater, Foster, Greenlaw, Higgins, L.M.; Holloway, Ingraham, Jacques, Kiesman, Lewis, MacBride, Martin, A.C.; Masterton, Mat-thews, K.L.; Maybury, McPherson, McSweeney, Mitchell, J.; Murphy, Parent, Perkins, Pines, Randall, Reeves, J.W.; Richard, Roderick, Scar-pino, Seavey, Small, Smith, C.W.; Sproul, Stev-enson, Stover, Telow, Walker, Webster, Went-worth, Weymouth, Willey, Zirkilton.

ABSENT—Baker, Bonney, Brown, K.L.; Car-rier, Dillenback, Dudley, Gwadosky, Jackson, Jalbert, Joyce, Kane, Kelly, Livesay, Mahany, Mayo, Paradis, P.E.; Paul, Rolde, Sherburne, Strout, Studley, Swazey, Tuttle, The Speaker.

Yes, 78; No, 49; Absent, 24.

The SPEAKER: Seventy-eight having voted in the affirmative and forty-nine in the nega-tive, with twenty-four being absent, the motion does prevail.

Mrs. Allen of Washington offered House Amendment "B" and moved its adoption.

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

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

By unanimous consent, ordered sent forth-with to the Senate.

The following enactor appearing on Sup-plement No. 1 was taken up out of order by unanimous consent:

#### Passed to Be Enacted Emergency Measure

An Act to Establish the Cost of the 1983 Spruce Budworm Suppression Project. (H. P. 1028) (L. D. 1342)

Was reported by the Committee on En-grossed 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. 118 voted in favor of same and one against, and ac-cordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forth-with.

#### (Off Record Remarks)

On motion of Mrs. Allen of Washington,  
Adjourned until nine o'clock tomorrow morning.