

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

May 16, 1983 to June 24, 1983

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August 4, 1983

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HOUSE

Friday, June 10, 1983

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

Prayer by the Reverend John E. Fickett, Interim Pastor, North Vassalboro Baptist Church.

The journal of yesterday was read and approved.

Papers from the Senate

The following Communication:
The Senate of Maine
Augusta

June 9, 1983

Honorable Edwin H. Pert
Clerk of the House
111th Legislature
Augusta, Maine 04333
Dear Clerk Pert:

In reference to the action of the Senate June 9, 1983 in which the Senate Insisted and Joined in a Committee of Conference on L.D. 1267, An Act to Encourage Prompt Resolution of Public Employee Labor Disputes.

The Chair appointed as conferees on the part of the Senate:

The Senator from York—Senator Dutremble
The Senator from Penobscot—Senator Hayes

The Senator from Kennebec—Senator Dow

Sincerely,

S/JOY J. O'BRIEN

Secretary of the Senate

The Communication was read and ordered placed on file.

Messages and Documents

The following Communication:

State of Maine

One Hundred and Eleventh Legislature
Committee on Education

June 8, 1983

The Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333
Dear Speaker Martin:

The Committee on Education is pleased to report that it has completed all business placed before it by the First Regular Session of the 111th Legislature.

Total number of Bills received	72
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Unanimous reports	60
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Leave to Withdraw	16
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Divided Reports	10
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Respectfully submitted,

S/STEPHANIE LOCKE

House Chair

Was read and ordered placed on file.

The following Communication: (H. P. 1320)

State of Maine

House of Representatives

Speakers' Office

Augusta, Maine 04333

June 9, 1983

Hon. Edwin H. Pert

Clerk of the House

Maine House of Representatives

State House Station 2

Augusta, Maine 04333

Dear Clerk Pert:

This is to inform you that pursuant to Chapter 176 of the Public Laws of 1983, I am today appointing Rep. Neil Rolde to serve as the House member of the Community Services Advisory Board.

This appointment will be effective beginning July 1, 1983, for a term of four years.

Sincerely,

S/JOHN L. MARTIN

Speaker of the House

Was read and ordered placed on file and sent up for concurrence.

Orders

On motion of Representative McSweeney of Old Orchard Beach, it was ORDERED, that Representative Norman O. Racine of Biddeford be excused June 10 through June 17 for personal reasons.

**House Reports of Committees
Divided Report****Later Today Assigned**

Majority Report of the Committee on Judiciary on Bill "An Act to Provide for Swifter Disposition of Drunk Driving Cases" (H. P. 830) (L. D. 1068) reporting "Ought to Pass" in New Draft (H. P. 1319) (L. D. 1749)

Report was signed by the following members:

Senators:

COLLINS of Knox

TRAFTON of Androscoggin

VIOLETTE of Aroostook

— of the Senate.

Representatives:

DRINKWATER of Belfast

JOYCE of Portland

LIVESAY of Brunswick

SOULE of Westport

HAYDEN of Durham

FOSTER of Ellsworth

— of the House.

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

Report was signed by the following members:

Representatives:

HOBBINS of Saco

REEVES of Newport

CARRIER of Westbrook

BENOIT of South Portland

— of the House.

Reports were read.

On motion of Mr. Diamond of Bangor, tabled pending acceptance of either Report and later today assigned.

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

Passed to Be Enacted**Emergency Measure**

An Act Concerning Confidential Records and State Certification of Educational Personnel (S. P. 583) (L. D. 1691) (H. "A" H-353)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 103 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Amend the Motor Vehicle Salvage Laws of the State (H. P. 910) (L. D. 1189) (H. "A" H-355 and C. "A" H-318)

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

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

Mr. WEBSTER: Mr. Speaker, I would like to pose a question through the Chair. Would somebody on the committee explain this to me?

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

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: This salvage law is one of the most important pieces of legislation that

you are voting on. Many of you are not aware that we have going on throughout this country the dismantling of automobiles by unlicensed and unknown salvage people throughout this state and throughout the United States. The federal government has in Congress a law they are getting ready to pass and are considering, which is a national salvage law, so they can coordinate all the states under one law regarding the salvage operation of automobiles. Right now there is no way that we have got a handle on who is dismantling automobiles and where they are being dismantled. This salvage law brings them under the Department of Motor Vehicles and then we can go out and find out who is salvaging automobiles, who they are, where they are, and have them keep records so we can pick up titles to automobiles so they will not be selling titles after the automobile has been salvaged.

Also, just a few days ago I received a call from the southern part of the state, a young boy happened to ride by a salvage yard and told his folks of three automobiles way out back. An investigation was launched and those cars that had just been stolen in a matter of hours would have been on the shelves being sold as parts.

I assure you that this is a good law, it is a much needed law and I urge your support.

The SPEAKER: The Chair recognizes the gentleman from Fryeburg, Mr. Kiesman.

Mr. KIESMAN: Mr. Speaker, Ladies and Gentlemen of the House: I echo the gentleman's comments, I think it is a very important piece of work.

I do have some concerns about the House Amendment "A" that was put on this the other day and I understand where that came from and why. I had such serious concerns about it that I contacted one of the veterans' organization representatives and asked them if they would look at the impact of this House Amendment "A" on the individual who is affected by this, this proposed salvage yard that was being placed next to the veterans' cemetery. They promised me that they would look into this, assess the impact on him and see if there was an accommodation that could be made that would mitigate the loss to that individual as a result of this amendment, and therefore I am going to support this bill and the amendment.

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

Mr. MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I just want to point out to you something in conjunction with what the gentleman from Fryeburg has just said. The salvage bill has been passed before but it was brought back by the gentleman from Augusta, Mr. Hickey, so he could add an amendment to it. That amendment was the amendment that referred to the salvage yard that was being built near the veterans' cemetery. I hope you will go along with this measure.

The SPEAKER: The pending question is on passage to be enacted. This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

111 voted in favor of same and 14 against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act to Provide for the Return and Proper Disposal of Pesticide Containers (S. P. 501) (L. D. 1513) (C. "A" S-184)

An Act to Establish a Commission to Review and Evaluate the University of Maine System (S. P. 537) (L. D. 1566) (H. "A" H-335)

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 Later Today Assigned

An Act to Provide Workers' Compensation Coverage to Emergency Medical Services' Persons (S. P. 563) (L. D. 1637) (H. "A" H-354 and C. "A" S-160)

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

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

An Act to Provide Equal Access to Justice (S. P. 570) (L. D. 1646) (H. "A" H-344)

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

An Act to Provide Equitable Mental Health Insurance (S. P. 596) (L. D. 1718) (H. "A" H-342 and S. "A" S-170)

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

Mrs. MacBride of Presque Isle 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 Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: I had not intended to get up again on this issue, but I feel that I must. Before you vote on this particular bill, I would ask you to give it some serious thought.

Yesterday, I mentioned briefly the fact that we as a body are acting as a group of actuaries, for which we are not qualified, and I would like to suggest to you that the same type of approach was utilized in Congress when that body attempted as a group of actuaries to rewrite Social Security. Social Security, when it was originally passed, was structurally actuarially sound, but when the Congressional people got done with it, it was not, and I don't have to tell you what has happened to it. We have essentially done the same thing in this state with workers' compensation. I have sat here and I have watched it, and as I have stated before, I have abstained from debating it or even voting on the issue for obvious reasons. Nevertheless, both sides of the aisle were equally involved in trying to rewrite workers' compensation, and I don't have to tell you where we are at today on that.

What we are trying to do here today is essentially the same type of approach—I know that what I am saying may not change any votes but at least I will be able to say, well, I told you so. I hope I am not around when that day comes, but this is what it is leading up to. What this bill does that disturbs me greatly is that it would open the door to over utilization. Just picture a person who spends an entire day in the house watching soap operas and suddenly decides that she or he ought to pay a visit to a local person and that particular person might, I am sure, say a lot of good things about that particular person and they can't help but enjoy that, and that in itself would call for repeated visits, there is no control and we would be paying for it.

I said it briefly yesterday—this House seems to be very inconsistent. We voted cost containment through yesterday, and I supported it like most of us here did, but the area that we are opening here today does not come under cost containment. On one hand, we try to close

the barn door and on the other hand we leave the back of the barn wide open. I would urge you to vote against this bill.

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

Mr. BRANNIGAN: Mr. Speaker, Men and Women of the House: I would urge you to support passage of this bill. We have given it serious thought, the people in our committee have given it serious thought. This therapy is not a frivolous matter that someone watching soap operas would go out and take; if they did, the people giving it would not get paid for it. Therapy has to be of a serious nature in order to be covered by this bill. This bill has no requirements other than that insurance companies must include these less expensive ways of dealing with the mentally ill than they do now in their hospital costs. Those who have embraced this kind of plan, either in other states or in our state, under mandated options has realized decreases in cost.

I urge you to support this legislation.

The SPEAKER: A roll call has been ordered. The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

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

Mr. CASHMAN: Mr. Speaker, I request permission to pair my vote with Representative Racine of Biddeford. If he were here, he would be voting yes; if I were voting, I would be voting no.

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

Mr. DAVIS: Mr. Speaker, I request permission to pair my vote with the gentleman from Brooksville, Mr. Perkins. If he were here, he would be voting yes; if I were voting, I would be voting no.

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

Mr. BOST: Mr. Speaker, I request permission to pair my vote with the gentlewoman from Vassalboro, Mrs. Mitchell. If she were here, she would be voting yes; if I were voting, I would be voting no.

ROLL CALL

YEA—Ainsworth, Allen, Andrews, Baker, Beaulieu, Benoit, Bott, Brannigan, Brodeur, Carroll, D.P.; Chonko, Connors, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Daggett, Diamond, Drinkwater, Erwin, Foster, Gauvreau, Hall, Hayden, Higgins, H.C.; Hobbins, Jacques, Jalbert, Joseph, Joyce, Kane, Kelleher, Kelly, Ketover, Kilcoyne, LaPlante, Lehoux, Lisnik, Locke, MacEachern, Manning, Martin, A.C.; Matthews, K.L.; Matthews, Z.E.; Mayo, McCollister, McGowan, McHenry, McSweeney, Melendy, Michael, Mitchell, J.; Murray, Nadeau, Nelson, Paradis, E.J.; Richard, Rolde, Smith, C.B.; Stevens, Tammaro, Theriault, Tuttle, Vose, The Speaker.

NAY—Anderson, Armstrong, Bell, Bonney, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carroll, G.A.; Carter, Clark, Conary, Dexter, Dillenback, Greenlaw, Gwadosky, Handy, Higgins, L.M.; Holloway, Ingraham, Jackson, Kiesman, Lebowitz, Lewis, Livesay, MacBride, Macomber, Masterman, Masterton, Maybury, McPherson, Michaud, Moholland, Murphy, E.M.; Murphy, T.W.; Norton, Parent, Paul, Perry, Pines, Reeves, J.W.; Ridley, Roberts, Roderick, Rotondi, Salisbury, Scarpino, Sherburne, Smith, C.W.; Soucy, Soule, Stevenson, Stover, Strout, Swazey, Telow, Thompson, Walker, Webster, Wentworth, Willey, Zirnkilton.

ABSENT—Carrier, Curtis, Day, Dudley, Hickey, Mahany, Martin, H.C.; Paradis, P.E.; Pouliot, Randall, Reeves, P.; Seavey, Small, Sproul, Weymouth.

PAIRED—Bost-Mitchell, E.H.; Cashman-Racine; Davis-Perkins.

Yes, 67; No, 63; Absent, 15; Paired, 6.

The SPEAKER: Sixty-seven having voted in the affirmative and sixty-three in the negative,

with fifteen being absent and six paired, the motion did prevail.

Signed by the Speaker and sent to the Senate.

An Act to Amend the Law Relating to Tax Increment Financing (H. P. 1039) (L. D. 1364)

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

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

Later Today Assigned

An Act to Require Interdepartmental Coordination of Social Services Planning (H. P. 1255) (L. D. 1668) (H. "A" H-347)

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

On motion of Mr. Brodeur of Auburn, under suspension of the rules, the House reconsidered its action whereby the Bill was passed to be engrossed.

On motion of the same gentleman, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-347) was adopted.

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

Mr. BRODEUR: Mr. Speaker, I am presently awaiting the printing of an amendment. Would somebody please table this bill until later?

Whereupon, on motion of Mr. Diamond of Bangor, tabled pending adoption of House Amendment "A" and later today assigned.

An Act Relating to the Identification and the Hazards of Exposure to Toxic and Hazardous Substances (H. P. 1306) (L. D. 1735) (S. "A" S-182)

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

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

Bill "An Act to Adopt Federal Options in the Unemployment Compensation Extended Benefit Program" (Emergency) (S. P. 615) (L. D. 1752)

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

In the House, under suspension of the rules, the Bill was read twice and passed to be engrossed without reference to any committee in concurrence.

Divided Report Tabled and Assigned

Majority Report of the Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-197) on Bill "An Act Affecting the Organization of the Department of Business Regulation" (S. P. 541) (L. D. 1580)

Report was signed by the following members:

Senators:

CLARK of Cumberland
CHARETTE of Androscoggin
SEWALL of Lincoln

— of the Senate.

Representatives:

MURRAY of Bangor
STEVENS of Bangor
BRANNIGAN of Portland
RACINE of Biddeford
POULIOT of Lewiston
MARTIN of Van Buren
TELOW of Lewiston
CONARY of Oakland

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Com-

mittee Amendment "B" (S-198) on same Bill.

Report was signed by the following members:

Representatives:

PERKINS of Brooksville
MacBRIDE of Presque Isle

— of the House.

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-197)

In the House: Reports were read.

On motion of Mr. Brannigan of Portland, tabled pending acceptance of either report and specially assigned for Tuesday, June 14.

Non-Concurrent Matter

Bill "An Act Relating to Major Policy-Influencing Positions in Various State Agencies" (H. P. 1311) (L. D. 1740) which was passed to be engrossed in the House on June 8, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-193) in non-concurrence.

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

Non-Concurrent Matter Later Today Assigned

Bill "An Act to Prevent Unjust Enrichment by Retention of Surplus Upon Foreclosure of Municipalities and Sewer Districts" (S. P. 486) (L. D. 1479) on which the Majority "Ought Not to Pass" Report of the Committee on Judiciary was read and accepted in the House on June 9, 1983.

Came from the Senate with the Body having insisted on its former action whereby the Minority "Ought to Pass" in New Draft (S. P. 597) (L. D. 1719) Report of the Committee on Judiciary was read and accepted and the New Draft passed to be engrossed as amended by Senate Amendment "A" (S-183) in non-concurrence.

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

Consent Calendar First Day

(S. P. 496) (L. D. 1510) Bill "An Act to Create the Maine Conservation Corps" — Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-199)

There being no objections, under suspension of the rules the above item was given Consent Calendar, Second Day, notification and passed to be engrossed as amended in concurrence.

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

Orders of the Day

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

BILL, "An Act to Increase the Minimum Wage" (H. P. 884) (L. D. 1138)

—In House, Minority "Ought to Pass" as amended Report of the Committee on Labor read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (H-262) in the House on June 1, 1983

—In Senate, Majority "Ought Not to Pass" Report of the Committee on Labor read and accepted in non-concurrence.

Tabled — June 9, 1983 by Representative Diamond of Bangor.

Pending — Further Consideration.

On motion of Mr. Diamond of Bangor, tabled pending further consideration and specially assigned for Tuesday, June 14.

The Chair laid before the House the following matter:

An Act to Amend the Law Relating to Tax Increment Financing (H. P. 1039) (L. D. 1364) which was tabled and later today assigned pending passage to be enacted.

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

Mr. HIGGINS: Mr. Speaker, Men and Women of the House: When we discussed this proposal on the committee report, the gentleman from Bangor, Mr. Kelleher, suggested the possible need for a fiscal note. I have gone to the Legislative Finance Office and spoken with Ronald Lord and we have prepared a statement that reflects the impact that this bill will have on the local municipalities and I would like to read this into the record.

"The specific fiscal impact of this bill cannot be determined at this time. It appears that if and when a tax increment financing district is formed, the effect on state valuation would have an impact on state reimbursement for education, state reimbursement of general assistance expenditures and county tax mill rate distribution among the towns. However, the fiscal impact is not in terms of an outright cost or appropriation, rather it is in the form of preventing a decrease in state subsidies that might otherwise occur if state valuation rose in accordance with development under currently available funding mechanisms.

"Furthermore, any fiscal impact would be only temporary, because once a tax increment financing district has served its purpose, that is repaid the municipal bond, the facility would once again be rated at its full valuation, thereby allowing the state to eventually reduce its municipal subsidies."

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

The Chair laid before the House the following matter:

House Divided Report — Majority (9) "Ought to Pass" in New Draft, H. P. 1319, L. D. 1749 — Minority (4) "Ought Not to Pass" — Committee on Judiciary on Bill "An Act to Provide for Swifter Disposition of Drunk Driving Cases" (H. P. 830) (L. D. 1068) which was tabled and later today assigned pending acceptance of either Report.

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

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

The SPEAKER: The gentleman from Saco, Mr. Hobbins, moves that the Minority "Ought Not to Pass" Report be accepted.

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

Mr. DRINKWATER: Mr. Speaker, Ladies and Gentlemen of the House: I hope you defeat the motion just made by the good chairman so that we can accept the "Ought to Pass" Report.

This piece of legislation, what it intends to do is to try to take the drunken driver off the highway. If you have read the statement of fact on the bill, that is L. D. 1749, you find that it says, "A law enforcement officer who arrests or summons a person for operating with an excessive blood alcohol level must forward to the Secretary of State a report, under oath, of all information relevant to the enforcement action. That information includes the identity of the person arrested or summonsed, a statement of the officer's grounds that the person was operating under the influence and any blood alcohol test and other relevant information. The Secretary of State will have a blood-alcohol test result of .10 percent or more to suspend the license under the new draft. So if any of you are worried about the police officer and his competence in taking away a license, it will be done by the Secretary of State on the recommendation of the police officer, but as you can see and read in your own document, this officer has got to supply considerable evidence

to the Secretary. At that time, the Secretary can suspend the person's license pending trial, at which time if there is extenuating circumstances that the court decides in favor of the defendant, of course the license would be restored.

What we are trying to do with this is allow the Secretary of State to suspend these licenses and not allow them on the road. In the past, it appears that there has been a lot of licenses kept by people who had been arrested for operating under the influence. Of course, we passed a rather good driving under the influence or drunk driving law here in the last session. What this bill intends to do is give the Secretary the power to suspend pending a hearing. I think if you do take heed to the amendment or to the whole bill, but the amendment right now, the statement of fact right now, you will be able to hopefully feel comfortable in voting for this bill.

I urge you to vote against the pending motion so that you can support the "ought to pass" report.

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: First of all, let me commend the sponsors of this legislation for their concern in regards to a very serious situation that confronts this nation, this state, and that is the drunken driver on the highway. However, and this is a big however, not every person who is arrested for operating under the influence is guilty. The presumption of this bill is that the officer, the law enforcement officer, is right a hundred percent about his or her observations, whether in fact a person is in their mind operating a vehicle while impaired. That is the first presumption and assumption.

Secondly, even if the officer makes that determination, we then assume and presume that a jury of the peers of that individual charged or the judge is going to, in every single case, convict that person.

The bill before you is a revised version of L. D. 1068, and let me tell you what L. D. 1068 said. It said if a law enforcement officer stopped someone and they presumed that person was under the influence, pending that person's day in court when a determination would be made whether that person would be found guilty or not guilty, pending that person's day in court, that person would lose their license automatically. Fortunately, this bill is a watered down version that basically gives the authority, based on one side of the story, not two sides of the story, one side of the story, of a law enforcement officer, he gives that information, along with a test, a .10 test, to the Secretary of State, and based upon that, one of those people over there in the Secretary of State's Office can suspend that person's license pending that person's day in court to determine whether that person in fact was under the influence.

My opposition to the bill is not an attempt in any way to say that I don't think that those who are convicted of operating under the influence should not be punished severely. My opposition to this bill is not based upon the fact that I want to in any way let people get off the hook if in fact they meet all the requisite requirements of the law.

However, I think this bill goes too far. Fortunately, because of the media and because of public awareness, society now has taken a close look at the issue of operating under the influence, and because of that publicity, not because of the basic technical aspects of the present OUI law but I think more so because of the publicity and the threat which has come out of that publicity, we have found, I think, a reduction in those individuals who operate on our highways while impaired by alcohol.

But I think this bill goes against the basic tenet of our criminal justice system, and that is, a person should be innocent until proven guilty.

Constitutionally, I can make an argument possibly that this bill isn't suspect and possibly win that argument. I should tell you that there are six other states, as possibly the proponents of this legislation will tell you, that have similar legislation on the books.

It is my hope that the bills coming out of Judiciary concerning the teenage drinker and the provisions of that individual's license will be passed into law soon, and I support that, I have supported many changes in the OUI law, but this goes too far. You are only hearing one side of the story, and I am not in any way trying to make a disparaging remark against our law enforcement officers because by and large we probably have the best group of state police and the best law enforcement officers in our towns and communities than probably any place in the country. They are well trained, but people make mistakes; like anyone else, they can make a mistake, and I do not feel that a person should lose their license, which is very important to many people, because of work or whatever, based upon one side of the story, the observations of that law enforcement officer and some hearing officer in the Secretary of State's Office making that determination. That determination should be made either by a jury of the peers of guilt or should be made by the judge at the time of the hearing.

Two years ago, this legislature felt a very big tragedy, and that was the loss of one of our employees, one of our Pages, one of our friends. Unfortunately, that person has not gone to trial yet, or the final adjudication of that case has not been rendered and that person is still driving on the roads, and that is a travesty. However, I do not think we should take that big brush, even though that person was dear to my heart, a close friend and colleague, I don't think we should take the big brush and swoop out all of the rights and privileges of those out there in society that have been adjudged by the observations of one person and by one hearing examiner, pending the outcome of that person's trial the loss of that person's privilege to operate a vehicle in this state.

I commend the sponsors. I know the good gentleman from Winthrop lost a constituent, lost a friend by this situation, but I do not think that this bill is the approach we should take. I urge you to look very carefully at this bill, and I know that emotionally everyone would support the bill, but I want you to think long and hard about whether or not you think a person should lose their license based upon the observations of one person and based upon the determination by some hearing officer.

There is one more point before I sit down, and that is, there is an increase to pay for these hearing officers of the Secretary of State's Office, an increase for the reinstatement fee of \$5. I think that all of you should know that. You probably won't see it by looking at the bill because it is imbedded in one of the provisions.

I, along with everyone else, hope that the situation on our highways diminishes because it is a tragedy to see loved ones die, but I hope that we don't go this far with this particular bill. I urge you to support the "ought not to pass" report.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, Ladies and Gentlemen of the House: Representative Hobbins is absolutely right, this bill is strong medicine and I would like to take a couple minutes of your time to explain to you why I am on the opposite side of him and why I am going to vote against the Minority Report, in the hopes that we can then pass this bill and make it a law in our state.

What we have, as Representative Hobbins described, is a situation in Maine where it is possible for someone not only to be arrested for OUI but to be involved in a death in an OUI and up to one year after that incident has occurred, after that charge has occurred, for the

person still to be driving on the roads. Now, that is not a reason and it never should be a reason for stripping somebody of their constitutional rights, for making the state some muscle bound arbiter of what is right and wrong. But, ladies and gentlemen, that is not what this bill does if it should become law.

What the bill does is, it makes an assumption, and this is the strong medicine part. That assumption is that if an officer observes someone operating a motor vehicle, it leads him to have probable cause that he is operating under the influence. If he takes a test that indicates there has been excessive use of alcohol, then the Secretary of State shall have the administrative power to suspend that license. The right to trial will still occur at some point in the future. If there is a criminal charge pending, that, of course, will continue too. The strong medicine is, if those facts are there, if that probable cause is there, the Secretary of State has that right to suspend the license. As a matter of fact, the person who is so accused, the person who would have his license suspended, also has a right to appeal. That is the reason for the change in the license fees, that is the reason for the safeguard, to give somebody a chance to get back on their feet or to make an argument why they shouldn't immediately lose their license. Not only is this practice in use in other states, but the same idea really is in use today in Maine in other situations.

If you have somebody right now who is stopped for the same suspicions and refuses to take a breathalyzer test, refuses to have their blood tested to prove that suspicion one way or the other, that person can immediately lose their license. And I can tell you, and other lawyers in this House can tell you, people who represent defendants charged with OUI, particularly in years past, have given the advice to people, don't take that test because it is worth it to you. You may lose your license for a short period of time, but then there is maneuverability and then there is room to negotiate, there is room to find some change to make some doubt. If we get that breath test, we are really locked in and you are going to face some type of responsibility for what you have done.

So we have passed a law, it is already a law in this state that if a person does that, administratively he loses his license. What this bill is doing is taking it one step further. It is a little bit stronger medicine and it says that administratively you can lose your license, still have the rights to those trials and a jury by your peers if that is what you like. You don't automatically get that in an OUI case anyway, as Representative Hobbins knows. You still have a right to insist on that, you have a right to appeal that administrative decision, but there is going to be a 10 or 20 day period where this person would be without their license. I don't deny that that is a tremendous hardship, that that is a very strict and severe punishment, but in my mind, we are always having to balance, we are having to balance the interest that we and our constituents have in this state.

What we are faced with is a spiraling death rate not just by teen drivers but by drunk drivers, it is our greatest cause of death right now, our greatest cause of serious injury where innocence is involved or somebody who has been carelessly drinking is involved, here is a chance to put an end to that, and I think when that balance is taken into consideration, this is an acceptable bill and it is an acceptable step to take with as many protections as we can possibly provide.

I was initially opposed to this bill without that insistence that there at least be some chemical evidence of excessive use of alcohol. That is now in this bill, this bill that has the support of the majority of the committee, I hope it will have the support of the majority of all of you. That is why I urge you to vote against the pending motion, so we can send this bill on its way.

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

Mr. DRINKWATER: Mr. Speaker, Ladies and Gentlemen of the House: Representative Hayden covered a lot of the items that I have checked down here, but I would like to say though that a driving license is a privilege, it is not a right, it is a little mite different. Having been a police officer, as several other people in this body have, it just seems that one of the biggest complaints that I got, and it has been a few years since I was active but I understand we are getting the same thing, is the fact that if a person who was picked up for operating under the influence or drunk driving, whatever you want to call it, the case seemed to be continued to death. They couldn't understand why this person was out there driving and being seen at the local gin shops, just couldn't understand it. What this does here is either get him off the road, or if he is not guilty and the test comes out that way, the Secretary won't suspend his license. As Representative Hayden said, there will be a trial down there also coming up.

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

Mr. AINSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: I just wanted to take a couple of minutes and tell you about a case that happened in Yarmouth within the last few months. A man was hit by a truck. This driver was under the influence of alcohol. It took them about an hour or two to get this man out of the car he was so deeply involved in the wreckage, and three and a half hours later, this same man was picked up again for drunken driving. That should tell you something.

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

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I rise with a heavy heart today because I want to tell you about an attorney by the name of Mr. Hawley who lived in Cornish, Maine. He was out walking a year ago last winter, was killed by a hit and run driver who was drunk. They finally found out who he was, had his trial, he is on appeal and continues to drive to this day, still driving. His fellow employees called me from where he was working and told me, you know, he is coming in half-crocked. I called the police, I called the District Attorney and I called the Secretary of State. They informed me that under the law this man will continue to drive until he is sentenced unless they can catch him out there drunk. The Secretary of State tells me there is no way he can take his license because if he takes it, they will take him to court and get him reinstated. Now what kind of a state are we living in where a man goes out and commits cold blooded murder in an automobile and continues to drive because he is awaiting sentence, he is on appeal. This is a mockery. Pass a tough law, then when they kill, take that license away. If he was a man with a conscience, he would never drive again after cold blooded murder.

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

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I think this is a good bill. When people are caught driving under the influence, they will work to get to court. Right now, they are working not to get to court in order that they can drive longer.

I do have a problem with the bill. I would like to ask a question through the Chair. What happens to the majority of the people that get caught? Around where I live, the people are either from Canada or from Connecticut - what happens then? The Secretary of State can't take away their license.

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

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: In response to the good gentleman's question, in a case such as he stated, even though that person does not have a license in the state, he has a privilege to operate in the state. His privilege to operate a motor vehicle of any kind would be suspended and that person would not be able to drive in the state with that privilege until such time as he or she met the requisite requirements of the law and paid the reinstatement fee.

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

Mr. JACQUES: Mr. Speaker, I would like to pose two questions through the Chair. First, can I take it that the Committee on Judiciary is going to use this new premise on this law to also include child molesters, rapists, people that have been arrested for gross and aggravated assault, that are released or while they are out on appeal or get off and let back into society in the meantime while they are waiting to go to court the same way you intend to do this with people who are arrested for alleged OUI?

My second question is, what do you intend to do with the repeat offender that loses his license and still continues to drive, because we found that when somebody is a repeat offender for OUI, whether or not they have a license does not keep them off the road?

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, Ladies and Gentlemen of the House: The answer to the first question is no and the answer to the second question, when you talked about repeat offenders, it is a different law, it is a different problem. That, in my opinion, is something that fogs this issue. What we are talking about here is a serious issue that has to do with drunk driving, has to do with a threat that all of us and our constituents are under when somebody is driving and drinking too much.

The administrative steps of losing a license when excessive use of alcohol has been shown by a test is the basis in this statute for administratively losing a license, just as it already is the basis in the present law if someone refuses to take that test. That is what we are talking about. We are not talking about changing our judicial fabric, we are not talking about changing our Constitution, we are talking about one very serious issue and because it is so serious, that is why the Judiciary Committee, the majority of it at any rate, has supported this legislation, and it is why I urge its passage.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Walker.

Mr. WALKER: Mr. Speaker, I would like to pose a question through the Chair. What is going to happen on that rare occasion, but I am certain that it will occur, when somebody has been adjudged not guilty and has lost his license, is there any provision in the bill to pay him or make amends to him when he may have had to hire drivers and things like that or will he have to come down here and throw himself on the mercy of this body to be reimbursed by the state?

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

The Chair recognizes the gentleman from Saco, Mr. Hobbs.

Mr. HOBBS: Mr. Speaker, Men and Women of the House: In response to the good gentleman's question, it is an excellent question, and to put it bluntly, tough luck. That person who did in fact go through the process, was found not guilty, tough luck. They lost their license, I guess, and that would be the cruel response. That is the problem with the bill and I think you highlighted it very well.

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

Mr. MACEachERN: Mr. Speaker, Ladies and

Gentlemen of the House: As most of you know, I am a retired police officer. Probably you think that I would support this type of legislation but I see a great danger in this bill. This bill sets up any police officer in the State of Maine, whether he is a constable, deputy sheriff, state police officer or a city policeman or whatever as judge and jury. He makes a decision on the spur of the moment whether or not a person is going to drive tomorrow and for the next 20 days or whatever, and I think that that is a dangerous situation.

I realize that there is a great problem with OUI in the state and all over the country and I realize that it is very serious, but I don't think this is the right approach. I think it is just putting too much responsibility on one person's judgment. I feel that is why we have courts, we have courts to make these decisions and to weigh the evidence with an unbiased mind. I don't think it would be fair to the police officers and I don't think it would be fair to the people to pass legislation of this type.

I hope you vote for the Minority Report.

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

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I must say that I wasn't surprised at the good gentleman from Durham's answer to my question because it seems to me that the guy who is driving under the influence now is a very popular item to kick around and probably he well deserves it. I always felt that the legislature was here to deal with everybody on a fair and equitable basis, and it seems to me that you are singling out this one type of criminal and giving them a little bit different treatment than you are some of these other ones.

Just recently in the paper they had a story about someone who had been arrested on numerous occasions for molesting young children and he was released on bond and then he molested somebody while he was out on bond. What about this person? If you are going to apply this type of reasoning for the drunk driver, then let's go with some crimes that are in my opinion just as heinous if not worse.

I know it is very popular to go back home and tell people that you did something to really punish the drunk driver, but I think probably this particular bill today punishes a lot more than just the drunk driver, it punishes, I believe, the Constitution of the United States of America, a little piece of paper called the Bill of Rights, and certain things that I believe everyone in this House believes in or we wouldn't be here.

When you leave the job of being judge and jury to a police officer, I think you are asking for big trouble. I can tell you this right now, everybody in this body and the other body who drives around with our blue plates and red plates should be particularly aware of the situation. I had a certain police officer in my town that took great joy and relished in stopping me at every opportunity, especially if he had seen me parked at a restaurant or at the Elks Lodge in Waterville to take a chance and see if he could get the Representative from Waterville for OUI. Well, little does he know that when I was at the restaurant and at the Elks, I was drinking Sprite and iced tea, so I don't mind him stopping and chatting with me every time he chooses to do so. But we do have police officers on the Waterville police force that for some particular reason have probably not all the qualifications, I would say, to be a good, dedicated law enforcement officer. This is the guy that bothers me a little bit. This is the guy that can take somebody's reputation and integrity and driver's license under this situation and pull it away on a judgment that he has.

If you want to deal with the drunk driver fairly and equitably and punish him by taking his license away for five years or ten years, let's do it, but let's do it under the confines of the law the way we operate today. But to go and

pass a law like this and allow some of the other things to occur, you just think back and ask how many times your constituents will complain to you about this very problem, you ask yourself if we are doing the right thing. Are you punishing the repeat offender who can probably care less whether he has a license or not or are you punishing all of the people in the United States of America that believe in the things that we certainly do believe in, I hope we do.

You know, it is a funny thing, one of the reasons these guys are back out driving drunk is that as soon as they get picked up, there is a line of lawyers there to make sure they get out. It is very amusing to me to see two lawyers on opposite sides of the fence today.

It bothers me a little bit that this gentleman would be out driving drunk again three and a half hours after he was in a major accident because I think there is a flaw somewhere in our system that allows a person to go back out and hand him his car keys when he is still drunk. It reminds me a lot of a police officer who knows somebody is under the influence and lets him drive two miles until they get to their house, and when they get there the wrecker is there waiting to tow the vehicle away and he arrests the guy immediately after stepping out of his car for OUI. I asked a police officer why in heaven's name did you let the guy drive two miles when he could have killed countless people along the way, why didn't you stop him right away? I have never gotten an answer.

I am not standing up for the guy who is driving under the influence, believe me. I hope that I am standing up for what we believe is right and wrong. In no defense of the drunk driver, I think you should use the same premise all the way across the board. If we are going to do that, I hope that the Judiciary Committee is going to be coming out with the same type of legislation to deal with these other repeat offenders who are allowed out on bond or bail because their lawyer happens to be a clever man and then go and roam the streets where they can repeat the same crime that they are in there for.

I am not voting for this bill, not because I am in favor of the drunk driver but because I think right is right and wrong is wrong.

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

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I don't believe it is going to be the officer's word against the person driving. It is the blood test that is going to determine whether a man is under the influence or not. When that blood test says he is, then why shouldn't he lose his license? If he refuses to take the blood test, he certainly will lose it.

In my area, when young people are picked up or anybody picked up for drunken driving and they keep on driving afterwards awaiting trial, people blame the police officers — why are you letting this man still drive? Well, it is not their fault, it is the court action, the way the law is, dicker and try to get the man off, so I say to you, this bill is needed and I certainly will support it.

The SPEAKER: The Chair recognizes the gentlewoman from Houlton, Mrs. Ingraham.

Mrs. INGRAHAM: Mr. Speaker, Ladies and Gentlemen of the House: I agree with Representative Jacques. I am amazed that this is not unconstitutional. It is arbitrarily depriving people of their rights; if not rights, the privilege of driving.

I have a question which is, what happens to the person arrested for drunken driving that is on prescribed medication or even Dristan because some people have a reaction to that? It has similar symptoms of drunkenness. This person is arbitrarily deprived of his driving license. I think it is a very dangerous bill.

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

Mr. SCARPINO: Mr. Speaker, Ladies and

Gentlemen of the House: I would just like to make a comment on a few things the gentleman from Saco, Mr. Hobbins, said. In his first commentary he spoke of people making mistakes. Well, people do make mistakes, we all make mistakes, and I will grant that the police officer could make a mistake. He could make a mistake in reading the blood test reports or his perception might be a little off, but with this bill we are given a choice. No matter what we do we have to take a chance of making a mistake. Either we take the chance of making a mistake that might cause some individual his license for 20 or 30 days or we take the chance of making a mistake that might cost somebody his life. Myself, I prefer that if I am going to make a mistake, I want to make one on the side of safety.

I would support the Majority "Ought to Pass" and not the Minority "Ought Not to Pass" on this.

The second comment that Mr. Hobbins made was whether when somebody asked him what do we say to the individual who, for whatever reasons, is found innocent and has lost his license for 20 or 30 days. Mr. Hobbins' response was — the only thing we could tell that person is "tough luck." What do we tell the person who has lost their wife or their husband or the kids who have lost their father because we let somebody drive after they have been picked up for OUI? Do you say tough luck kid, your father is dead?

If we are going to make decisions on that, I don't think there is any question what way we have to go.

I would urge your opposition of the Minority "Ought Not to Pass" Report.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I sat back, I didn't think I would have to get up on this one, but I listened to my favorite trooper in the back row. I guess it has been a long time since he drove over those roads. It has been a long time, his memory is now failing him, apparently.

I would like to read here just a few lines. One is from the Secretary of State that he sent to our committee, part of his testimony. "We currently suspend 50,000 driver's licenses a year for all reasons." Other evidence that we have gotten on this bill, the question of constitutionality — oh how I heard that term abused here today.

You know, Mr. Speaker, it brings me right into a position today that I only wish, once again, that our rules would permit me, when I am speaking to my chairman from Saco, to address him as "my son." He is a great chairman and often seeks my guidance; he did not on this bill.

I only want to remind you of this letter that was included in the testimony. The Presidential Commission on Drunk Driving, dated December 13, 1982, pronounces "states should enact legislation to require prompt suspension of license of drivers charged with driving under the influence upon finding alcohol levels of .10."

Regarding the constitutionality of an administrative per se hearing, this very question has been brought before the courts in Minnesota, West Virginia, Iowa, Delaware, New York, Oklahoma and the District of Columbia, they all have this current law. There are many cases in case law upholding the constitutionality of such a concept.

Getting back to our Secretary of State, he gave us a three line sentence to close his letter — "In summary, this is a good bill, constitutionally sound, nationally recommended, and one which should not only contribute to our OUI campaign but a bill that is also self-financing." We have a grave obligation to remove that drunken driver from the road. As you will recall last session, that drunken driver that we often heard of in here, that went down

the street and hit that woman pushing the baby in the baby carriage, we have an obligation to bring that woman back today and tell her, we can make the streets still safer for her and that baby.

I urge you to defeat the minority proposal that is before this House today so we can move on and pass the Majority "Ought to Pass" Report and sent it down.

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

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I hate to follow the good gentleman from Portland, Mr. Joyce, because he is so good at what he does. When he talked about 50,000 licenses suspended, I think you will find that it also says, "upon conviction," very important point, I think.

My good friend, the gentleman from Island Falls, Mr. Smith, has talked about the alcohol tests. It was my understanding that that is only part of the evidence when a police officer or a constable takes you to court on what is used to determine your guilt by a judge and jury. I would hope that the blood alcohol test is not the only thing that is used when they determine, but maybe I am incorrect.

When the good gentleman from St. George, Mr. Scarpino, was talking about being sure on the side of safety and talking to the child and telling him his father was dead and whatever — you know, there probably is nobody in this House that enjoys children anymore than I do and if I thought passing this bill would save any of the little children running around on our streets today and justly do so, I would be all for it, but I don't think that is going to be the case. When Mr. Scarpino was telling us the story it reminded me of a story that the history teacher told me when I was in high school. There was one of Benito Mussolini's men that was accused of collaborating with the enemy, which happened to be the United States, they were pretty sure that they had the guilty man but there were five of them involved. After two weeks they couldn't prove who the guilty of the five were, so Mr. Mussolini, in his good judgment, said, we have to make sure we get the right one so let's hang all five, which he did. I couldn't help but think back to that story when Mr. Scarpino was telling us his feelings on this bill. That bothered me a little bit then and it still bothers me today.

Mr. Hayden of Durham was granted permission to speak a third time.

Mr. HAYDEN: Mr. Speaker, Ladies and Gentlemen of the House: The good gentleman from Waterville, he is a great orator and I appreciate the fact that he loves children, loves the Constitution and hates Mussolini, but I think we have still got to get back to focusing on the thing we have before us today. Let's take one last look at it.

We are not going to end up treating accused rapists and murders the same way that people are being treated in this, so even though some of you may want that, you are not going to get my recommendation to do that because we are talking about something else. There we are talking about somebody who is facing a loss of their liberty, who is facing imprisonment. Here we are talking about someone who is facing the loss of the privilege of driving, and we are asking ourselves, do we want to treat that person, who has shown by tests, not by the whim of a police officer who might be after somebody even though they are drinking Pepsi Cola and iced tea, but who has shown by a test that he had been drinking excessive alcohol. Do we want to treat that person the same way that we treat someone who has already refused a breath test by automatically taking his license away?

I think this is a strong bill, I think it is harsh medicine, I think it is sensible. If you disagree with Representative Hobbins or with Representative, the good gentleman from Waterville, and any others who may have that position, if

you agree that this is a sensible measure, then you would vote against the pending motion and try to pass the bill.

Mr. McPherson of Eliot 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 Newport, Mr. Reeves.

Mr. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: I do, indeed, find it difficult to rise this morning and ask your support of the motion before you. I think most of you know that I am a retired police officer. I agree with my brother retired trooper up there, Mr. MacEachern, I believe that Mr. Hobbins gave you an excellent presentation on this bill. It is a hard, tough piece of legislation. I referred to it several times in our committee, and Mr. Hobbins agrees, and I can't understand why some of these other attorneys do not, but this is, in fact, ladies and gentlemen, a pre-judgment bill. What is the matter with the good old American judicial system? I always thought and have been taught that anyone in this great country is innocent until proven guilty.

Mr. Walker asked an excellent question — what about the individual who has been prejudged, mistreated, punished before his day in court?

Ladies and gentlemen, I am not standing up here this morning and I don't want to leave any doubt in anyone's mind, I do not, never have and cannot condone OUI, drunken driving or whatever you wish to call it. I have been down the road, I have seen results. You are talking about people getting killed. I have seen them, I have been there, but we are not talking strictly with that this morning, we are talking about the license. The person might not be involved in an accident, but he is being charged with an offense, and someone a while back said that he was a criminal — not necessarily. There are two types of OUI convictions, and the first one is an infraction, a misdemeanor, it is not a criminal offense. But you are talking about depriving this individual of his or her right, privilege, some would say, but we pay very dearly for that privilege. I have seen it more than double here in the last few years.

I will agree again with Mr. MacEachern, policemen are only normal people. I said many times when I was wearing that uniform, you take this uniform off and I am just the same as anyone else, and what I am saying is, we can, we have, we will make mistakes.

Mr. Smith mentioned that this was going to be decided by the blood alcohol test. Ladies and gentlemen, those of you who know anything about the law, and these attorneys all know it, these retired officers all know it, that is only one piece of evidence that would be introduced in a court of law, and only one piece. This in itself is not enough to convict any individual. The first thing you have got to prove is operation. You have got to put the individual behind the wheel, and if you can't do that, if you didn't actually see that individual driving yourself and you do not have a witness, and I have seen this many times in my career, as a result of an accident it is extremely difficult, and in many cases impossible, to put that individual behind the wheel. The accident happened sometime before you got there, they are out running around. If there were two people in that vehicle, they can both deny that they were driving, the operator of the vehicle can get so confused that he might not be a good witness to put that individual behind the wheel, so what happens? You are going to charge that individual, in all probability, if he is showing

symptoms of being under the influence, you are probably going to charge him, but you are not going to convict him in court. So what happens? He has lost his license, the Secretary of State has suspended him because you charged him, but if you can't prove it in court, he has been punished before his day in court. I say to you ladies and gentlemen, I hope you will support the motion in front of you and let's go along with our good judicial system.

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

Mr. DAVIS: Mr. Speaker, Ladies and Gentlemen of the House: I am the sponsor of this bill and I feel very, very deeply about it.

Once again I would like to state, a license is a privilege, and anytime we abuse privileges, we can expect a reaction not only from our fellow men but from the social laws that we have set up.

It has been stated here that a person is subject only — it appears to me anyway — to what the police officer does and his observations. It is not his observations, it is what he determines scientifically is the blood alcohol content of this individual. That does not necessarily mean that he is going to be off the road if an error has been made. He has 10 days to request a hearing with the Secretary of State. There he can plead his case and if he has unjustly been arrested and detained, the Secretary of State will immediately let him have his license back.

Two years and eight weeks ago today a young man came to my desk who had been sitting there, I was sitting up in seat 41, and he said to me, Mr. Davis, this weekend I am going down to Old Orchard to a concert and I may be a little more pale Monday than I would be ordinarily. We had a thing going between us over weekends. I would say, Dave, you look a little pale this Monday morning, what happened this weekend? We had this thing going and he came up and said to me, I am going to be a little more pale Monday because I am going to the concert, we are going to be out late, and I will tell you, ladies and gentlemen, he was pale, he was laid right out in a casket Monday morning because a drunken driver killed him at seven o'clock that evening.

I think it is our responsibility, deep responsibility, to do something about this. We know that this gentleman who caused this death was on the road right after, similar to what Representative Ainsworth has explained to you here, right on the road and still going for months afterwards. If we want that to continue, vote for this minority report, but if you want to do something about this problem, let's defeat this minority report and accept the majority report.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Saco, Mr. Hobbins, that the Minority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Allen, Andrews, Armstrong, Baker, Beaulieu, Benoit, Bost, Bott, Brodeur, Brown, D.N.; Cahill, Carroll, D.P.; Carter, Cashman, Chonko, Clark, Connolly, Connors, Connolly, Cooper, Cote, Crouse, Daggett, Dexter, Diamond, Dillenback, Erwin, Gauvreau, Gwadzky, Hall, Handy, Hobbins, Gagnon, Jalbert, Joseph, Kane, Kelleher, Kelly, Lebowitz, Lehoux, Lewis, Locke, MacEachern, Masterton, Matthews, Z.E.; Maybury, Mayo, McCollister, McGowan, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, E.M.; Murphy, T.W.; Murray, Nadeau, Reeves, J.W.; Richard, Roberts, Roderick, Rolde, Sherburne, Sproul, Stevens, Theriault, Vose, Walker, Webster, Wentworth, Zirkilton.

NAY—Ainsworth, Anderson, Bell, Bonney, Brannigan, Brown, A.K.; Brown, K.L.; Carroll, G.A.; Cox, Crowley, Curtis, Davis, Drinkwater, Foster, Greenlaw, Hayden, Hickey, Higgins, H.C.; Higgins, L.M.; Holloway, Ingraham, Jack-

son, Joyce, Ketover, Kiesman, Kilcoyne, LaPlante, Lisnik, Livesay, MacBride, Macomber, Manning, Martin, A.C.; Martin, H.C.; Masterman, Matthews, K.L.; McHenry, McPherson, McSweeney, Nelson, Norton, Paradis, E.J.; Paradis, P.E.; Parent, Paul, Perry, Pines, Pouliot, Randall, Ridley, Rotondi, Salsbury, Scarpino, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Stevenson, Stover, Strout, Swazey, Tammara, Telow, Thompson, Tuttle, Willey, The Speaker.

ABSENT—Callahan, Carrier, Day, Dudley, Mahany, Perkins, Racine, Reeves, P.; Seavey, Weymouth.

Yes, 73; No, 68; Absent, 10.

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

Sent up for concurrence.

The Chair laid before the House the following matter:

Bill "An Act to Prevent Unjust Enrichment by Retention of Surplus Upon Foreclosure of Municipalities and Sewer Districts" (S. P. 486) (L. D. 1479) which was tabled and later today assigned pending further consideration.

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

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

The SPEAKER: The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Men and Women of the House: I would hope that you would reject the motion to recede and concur so that we can adhere to our position of yesterday.

We discussed this matter at length yesterday, it deals with the issue of the time when a town or a municipal sewer district or city forecloses on a sewer lien or a tax lien, and once the city or town has obtained possession of that land, what they do with it. The bill, as I expressed yesterday, has a good aim, it aims, once that land is sold, to return any surplus, after the expenses and taxes and interest have been deducted, it returns the surplus to the owner.

My objection is, first of all, the inequality with which the bill treats town owned land and state owned land and that it fails to address the problem at all with regard to state tax acquired property. Secondly, I have great misgivings with our dicker around with a tax lien procedure that has been in effect for over 40 years.

The bill, as it is drafted and as amended by the Senate Amendment (S-183) deals with the issue of surplus. In an attempt to revive what was a dead issue here in the House yesterday, an amendment has been tacked on in the other body which would allow the municipalities to retain 20 percent of the surplus and return the balance to the towns. I believe it is fair that the towns return everything, the surplus, to the owner if that is the way we want to go as a policy. It is not consistent at all to expect that the towns should retain 20 percent and get a bonus of 20 percent and not follow the rules in other respects.

I guess my primary objection is, as I expressed yesterday, when the town takes property for non-payment of taxes or the non-payment of a sewer lien, there are some 60 to 70 different steps that that town has to take in order to perfect its lien. From the date that the taxes are assessed, there is probably, in most practice, a six-month period before a lien is assessed. From that date, there is an 18 month period before the town actually obtains title to the property, and most towns address the problem of residences by letting people live there. They have addressed them on the local level by passing ordinances or adopting articles in their town meetings or by their city councils addressing this problem, and I believe that is where the issue needs to be addressed, at the local level, and it can be addressed at

that level.

I urge you to oppose the current motion so that we can adhere to our former position whereby we accepted the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, I have an amendment which I think will address some of the problems that Representative Soule has raised and I have had with this bill, and I would ask somebody to table this until later in today's session.

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

Ms. BENOIT: Mr. Speaker, I move that this be tabled until later in today's session.

Whereupon, Mr. Macomber of South Portland requested a vote.

The SPEAKER: The pending question is on the motion of the gentleman from South Portland, Ms. Benoit, that this be tabled and later today assigned pending the motion of Mr. Hobbins of Saco to recede and concur. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

60 having voted in the affirmative and 27 having voted in the negative, the motion did prevail.

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

Unanimous Leave to Withdraw

Representative Masterman from the Committee on Taxation on Bill "An Act to Repeal Certain Sales Tax Exemptions and Provide for Tax Reform" (H. P. 965) (L. D. 1246) reporting "Leave to Withdraw"

Representative McCollister from the Committee on Taxation on Bill "An Act to Increase the Excise Tax on Dessert Wine and to Permit the Sale of Dessert Wine at Retail Stores" (H. P. 1284) (L. D. 1701) reporting "Leave to Withdraw"

Representative Kelleher from the Committee on Appropriations and Financial Affairs on Bill "An Act to Identify and to Promote Excellence in Schools" (Emergency) (H. P. 1163) (L. D. 1545) reporting "Leave to Withdraw"

Representative Kelleher from the Committee on Appropriations and Financial Affairs on Bill "An Act to Promote Efficient Completion of the State Weatherization Program" (Emergency) (H. P. 1207) (L. D. 1606) reporting "Leave to Withdraw"

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

Consent Calendar

First Day

(H. P. 1317) (L. D. 1746) Bill "An Act to Increase Funding Allocation for the Bureau of Oil and Hazardous Materials Control for Fiscal Year 1983" (Emergency) — Committee on Appropriations and Financial Affairs reporting "Ought to Pass"

There being no objections, under suspension of the rules the above item was given Consent Calendar, Second Day, notification, passed to be engrossed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The Chair laid before the House the following matter:

An Act to Require Interdepartmental Coordination of Social Services Planning (H. P. 1255) (L. D. 1668) which was tabled and later today assigned pending adoption of House Amendment "A" (H-347)

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

House Amendment "B" to House Amendment "A" (H-383) was ready by the Clerk.

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

Mr. BRODEUR: Mr. Speaker and Members of the House: This House Amendment simply corrects an error of reference in the original amendment.

Thereupon, House Amendment "B" to House Amendment "A" was adopted.

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

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

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

An Act to Revise the Truancy Laws (H. P. 877) (L. D. 1131) (C. "A" H-213 and H. "C" H-264)

— In House, Passed to be Enacted on June 1, 1983.

— In Senate, Passed to be Engrossed as Amended by Committee Amendment "A" (H-213) and Senate Amendment "A" (S-191) in non-concurrence.

Tabled — June 9, 1983 by Representative Locke of Sebec.

Pending — Further Consideration.

On motion of Mrs. Thompson of South Portland, the House voted to recede.

Senate Amendment "A" (S-191) was read by the Clerk.

Mrs. Thompson of South Portland offered House Amendment "A" to Senate Amendment "A" and moved its adoption.

House Amendment "A" to Senate Amendment "A" (H-385) was read by the Clerk.

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

Mrs. THOMPSON: Mr. Speaker, Men and Women of the House: This bill has been before the other body for almost two weeks, since we passed it with more than a two-thirds majority two Fridays ago. The bill was amended. We had many discussions between those who were amending the bill and those of us who felt that truancy laws should be firm, and the amendment I am presenting in fact reflects a compromise. We are placing back on the bill the fine at the discretion of the court, which will be up to \$200 for those parents of young children who are found to be primarily responsible for the child's truancy. This is the issue that more than two thirds of you support two weeks ago.

Thereupon, House Amendment "A" to Senate Amendment "A" was adopted.

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

The bill was passed to be engrossed as amended by Committee Amendment "A", Senate Amendment "A" as amended by House Amendment "A" thereto and House Amendment "C" in non-concurrence and sent up for concurrence.

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

Ought to Pass in New Draft

Report of the Committee on Energy and Natural Resources on Bill "An Act to Establish a Program to Abate Clean-up and Mitigate Threats to Public Health and the Environment from Uncontrolled Hazardous Substance Sites" (Emergency) (S. P. 565) (L. D. 1638) reporting "Ought to Pass" in New Draft (Emergency) (S. P. 617) (L. D. 1751)

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 read once and assigned for second reading later in the day.

Ought to Pass in New Draft/New Title

Report of the Committee on Health and Institutional Services on Bill "An Act to Stream-

line Information Processing by Income Supplementmentation and Social Service Programs" (S. P. 533) (L. D. 1564) reporting "Ought to Pass" in New Draft under New Title RESOLVE, Authorizing the Streamlining of Information Processing by Income Supplementmentation and Social Service Programs (Emergency) (S. P. 613) (L. D. 1748)

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 and the New Draft read once. Under suspension of the rules, the New Draft was read the second time and passed to be engrossed in concurrence.

Report of the Committee on Energy and Natural Resources on Bill "An Act to Create an Uncontrolled Site Clean-up Program and to Provide for the Removal of Certain Hazardous Waste from the McKin Site in Gray, Maine" (Emergency) (S. P. 465) (L. D. 1419) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Appropriate Funds for the Removal of Certain Hazardous Waste from the McKin Site in Gray, Maine" (Emergency) (S. P. 614) (L. D. 1750)

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 and the New Draft read once. Under suspension of the rules, the New Draft was read the second time and passed to be engrossed in concurrence.

Non-Concurrent Matter

Bill "An Act Relating to Training Penobscot Law Enforcement Officers" (S. P. 81) (L. D. 192) which was passed to be engrossed as amended by House Amendment "A" (H-219) in the House on May 10, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-186) in non-concurrence.

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

Bill "An Act Relating to Involuntary Admission" (Emergency) (H. P. 1321) (Presented by Representative Carroll of Gray) (Cosponsors: Senators Bustin of Kennebec, Gill of Cumberland and Representative Nelson of Portland) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Committee on Judiciary 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.

Bill "An Act to Improve the Evaluation of Hearing Loss Under the Workers' Compensation Act" (H. P. 1322) (Presented by Representative Beaulieu of Portland) (Cosponsor: Senator Dutremble of York) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Committee on Labor 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, all matters acted upon requiring Senate concurrence were ordered sent forthwith.

House at Ease

Called to order by the Speaker.

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

Unanimous Leave to Withdraw

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to

Withdraw" on Bill "An Act to Amend the Authorization for the Community Development Block Grant Program to Include the Development Opportunity Fund" (S. P. 476) (L. D. 1463)

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on RESOLVE, to Provide Funds to the Department of Human Services to Study Radon in the Air and Waters of this State (S. P. 489) (L. D. 1489)

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

Bill "An Act to Establish a Program to Abate, Clean up and Mitigate Threats to Public Health and the Environment from Uncontrolled Hazardous Substance Sites" (Emergency) (S. P. 617) (L. D. 1751)

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

Mr. Hall of Sangerville offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-386) was read by the Clerk and adopted.

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

By unanimous consent, ordered sent forthwith to the Senate.

Bills Held

An Act to Amend the Law Relating to Tax Increment Financing (H. P. 1039) (L. D. 1364)

— In House, Passed to be Enacted on June 10, 1983.

Held at the request of Representative McCollister of Canton.

Mr. McCollister of Canton moved that the House reconsider its action whereby the Bill was passed to be enacted earlier in the day.

The SPEAKER: The gentleman from Canton, Mr. McCollister, moves that the House reconsider its action whereby this Bill was passed to be enacted.

The gentleman may proceed.

Mr. MCCOLLISTER: Mr. Speaker, Ladies and Gentlemen of the House: First, I would ask for a roll call vote on reconsideration.

The problem this morning was, a statement was made by Representative Higgins when he read from a report that was read into the record in the other house that the fiscal impact would only be temporary. I find a fiscal impact of 10 to 20 years not temporary. Having been lobbied very hard by the City of Auburn, I felt that we had done enough for industrial development in that city this year so that I was opposed to this and I have been.

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Canton, Mr. McCollister, that the House reconsider its action of earlier in the day whereby this Bill was passed to be enacted. All those in favor of reconsideration will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Andrews, Armstrong, Baker, Beaulieu, Bost, Brannigan, Carroll, G.A.; Carter, Chonko, Clark, Conary, Connolly, Cooper, Cote, Cox, Daggett, Erwin, Gauvreau, Gwadnosky, Hickey, Higgins, H.C.; Hobbins, Jacques, Joyce, Kane, Ketover, Killoynne, LaPlante, Lehoux, Livesay, Macomber, Manning, Martin, A.C.; Martin, H.C.; Matthews, Z.E.; Maybury, McCollister, McGowan, McHenry, McSweeney, Melendy, Michael, Mi-

chaud, Mitchell, E.H.; Murphy, E.M.; Norton, Paul, Perry, Pouliot, Reeves, J.W.; Richard, Ridley, Roberts, Rotondi, Smith, C.B.; Soucy, Soule, Stover, Swazey, Tuttle, Wentworth.

NAY—Anderson, Bell, Bonney, Bott, Brodeur, Brown, K.L.; Cahill, Carroll, D.P.; Cashman, Conners, Crouse, Crowley, Curtis, Davis, Diamond, Dillenback, Drinkwater, Foster, Greenlaw, Hall, Handy, Hayden, Higgins, L.M.; Holloway, Ingraham, Jackson, Joseph, Kelleher, Kelly, Kiesman, Lebowitz, Lewis, Lisnik, Locke, MacBride, MacEachern, Masterman, Masterton, Matthews, K.L.; Mayo, McPherson, Mitchell, J., Moholland, Murphy, T.W.; Murray, Nadeau, Nelson, Paradis, E.J.; Paradis, P.E.; Parent, Pines, Roderick, Scarpino, Seavey, Sherburne, Small, Smith, C.W.; Sproul, Stevens, Strout, Tammara, Telow, Vose, Walker, Zirkilton.

ABSENT—Benoit, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Day, Dexter, Dudley, Jalbert, Mahany, Perkins, Racine, Randall, Reeves, P.; Rolde, Salsbury, Theriault, Thompson, Webster, Weymouth, Willey, The Speaker.

Yes, 63; No, 66; Absent, 22.

The **SPEAKER**: Sixty-three having voted in the affirmative and sixty-six in the negative, with twenty-two being absent, the motion does not prevail.

Tabled and Assigned

Bill "An Act to Provide for Swifter Disposition of Drunk Driving Cases" (H. P. 830) (L. D. 1068)

— In House, Minority "Ought Not to Pass" Report of the Committee on Judiciary read and accepted on June 10, 1983.

Held at the request of Representative Cahill of Woolwich.

Mrs. Cahill of Woolwich moved that the House reconsider its action whereby the Minority "Ought Not to Pass" Report was accepted.

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

Mr. **KELLEHER**: Mr. Speaker, Ladies and Gentlemen of the House: This bill was debated at great length. I am simply going to expedite it along because I don't believe anything new can be added or subtracted. I ask for the yeas and nays.

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

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

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

Mr. **HIGGINS**: Mr. Speaker, Ladies and Gentlemen of the House: I hesitate to rise this morning on this bill simply because my good seatmate here is the prime sponsor and he was nice enough to ask me to be the cosponsor and I felt that I should stay out of the debate simply because I didn't want to appear that it was partisan in nature, and it has not been. If you have looked at the roll call, you can easily see that it has not been a partisan bill. But that doesn't diminish the support that I have for it.

I just want to make a couple of points. We talked this morning about the fact that to operate a motor vehicle in this state is not a right, it is less than that, you have the license on a very temporary basis as long as you obey the laws, and I don't think from looking at it and listening to the debate and what the bill intends to do that we are really unduly punishing anybody for an act that they have committed. We may have inconvenienced them some, yes, but the fact that they were out there on the road and apparently through being tested scientifically showed to have been consuming alcohol, I think that is sufficient reason to keep them off the road again until they are

proven guilty, or innocent, or whatever the case might be. I think the presumption is there, that is correct, but we are not talking about denying anybody their constitutional right, we are not talking about putting them in jail, presuming that they are guilty, we are just saying the presumption is, because you took a test and failed that test, that you were operating under the influence and you ought not to be able to continue to drive until you are proven innocent.

If I am driving down the road in an automobile and I am stopped and the police officer checks my brakes and they are found not to work at all, that is it, I cannot operate that motor vehicle until those brakes are corrected. That is basically what we are saying here, only instead of getting at the brakes of the vehicle, we are trying to get at the nut behind the wheel, if you will, who is driving under the influence. I still have no problem with this. I know that some of the lawyers have and I know some of you feel that we are unduly punishing somebody.

We heard a lot of stories today about people who, while they were waiting for trial, or even in one case a couple of hours after they had been picked up once were picked up again, I think we have to ask ourselves, who are we protecting? Don't we have the right to protect citizens in this state when they are out there meeting somebody coming the other way who is intoxicated?

I hope you will vote in favor of the motion to reconsider and I hope you vote against the motion to accept the "ought not to pass" report so that we can accept the "ought to pass" report.

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

Mr. **HOBBS**: Mr. Speaker, Men and Women of the House: I would hope that you would stand fast and support the minority "ought not to pass" report. As I mentioned earlier, the premise behind this bill is that anyone who is stopped or everyone who is stopped is guilty, and that is not the case at all. I would remind a few individuals that there was a case involving a United States Congressman of the same political persuasion as Representative Higgins by the name of Representative Crane. He was charged with operating under the influence, and you know what happened? Three and a half months after he was charged he was found not guilty. If Representative Crane was a resident of Maine and was involved, if in fact this bill had passed, Representative Crane would have been walking for three and a half months before his day in court.

I agree that they might be a potential problem involving someone who is involved in an accident, charged with operating under the influence, who causes serious injury or causes a death, but we have two other vehicles before the Judiciary Committee which will be up for your consideration next week to address that problem. Those bills can be amended to address the issue of whether or not to take the license from someone pending an administrative hearing by the Secretary of State when there is serious auto injury or a death caused by a motor vehicle accident which involves drinking.

This bill goes too far and I urge you to stand by your previous position because we all are concerned about this situation, but I think that there are other avenues and there are other approaches to take than to take that brush and to paint over everyone, which this bill attempts to do. I urge you to vote against the pending motion.

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

Mr. **MacEACHERN**: Mr. Speaker, just a couple of points. I don't want to belabor this debate. Mr. Higgins, the gentleman from Scarborough, mentioned the fact the license should be taken away pending conviction. As long as I have been involved in law enforcement, which

is a few years, the burden of proof has rested with the state, not with the respondent. The state must prove its case before he is found liable for his crime.

Secondly, the driver's license may be a privilege, but in this day and age, the driver's license is a necessity. I don't think there is anybody in this room that doesn't need a driver's license either to get to their work or in the performance of their work. And I consider it a very serious thing when you take away that right or that privilege or that necessity from any driver in the State of Maine.

I agree a hundred percent with Representative Hobbins, that a person should be found guilty before this right is taken away from him. I urge you to vote not to reconsider this bill.

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

Mr. **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House: The person is not guilty, he is only being suspended on his license. This bill in no way is a conviction. It is only treating those who are operating under the influence the same, an equal justice law. If you refuse to take the test, your license is suspended for up to 180 days. You are assumed to be above the alcohol level allowed. If you take this and are above that level, at the present time you can keep on operating. I believe you should have your license suspended if you are above the level, the same as those who refuse to take the test. Only by trial will you be convicted.

Representative Jacques is concerned about others involved in rape, child molesting and so forth, well this bill can't address those issues; if it could, I certainly would be behind it.

The breath test is by the lab, not by the police. If it were the police alone that would be enforcing this, I certainly would be against it.

The breath test is by the lab, not by the police. If it were the police alone that would be enforcing this, I certainly would be against it.

It is time to suspend those who are playing for time through this court system under the present law. I hope you will pass this law, I believe it will work well.

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

Mr. **McHENRY**: Mr. Speaker, Ladies and Gentlemen of the House: I believe this would be a good bill. The only part I don't like is if the person is proven innocent. I would be willing to see an amendment put on to take care of that part where that person would be compensated for the problem of cost.

For Representative MacEachern — what happens to a person when a game warden catches him jacking at night with a truck? Does not the warden take away the gun, the truck and everything?

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

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

Mr. **MacEACHERN**: Mr. Speaker, Ladies and Gentlemen of the House: I think you are comparing apples to oranges as far as that goes. The gun, the truck and the ammunition and the blood and the whole business is evidence. The driver's license is not evidence.

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

Mr. **MATTHEWS**: Mr. Speaker, Members of the House: I rise today to take exception to what the gentleman from Scarborough, Mr. Higgins, said and I would just urge the members of this House that we are all lawmakers and from the vote today, I don't think it was a vote where lawyers were on one side and we were on the other. I think there were lawyers on either side and I would also say that there were probably more lawyers against it.

Your rights, as Mr. Higgins said, might be inconvenienced. I would say to you that not only would you be inconvenienced, they are going to

be infringed upon. It is our right and our duty and obligation to the people of this state to protect the Constitution and I think this bill runs against that grain.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Vose.

Mr. VOSE: Mr. Speaker, Ladies and Gentlemen of the House: I guess I am a little mixed up. If somebody would correct me if I am wrong, if a person is stopped, suspected of and then takes a test and is proven to be incapable of driving because he is drunk or under the influence of alcohol, don't we take the key at that time away from that person and take him to the police station? Isn't he released only if he is bailed out and then that person who bails him out takes the keys to the automobile and he doesn't drive? Then, again, is he made to stay in that cell until such time as he dries out? I don't know just exactly what it is but that is my impression. I am awfully surprised to think that that person under the influence of liquor is allowed to drive again.

We are assuming now that when he finally sobers up that he is going right out and get drunk again. It appears to me that when a person is under suspicion of possibly going to have their license taken away because they have been drinking, it is going to surprise me to see this person going back out on the road drinking again unless, of course, he is an alcoholic, that could be. So I just don't see why it is necessary to change the law at this time. I think we have ample protection to take these people off the road at the proper time, when they are drinking.

I hope you don't reconsider this.

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

Mr. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: I very reluctantly rise again this afternoon. I would try to answer Representative Vose's question and if there is any doubt in your minds, he was absolutely correct.

When a police officer stops an individual and charges him with operating under the influence, he has been physically arrested. He is transported to the local police station, if they have one, or he is transported to jail. His keys are taken away from him, his car is secured, he is incarcerated and the only way he can get released is by bail. If he is going to bail himself out on his cash bail, the person in charge of where he is incarcerated is going to make sure that he has sobered up before his keys are released to him and he is released to go. If someone else comes to go his bail and pick him up with the understanding that they are going to take him home, if they are a friend, they are not going to turn the keys over to him either.

To get back to the basic issue, it was mentioned earlier that a person might be inconvenienced. Well, ladies and gentlemen, I submit to you this afternoon that it can be a considerable inconvenience if that license is suspended before he has his day in court and because of that suspension he has lost his job. I think that that is quite an inconvenience.

Somebody said that it wasn't a matter of conviction, it was just a matter of taking his license, that's right, but you, in fact, convicting that man without his day in court. As I said earlier today, what is the matter with our present judicial system? I think we all realize, maybe some don't like to admit it on this bill here today, but we all know that in this great country we are innocent until proven guilty. I think that the judicial system is working all right, working good. We should all be protected by this "innocent until proven guilty" constitutional guarantee.

I am not going to take any more of your time. This bill has been well debated and I would hope that you would vote against the reconsideration motion.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I think I have earned the privilege that you offer me today to speak a couple of minutes on this bill and I will use my timer here to limit me to three minutes and I will beat the timer.

From the Secretary of State's Office, the Judiciary Committee got the following correspondence. "So important is this L. D., prompt removal of driving privileges, that the United States Department of Transportation has established it as a requisite for receiving federal funds. One of the most effective aspects of any OUI law is prompt and universal enforcement." I don't think it is necessary to go into the constitutionality of this here today. I mentioned this morning of all the states that tried it, plenty of case law to uphold the practices used in this state for suspending licenses.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Woolwich, Mrs. Cahill, that the House reconsider its action whereby the Minority "Ought Not to Pass" Report was accepted.

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

Mr. CROWLEY: Mr. Speaker, I request leave of the House to pair my vote with the gentleman from Lewiston, Mr. Jalbert. If Mr. Jalbert were present and voting, he would be voting no; I would be voting yes.

The SPEAKER: The pending question before the House is the motion of the gentleman from Woolwich, Mrs. Cahill, that the House reconsider its action whereby the Minority "Ought Not to Pass" Report was accepted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Anderson, Armstrong, Bell, Bonney, Brannigan, Brown, K.L.; Cahill, Carroll, G.A.; Conary, Conners, Cox, Curtis, Davis, Drinkwater, Foster, Greenlaw, Hayden, Hickey, Higgins, H.C.; Higgins, L.M.; Holloway, Ingraham, Jackson, Joyce, Ketover, Kiesman, Kilcoyne, LaPlante, Lebowitz, Lewis, Lisnik, Livesay, MacBride, Macomber, Manning, Martin, A.C.; Masterman, Matthews, K.L.; McGowan, McHenry, McPherson, McSweeney, Nelson, Paradis, E.J.; Paradis, P.E.; Parent, Paul, Perry, Pines, Randall, Roderick, Rotondi, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Stevenson, Stover, Strout, Swazey, Tammara, Telow, Zirkilton, The Speaker.

NAY—Allen, Andrews, Baker, Beaulieu, Bost, Bott, Brodeur, Carroll, D.P.; Carter, Cashman, Chonko, Clark, Cooper, Cote, Crouse, Daggett, Diamond, Dillenback, Erwin, Gauvreau, Gwadosky, Hall, Handy, Hobbins, Jacques, Joseph, Kane, Kelleher, Kelly, Lehoux, Locke, MacEachern, Martin, H.C.; Masterton, Matthews, Z.E.; Maybury, Mayo, McCollister, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, E.M.; Murphy, T.W.; Murray, Nadeau, Norton, Pouliot, Reeves, J.W.; Richard, Ridley, Roberts, Sproul, Stevens, Theriault, Vose, Walker, Wentworth.

ABSENT—Benoit, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Connolly, Day, Dexter, Dudley, Mahany, Perkins, Racine, Reeves, P.; Rolde, Salsbury, Seavey, Thompson, Tuttle, Webster, Weymouth, Willey.

PAIRED—Crowley-Jalbert.

Yes, 68; No, 60; Absent, 21; Paired, 2.

The SPEAKER: Sixty-eight having voted in the affirmative and 60 in the negative, with twenty-one absent and two paired, the motion does prevail.

The pending question before the House is acceptance the Minority "Ought Not to Pass" Report.

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

Mr. HOBBS: Mr. Speaker, I move that this be tabled for one legislative day.

Mr. Davis of Monmouth requests a division.

The SPEAKER: The pending question before

the House is on the motion of the gentleman from Saco, Mr. Hobbins, that this matter be tabled for one legislative day. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

67 having voted in the affirmative and 54 in the negative, the motion did prevail.

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

Ought to Pass in New Draft

Report of the Committee on State Government on Bill "An Act to Create the Finance Authority of Maine" (S. P. 534) (L. D. 1565) reporting "Ought to Pass" in New Draft (S. P. 612) (L. D. 1747)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed as amended by Senate amendment "A" (S-200).

In the House: The Report was read and accepted and the New Draft read once. Senate Amendment "A" (S-200) was read by the Clerk and adopted in concurrence.

Under suspension of the rules, the New Draft was given its Second Reading.

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

Mr. HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: The Maine veterans have always been dependent upon the Maine Veterans Small Business Loan Program. When the different banks were unable to sponsor their requests for loans, the Veterans Small Business Program always was the medium of assistance.

I would appreciate an explanation from anyone on what the future holds for the veteran in the loan authority program?

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

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would be happy to respond to the question of the gentleman from Augusta, Mr. Hickey.

The Maine Veterans Small Business Loan Program remains intact in this bill. It is combined with the Small Business Loan Program, three programs of the Maine Guarantee Authority and they are combined into one consolidated type of program. What is important to remember is that the current guarantees that will be provided by veterans are maintained in this program. We did see fit to up the limit of guarantee that is available for Maine's veterans and currently the total amount of money you can be guaranteed under the Maine Veterans Loan Program is \$30,000. Under this bill, and this is a unanimous committee report from the Committee on State Government, we have raised that guarantee to \$100,000 to recognize the effect that inflation has had over the past nine years. The \$30,000 limit was put in nine years ago.

We also are keeping the Maine Veterans Small Business Loan Board as an advisory board so that they will be able to give advice to the overall FAME board on the different criteria and problems that the veterans face. We also have put into the bill one of the staff members that will be working for FAME will be a veteran and will respond to any veterans who come to the FAME Board and ask for a loan through the Maine Veterans Small Business Loan Program. We have done that because at the public hearing the veterans said to us they felt it was important to have veterans available so when people, particularly veterans, come before the FAME board they like to deal with other veterans so we have explicitly put that into the bill, that when they did come to the FAME board, that they would meet with another veteran who will help them with their particular problem.

One of the reasons why we believe that it is good and makes a great deal of sense to consolidate a couple of these programs, and when we say consolidate we are talking about the Maine Veterans Small Business Loan Program, the Maine Small Business Loan Program, and three programs in the MGA, is that in the Maine Veterans Business Loan Program and the Maine Small Business Loan Program, these two programs have been underutilized to the effect that they could be.

For example, in the last year in the State of Maine, and we have some 18,000 businesses in the State of Maine, the Maine Veterans Small Business Loan Program made 19 loans. The Small Business Loan Authority made 27 loans. This, compared to the Small Business Administration, which made 291 loans to small business, there were several reports done on this and what they felt and what they viewed was that a lot of people don't know the difference between the Small Business Loan Authority and the Maine Small Business Loan Authority and the Veterans Small Business Loan Authority. Reports indicated that there needs to be more staff people so these programs can be marketed better so that more veterans will know about these programs and more small businesses will know about these programs and they will be able to go to one place in state government and get this information rather than trying to go to several different places. So the idea of consolidating these different programs is to have better coordination of the programs, you achieve a lot of efficiencies of scale because you interchange your staff members in the programs and you avoid a lot of confusion by individual purchasers or people who want to get their loans back because they don't know where to go. So we tried to really conscious and the veterans were well represented at the public hearings. They brought these concerns to us and I think the committee was sympathetic to those concerns and tried to address them the best we could.

Mr. Sproul of Augusta offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-382) was read by the Clerk.

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I move the indefinite postponement of House Amendment "A."

The SPEAKER: The gentleman from Fairfield, Mr. Gwadosky, moves indefinite postponement of House Amendment "A."

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I think it is important to remember that this is a unanimous committee report from the Committee on State Government and the amendment that Representative Sproul from Augusta has offered deals with just a minute portion of this. The point to remember is that this is an 83 page bill.

Representative Sproul indicated to me ahead of time that he was going to be offering this amendment and I had certainly told him that it was his right to do so, although I would be opposing it because we had pretty much taken a position in committee.

We are envisioning the staff, and we are talking about 13 or 14 members who would be on the Financial Authority of Maine to be a quasi-public state agency; in other words, it is an agency like the Maine State Housing Authority in which the employees aren't subject to the personnel laws in the State of Maine. We have envisioned that for a number of reasons. I think what is most important at this time is to remember that the committee worked long and hard on this issue. We felt it was important to have some professional people there. This is going to be a very important authority, a very important agency, similar to the Maine State Housing Authority and they are dealing with a lot of money and they have to be able to attract the best quality people that they can. We feel as

a committee, and certainly the overwhelming majority of the committee still believes, that a well run financial authority of Maine is ultimately going to be the goal and should be the function of this staff. It is often difficult with the constraints of state civil service requirements to hire the kind of professional staff that is needed, skilled in financial management and necessary to insure the success.

It is for these reasons that I hope you would go along with certainly the overwhelming majority of the committee and indefinitely postpone this amendment.

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

Mr. SPROUL: Mr. Speaker, Ladies and Gentlemen of the House: Indeed, it was the unanimous committee report, I signed that report. It was after the signing of that report that the gentleman from Fairfield, Mr. Gwadosky, came to me, told me we had a problem, because during the deliberations of the committee I raised the question on these positions which are going to be employees of the Finance Authority of Maine. All this amendment does is address four and a half clerical positions, to classify them, that is the bottom line of this amendment.

As is currently with the Maine Guarantee Authority, every employee is classified, it is my understanding, except for the chief executive officer. I am conceding that the chief executive officer, plus the eight other staff people, professionals, will still be unclassified, political appointments. All I am working for in this amendment is to classify the four and a half clerical positions. To that fact, when I signed out this report, it was my understanding that these four and a half clerical positions were, indeed, going to be classified. I asked Mr. Stevens, the Director of the State Planning Office, Commissioner Smith of the Agriculture Department their feelings on this and they said, indeed, it was proper and they had no objections to the clerical workers being classified state employees.

I, as much as anyone, believe in the two-party system and tend to be somewhat political myself, as most of us are here. I think there are certain advantages to having political appointments. Indeed, in 1986, when the Republicans take over the Blaine House, when my seatmate, Representative Murphy, is elected Governor, I certainly hope to help give him some advice on some people to take over some of these positions. However, I believe we are going a bit too far when we decide to make four and a half clerical positions on this new board political appointments.

I hope you would vote against the motion to indefinitely postpone and, Mr. Speaker, I ask for a division.

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I have to agree with what Representative Sproul has said. Representative Sproul is from Augusta, he represents a great many state employees and he is representing them well today.

In the committee, we said from the very beginning that we felt that 8 or 9 of the positions should be professional positions and that the 4 or 5 clerical positions should, indeed, be classified. We never took a vote on that but that was pretty much the understanding. I don't mean to speak for everybody on the committee, but I think that was pretty much the understanding of everybody on the committee. It was when we were getting ready to send a memo to the Appropriations Commission indicating some of our recommendations dealing with the appropriation and position counts that we found that with the Finance Authority of Maine being a quasi-public state agency similar to the Maine State Housing Authority, you can't have it both ways, you can't have non-state employees and four or five classified clerical state

employees. That is exactly the reason why the majority of the committee feels now that it should be a separate function and shouldn't be classified employees.

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

Mr. SPROUL: Mr. Speaker and Members of the House: I appreciate the comments of the gentleman from Fairfield, Mr. Gwadosky. Indeed, it was the overwhelming agreement of the committee that they should be unclassified. As it was explained to me, the reason the difficulty arose is not really in the drafting of the bill but in the way the Part II budget was presented. I really don't understand that too well, that is just how it was explained to me. It is very easy to change that around to what the original thinking of the committee was, and that is simply by accepting this amendment.

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

Mr. CROWLEY: Mr. Speaker, I would like to pose a question through the Chair to the sponsor, Representative Sproul. If I vote for this amendment, will I be voting for Tom Murphy for Governor?

The SPEAKER: The gentleman from Stockton Springs, Mr. Crowley, has posed a question through the Chair to the gentleman from Augusta, Mr. Sproul, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPROUL: On this particular vote, no, you would not be voting for Tom Murphy for Governor; however, as his campaign chairman, I would welcome that vote in 1986.

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

A vote of the House was taken.

Whereupon, Mr. Sproul of Augusta requested a roll call vote.

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

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

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

ROLL CALL

YEA—Ainsworth, Andrews, Baker, Beau-lieu, Bost, Brannigan, Brodeur, Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Clark, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Diamond, Dillenback, Erwin, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Jacques, Joseph, Joyce, Kane, Kelleher, Ketover, Killoyn, LaPlante, Lehoux, Lisnik, Locke, MacEachern, Macomber, Manning, Martin, A.C.; Matthews, Z.E.; Mayo, McColister, McGowan, McHenry, McSweeney, Melendy, Michael, Mitchell, E.H.; Mitchell, J.; Moholland, Murray, Nadeau, Nelson, Norton, Paradis, P.E.; Paul, Perry, Pouliot, Richard, Ridley, Roberts, Rotondi, Smith, C.B.; Soucy, Soule, Stevens, Swazey, Tammaro, Telow, Theriault, Tuttle, Vose, The Speaker.

NAY—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, K.L.; Cahill, Conary, Curtis, Daggett, Davis, Diamond, Drinkwater, Foster, Greenlaw, Higgins, L.M.; Holloway, Ingraham, Jackson, Kelly, Kiesman, Lebowitz, Lewis, Livesay, MacBride, Masterman, Master-ton, Matthews, K.L.; Maybury, McPherson, Michaud, Murphy, E.M.; Murphy, T.W.; Paradis, E.J.; Parent, Pines, Randall, Reeves, J.W.; Rod-erick, Scarpino, Sherburne, Small, Smith, C.W.;

Sproul, Stevenson, Stover, Strout, Walker, Wentworth, Zirkilton.

ABSENT—Benoit, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Chonko, Day, Dexter, Dudley, Gauvreau, Hobbins, Jalbert, Mahany, Martin, H.C.; Perkins, Racine, Reeves, P.; Rolde, Salsbury, Seavey, Thompson, Webster, Weymouth, Willey.

Yes, 76; No, 51; Absent, 24.

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

The Chair recognizes the gentlewoman from Auburn, Miss Lewis.

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I realize it is Friday afternoon, but I understand that this is a bill of great magnitude and therefore I would like to pose two questions through the Chair. My first question is, I think there is a \$540,000 fiscal note on the bill and I would like that explained. My second question is, I have heard in the halls that this bill is very similar to Representative Baker's state bank bill, and I would like someone to explain that to me.

The SPEAKER: The gentlewoman from Auburn, Miss Lewis, has posed a question through the Chair to anyone who may care to answer.

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

Mr. BAKER: Mr. Speaker, Ladies and Gentlemen of the House: The answer to the gentlewoman's second question is, no!

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

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: In answer to Miss Lewis' first question, the program funding for this particular bill, the Finance Authority of Maine, the funding for the program itself is provided through the use of bonds which will not be obligations of the State of Maine and also through fees charged to projects that will be used for administrative costs.

There is requested in the Part II Budget start-up funding in the amount of \$40,000, first of all, for the Business Development Finance Agency. This is a one-time request. The Development Finance Agency, which is the division which consolidates the Maine Veterans' Small Business Loan Program, the Small Business Loan Program and three of the MGA's current programs come under that particular division, and the operating revenues of these three programs would support the new Business Development Finance Agency activities, and after the initial start-up costs, this \$40,000, these revenues are expected to be fully covered by the administrative costs of the Business Division Finance Agency, so it is a self-sustaining type of organization, just like we have currently with the Maine Housing Authority.

The start-up costs for the Division of Natural Resource Farming is where the money comes in, because we currently have no program set up in this area. There is requested in the Part II Budget an appropriation of \$100,000 in fiscal year 1984 which is for the director and the staff for a year and a half. It also provides funds for contract services and other costs needed to establish the various new programs.

An additional appropriation of \$400,000 is requested for fiscal year 1985 to hire the additional staff and implement the program. It is important to remember that down the road these monies and these programs will become self-sustaining; however, we suspect it will take a few years before it reaches this point. It takes a while to accumulate the application fees for the various projects and accrue the revenues that might be needed.

Thereupon, the Bill was passed to be engrossed in concurrence.

Non-Concurrent Matters

Bill "An Act to Establish New Selection Procedures for the Maine Indian Tribal-State

Commission Chairmanship" (S. P. 342) (L. D. 1016) which was passed to be engrossed as amended by Committee Amendment "A" (S-76) and House Amendment "A" (H-220) in the House on May 10, 1983.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (S-76) as amended by Senate Amendment "A" (S-187) thereto in non-concurrence.

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

Bill "An Act to License Home Health Care Services" (S. P. 527) (L. D. 1550) which was passed to be engrossed as amended by Committee Amendment "A" (S-180) as amended by House Amendment "A" (H-370) thereto in the House on June 8, 1983.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (S-180) and Senate Amendment "A" (S-202) in non-concurrence.

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

Bill "An Act to Extend the Time for Acquiring those Areas which have been Designated Potential Passamaquoddy Indian Territory" (H. P. 1291) (L. D. 1712) which was Passed to be Enacted in the House on June 3, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-188) in non-concurrence.

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

An Act to Permit any Municipality with a License Ordinance to Deny a License to any Person who is Delinquent in Paying Personal Property Taxes (Emergency) (H. P. 1290) (L. D. 1711) (S. "A" S-172) which was Passed to be Enacted in the House on June 9, 1983.

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

In the House: On motion of Mr. Strout of Corinth, the House voted to recede and concur.

An Act Relating to Penobscot Nation Trust Land Designation (S. P. 593) (L. D. 1713) which was passed to be enacted in the House on June 3, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-189) in non-concurrence.

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

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

The SPEAKER: We will have available for you after the session, and we have a few copies available now of the Attorney General's opinion dealing with the request that the Chair made of him. I will read parts of that opinion.

"Dear Speaker Martin: In your capacity as presiding officer of the House of Representatives you have requested an opinion from this Office as to whether an advisory opinion issued by the Commission on Governmental Ethics and Election Practices on May 31, 1983, in response to a request from Representative Elizabeth H. Mitchell, is incorrect as a matter of law. For the reasons discussed below, it is the opinion of this Office that Representative Mitchell would not be involved in a conflict of interest, within the meaning of 1 M.R.S.A. § 1014 (1) (A), should she vote on Legislative Document 1353."

The letter then lays out the factual background, the statutory framework, and I would quote parts of the remaining portion of the opinion on Page 4.

"In concluding that Representative Mitchell's vote on L. D. 1353 would create a conflict of interest, the Commission relied

exclusively on 1 M.R.S.A. § 1014 (1) (A). However, it is obvious from a reading of that statute that the first clause of subsection (1) (A) has no application to the situation presented by Representative Mitchell since neither she nor her husband have a direct substantial financial interest, distinct from that of the general public in an enterprise which would be financially benefited by proposed legislation. Based upon the facts as recited by Representative Mitchell, her husband does not have a financial interest in the Family Practice Residency, but is simply providing legal services to a client for which he is compensated. Moreover, it is apparent that the Family Practice Residency, even assuming it is an enterprise, although affected, will not receive a direct financial benefit which is foreseeable from either the passage or defeat of L. D. 1353.

"Consequently, in determining whether the Commission correctly opined that Representative Mitchell would be involved in a conflict of interest, it is necessary to focus on the second clause of subsection (1) (A), which provides that a conflict of interest exists (w)here a legislator or a member of his immediate family . . . derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation."

"In view of the lengthy legislative history of P. L. 1975, c. 621, it is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The "direct substantial personal financial benefit" referred to in 1 M.R.S.A. § 1014 (1) (A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered. This was made abundantly clear by several members of the 106th Legislature which enacted the precursor of 1 M.R.S.A. § 1014 (1) (A). See P. L. 1974, c. 773, codified at 3 M.R.S.A. § 382, repealed and replaced by P. L. 1975, c. 621. The Senate Chairman of the State Government Committee and at least two House members of that Committee, which reported out favorably the original legislative ethics bill, clearly stated that a Legislator would not be involved in a conflict of interest simply because she or her spouse is an employee or attorney for a person with a financial interest in proposed legislation. See 2 Legis. Rec. 2206 (1974) (statement of Senator Speers); 2 Legis. Rec. 2227 (1974) (statement of Representative Curtis); 2 Legis. Rec. 2458 (1974) (statement of Representative Gahagan). Rather, the financial benefit to the Legislator or her immediate family member must be directly related to and derived from the proposed legislation which affects the enterprise in which the employer or client has a direct financial interest.

"In view of the foregoing, it is apparent that Representative Mitchell's husband does not fall within the ambit of § 1014 (1) (A). He will not derive a personal financial benefit from either passage or defeat of L. D. 1353. On the contrary, he is simply being compensated for providing legal representation to a client.

"Accordingly, it is the opinion of this Office that the Commission on Governmental Ethics and Election Practices was incorrect a matter of law in its interpretation of 1 M.R.S.A. § 1014 (1) (A) and its conclusion that Representative Mitchell would be in a conflict of interest had she voted on L. D. 1353. In reaching this conclusion, of course, we recognize, as the Legislature has, that the resolution of ethics problems must indeed rest largely in the individual conscience" (1 M.R.S.A. § 1011) and that a Legislator may, as a matter of individual choice, abstain from voting on proposed legislation notwithstanding the fact that she is not

required by law to do so.

"Finally, the Legislature has repeatedly recognized and endorsed the concept of a part-time Legislator. This opinion, therefore, should be read broadly to include, not only an attorney who represents a hospital, but also direct employees of health care institutions and trustees of not-for-profit institutions on the same theory outlined in this opinion. This opinion holds that the purpose of the conflict of interest statute is to prohibit the use of legislative office for private gain. Indeed, there is affirmative legislative history supporting the view that the conflict of interest laws were not designed to frustrate the legitimate attempts by publicly elected officials to use their personal experience in attempting to solve the problems of our State.

"I hope this information is helpful to you. Please feel free to call upon this Office if we can be of further assistance."

Very truly yours,
S/JAMES E. TIERNEY
Attorney General

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

Non-Concurrent Matter

Bill "An Act Making Adjusted Allocations from the Highway Fund for the Fiscal Year Ending June 30, 1983" (Emergency) (H. P. 810) (L. D. 1050) which was passed to be engrossed as amended by House Amendment "B" (H-373) in the House on June 8, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-204) in non-concurrence.

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

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

The following Joint Order: (S. P. 620)

Ordered, the House Concurring, that, when the House and Senate adjourn, they adjourn to June 14, 1983, at 4 p.m.

Came from the Senate read and passed.

In the House: The Order was read and passed in concurrence.

Unanimous Leave to Withdraw

Report of the Committee on Business Legislation reporting "Leave to Withdraw" on Bill "An Act to Prohibit Insurers from Increasing or Adding Insurance Coverage to Existing Insurance Policies without the Consent of the Insured" (S. P. 578) (L. D. 1667)

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

Orders

On Motion of Representative Mitchell of Vassalboro, the following Joint order: (H. P. 1324)

ORDERED, the Senate concurring, that the following specified matters be held over to the next special or regular session of the 111th Legislature:

Committee & Bills

Aging, Retirement and Veterans — H. P. 1218—L. D. 1617.

Appropriations and Financial Affairs — H. P. 455—L. D. 557; S. P. 367—L. D. 1141; H. P. 1103 —L. D. 1457; S. P. 582—L. D. 1690.

Business Legislation — H. P. 412—L. D. 495; H. P. 414—L. D. 497; H. P. 604—L. D. 752.

Education — H. P. 1275—L. D. 1688; S. P. 586—L. D. 1703.

Energy and Natural Resources — S. P. 402—L. D. 1250; H. P. 976—L. D. 1277; H. P. 992—L. D. 1302; H. P. 1106—L. D. 1459.

Fisheries and Wildlife — H. P. 1312 — L. D. 1741.

Judiciary — S. P. 413—L. D. 1260; H. P. 761—L. D. 992; H. P. 1082—L. D. 1428; H. P. 798—L. D. 1038.

Labor — H. P. 1001—L. D. 1309.

Marine Resources — H. P. 928—L. D. 1207.

Public Utilities — H. P. 805—L. D. 1045.

Transportation — H. P. 1167—L. D. 1547

By unanimous consent, the order was read and passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith.

(Off Record Remarks)

On motion of Mr. Handy of Lewiston,
Adjourned until Tuesday, June 14, at four o'clock in the afternoon.