

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD
OF THE
One Hundred and Twelfth
Legislature
OF THE
STATE OF MAINE

VOLUME I
SECOND REGULAR SESSION
January 8 - April 2, 1986

The House was called to order by the Speaker.
Prayer by Reverend William Kennison, St. John the Baptist Episcopal Church, Thomaston.
The Journal of Thursday, March 13, 1986, was read and approved.
Quorum call was held.

PAPERS FROM THE SENATE

Bill "An Act Providing for Financial Assistance to Owners of Underground Oil Storage Tanks" (S.P. 869) (L.D. 2185)

Came from the Senate, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Was referred to the Committee on Appropriations and Financial Affairs in concurrence.

Divided Report

Majority Report of the Committee on Judiciary on Bill "An Act to Extend the Provisions for Judicial Certification and Commitment Procedures to Institutions Housing Mentally Retarded Persons" (S.P. 760) (L.D. 1924) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Extend the Judicial Certification Procedures to Institutions Housing Mentally Retarded Persons" (S.P. 864) (L.D. 2178)

Signed:

Senators: CARPENTER of Aroostook
CHALMERS of Knox
SEWALL of Lincoln

Representatives: KANE of South Portland
PARADIS of Augusta
COOPER of Windham
ALLEN of Washington
PRIEST of Brunswick
DRINKWATER of Belfast

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

Signed:

Representatives: MacBRIDE of Presque Isle
LEBOWITZ of Bangor
STETSON of Damariscotta
CARRIER of Westbrook

Came from the Senate with the Majority "Ought to Pass" in New Draft under New Title Report read and accepted and the New Draft passed to be engrossed.

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.
Representative PARADIS: Mr. Speaker, I move that

the House accept the Majority "Ought to Pass" Report.
On your desk there is a corrected copy of L.D. 2178 and it is extremely brief. It is perhaps the most brief piece of legislation that the Committee on Judiciary has reported out to this body for this entire legislature.

The intent of this bill, my colleagues, is not very brief, it is very important because, in this state there are, approximately 40 to 50 patients in our care who are diagnosed as being both mentally retarded and mentally ill. What this bill would do is to give the benefit of the court consent decree from the federal government to those patients who had been at Pineland and who are in Pineland now to give the benefit of that to those patients in other state institutions around Maine the protection of being considered mentally retarded even though they reside in an institution for the mentally ill. There are some patients at AMHI and BMHI and other places, who are there in a mental institution because they are perhaps temporarily mentally ill. A person who is mentally retarded can be both but we want them to be treated as mentally retarded patients so they can have the benefit of the law and the benefit of recuperation.

A hypothetical case might be someone who is in a foster home for the mentally retarded who becomes very despondent or belligerent and has to be moved from that home, put into a state institution because no one else can care for that person — no one has the adequacy or the staff to care for that person and then be forgotten in a mental institution. I don't believe we want that to happen, we want them to make sure that once that mental illness has been terminated, once it has been diagnosed as having been overcome, that person would be referred back to a foster home setting or to a home for the mentally retarded.

I can only tell you that I am very happy that we have this type of legislation on the books and that we have this type of bill to consider because a mental institution is not a place for the mentally retarded. There is so much that can be done for these wonderful people, exceptional people, that we don't want them to be forgotten. We want to give them the full benefits of what we know to be a constitutional right today. So, I would urge you all to please accept the Majority "Ought to Pass" Report.

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

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I signed the "Ought Not to Pass" Report on this bill and I really gave a good deal of thought to my decision. If I felt the bill would be truly helpful to those 42 persons at Augusta Mental Health Institution and Bangor Mental Health Institution, who are dually diagnosed as being both mentally ill and mentally retarded as you have heard, I certainly would have voted for it. However, I do not feel that it would be helpful to them. I feel that it would be raising false hopes in those individuals that they would be moving somewhere else and the problem is, there is no place to move these people, no other home or facility for them and there is not available at the present time, money to establish a home for them. It is estimated that it would cost \$250,000 additional to provide homes for just half of the people and that money has not been budgeted. As it is now, the Department of Mental

Health and Retardation reviews these cases. They say they review these cases; they do not have a judicial review but they do have a review of the cases. They know those who are ready for placement and they move these people as soon as there is a place for them to go. Monthly, the staff of the department go to the Mental Health Institute for these reviews.

This bill would merely provide more pressure to the department to move these people out of the institution. I can't see how more pressure on the department will help. These people should certainly not be moved out on the street. When a review is done, this bill would say that those people who are deemed ready to go or ready to move on, would have to be removed every six months, whether there was a place for them or not. I really don't think that is fair to the people. I do not feel that a judicial review every six months will help the situation and I also believe that it will take court time, personnel time and money and all to little avail.

Mr. Speaker, I would request a roll call.

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

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

The SPEAKER: The Chair recognizes the Representative from Damariscotta, Representative Stetson.

Representative STETSON: Mr. Speaker, Ladies and Gentlemen of the House: The Majority Report takes notice of a consent decree that was entered against the Pineland Hospital some years ago. The object of the Majority Report is to try to bring Bangor Mental Health and Augusta Mental Health under the same decree, in effect. I submit to you that this is not needed. It is not needed here in Augusta nor is it needed in Bangor. There was a problem over at Pineland and the problem was addressed by that consent decree. This legislation tends to indict the administrators of our hospitals here in Augusta and Bangor. It tends to say, we don't trust you, we feel that you are letting the mentally retarded in your institutions be forgotten -- I cannot accept that, I cannot accept the fact that the administrators in those institutions are forgetting their obligation to their patients.

As Representative MacBride already pointed out, this is a cruel hoax to those people to suggest that we are going to be able to do something for you when, in fact, we can't do anything for you because there is no other place to put you. So the pressure becomes -- turn them out on the street and I don't think that is what we want to see happen.

I have checked with the people at Augusta Mental Health and I find that they are presently reviewing each case -- they are not forgetting people. They are trying to place these patients in a setting that is less restrictive than the Augusta Mental Health Institution but there is no place to put them. If you take the person who is taken from a foster home and place that person at Augusta Mental Health -- are the people in that foster home willing to take that person back? If they are, they will be there to take them back but apparently, they are not willing to take them back and that is the problem, as I see it.

There is not enough money to cover this situation, unfortunately, and it would be nice to have the facilities where we could put these 42 people but there just is not room for them. So, I suggest to you that this bill does nothing but impose an additional burden on the administration of these institutions, an additional burden on the court -- what can the court do about it? The court can't do a darn thing about it so it is putting a burden on personnel that are already overburdened and it is not solving anything.

I urge you to reject the Majority Report and go with the "Ought Not to Pass" Report.

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

Representative KANE: Mr. Speaker, Ladies and Gentlemen of the House: I will not talk long on this bill. I think it is unfortunate though that so many other things were brought into the debate about deinstitutionalization and this is not the question.

This is a provision of a service of a judicial certification, which is now provided for the mentally retarded except those mentally retarded who are duly diagnosed as mentally retarded and mentally ill, and they will end up at AMHI.

There was one question that just kept popping up during the work session from some people who opposed the bill then and still do and that is, is this essential? I just couldn't figure out when we started using essential as the standard by which we judge bills of this sort -- what this does is remedy a situation where, one who is within a system and is mentally retarded and mentally ill, might well, without this, stay within that system year after year after year without ever having anyone whatsoever involved in his/her situation or reviewing that situation except people within that same system. I think common sense tells us that that is not a desirable situation. People naturally go along with okaying actions that they have taken before or their colleagues have taken before -- this is just offering a service to people in that most pathetic plight. I don't think it is a cause for lots of controversy and I hope you support Representative Paradis' motion.

The SPEAKER: The pending question before the House is the motion of the Representative Paradis of Augusta that the House accept the Majority "Ought to Pass" Report.

The Chair recognizes the Representative from Belfast, Representative Drinkwater.

Representative DRINKWATER: Mr. Speaker, I request permission to pair my vote with the Representative from St. George. If he 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 Representative from Augusta, Representative Paradis, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

76 having voted in the affirmative and 51 in the negative with 22 being absent with 2 paired, the Majority "Ought to Pass" Report was accepted, the bill read once and assigned for second reading later in today's session.

(See Roll Call No. 254)

COMMUNICATIONS

The following Communication: (S.P. 866)

112th LEGISLATURE

March 13, 1986

Senator Larry M. Brown
Representative Ada K. Brown
Chairpersons
Joint Committee on Education
112th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor Joseph E. Brennan has nominated Teresa A. Moore of Westbrook for appointment to the University of Maine, Board of Trustees.

Pursuant to Title 20, M.R.S.A Section 2251, this nomination will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/Charles P. Pray
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Education.

Was Read and Referred to the Committee on Education in concurrence.

The following Communication: (S.P. 867)

112th LEGISLATURE

March 13, 1986

Senator Richard L. Trafton
Representative Polly Reeves
Chairpersons
Joint Committee on Legal Affairs
112th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor Joseph E. Brennan has nominated James Gibbons of South Portland for reappointment to the Maine State Liquor Commission.

Pursuant to Title 3, M.R.S.A Section 151-A, this nomination will require review by the Joint Standing Committee on Legal Affairs and confirmation by the Senate.

Sincerely,

S/Charles P. Pray
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Legal Affairs.

Was Read and Referred to the Committee on Legal Affairs in concurrence.

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

Reported Pursuant to the Statutes

Representative ROLDE for the Committee on Audit and Program Review, pursuant to Maine Revised Statutes Annotated, Title 3, Chapter 23 ask leave to submit its findings and report that the accompanying Bill "An Act Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Laws" (Emergency) (H.P. 1548) (L.D. 2187) be referred to the Joint Standing Committee on Audit and Program Review for Public Hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the bill referred to the Committee on Audit and Program Review, ordered printed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

ORDERS

On motion of Representative McSWEENEY of Old Orchard Beach, the following Order:

ORDERED, that Representative Willis A. Lord of Waterboro be excused March 13 and 14 for Legislative Business.

Was read and passed.

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-572) on Bill "An Act to Bring into Conformity Municipal and State Subdivision Laws" (H.P. 872) (L.D. 1229)

Signed:

Senators: USHER of Cumberland
EMERSON of Penobscot

Representatives: JACQUES of Waterville

RIDLEY of Shapleigh
HOGGLUND of Portland
DEXTER of Kingfield
BROWN of Livermore Falls
LAW of Dover-Foxcroft

Minority Report of the same Committee reporting
"Ought to Pass" as amended by Committee Amendment "B"
(H-573) on same Bill.

Signed:

Senator: KANY of Kennebec

Representatives: MITCHELL of Freeport
COLES of Harpswell
HOLLOWAY of Edgecomb
MICHAUD of Medway

Reports were read.

Representative Jacques of Waterville moved that
the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the
Representative from Freeport, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, Ladies and
Gentlemen of the House: I request a division.

The title of this bill is "A Bill to Bring the
State and Municipal Subdivision Laws Into Effect" and
that is not what the bill does. What the bill does
is it chips away at a state law, known as the Site
Location Law. The Site Location Law is located in
Title 38. The purpose of the law is to review large
scale developments that affect the environment of the
state or the region. It was enacted in the late
1960's and has existed since that time, largely
intact.

The Municipal Subdivision Law is in Title 20 and
it is only mentioned in the title of the bill and it
is not addressed in the text of the bill at all.

This law grants our towns and cities the
authority to manage the growth within their
boundaries by reviewing development, in order, the
law says, that the towns can provide services and
growth in an orderly manner.

The bill before you makes two changes in the Site
Location Law. It says that if a piece of property is
located on both sides of the road, it should be
considered one piece of property under the provisions
of the Site Location Law, which weakens the law and
makes it more difficult for the Site Location Law to
be administered in those areas between 20 and 39 and
a half acres, which just happen to be intersected by
a road. It also exempts lots of 40 acres or more
from the Site Location Law.

This bill has undergone a lot of scrutiny in our
committee. There was a subcommittee that met in the
Fall and discussed the bill at great length. The
Maine Municipal Association participated in the bill
and you would think that they would support the
effort to give them more power or to shift authority
to control these developments from the state to the
towns but, in fact, that is not true, especially in
the small towns that are experiencing a lot of
growth. Municipal government seems to favor the Site
Location Law because it was a little more strict than
the state law and a lot of towns are grappling with
the problem of a lot of growth.

The Majority Report simply weakens the Site
Location Law.

The Minority Report basically makes one small
correction in the law that would make the whole law
fairer.

The impact of the law, I think, will be felt in
the southern third of the state, in the area along
the coast that is experiencing very rapid growth.
What is happening is there are not a lot of large
developments being built, but a lot of small
developments are going on. It is a really small
accumulative process and it is very insidious. It
has happened in my town, let me tell you -- it has
happened a lot.

A few years ago, it was a sleepy little town and
then this changed and that changed and something else
changed and pretty soon there are lots of changes in
the place that you used to know and the town that you
moved into and, for a lot of good reasons, is
completely gone. The way of life is gone and
everything has changed. I don't think that we should
take the power away from a state agency to look at
that and control that just to make life easier for a
couple of real estate developers.

Before I sit down, I would like to make a couple
of remarks about this section of the bill that deals
with areas on two sides of the road.

I came to the legislature in late 1980 and I have
served on the Energy and Natural Resources Committee
ever since, that is three sessions, and three times
we have had a bill before our committee to change
this provision of the Site Location Law. We have
held public hearings on that bill three times and
there has never been a citizen of this state come
before that committee when I was there that said,
this provision of the law affects me and hurts me and
is a problem for me. But every single session of the
legislature, someone comes in with a proposal to
change that section of the Site Location Law.

In closing, I just don't think that we should
take a chip out of the Site Location Law just to make
life easier for some people -- some real estate
developers who want to get things done without having
to get a permit for it.

I urge you to vote for the Minority Report.

The SPEAKER: The Chair Recognizes the
Representative from Bangor, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and
Women of the House: This bill has been around for a
long time in various forms. This year, the Energy
and Natural Resources Committee selected this as one
of their study bills for the interim and came out
divided on the report.

As was presented to you this morning, I am asking
you to support the majority position of the bill. It
is not my desire as sponsor of the bill to weaken
Site Development Laws, that is not my goal. My goal
before you this morning is to ask you to consider
conformity between two standards of development.
Presently in the State of Maine, someone who wishes
to subdivide their property frequently have to appear
before the regulatory authority of their
municipality, planning board, selectmen, whomever
hears it, and also have a request before the DEP. So
far, so good. Two authorities, two approvals.
However, what happens to that person when they have
two different standards that apply? What happens if
the standards are different for the municipality than
they are for the state? Put yourself in that
person's position and here you are. I'll tell you
what happens to you, you call up your attorney, and I
will tell you how much you pay, and citizens in this

state have told legislators in this state how much they have to pay for an attorney to tell them, just tell them, whether or not they can divide their property, whether or not they can sell grandma's lot down the road because they sold a lot two years ago to Aunt Sue, and they have to have a lawyer tell them. I ask you if that is fair?

Many of you have seen this book, this is the State Site Development Law. This is Title 38. If Representative Mitchell would propose, that by my bill, which is about three paragraphs long, that I am going to throw this out the window, I would challenge that he is correct. I think there are 46 pages in this. All I am asking from the body is to have conformity in two areas. The municipal law has been with us for 30 years. It has a long history, case history, to support it. It has worked in the municipalities.

Right now, the municipalities have two exemptions that I would like for the State to have. One of them is, if your lot is 40 acres, (certainly not your 100 foot frontage), is 40 acres large, do you need to get approval from DEP and count that as a lot? That is a fairly substantial piece of property, 40 acres. I maintain that the charge of the DEP is to protect the environment from substantial environmental harm. If you were to exempt a 40 acre lot, the DEP still has authority for what Representative Mitchell would call large scale development.

I am not talking about the use of land. The use of land is covered under all these other sections in this bill. I am talking about the division of land, subdividing. How we choose is a different issue that is currently covered under municipal and under state laws. I am just talking about where they can be divided in the first place. If it is divided, who do we have to ask if we can divide it? We ought to ask, I agree with that. Let's ask the municipality, let's ask the state, but let's ask them to use the same standards in their exemptions.

The other exemption is whether or not a piece of land that is transected by a road, by something else, should be one parcel or should it be two parcels.

When I came in three years ago, I said, I don't care whether you make it one parcel, I don't care if we make it two parcels, I just want it to be the same, I want it to be the same standard in the state as it is in the municipality. At that time, they said, all right, we will make it the same. Fortunately, unfortunately, it didn't work in the other body. If it is the same, it gives the same standards to municipalities and to the state.

I would like to counter the MMA objection to the bill. The MMA says the standard should not be the same because the statutes were written for different purposes, that the purposes of the municipality is to control municipal services. If you would look at the purpose of the legislative intent and the guidelines of the municipal subdivision law, there are 12 purposes, 12 you shall consider. Of those 12, only five have to do with municipal services. Tell me if this has to do with municipal services -- "will not result in undue water or air pollution; will not cause unreasonable soil erosion; will not have adverse effects on the scenic and natural beauty of the area; if the subdivider has adequate financial and technical capacity to meet the above standards" -- that has nothing to do with whether or not the municipality can provide water and sewage treatment.

Municipal law has been with us since 1969. I

don't see any pillaging and plundering of our cities as a result of their following this law since 1969. If that be the case, let's bring in bills to change the Municipal Site Law. If you say, well my community is over-developed, we need all the help we can get, our shores are being polluted with condominiums, whatever, any municipality in the State of Maine is free at any time to adopt stricter standards than DEP. All they have to do is sit down with their selectmen and their planning board and draft them, have a public hearing and you've got them. If your community is having trouble, by all means, I encourage you to have them come in. Some of the communities, Garland, Orrington, they have standards that are so strict that it is very difficult to build in those communities, impossible in some instances and they have done that on their own. The community can do it if they elect.

I suggest you accept the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Harper.

Representative HARPER: Mr. Speaker, Ladies and Gentlemen of the House: It was a few weeks ago, during the smolt debate, that we all had the pleasure of hearing Representative Vose talk about Aunt Hilda. Today, I would like you to meet my cousin, George. You will find him pacing up and down the sidewalks of Lincoln chewing on his cigar, telling everyone he meets about the crazy problem that he has concerning the ruling of the DEP on his property. Now, he owns this choice piece of land, many acres, and some of it, about 117 acres, were on the access road coming in from 95. It was good business property. Some of it out in the back was very beautiful property, high above the Penobscot River. Oh, my, this we might have for residential use. But the town of Lincoln decided that it needed the middle of cousin Georges' property, a large portion, right through the middle, to build the Lincoln Airport. So now cousin George has what he thinks is two pieces of property, entirely separated by an airport. Well, I'll sell that hunk on the access road, thinks cousin George, darn good business property, customers are all lined up. I'll just hang on to that other land. Well, not so, says the DEP, even though there is an airport separating these pieces of property, it is still, under the law, one piece of property.

Now, if you would like to purchase a large piece of land with an airport that runs right straight through the middle, come see my cousin George. If not, would you kindly vote to be supportive of this Majority Report?

The SPEAKER: The pending question before the House is the motion of Representative Jacques of Waterville that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

95 having voted in the affirmative and seven in the negative, the Majority "Ought to Pass" Report was accepted and the Bill read once.

Committee Amendment "A" (H-572) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Mitchell.

Representative MITCHELL: Mr. Speaker, I move that this be tabled one legislative day pending adoption of Committee Amendment "A".

Representative Stevens of Bangor requested a vote on the tabling motion.

The SPEAKER: The pending question before the House is the motion of Representative Mitchell of Freeport that this matter be tabled one legislative day. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

16 having voted in the affirmative and 85 in the negative, the motion did not prevail.

Subsequently, Committee Amendment "A" (H-572) was adopted and the Bill assigned for second reading Monday, March 17, 1986.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Energy and Natural Resources on Bill "An Act Concerning Fees Imposed on the Generation of Hazardous Waste" (H.P. 1241) (L.D. 1751) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Concerning Fees Imposed on the Use of Hazardous Materials" (H.P. 1546) (L.D. 2183)

Signed:

Senators: USHER of Cumberland
KANY of Kennebec

Representatives: MICHAUD of Medway
JACQUES of Waterville
MITCHELL of Freeport
COLES of Harpswell
HOGGLUND of Portland

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

Signed:

Senator: EMERSON of Penobscot

Representatives: RIDLEY of Shapleigh
DEXTER of Kingfield
BROWN of Livermore Falls
HOLLOWAY of Edgecomb
LAW of Dover-Foxcroft

Reports were read.

On motion of Representative Jacques of Waterville, tabled pending acceptance of either report and specially assigned for Monday, March 17, 1986.

ORDERS OF THE DAY

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

SENATE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (3) "Ought to Pass" as amended by Committee Amendment "A" (S-410) - Committee on State Government on Bill "An Act to Amend the Requirement that All Part-time Law Enforcement Officers be Trained by the Maine Criminal Justice Academy" (S.P.

798) (L.D. 2005)

- In Senate, Majority "Ought Not to Pass" Report read and accepted.

TABLED - March 13, 1986 by Representative HAYDEN of Brunswick.

PENDING - Motion of Representative GWADOSKY of Fairfield to accept the Minority "Ought to Pass" as amended Report.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Sproul.

Representative SPROUL: Mr. Speaker, Men and Women of the House: Is the printed calendar correct, the motion of the Representative from Fairfield is to accept the Minority "Ought to Pass" Report?

The SPEAKER: The Chair would advise the Representative that the calendar is correct.

Representative SPROUL: Mr. Speaker, could we please have the Committee Report read?

Subsequently, the Committee Report was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Sproul.

Representative SPROUL: Mr. Speaker, Men and Women of the House: I stand before you today and urge you to oppose the motion of the Representative from Fairfield that we accept the Minority "Ought to Pass" Report and support the Representative from Fairfield in the way he signed on the Majority of the "Ought Not to Pass" Report.

This bill, as proposed, would remove a requirement that part-time law enforcement officers, who have over five years of field experience, this would allow them to be removed from the requirement of the certification from the Maine Criminal Justice Academy. On its face value, that seems to be a reasonable idea — people who have worked in the field for five years have certainly attained some knowledge during that time.

However, there were some things which were brought out in the public hearing that I feel you should be made aware of. First of all, since that bill which requires part-time law enforcement officers who carry guns, since that law came out that they do have to attend the Criminal Justice Academy, roughly 1,640 of those law enforcement officers have complied, 22 have not. For those 22, the majority of the committee felt it was important to try to give them a little bit of a last shot. The State Government Committee sent a letter to the Board of Trustees of the Maine Criminal Justice Academy asking the Criminal Justice Academy to take that first step to those 22, see if they could put some courses in their areas, do everything that they could to bend over backwards to help these people become certified. In addition to this, the Maine Criminal Justice Academy does have waivers available for part or all of the law enforcement training based on competency testing, I believe.

One situation came out at that public hearing a few weeks ago, which really swayed me and is the reason I supported the Majority "Ought Not to Pass" Report and that came from testimony from people at the Maine Criminal Justice Academy that did have an individual in their course who had many more than the five years requirement. One of the requirements of the Maine Criminal Justice Academy is to pass a fire arms test, a passing grade is 70. This person, who had been out in the field for quite some time, received a very high score of 35. Under this bill,

if this is to become law, he could still remain and he could still carry a gun.

I just don't feel comfortable with that. I feel the majority of the State Government Committee acted in a very responsible manner. I would request you vote no on the pending motion.

I request a division.

The SPEAKER: The Chair recognizes the Representative from Athens, Representative Rotondi.

Representative ROTONDI: Mr. Speaker, Ladies and Gentlemen of the House: I am a cosponsor of this bill and I hope that you will accept the Minority "Ought to Pass" Report.

I am before you today to stress my concerns and feelings about L.D. 2005 on the subject of reserve officer training.

I am not questioning the amount of part-time police officers that have entered training or that have completed their training, I am addressing the wisdom of such a program that involves peace officers with many years of on the job training, some in excess of 20 years, when their brother full-time officers who might have had much, much less time in police work -- which I shall call on-the-job training -- are grandfathered. Not only is it an insult to a dedicated person, who has served many years doing a thankless job, because at this late date, we thank him and insult him. After all these years, he will have to go to the Maine Criminal Justice Academy so he can do the same job that he has been doing all these past years. In many instances, the insult goes further by asking him to pay for the training.

My district, House District 103, makes up three quarters of Somerset County. It is a large district geographically, it is made up of 17 towns, plantations, and many unorganized territories. I have no police departments in my district. I have one state trooper, he patrols the major highway, which is Rt. 201. We rely on the Sheriff's Department. I guess it is a unique situation.

Many times when a trooper is called, he has to ask for a deputy to assist him because he is unfamiliar with some of the remote sections. It is not the mere fact of hiring someone to fill a position, it is that you have to have someone who knows the area and the people. The right person needs to know the area so well that they have to know a lot of the roads that maybe aren't on the maps. I hope that this law that discriminates against so few can be corrected and that you will please vote in favor of this bill.

The SPEAKER: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: A lot of these part-time law enforcement officers are good old country boys like me. Up in Franklin and Somerset Counties, I happen to have quite a few of those. I see nothing wrong with that. As far as somebody scoring 35, up my way, we bring them right up close and it doesn't make any difference if you scored zero -- you are pretty apt to hit him when the gun is right next to his stomach, so I don't think that amounts to too much.

Anyway, let me tell you a little story about how we live up in the country. It's a little bit of a different style perhaps from you city people from Augusta. About twenty years ago, what we call the beehive in the built up section of town -- we do have a built up section in Kingfield -- they had probably a dozen young people there that had a little rhubarb

we called it, in fact, some of those boys worked for me in the woods, they were quite tough, capable boys. They called the local constable. Well, he arrived over there, he had put his hat on, but he didn't bother with a gun, what would he need a gun for? There were only twelve of them. He said, "Boys, let me tell you something, you have just taken me away from Gunsmoke and that makes me really angry." Do you remember Gunsmoke with Matt Dillon? He said, "If you want to fight and raise the devil, you go out of town and let me tell you, I don't want to be called a second time." They didn't argue -- in fact, the fellow working for me, who was a tough boy, said, I could see that gentleman was angry and we decided we would disperse. So we have a lot different style up where I am. All this talk about shooting and so forth, that is clouding the issue. What do you want to do, add a little more cost to my overburdened county budget already? It doesn't make any sense so I hope you will vote for the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Dillenback.

Representative DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: I don't think that I am any different than Mr. Dexter. I don't think I look too much different, I have run around the country up there, I have white hair, he doesn't -- I know those old boys and they are all good friends of mine and they are very capable but really these part-time people -- it isn't fair that over a thousand of them had to take the exams and learn the laws and then exempt just nine people. I understand that some of them might have difficulty reading but the schools would be very happy to sit down with them, when they brought the schools to their area, and sit down with them and help them with the exam. They will even read it to them if that would help but I do think they should know what the law is.

The people who are part-time concerns those who are carrying a gun. If somebody needs help, a state trooper, if the fellow doesn't carry a gun, he can help, the trooper can carry the gun so that isn't an important factor. We passed a law here several years ago that we wanted our officers to be able to read and write, know the laws, and be able to handle a gun. I don't want any false arrests when I go through that country so I think it is a matter of fairness that everybody that is a part of the law should be able to do these things.

I am going to vote with the Majority Report. I think there were only three that opposed this and I hope that you will vote with me.

The SPEAKER: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: I know that I have called myself just a dumb, uneducated country boy but they did teach us how to read and write up there. I know we didn't go to school too long but I can show you a deputy sheriff that graduated from that academy and, so help me, he can't read as well as I can and that is pretty bad. After all, I know that we are simple people but we do have some common sense. Somebody who has served that long as a part-time deputy sheriff -- I am sure he is quite capable.

The SPEAKER: The Chair recognizes the Representative from Princeton, Representative Moholland.

Representative MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: I wish you would go along with the Minority Report. I have a district that is probably one of the biggest in Washington County and we have part-time deputies that have been there for 25 to 30 years. I only went to school one day in a fellow's place and he never passed and I was chief of police in Princeton for 20 years. I think I know just as much as some of the young fellows that have just graduated. All the little small towns like Danforth, Topsfield, I could name 28 of them that I represent, most of those boys that are part-time deputies go to work at one o'clock in the afternoon and work 18 hours hauling wood. They don't have much time to travel 150 to 200 miles to go to school. So, I wish you would go along with the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Lander.

Representative LANDER: Mr. Speaker, Ladies and Gentlemen of the House: I wish you would go along with the Minority Report today. I don't know if you realize it or not but, in northern Maine, we have a problem with police protection especially since the work time of the State Police has been cut down.

Representative Rotondi from Athens spoke of not very much protection between her district and my district and that is because we have only one State Policeman -- that is northern Piscataquis and northern Somerset County. I can tell you about a number of instances in Greenville, where we have one policeman, Chief of Police, and when he calls for backup, he very, very seldom can get a State Police officer that is closer than an hour. If you are out there in an emergency situation, an hour is a long time to wait for a State Police officer. Quite often, that State Police officer is down in Bangor or Newport patrolling on the interstate system so I want to stress that police protection in northern Maine, especially in my area, is very weak.

I would also like to tell you that we have a fellow in Greenville, who is a part-time deputy, 75 years old and jokingly, he is called the Commissioner, that fellow has more experience with a handgun or a rifle than I would say 90 percent of the law officers in the State of Maine. He has been a trapper all of his life. He is the guy who gets the dog chasing details because he is willing to go out and do it. If our one officer in town is off on a day in Bangor, and there is an accident, quite often, he is the one who goes and takes care of it. It takes him a long time to do it but he does go willingly to do the job and he is not afraid so I think if we are looking at this gun issue, the guy scoring 35, I think it is a pretty weak argument. I understand out of the 22 people that we have up there, the least amount of experience with any of them is 15 years.

The other argument that I think we can shoot down is, of the 1600 people that has taken that 100 hour program, I understand there is no one protesting this.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Baker.

Representative BAKER: Mr. Speaker, I would like to pose a question through the Chair to the member from Augusta, Mr. Sproul.

What I would like to know is, if an amendment were presented that would take care of your concern over the scoring of the guns, would this make the bill a better bill in your opinion, something that you could live with?

The SPEAKER: The Representative from Portland, Representative Baker, has posed a question through the Chair to Representative Sproul of Augusta, who may respond if he so desires.

The Chair recognizes that Representative.

Representative SPROUL: Mr. Speaker, Men and Women of the House: It is difficult to respond to that. It certainly might make it more palatable but the requirements of the Criminal Justice Academy are more than just firearms, they are basic knowledge of the law in this state, which I believe all enforcement officers should have.

As I said before, waivers were available for those people who have 15 years experience. As Representative Lander's said, all they have to do is go and take the test. I don't see what the problem is.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: There may be some hot passions on this bill from those who might be affected in the rural areas but I was a member of the State Government Committee for six years and we passed the original jurisdiction that this bill addresses. Then we subsequently passed an amendment extending the time to which these part-time police officers, part-time deputies could be certified in order to give greater opportunity and for those who had difficulty going to the academy to be certified. I think we ought to consider one very, very important thing if we pass this bill this afternoon and that is, we are reading almost daily about litigation against municipal officers appointed, police officers, deputies, tort claim liabilities against them for not properly exercising their duty or violating the law and what we are saying here is that, although we have a competent, highly trained, academy staff for our police officers, we are going to exempt certain individuals because they have been in the service for 10 or 20 years depending on the exact wording of the bill. Those are the ones that ought to go back for the refresher courses. Those are the ones that ought to know what the law is according to what the Supreme Court of this land says that it is and they must obey whether they like it or not and we must live by it whether we like it or not. They are the ones who most need it and if you want a police officer to be put on the stand in a court in this state and be asked by an attorney, "have you ever been certified by the Criminal Justice Academy of this state" and have to have that officer say, "no, I am grandfathered." Do you think a jury is going to say, "well, that is nice." Our municipalities and counties would face severe tort claims liability because of that fact and I think we have to consider that factor when we vote on this legislation this afternoon.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Boutilier.

Representative BOUTILIER: Mr. Speaker, Ladies and Gentlemen of the House: Before we get too far along, I worked on drafting the Minority Report and before we get into too many discussions of what it does, I think I should say what it does. Steve Giorgetti of the Maine Criminal Justice Academy worked with our committee in discussing the original bill and, after the committee met and the members on the Majority Report voted, I met with our staff

assistant and Mr. Giorgetti, to work out a compromise to go on the Minority Report.

I want to read the Majority Report because it is really cut and dried and explains just what it does. There are three areas of concern, there is the group of officers who have worked as part-time, full-time reserve officers -- when I say part-time, full-time, I mean they are paid for part-time but they have an 8 to 5 and anybody who calls them prior to 8 or after 5, they don't answer, just like us. They get part-time pay but they are there full-time, especially in some of the larger counties in northern Maine. If they have worked part-time since January 1, 1970 and have worked continuously up to December 31, 1985, which was the day that they had to leave, the deadline of the extension had ended on that day and many sheriff's had dismissed them because they hadn't taken the 100 hour training, which is two weeks of full-time at the training academy or roughly 33 weeks of two hours a week, I believe. If they could not afford the time to do that, could not get to a course that came into their area, the sheriff said, I can no longer keep you. Most of the time, what he or she did was revoke their powers of arrest and not allow them to carry a gun. What this bill says is, that someone who has worked continuously, many of them over 15 or 20 years, that we are going to allow that time that they served as a reference point to their ability to serve as a part-time law enforcement officer. We are going to grandfather those people, if they have worked full-time.

In reference to someone who has only worked since September 14, 1979, and the reason that I picked that date and the reason that Steve Giorgetti agreed to that date was that, at that point in time, full-time officers were grandfathered and they were told that they did not have to take the training course. Currently, there are 100 full-time paid officers who are grandfathered and are not required to take that training.

My bill goes a step further to try to keep the training in there, which I personally feel is a good idea and it says that anyone in that range, up to September 14, 1979 until December 31, 1986, that a new waiver program would be set up by the Criminal Justice Academy. Steve Giorgetti and their board would have 90 days to set up a waiver program, which would take into account, experience. I agreed. Any person who was employed as a part-time law enforcement officer prior to September 14, 1979 but who does not meet the requirements in Paragraph A, which means they worked continuously from January 1, shall be required to be certified as required by this section except (and this is very important) that he or she shall be able to be eligible to pursue a waiver procedure established by the Board of Trustees of the academy. This waiver procedure will allow for the substitution of experience for attendance as part-time training programs approved by the academy. The waiver procedure established, pursuant to this paragraph, shall not include any waivers of testing or specifications required in the training program of part-time law enforcement officers under this section. Any person who qualifies for waiver under this paragraph shall fulfill the certification process requirements no later than December 31, 1986.

I think it is a very good compromise, I think it takes into account that we do have experienced officers in areas of the state that have difficulty taking 100 hour training courses. I think it is fair

also for those same officers, many of whom work side by side with full-time officers, who were grandfathered and it also takes into account those officers who worked since 1979 to get them into a waiver program and not totally exempt them from that training. I would hope that you would go along with the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Lander.

Representative LANDER: Mr. Speaker, Ladies and Gentlemen of the House: I really appreciate Representative Boutilier's explanation of that because I was reading that as 15 years. It is not five or six years, it is 15 years on the part-time.

I also wish that I could say Uncle George was one of our deputy's but he is not. The sheriff of Piscataquis County is very concerned because he has a couple of deputies up beyond Greenville. He doesn't have to use them very often but when he does, he likes to be able to call them from there. I am afraid that the opponents of this bill, you city slickers, that don't have the problem and if you do have the problem, and your sheriff doesn't want to hire those deputies, he doesn't have to. But let us in the remote sections hire these deputies.

The SPEAKER: The Chair recognizes the Representative from Oakland, Representative Lacroix.

Representative LACROIX: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to beat a good horse to death but as one of the signer's of the Majority Report, I think in all fairness, we are talking about maybe four or five people who object only for reasons that they believe it is going to hurt their pride and that came out in the testimony that we had. All of the other 1640 part-time officers had taken the training and some of those are from the remote parts of the state, just as these four are who don't want to take the training. I think it would be a real slap in the face to people who are in part-time and have part-time jobs and took the time out of their lives, out of their jobs to take this 100 hour training, training that was taken to those areas by the Criminal Justice Academy. They don't have to drive to Waterville. Yes, they may have to drive from Jackman to Greenville to take it but others have already done it. I think in all fairness we should look at the 1640 who took the training, not the four or five who didn't take the training and are hoping that this legislature will go along so they don't have to do it. In all fairness, I hope you defeat the motion before you.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Bott.

Representative BOTT: Mr. Speaker, Men and Women of the House: I do hope that you will support the Majority "Ought Not to Pass" Report. Many of you have been talking about how valuable experience is -- well, experience is great as long as you have knowledge to back it up. We pass so many laws down here I don't think too many people in this room know how many new laws that we have passed. It is very important that our law enforcement people know the law. It is very important that our law enforcement people across the state all know the law because the law is the same no matter where you go. If full-time officers and chiefs have to continue training to stay current with the laws and procedures, then why should part-timers be exempt?

The SPEAKER: The Chair recognizes the

Representative from Skowhegan, Representative Hepburn.

Representative HEPBURN: Mr. Speaker, Ladies and Gentlemen of the House: I just want to speak today as one who grew up in rural Maine. I am now a resident of an urban area, a resident of Skowhegan, but there is a real problem in rural areas getting police protection. I understand that there is a desire to have the best trained officers always on jobs that we can get and eventually we are going to do this, this problem has been taken care of, but in certain areas of the State of Maine, what we are really dealing with now is, are we going to have maybe not the best possible sheriff protection that we can get? Maybe we will have to make that slight compromise, but it is either that or having none at all. Some of these people just won't be able to take the training and won't be involved in it so I would hope that you would support the motion before you.

The SPEAKER: The Chair recognizes the Representative from Milo, Representative Masterman.

Representative MASTERMAN: Mr. Speaker, Ladies and Gentlemen of the House: I thank Mr. Law and Mr. Lander for calling your attention to an area north of Greenville. I haven't followed this bill too much so I am not prepared to debate too much but I do know this isolated case. Maybe most of you know about Chesuncook Lake by seeing it on the map -- Chesuncook Village is more or less of a summer place but there is a gentleman there who is an officer for Piscataquis County. If you want to get to Chesuncook Village, the only way that you are going to get there is by a snow sled in the winter or an airplane; in the summer, by airplane or boat. I think if anyone reacts with sound judgment, they are not going to say that Mr. McBurney, after some 25 years of being the deputy up there, should have to take this training.

I hope you support the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Dexter, Representative Sherburne.

Representative SHERBURNE: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would support the Minority Report. In our area, (the deputy lives in my district), we have a little town called Hartland and I believe that is in Representative McGowan's district but, a year or two ago, we had quite an exciting time up there, a former employee of the Hartland Tannery lost his job and he really wasn't very stable mentally, I guess, because after losing his job, he came into Hartland pretty heavily armed and decided that he was going to shoot the tannery up. He proceeded to knock many of the windows out of the offices of the building and in doing that, he endangered the lives of many of the employees in that business. It was a local deputy who was there on the job, much sooner than a State Police officer could be there, and this deputy took a shot from that man in the arm. I guess he had two wounds. This deputy had been on for many, many years. I believe he served over 20 years and his reaction to this -- he had the training so he wasn't required to go back and have the training -- and his loyalty to other deputies who served with him was such that he decided that he was going to stop serving as a deputy because he was so upset about this requirement for new training.

He had people serving with him and he had trained some people also that had taken the training. When they came out of the academy, he further trained them, and he was so loyal to the people that had served in that area that he decided not to serve any

longer. I think the people in the area felt that they had much rather have a deputy who has served them for years with training or not, protecting their area, than a newly trained man from the academy.

So, I hope you will support the motion on the floor.

The SPEAKER: The pending question before the House is the motion of the Representative from Fairfield, Representative Gwadosky, that the House accept the Minority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

58 having voted in the affirmative and 35 in the negative, the Minority "Ought to Pass" Report was accepted and the bill read once.

Committee Amendment "A" (S-410) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" in non-concurrence and sent up for concurrence.

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

PASSED TO BE ENACTED

An Act to Increase the Maine Child Care Credit Under the State Income Tax (H.P. 1310) (L.D. 1826) (S. "A" S-406 to C. "A" H-562)

An Act to Permit Specific Municipalities to Serve as Administrators of Fuel Assistance Programs (H.P. 1536) (L.D. 2163)

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.

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

PAPER FROM THE SENATE

Non-Concurrent Matter

Joint Order establishing the Joint Select Committee on Vocational-Technical Education (H.P. 1551) which was read and passed in the House on March 13, 1986.

Came from the Senate read and passed as amended by Senate Amendment "A" (S-414) in non-concurrence.

The House voted to recede and concur.

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

PASSED TO BE ENGROSSED

Bill "An Act to Extend the Judicial Certification

Procedures to Institutions Housing Mentally Retarded Persons" (S.P. 864) (L.D. 2178)

Was reported by the Committee on Bills in the Second Reading, read the second time and Passed to be Engrossed in concurrence.

At this point, the Speaker appointed the following members to the Joint Select Committee on Vocational-Technical Education on the part of the House:

Representative GWADOSKY of Fairfield
Representative BROWN of Gorham
Representative BOST of Orono
Representative HANDY of Lewiston
Representative NADEAU of Saco
Representative LACROIX of Oakland
Representative MATTHEWS of Caribou
Representative LAWRENCE of Parsonsfield
Representative HICHBORN of LaGrange
Representative SPROUL of Augusta

On motion of Representative Holloway of Edgecomb,
Adjourned until Monday, March 17, 1986, at nine o'clock in the morning.
