

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

One Hundred and Seventh Legislature

(First Special Session)

OF THE

STATE OF MAINE

1976

KENNEBEC JOURNAL
AUGUSTA, MAINE

"Ought to Pass" as amended by Committee Amendment "A" (H-1158)

Report was signed by the following members:

Mrs. CUMMINGS of Penobscot
Messrs. BERRY of Cumberland
REEVES of Kennebec

— of the Senate.

Messrs. WEBBER of Belfast
JENSEN of Portland
MACKEL of Wells
GREENLAW of Stonington
CONNORS of Franklin
CURTIS of Rockland
JACKSON of Yarmouth
MILLS of Eastport
BLODGETT of Waldoboro

— of the House.

Minority Report of the same Committee reporting "Leave to Withdraw" on the same Bill.

Report was signed by the following member.
Mrs. POST of Owl's Head

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Stonington, Mr. Greenlaw.

Mr. GREENLAW: Mr. Speaker, I move the House accept the Majority "Ought to pass" Report and would speak to my motion.

The SPEAKER: The gentleman from Stonington, Mr. Greenlaw, moves that the House accept the Majority "Ought to pass" Report.

The gentleman may proceed.

Mr. GREENLAW: Mr. Speaker, Men and Women of the House: This bill is the result of a long committee study that the Marine Resources Committee did this summer on shellfish sanitation and the licensing structure of the Department of Marine Resources. The bill has seen eight drafts, and as you can see today, it has received the majority support of the committee.

With the possibility of two exceptions, there are basically no changes or additions to the existing law but rearrangement of the sanitation laws and the licensing structure. It is a rather long bill. I would ask today that we would accept the committee report with the House concurrence, when Committee Amendment "A" is read. I would like to have it tabled for a day so that you can all examine the bill. A member of the committee, I am sure, will be glad to answer questions and we can debate it tomorrow and dispose of it one way or the other tomorrow.

Thereupon, the Majority "Ought to pass" Report was accepted and the Bill read once. Committee Amendment "A" (H-1158) was read by the Clerk.

On motion of Mr. Greenlaw of Stonington, tabled pending adoption of Committee Amendment "A" and tomorrow assigned.

Orders of the Day

The Chair laid before the House the following item of Unfinished Business:

Bill "An Act Redistributing the Powers of the Executive Council" (H. P. 1997) (L. D. 2197) (C. "A" H-1115)

Tabled — (Till Later Today) March 30 by Mrs. Najarian of Portland.

Pending — Passage to be Engrossed.

On motion of Mr. Kelleher of Bangor, the House reconsidered its action whereby Committee Amendment "A" (H-1115) was adopted.

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

House Amendment "A" to Committee Amendment "A" (H-1140) was read by the Clerk.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Thank you for allowing the reconsideration motion.

This amendment, if you look at the statement of fact, provides that each commissioner of a department affected by this bill shall serve coterminous with the Governor appointing them and shall be removable for cause. But it goes one step further in the bill, and let me very briefly explain to you.

The members of this House that are sitting on Joint Standing Committees of the Legislature are going to be in a position to advise and consent the governor on any appointee that comes before your respective committees, be it Judiciary, be it Public Utilities, be it Agriculture, or be it Finance. The reason that I want to put this amendment on, it is simply that a person that is nominated by the governor and approved by the said committee that he or she goes before and then approved by the Senate cannot be arbitrarily dismissed by the governor without going back for advice and consent from the committee that heard it. I think this is a protection not only for the individual that is being — but in other words, the way I look at it, the governor couldn't appoint any puppets that could serve at his pleasure, that could be removed for any reason whatsoever. I think it gives guarantee to the individual that is being appointed to a department to serve there with the ability to disagree with the governor without arbitrarily being thrown out of his position because he or she doesn't happen to agree with this individual. If the governor has reasonable cause to remove these people that he will be appointing, then they go back to the committee that gave them the advice and consent to agree to this individual's appointment and then in turn can either agree or disagree with the governor for removal.

It further states that the governor, once he assumes office, has to appoint his department heads within 120 days, and this is not an unreasonable time limit. Because the governor is elected in November, he has the month of November, December and then three more months to reach the decision on who he wants to put into these particular positions in government.

Another thing he won't be able to do is dangle anybody on a string and keep them as a department head. A very good example would be Emilien Levesque who was on the string for six or seven months before the governor finally decided to appoint him. I think this is in fairness to the men and women who are now serving in these various departments and it is also fair to the governor.

The amendment also provides gubernatorial appointments to the posts. The Secondary Education Commission shall be subject to review by the Joint Standing Committee on Education and to be confirmed by the legislature. I don't feel that this is unreasonable. Ladies and gentlemen, I commend the State Government Committee for the work they have done on this bill that is before us today, this amendment is not new to them, it was an amendment that was put together by Councilor Charles Jacobs, presently serving on the Executive Council, and myself. It was presented to the State Government Committee. I understand at the time that there was some support and I can understand the judgment of the committee, rather than having two different reports coming out, amendments would be offered on this floor.

I think this is a good amendment, I think it is a safe amendment, I think it is a good amendment as far as government is concerned and I would appreciate your support.

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

Mr. COONEY: Mr. Speaker, Ladies and

Gentlemen of the House: I would move the indefinite postponement of the gentleman from Bangor, Mr. Kelleher's, amendment and would speak briefly.

The SPEAKER: The gentleman from Sabattus, Mr. Cooney, moves the indefinite postponement of House Amendment "A" to Committee Amendment "A".

The gentleman may proceed.

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: The bill as reported out by the State Government Committee provides for the coterminous appointments of all top executive office personnel as well as the appointment of judges to serve at fixed terms. All of these people, and there are 152 actual jobs involved, must be approved by Joint Standing Committees of the Legislature as the Constitution provides.

The committee, and I might point out to the gentleman from Bangor that the committee feels, I think, much more unanimously than it did last summer when we discussed the idea that he has presented, feels that the governor is elected by all of the people. He must have top aides who he can work harmoniously with, and I think you know as well as I do that sometimes the appointees, after a period of time, there are difficulties in their relationships and the governor is unable to carry out the policies that he has promised the people that he would try to carry out.

What Mr. Kelleher would offer is the alternative of removal for cause. You have to go back into judicial decisions to see what 'for cause' is, and it is not a very carefully delineated thing, and I think what you find is that most governors, most administrators, simply will not remove someone because it can become very, very messy, indeed, it can end up in the courts and a whole department can just grind to a halt as a governor might try to remove someone for cause. So what the committee has provided for is that the commissioner serve at the pleasure of the governor, just as the cabinet officers serve at the pleasure of the president, we have provided that the system would work the same in the State of Maine.

I don't think that there would be many cases where a governor would be firing or asking for the resignation of a top commission, but in those few cases where it occurs, I think it is essential that the chief executive have the opportunity to have working with him people who he can in fact work with.

In terms of the provisional appointments that have been mentioned by Mr. Kelleher, the committee has provided that all appointees serve coterminous, but a governor may appoint, for a six-month provisional period, someone to act as acting commissioner. This would mean that if he was unable to find someone to serve in a position quickly, he could appoint a deputy commissioner or some person from the classified service to act as acting commissioner for a period not to exceed six months. So there is a provision in the committee bill for interim appointments.

One final thing. If you feel that there is some merit to Mr. Kelleher's arguments, there is another amendment which Mrs. Kany of Waterville has to present that we also discussed yesterday in caucus which would provide for a one-year trial period for a commissioner. That, to me, is a middle ground. But I, philosophically, feel that the governor would have the power to have the aides day in and day out who he can work with. Mr. Kelleher's amendment, although it may protect those top aides from whim and caprice of a top chief executive, I think that whim and caprice is a very, very minor situation and in most cases the governor acts responsibly and appoints good people and works with those good people, and I think he

ought to have the power to remove them without the 'for cause' provision.

So, I urge you to support the indefinite postponement of this amendment.

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

Mr. FARNHAM: Mr. Speaker and Members of the House: I rise to back the motion of the gentleman from Sabattus, Mr. Cooney, that this amendment be indefinitely postponed. This was a subject of long discussion in the State Government Committee. Early in the stages, there were people who felt as Mr. Kelleher does. We did come around to unanimous thinking on it, and I think evidence of that is that this amendment was not sponsored by anyone on the committee.

It makes a difference, a little bit, in your philosophy as to whether or not you in your positions in life have ever been in a management position. The manager is the man held responsible and accountable. He should, therefore, have the authority to dispose of people who will not work with him. This does not mean, as the gentleman from Bangor said, that you do not tolerate anyone who disagrees with you.

When you meet in your cabinet sessions, as the governor does and as I did in industry in a top level management discussion, there were always frequent decisions. Sometimes we changed the top manager's thinking. Other times we compromised, but when he stood firm on his position, we had no choice, and we shouldn't have any choice but to go out and work for the position he has taken, because he is the man who is going to be held responsible if that position that he took turns out to be a lemon. But it is our duty and it would be the duty of every commissioner, once the decision is made in that cabinet room, that he work for the position taken by the governor. He has an alternative. If he is completely in disagreement with it, he has the opportunity to resign and resign he should.

In some respects, you could compare this a little bit to the military. The colonel gives orders, the captains, lieutenants, so on down the line, the colonel is the man responsible if that captain goes behind his back and says, boys, don't pay any attention to this order, we are going to run this show our way, what kind of an army would you have? Maybe the colonel was all wrong, time only will prove that. So the idea that there can be no disagreement, the disagreements take place at cabinet meetings. After you come out, you follow the decision of the chief executive, whoever he may be.

Another little weakness in this amendment is this — on appointment, these people are to go before the proper legislative committee to be checked and approved. They are then to be approved by the Senate. This normally is going to occur in the first three or four months of the new administration. The legislature is all here, it is not calling anybody back or whatnot, but under this proposal, if you want to get rid of somebody in August, you have got to call in that legislative committee to hear all the reasons why this man should be discharged and then you have got to call the Senate into special session and that could happen a number of times and be a very expensive procedure. The procedure we have adopted, as compared to the old way the council acted, is going to be quite expensive as it is.

The gentleman spoke of the men who were left dangling a year ago. Well, I was one of those people who went to the governor on two of the commissioners, Commissioner Mallar and Commissioner Levesque, and I think I had a little part in selling him on the merits of these men. But each of these men had a choice which would have forced the issue right off, and I am sure if either one of them had gone in and said, I am resigning, I am not hanging on like this, the governor would have acted much quicker and I

think he would have reappointed these men to their positions. I thought it was a little bit harsh and I don't think it was necessary. As it is now, the governor who had some doubts about the ability of Mr. Levesque is sold on him 100 percent, because those of us who know him know that Emilien Levesque is a diamond in the rough.

My notes have run dry, and I would urge you, in behalf of good management, forget who is governor now, who knows who is going to be the next governor, but he is the man you will hold responsible and he should have people as commissioners and working for him who are going to do what he says.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I always appreciate the remarks of the kind gentleman from Hampden, but not very often do I agree with him.

The amendment that I offer here today was not put together in a hasty manner, it was put together after some careful consideration and some input by a member of the present executive council and a member from Bangor in this legislature who is concerned about redistributing the powers and the authority of the executive council back onto this legislature and its individual committees.

We are not dealing with management today, we are dealing with government. We have a variety of departments in government and we have a variety of individuals serving in departments who have personalities, who have decisions, who have feelings, who may not necessarily agree with the present chief executive or whoever the next chief executive may be.

Nevertheless, as I look at this amendment, it gives him an opportunity to express a difference of opinion before legislative committees that hear bills. We know in the last session the governor himself attempted to handcuff commissioners in going before legislative panels and speaking for or against various pieces of legislation. I don't think this is fair. I don't think it is fair that one individual in government can have the thumb applied to various department heads and limiting their ability to deal with the legislature, limiting their ability to deal with the various committees that affect their own departments or being able to express their own personal feelings on issues.

I am not saying that this governor would arbitrarily dismiss anyone because he disagreed with the person that has taken an opposite viewpoint to his. Maybe this isn't necessary for this governor. I don't really think that it is, but who knows that this type of amendment may not be necessary for the next governor or the governor that is following him.

The legislative committees, in their wisdom, are going to be passing on to the Senate their support for individual commissioners or department heads. I think it is important to those various people that we approve as legislators, that we give them an opportunity to come back before the respective committees that approved them to hear why they should be dismissed. This is not an unsound amendment, and I would hope that this House would support it and I request the yeas and nays.

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

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: At this point in time, I think I am going to take the position of voting against this bill, because as far as I can see, it is just too big, it is too unwieldy, we are talking about power and nothing else. We have only had one caucus on this bill, and I think it is probably one of the most important bills that has come before us. We don't know what is in here and I think we should. Unless we change our position,

I think I am going to take the position of voting against this bill.

I would like to address myself to this amendment, though, because I feel deep down that the words of the gentleman from Bangor, Mr. Kelleher, are absolutely true and they are very factual and very fundamental.

The words of the gentleman from Sabattus, Mr. Cooney, that this is a very minor point is utterly untrue. I think probably one of the most important parts of this amendment is the security and the protection that is afforded in this amendment of Mr. Kelleher. I say that because I have also worked for the general public in the private sector. I have also worked as a member of the union, and it makes a great deal of difference between the two. In other words, I think what Mr. Kelleher is trying to get through to you is that there is that ounce of protection and an ounce of security going along with that kind of amendment.

If I understand correctly, the gentleman from Sabattus, Mr. Cooney, is saying that if a gentleman from Agriculture or from the Attorney General's Office or one of those commissioners happens to come into a meeting late one morning, the governor can arbitrarily say, you are all done. Or, as the words of the gentleman from Bangor are saying, that particular individual cannot voice his true opinion against the governor or for the governor, as a matter of fact, without the thinking of some kind of reprisal of one kind or another. Whereas if he had that ounce of protection and that ounce of security, where he can't just be arbitrarily fired or let go, it would make that much difference. I think it is a very important part of that amendment that we are talking about. Therefore, I would hope, because I support the amendment, you would vote against the indefinite postponement of this amendment.

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

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry that the good gentleman from Portland feels that I indicated this was a minor point; it is not a minor point at all and I don't believe I said that. It is a major point, and I think it is getting good consideration. I see everyone here is paying attention to this debate and it is an important one.

I would like to point out that there is one feature of the bill that I didn't mention previously and that is that those commissioners who are presently holding positions or who will be appointed to positions before the effective date of this bill, which is January 4, 1977, will be removable for cause only. They will be removed under the process by which they came into the system, so there is that built in protection for those people who are on board now or who will be on board before the opening of the next legislative session. So it is only those people who will be appointed after that that will serve at the pleasure of the governor.

I would like to just address one point that has been raised by both Mr. Kelleher and Mr. Talbot, and that is that the commissioners are unable to speak their own minds and tell us how they feel. I think you know that regardless of the governor, commissioners are occasionally under pressure to speak a particular way. I think you know as well as I that they have a way of getting their views and their feelings to us, privately if it need be, but publicly in most cases. I don't foresee that there is a situation where the whim and caprice that people seem to be afraid of would become a major problem. We don't see the President of the United States firing people because they are five minutes late to a cabinet meeting, and I can't imagine that a governor of this state would fire people for being five minutes late to a cabinet meeting. I think you can imagine the hornets nest that would erupt in the legislature and the press and among

the citizenry if any governor chose to dismiss somebody for such minor reasons.

I think that it is important that the governor have people working with him who he can depend on and who are responsible to him, and that is what the committee has presented to you.

The SPEAKER: The Chair recognizes the gentlewoman from Brunswick, Mrs. Bachrach.

Mrs. BACHRACH: Mr. Speaker and Members of the House: I would like to pose a question to anyone who wants to answer. I would like to know in what way this particular bill differs from the undated letter of resignation that came under fire to such an extent at the beginning of this term?

The SPEAKER: The gentlewoman from Brunswick, Mrs. Bachrach, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, after the effective date of this bill, no undated letters of resignation would be required in that the governor would have the power to dismiss at his pleasure. Right now, the commissioners and other officials who are appointed and confirmable by the executive council must be removed only for cause, so the only way that a governor right now can be sure of the power to dismiss would be to have an undated letter of resignation, and that is a technique that is sometimes used. But if this amendment is turned down, then that would never have to be the case again.

The SPEAKER: The Chair recognizes the gentlewoman from Auburn, Mrs. Snowe.

Mrs. SNOWE: Mr. Speaker, I want to pose a question through the Chair. Does this amendment apply to all the 150, approximately, positions that we will be confirming?

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

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

Mr. KELLEHER: Mr. Speaker, the major ones.

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 Sabattus, Mr. Cooney, that House Amendment "A" to Committee Amendment "A" be indefinitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Berry, G. W.; Berry, P. P.; Berube, Birt, Burns, Carpenter, Carter, Churchill, Connors, Cooney, Cote, Curran, R.; Curtis, Dam, DeVane, Dow, Drigotas, Dyer, Farnham, Faucher, Fraser, Garsoe, Gauthier, Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Higgins, Hinds, Hobbins, Hunter, Immonen, Jacques, Kany, Kelley, Laverty, Lewin, Littlefield, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBrearty, McKernan,

Miskavage, Mitchell, Morton, Palmer, Perkins, S.; Peterson, P.; Pierce, Rollins, Shute, Silverman, Smith, Snow, Snowe, Stubbs, Susi, Teague, Torrey, Tozier, Usher, Wagner, Walker, Webber.

NAY — Albert, Ault, Bachrach, Bagley, Bennett, Blodgett, Boudreau, Bustin, Byers, Call, Carey, Carroll, Chonko, Clark, Connolly, Cox, Curran, P.; Davies, Doak, Dudley, Farley, Fenlason, Finemore, Flanagan, Goodwin, H.; Hennessey, Hewes, Hutchings, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kauffman, Kelleher, Kennedy, Laffin, LaPointe, LeBlanc, Leonard, Lewis, Lizotte, Mahany, Martin, A.; Martin, R.; Maxwell, Mills, Morin, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Peterson, T.; Post, Powell, Raymond, Rideout, Rolde, Saunders, Sprowl, Strout, Talbot, Tarr, Theriault, Tierney, Truman, Twitchell, Tynedale, Wilfong, Winship, The Speaker.

ABSENT — Bowie, Durgin, Hall, Hughes, McMahon, Norris, Perkins, T.; Quinn, Spencer.

Yes, 69; No, 73; Absent, 9.

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

Thereupon, Mr. McKernan of Bangor requested a vote on the adoption of House Amendment "A" to Committee Amendment "A".

The SPEAKER: The pending question is adoption of House Amendment "A" to Committee Amendment "A". All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

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

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call 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 Bangor, Mr. McKernan.

Mr. McKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief, but I did have some comments that I wanted to make and I didn't make on the original motion because until I saw the Speaker's light go on, I assumed that the motion would be defeated.

I do have one point that was not raised during the initial debate and I do feel it is important before we vote on acceptance of this amendment, and that is, what is the purpose of confirmation of the appointees of the governor? The whole purpose of checks and balances and therefore a confirming body is to guarantee qualified people running our departments. Therefore, we had the executive council and we are taking great pains to make sure that we have a confirmation process that people feel will serve that purpose.

What these committees and then the Senate after that are looking for is people who will be able to run the departments competently, people who do not have conflicts of interest and people who will serve the interest of the people of the State of Maine and the governor who appoints that person. That is the only role that these confirming bodies should have.

They should not have to worry about personalities and whether that confirming body likes one person better than another, because

that is not the role of that body. Therefore, I don't feel there is any need for this amendment, because we will always be able to make sure that the governor appoints qualified people. If he has a personality dispute with someone whom he has already appointed and therefore feels that that department and his administration would be better served by asking that person to resign, the chief executive ought to have that right and we, as representatives of the people of the State of Maine in the legislature, do not have to worry about somebody incompetent taking over as the head of that department, because we have the right to confirm his next appointment, and that is the whole key. We are assured of getting qualified people, and that should be our only concern, not on the personalities of whether one person will do it in a way that we consider better than another. So there is no need for this amendment, because we will be assured by the confirmation process alone that we will have qualified people that will be appointed.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: My good friend from Bangor has raised a good point, and I am sure that the good Governor of this state or any other governor would nominate qualified people to serve in the various departments that would be open for consideration. I am sure that this legislature or the next incoming legislature would have the ability to determine who was qualified and not qualified.

But one thing that we are doing to insure even a better quality or a better confirmation procedure is to guarantee the applicant, the nominee, whatever you want to call him, that the governor is presenting to the various committees, an opportunity to be able to express himself or herself freely. "For cause," if the governor wants to remove an individual, then, in fact, the individual would be going back to the committee that approved him to hear what the cause is. And I think Mr. McKernan knows very well, as the members of this House know, the importance of an administrator to be able to run his government, but it is also equally important that an administrator in the various departments could have a difference of opinion with that person without fear of removal. I don't believe this governor would ever remove anyone for that reason, but who knows what we may have down in the chief executive's office another term?

I would urge the House to stand by its vote and adopt my amendment.

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

Mrs. KANY: Mr. Speaker, a parliamentary inquiry. If there is an amendment which is prepared and has been passed around which would be in direct conflict to this amendment, could that still be proposed if this amendment passed?

The SPEAKER: The Chair would answer in the affirmative.

Mrs. KANY: Mr. Speaker and Members of the House: I don't know if it is clear to you all that within the bill itself the people in the sensitive quasi-judicial regulatory bodies are quite protected. I don't know if you are aware of that, and that a much more complicated dismissal procedure has already been set up for those sensitive positions. So we are basically just talking about the commissioners or those in the top administrative posts.

The SPEAKER: The pending question is the adoption of House Amendment "A" to Committee Amendment "A". A roll call has been ordered. All those in favor of House Amend-

ment "A" to Committee Amendment "A" being adopted will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Bachrach, Bagley, Bennett, Blodgett, Boudreau, Bustin, Byers, Carey, Carroll, Chonko, Clark, Connolly, Cox, Curran, P.; Davies, Dudley, Fenlason, Finemore, Flanagan, Goodwin, H.; Hennessey, Hewes, Hobbins, Ingegneri, Jackson, Jacques, Jensen, Joyce, Kauffman, Kelleher, Kennedy, Laffin, LaPointe, LeBlanc, Lewis, Mahany, Martin, A.; Martin, R.; Maxwell, Mills, Mitchell, Morin, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Post, Powell, Raymond, Rolde, Saunders, Smith, Strout, Talbot, Tarr, Theriault, Tierney, Tozier, Truman, Twitchell, Tyndale, Wilfong, Winship, The Speaker.

NAY — Ault, Berry, G. W.; Berry, P. P.; Berube, Birt, Burns, Call, Carpenter, Carter, Churchill, Conners, Cooney, Cote, Curran, R.; Curtis, Dam, DeVane, Doak, Dow, Drigotas, Durgin, Dyer, Farley, Farnham, Faucher, Fraser, Garsoe, Gauthier, Goodwin, K.; Gould, Gray, Greenlaw, Henderson, Higgins, Hinds, Hunter, Hutchings, Immonen, Kany, Kelley, Laverty, Leonard, Lewin, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, McBreaarty, McKernan, Miskavage, Morton, Norris, Palmer, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Rideout, Rollins, Shute, Silverman, Snow, Snowe, Spencer, Sprowl, Stubbs, Susi, Teague, Torrey, Usher, Wagner, Walker, Webber.

ABSENT — Bowie, Hall, Hughes, Jalbert, McMahon, Quinn.

Yes, 67; No, 78; Absent, 6.

The SPEAKER: Sixty-seven having voted in the affirmative and seventy-eight in the negative, with six being absent, the motion does not prevail.

Thereupon, Mrs. Kany of Waterville offered House Amendment "B" to Committee Amendment "A" and moved its adoption.

House Amendment "B" to Committee Amendment "A" (H-1152) was read by the Clerk.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Would the gentlelady mind explaining her amendment. I know some members got into it prior to action on mine, but I would like to hear just exactly what it does.

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

Mrs. KANY: Mr. Speaker and Members of the House: Basically, the amendment before you is not being offered as a compromise between those who would prefer dismissal anytime by a governor of the top administrative posts or those who would like to see continuous security, but it is being offered as a common sense, reasonable approach. The greater security during the first year, basically just being able to be dismissed by cause, might help our present situation in which few are willing to chance taking more responsible positions in state government. Some are hesitant to leave the classified services and others hesitate to move their families to Augusta for what might be an extremely brief stay.

This is the present situation and we can expect that that situation might continue in the future, particularly when people would be going through the more arduous confirmation procedure which we have adopted now in the Constitution.

I think a governor should be allowed to dismiss his top aides but recommend this amendment as at least providing some security briefly to those who might consider being nominated for our top administrative posts.

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

Mr. PIERCE: Mr. Speaker, I would ask for a division.

The SPEAKER: All those in favor of House Amendment "B" to Committee Amendment "A" being adopted will vote yes; those opposed will vote no.

A vote of the House was taken.

22 having voted in the affirmative and 91 having voted in the negative, the motion did not prevail.

Thereupon, Committee Amendment "A" was adopted.

Mr. Talbot of Portland requested a roll call vote on passage to be engrossed.

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 Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker, Ladies and Gentlemen of the House: From the earlier remarks of the gentleman from Portland, Mr. Talbot, I got the feeling that he didn't realize that if we don't pass this bill in some form or another, we are in one awful mess because we have killed the council effective next January and this is to take over the duties. If we don't pass this bill in some form, the governor would be running the state and doing just as he pleased because there would be no council or input from the legislature. I don't think you realize that.

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

Mr. TALBOT: Mr. Speaker, Ladies and Gentlemen of the House: I am not trying to persuade anybody to vote for or against this bill. I have my own reason for doing that. The gentleman from Hampden, Mr. Farnham, said we would be in one big mess if we didn't vote for this bill. It is my contention that we have been in one big mess since we have been here.

I don't think some of you know, just dealing with the portion of that bill that we just got done discussing, if a confirmation goes before your committee and two or three members from the Senate vote against that, it is dead, the confirmation is dead. It has to go back before the Senate for two-thirds vote, if I understand correctly, although the majority of that committee are members from the House. That kind of thing bothers me knowing what that room down the hall is capable of doing.

The other reason that I think I agree with the gentleman from Hampden, Mr. Farnham, that this is one of the most important bills to come before us. We had one brief caucus on it, which was yesterday. I want to know more about the little innuendoes that are in that bill. I want to know where a lot of the little hidden power is going. I want to know what we can do, what we are doing. I want to know what we have got to say and how much we have got to say about it, and I don't.

For me to vote on that particular bill this fast, I won't do it, but that is just my personal feeling. I am not trying to persuade you one way or the other. I have to live with myself and I think by doing this I will be able to live with myself just a little bit better.

If a time comes, either tomorrow or the next day or next week, that we are going to sit down, either through a joint caucus or a Democratic caucus, whatever you want, and discuss this bill in its entirety, piece by piece, so that when we go home from here we will know exactly what is happening with this new body that is taking over, that is fine. I have no problems with that. I will take part in that and I will learn what I can learn and then I will vote accordingly. But for

me to do otherwise, and this is the first time I have taken this position, for me to just sit in my seat and vote, I won't do that.

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

Mrs. KANY: Mr. Speaker and Members of the House: Just to clarify a point for Representative Talbot, the Senate has to have a two-thirds vote to override the decision of the majority of the legislative committee. In other words, the problem isn't there that he thought exists.

The SPEAKER: The Chair recognizes the gentleman from Houlton, Mr. Carpenter.

Mr. CARPENTER: Mr. Speaker, Ladies and Gentlemen of the House: We are arguing the merits of a constitutional amendment, really, that was approved and passed by the voters last November. I hate to say our only alternative, our only alternative is certainly not this bill. This is the bill that came out of the State Government Committee as a result of that constitutional amendment.

Certainly there was opposition in both — more so here than down the hall, of course, as to the passage of that constitutional amendment, but I would urge you not to vote against this bill simply because you disagree with that point. That is a finished product.

We are more than willing to accept amendments. The State Government Committee has worked all summer on this bill and certainly we don't have all the answers and certainly probably this isn't a perfect bill, and I for one am certainly willing to sit down with any member of this body and discuss an amendment. There were divided opinions on the committee as to certain points, and as the gentleman from Bangor did mention earlier, we came out with one bill prepared to accept amendments.

I would appreciate it, if we have problems such as the one that the gentleman from Portland has, I would appreciate it if someone would table this and perhaps we can get a caucus going to discuss the finer points of the bill. I don't think there is anything hidden in the bill. I think the committee and the legislative assistants who drafted the bill went out of their way to bring everything out in the open, above board, so we could see exactly what we were doing. But we must pass this or some similar type of legislation or we will be in a very chaotic situation.

The SPEAKER: The Chair recognizes the gentlewoman from Old Orchard Beach, Mrs. Morin.

Mrs. MORIN: Mr. Speaker, I move this be tabled for one day.

Thereupon, Mr. McKernan of Bangor requested a vote on the tabling motion.

The SPEAKER: All those in favor of this Bill being tabled pending passage to be engrossed and tomorrow assigned will vote yes; those opposed will vote no.

A vote of the House was taken.

29 having voted in the affirmative and 89 having voted in the negative, the motion did not prevail.

The SPEAKER: A roll call has been ordered. The pending question is on passage to be engrossed as amended by Committee Amendment "A". All in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Bagley, Bennett, Berry, G. W.; Berry, P. P.; Berube, Birt, Blodgett, Boudreau, Burns, Bustin, Byers, Call, Carey, Carpenter, Carroll, Carter, Chonko, Churchill, Clark, Conners, Cooney, Cote, Cox, Curran, P.; Curran, R.; Curtis, Dam, Davies, DeVane, Doak, Dow, Drigotas, Durgin, Dyer, Farley, Farnham, Faucher, Fenlason, Finemore, Flanagan, Fraser, Garsoe, Gauthier, Goodwin, H.; Goodwin, K.; Gould, Gray, Greenlaw,

Henderson, Hewes, Higgins, Hinds, Hobbins, Hunter, Hutchings, Immonen, Ingegneri, Jackson, Jacques, Jensen, Joyce, Kany, Kaufman, Kelley, Kennedy, Laffin, Laverty, LeBlanc, Leonard, Lewin, Lewis, Littlefield, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBrearty, McKernan, Mills, Miskavage, Morton, Nadeau, Najarian, Norris, Peakes, Pearson, Pelosi, Perkins, S.; Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Powell, Raymond, Rideout, Rolde, Rollins, Saunders, Shute, Smith, Snow, Snowe, Spencer, Sprowl, Strout, Stubbs, Susi, Tarr, Teague, Theriault, Torrey, Tozier, Truman, Twitchell, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship.

NAY — Bachrach, Connolly, Dudley, Hennessey, Kelleher, LaPointe, Mitchell, Morin, Mulhern, Post, Silverman, Talbot, Tierney.

ABSENT — Bowie, Hall, Hughes, Jalbert, McMahon, Palmer, Quinn.

Yes, 130; No, 13; Absent, 7.

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

Sent up for concurrence.

The following paper from the Senate was taken up out of order by unanimous consent:

The following Joint Order: (S. P. 782)

WHEREAS, children who are mentally retarded need every advantage to develop confidence in themselves and to succeed in building a positive image; and

WHEREAS, special olympics have been designed for the mentally retarded to give them a chance to develop skills and experience success through an organized programming of physical fitness; and

WHEREAS, through this unique program mentally retarded boys and girls of the State can share experiences of athletic competition not otherwise available; and

WHEREAS, the special olympics program for mentally retarded children is scheduled to be held in the City of Portland on June 4 and 5, 1976; now, therefore, be it

ORDERED, the House concurring, that the Members of the Special Session of the One Hundred and Seventh Legislature, now assembled, commend the continued development of the special olympics program and express our thanks to all those who participate, support and make possible, through this special olympic event, new hope and a better way of life for the mentally retarded; and be it further

ORDERED, that suitable copies of this Joint Order be forwarded to the olympic officials in token of our commendation and support.

Came from the Senate, read and passed.

In the House, the Order was read and passed in concurrence.

The Chair laid before the House the second item of Unfinished Business:

Bill "An Act to Revise and Clarify the Freedom of Access Law" (H. P. 2226) (L. D. 2316) — In House, Passed to be Engrossed as amended by House Amendments "A" (H-1034), "B" (H-1044), and "E" (H-1110) — In Senate, Passed to be Engrossed as amended by House Amendments "B" and "E" in non-concurrence.

Tabled — (Till Later Today) March 30 by Mrs. Najarian of Portland.

Pending — Further Consideration.

On motion of Mr. Faucher of Solon the House voted to recede from its action whereby the Bill was passed to be engrossed.

Thereupon, the same gentleman offered House Amendment "F" and moved its adoption.

House Amendment "F" (H-1137) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Madison, Mrs. Berry.

Mrs. BERRY: Mr. Speaker, I wonder if this amendment could be explained?

The SPEAKER: The gentleman from Madison, Mrs. Berry, has posed a question through the chair to anyone who may care to answer.

The Chair recognizes the gentleman from Solon, Mr. Faucher.

Mr. FAUCHER: Mr. Speaker and Members of the House: This amendment was first drafted by a lobbyist for the Maine Municipal Association and asked me to offer it. I spoke to the members of the Legal Affairs Committee and they didn't see any problem with this amendment. This amendment makes it clear that public notice is to be given only for meetings of official bodies that consist of three or more persons. It does not require notice of meetings that merely deal with policy but only those at which policy will be adopted.

The SPEAKER: The Chair recognizes the gentleman from Bridgton, Mrs. Tarr.

Mrs. TARR: Mr. Speaker, I don't like the sound of that amendment. If Mr. Faucher can say anything else to convince me, but is this that three people could get together and discuss policy and so forth without any meeting, is that what you are saying?

The SPEAKER: The gentleman from Bridgton, Mrs. Tarr, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This has reference only to the advertising of the meetings. As I stated the other day, this law no longer is applicable to committees and subcommittees of those agencies or boards or commissions. However, there are some agencies that are one man or one individual, and the way that the law was written, it would mean that if that one individual came into town or contacted anyone, he would immediately have to post a public notice that he was going to do so. We didn't think that this was what they wanted.

This only involves the committees, agencies, boards and commissions that have the authority to either impose taxation, appropriate funds or set policy on those individuals governed and a committee would be one less than a majority, meaning that the commission couldn't go in and say, we are now a committee so these rules do not apply. But a committee or subcommittee of one of these boards, agencies, groups can only be one less than a majority so, therefore, the entire board must meet before any major decisions are made. Then this law does apply.

Thereupon, House Amendment "F" was adopted.

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

Mr. HENDERSON: Mr. Speaker, I would inquire to any member of the Legal Affairs Committee if they could explain to me if a body, say a school committee or a council, could say that they were not having an executive session or not even an official meeting, that they were having what they might call a work shop meeting, could they get together and have such a meeting without notifying the public or making it open to the public?

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

The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This is one of the problems that we had with this bill in dealing with it, and we hoped that we had taken care of

it under Section 401. The last sentence says, it is further the intention of the legislation that clandestine means conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not to defeat the purpose of this subsection.

Mr. Shute of Stockton Springs offered House Amendment "G" and moved its adoption.

House Amendment "G" (H-1146) was read by the Clerk.

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

Mr. SHUTE: Mr. Speaker, Ladies and Gentlemen of the House: The purpose of this amendment is pretty well explained in the Statement of Fact. It says the purpose of the amendment is to provide greater flexibility and notification of the media in the event of an emergency meeting. This is amending Section 406 of the bill under Public Notice, which reads at the present time: "Public notice shall be given to all public proceedings as defined in Section 402 whenever these proceedings deal with expenditures of public funds, taxation or policy. This notice shall be given in ample time to allow public attendance" which is all right with me and that is the way it should be and I find no fault with that section. The next sentence, however, deals with the emergency situation and this is the section that I am amending.

"In the event of an emergency meeting, local representatives of the media shall be notified of the meeting" and this is where my amendment comes in. "whenever practical" were those words. The notification to include time and location by the same means or faster means to notify members of the agency conducting the public proceedings.

Some of the small towns naturally would have to comply with this if an emergency situation did arise on water damage to a bridge or road repair or anything. I can think of one town next to my town that would have to notify three newspapers, four radio stations and three TV stations, and I think that is a little impractical if there isn't time to notify these people of the meeting. If the notification is given in person, it would also be impractical to notify the media in person.

It is not the intent of this amendment to in any way defeat the purpose of the bill because they would still be required to notify the media, whenever they could possibly do that. I do think there is a little need for flexibility in the notification section when an emergency arises.

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I was wondering if any member of the committee was concerned about this, and I am not quite sure but I think I am concerned about it in that what practicality is can sometimes be a very broad discretionary judgment on the part of people who might be holding meetings where people will not be able to attend. Unfortunately, this kind of a law is being passed to deal with those marginal cases where people do hold meetings where they are not quite as forthcoming as we would like to have them and this might give them what I would think is possibly a gaping loophole.

I wonder though, since it does talk about local representatives of the media, whether a small town which does not have a television station located in its district but may have a local correspondent of the newspaper, whether they would only be obligated to notify the latter and not all these other groups. I would ask for a division on the motion and hope, unless we hear some more convincing arguments, that we do not adopt the committee amendment.

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