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

Bill "An Act relating to Steel Guardrails on the Maine Turnpike" (H. P. 619) (L. D. 830) — In House, passed to be engrossed as amended by House Amendment "A" (H-247) — In Senate, passed to be engrossed as amended by Senate Amendment "A" (S-170) and Senate Amendment "B" (S-171) in non-concurrence.

Tabled — May 18, by Mr. Porter of Lincoln.

Pending — Motion of Mr. Lizotte of Biddeford to recede and concur.

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

Mr. CROSBY: Mr. Speaker, Ladies and Gentlemen of the House: Yesterday this bill was tabled in order that an opinion might be obtained from the Attorney General's office. That opinion is available now and I would like to read it into the record. It is addressed to me.

"This office has reviewed the above reference legislative document in order to determine whether there are any constitutional problems with respect to this legislative document, as amended.

The legislative document as originally drafted proposed that the Maine Turnpike Authority erect and maintain steel guardrails in the median strip on the turnpike from Kittery to August. Two of the proposed amendments to L. D. 830 (H-247 and S-170) contemplate that either guardrails or safety barriers be erected before a certain date. It is the addition of a date by which the barriers or guardrails will have to be erected that gives us particular reason to consider whether or not such a requirement violates the provisions of the Constitution of Maine relating to impairment of the obligation of contracts.

The Maine Constitution, Article I, Section 11 provides:

'The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.'

The Maine Turnpike Authority is a creature of statute having been established by the Maine Legislature by Chapter 69 of the Private and Special Laws of 1941. The Authority is bound to disburse its funds according to the terms of the Trust Indenture. For example, payment of interest on bonds and redemption of bonds when due would have a priority of payment from revenues collected from tolls. A question can properly be raised as to whether any legislation which would divert revenues of the Authority contrary to the terms of the Trust Indenture would be in violation of the reference constitutional provision. We think there is a potential constitutional problem if the Turnpike Authority is required before a certain date to erect guardrails, or safety barriers. This is not to say that the Authority cannot erect guardrails, the cost of which would be financed from revenues. It is to say, however, that it does not appear that the legislature can properly limit the time in which the Authority must act.

We, therefore, express grave doubts as to the constitutionality of the reference legislative document as amended by either H-247 or S-170.

Nothing contained in the foregoing statements should be considered in any way comments upon the merits of the proposed legislation."

Therefore, Mr. Speaker, I move that this bill and all of its accompanying papers be indefinitely postponed.

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

Mr. LIZOTTE: Mr. Speaker, Ladies and Gentlemen of the House: Unlike many Attorney General opinions, this one does not say that this bill is unconstitutional. It merely says there is a potential constitutional problem. Every complicated document that is passed upon in this House can be considered potentially unconstitutional. But to permit the vague language of an Attorney General's opinion to taint this bill would be clearly improper.
I have consulted attorneys who claim that the Attorney General is wrong, and if there is a potential constitutional problem, although I say there is not, then let us handle the matter in court at the proper time.

It seems very strange to me that we can legislate laws to private business. As example, when a private business builds a million dollar motel, we tell him that he cannot open his doors until he has gone through an added expense of installing a 20 to 30 thousand dollar sprinkler system. Then why can't we legislate to the Maine Turnpike Authority which is, ladies and gentlemen, a private business?

I am very surprised to see that we have some people opposed to such a good piece of safety. We are all here to try in one way or another to protect our people. I hope you will all join with me and vote to recede and concur with the other body. And, Mr. Speaker, when the vote is taken, I would ask that it be by the yeas and nays.

The SPEAKER: The Chair would advise the House that this is a non-concurrent matter. The only motions acceptable are recede and concur, insist and adhere.

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

Mr. VINCENT: Mr. Speaker, Ladies and Gentlemen of the House: It was mentioned that the Maine Turnpike Authority is a creation of the legislature and as such I would think that we would be responsible for some of its safety. Setting time limits doesn't go without precedent. On the federal level the members of Congress have dictated that we shall clean up the streams and rivers in this country by the year 1976. They have also made it mandatory that safety devices for smog be placed upon cars by the year 1975. So I think that in a court ruling the courts would rule in favor with us, the members of the legislature, if we so wish to erect safety barriers along the Maine Turnpike.

This piece of paper was handed out this morning on the number of accidents that have occurred on the turnpike and north of Augusta. It is interesting to note that there are quite a few accidents below as well as above the Augusta toll booth.

With the number of accidents indicated here it would be one more reason for voting in favor of having a safety barrier placed along the center strip on the turnpike. It would be a good idea in the future also to have something placed upon Interstate 95 between Brunswick and Portland as there are many unsafe corners and turns upon that road as I travel back and forth.

I would hope that you would defeat the motion, if it has been made or placed for indefinite postponement, and go along with the motion that is pending before the floor, to recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Albion, Mr. Lee.

Mr. LEE: Mr. Speaker and Ladies and Gentlemen of the House: It has been mentioned that the Maine Turnpike is a private concern. Now this may be true. It was established by the legislature for the purpose of building and maintaining a road. But when the bond has been paid off this becomes the property of the state right then. So it is part of the state highway system.

I had distributed on your desks some information I had Lieutenant Jones get for us concerning accidents. It speaks for itself. There were more accidents per mile on what we consider a better type of highway north of us than there is south of us. I am not against a guardrail on the turnpike. I think someday it is going to be there. But it should be of a better type than what is proposed. It should be on the inside, right beside the pavement, not down in the middle of the median strip. Engineering-wise that is a poor place for it.

I would hope we would defeat this motion to recede and concur so that we could adhere or indefinitely postpone.

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

Mr. SHELTRA: Mr. Speaker and Members of the House: According to the amendments that were brought forward by the Sen-
talking about the safety of our own people. And this we are all responsible for. Insofar as the letter that came forth through the Attorney General’s office, the language is such that it reads we think, and we doubt. This doesn’t seem to be a very sound decision to me. I think that we should go along with this bill. Our people deserve it, and God knows safety is most important to all our citizens.

Insofar as the statistics that we have read about, or this chart, I think we all know that the weather has to play a great part in the difference of accidents that might be contained as opposed from one end of the state to the other. I see conditions prevail a lot more and a lot longer in the north than they do in the south. So this here, again, is just a play on statistics.

I hope that you will vote against indefinite postponement of this bill for the safety of our constituency.

The SPEAKER: The Chair would advise the gentleman and the House that the pending question is on the motion of the gentleman from Biddeford, Mr. Lizotte, that the House recede and concur.

The Chair recognizes the gentleman from Mexico, Mr. Fraser.

Mr. FRASER: Then I move we adhere.

The SPEAKER: The pending question is to recede and concur, which has priority.

The Chair recognizes the gentleman from Biddeford, Mr. Lizotte.

Mr. LIZOTTE: Mr. Speaker and Ladies and Gentlemen of the House: In Senate Paper 170, it says that the Maine Turnpike has until December 31, 1974. This gives them over three years to do this in, and I think this is more than sufficient.

The SPEAKER: The Chair recognizes the gentleman from Lubec, Mr. Donaghy.

Mr. DONAGHY: Mr. Speaker, parliamentary inquiry please.

The SPEAKER: The gentleman may state his inquiry.

Mr. DONAGHY: Mr. Speaker, if we kill the recede and concur, does that mean that we then can indefinitely postpone the bill?

The SPEAKER: The answer is in the negative. There are four motions in a non-concurrent matter that are in order: recede, concur, insist and adhere.

The Chair recognizes the gentleman from Mexico, Mr. Fraser.

Mr. FRASER: Mr. Speaker and Members of the House: My amendment H-247 gives the time as December 31, 1973, not ’74.

The SPEAKER: The yeas and nays have 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 members 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 Eagle Lake, Mr. Martin.

Mr. MARTIN: Mr. Speaker and Ladies and Gentlemen of the House: One question that is still apparently confusing to me and perhaps to other members is the amendment that was imposed in the other body, as to whether or not it is ’71 or ’74. I wonder if the Clerk could so inform the Members of the House.
The SPEAKER: The Chair would inform the Members of the House that the Senate indefinitely postponed House Amendment "A". They passed the Bill to be engrossed as amended by Senate Amendments "A" and "B" in non-concurrence. Senate "A" is S-170, and the date is 1974.

The pending question is to recede and concur on Bill "An Act relating to Steel Guardrails on the Maine Turnpike," House Paper 619, L. D. 830. If you are in favor of receding and concurring you will vote yes; if you are opposed you will vote no.

**ROLL CALL**


ABSENT: Bustin, Carey, Cote, Dudley, Gauthier, Gill, Hanson, Haskell, Hewes, Hodgdon, Jalbert, Jutras, Kelley, K. F.; Lessard, McKinnon, Pontbriand, Rocheleau, Starbird, Trask.

Yes, 65; No, 66; Absent 19.

The SPEAKER: Sixty-five having voted in the affirmative, sixty-six in the negative, with nineteen being absent, the motion to recede and concur does not prevail.

The Chair recognizes the gentleman from Bath, Mr. Ross.

Mr. ROSS: Mr. Speaker, I move we insist and ask for a Committee of Conference.

The SPEAKER: The gentleman from Bath, Mr. Ross, moves the House insist and ask for a Committee of Conference. Is this the pleasure of the House?

(Cry of "No")

The SPEAKER: The Chair will order a vote. All in favor of insisting and asking for a Committee of Conference will vote yes; those opposed will vote no.

A vote of the House was taken.

102 having voted in the affirmative and 22 having voted in the negative, the motion did prevail.

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

Bill "An Act Providing for a Declaration of Policy Concerning the State's Environment" (H. P. 1301) (L. D. 1706) — In Senate, passed to be engrossed. Tabled — May 18, by Mr. Susi of Pittsfield.

Pending — Adoption of House Amendment "A" (H-288)

The SPEAKER: The Chair recognizes the gentleman from Eagle Lake, Mr. Martin.

Mr. MARTIN: Mr. Speaker and Ladies and Gentlemen of the House: As you recall yesterday, we went through some parliamentary questions as to what we could or could not do with this L. D. After the session yesterday afternoon I spent some time going between legislative bodies and also between the Speaker's office and also to the State Government Committee.

For the most part I think most people on the State Government Committee are satisfied with the motion that I am about to make — and basically it is a motion to recommit, with perhaps instructions that they simply vote on the amendment that we have got so that we don't get ourselves entangled up in any parliamentary controversy.