# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

# *One Hundred and Seventh Legislature*

OF THE

STATE OF MAINE

## Volume II

May 21, 1975 to July 2, 1975

## Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

Mr. JENSEN: Mr. Speaker, that being the case, it would seem to me to be extremely irresponsible to pass a budget without passing the money to go along with it in its final form.

Thereupon, the Bill was passed to be engrossed as amended by Senate Amendment "A" in concurrence.

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

An Act Concerning the Office of Energy Resources (S. P. 549) (L. D. 1913) (C. "A" S-285, S. "B" S-301, S. "D" S-363)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House necessary, a total was taken. 107 voted in favor of same and 5 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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An Act Relating to Compensation and Benefits under the State Classified Service (H. P. 406) (L. D. 495) (S. "A" S-366 to C. "A" H-153)

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

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

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(Off Record Remarks)

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On the disagreeing action of the two branches of the Legislature on Resolution, Proposing an Amendment to the Constitution to Abolish the Executive Council and Reassign its Constitutional Powers to the Governor (H. P. 16) (L. D. 24) the Speaker appointed the following Conferees on the part of the House:

Messrs. TIERNEY of Durham
CARPENTER of Houlton
Mrs. SNOWE of Auburn

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

Bill "An Act to Correct Errors and Inconsistencies in the Public Laws" (S. P. 480) (L. D. 1760) which was passed to be engrossed as amended by Committee Amendment "A" (S-351) as amended by Senate Amendments "A" (S-355), "B" (S-362), "E" (S-361), "F" (S-365), and House Amendments "B" (H-823), "C" (H-828), "E" (H-830), "F" (H-834), "G" (H-835) thereto and Senate Amendments "C" (S-356) and "A" (S-352), and House Amendments "A" (H-814), "B" (H-821), "C" (H-831), "D" (H-832) and "E" (H-836) in the House on June 24.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" as amended by Senate Amendments "A", "B", "E", "F" and "H" (S-369) and by House Amendments "B", "C" and "G" thereto and Senate Amendments "A", "C", "E" (S-368), "G" (S-371) and "F" (S-370) and House Amendments "A", "B", "C", "D" and "E" in non-concurrence.

In the House: On motion of Mr. Gauthier of Sanford the House voted to recede from passage to be engrossed.

Senate Amendemnt "H" to Committee Amendment "A" (S-369) was read by the Clerk.

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

Mr. LaPOINTE: Mr. Speaker and Members of the House: Could a member of the Judiciary Committee please explain this amendment?

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

Mr. PERKINS: Mr. Speaker and Members of the House: I move the indefinite postponement of Senate Amendment "H" and would speak to my motion in an effort to answer Representative LaPointe's question.

Senate Amendment "H" is a duplicate of sorts to House Amendment "F" that was adopted yesterday by this Body. It appears that there was some error, typographically, in terms of House Amendment "F" and in conflict, in part, with a Senate Amendment that was likewise adopted and, therefore, by virtue of a conference between the sponsors of the two particular amendments it was agreed that Senate Amendment "H" would be presented and that the two previous amendments would be deleted. This particular section which has been placed as an amendment to the Errors and Inconsistencies Bill bothers me, personally, quite a bit I am afraid. The arguments for this particular piece of legislation, if you will, and it is just that, is that we, as a body, or this legislature has expressed its intent that we hold legislative papers in confidence and confidentiality by virtue of a vote taken earlier in the session on a joint order presented by myself. That constitutes a sufficient cause, if you will, to amount to an error and inconsistency in the law. ladies and gentlemen, there is no law and, therefore, we must put it in the law if we are to preserve the position that was taken by the legislature or specifically by this body on my particular joint order.

I might add that I also was vocal enough to suggest that I had intent to bring suit against the Legislative Research Office because there is no law on the books that says those records are confidential and that I felt that I would prevail. If we pass this legislation, there isn't any question about it, I will lose. Whether I do or I don't and frankly, I don't find that very important other than for the fact that legislative records and reports I find are very difficult, very hard to understand what it is we, as legislators, as elected public officials, claim that we must keep our papers confident in the state of confidentiality that we would prevent the general public from being aware of what they might be if they chose to do so. That to me, rings so and true of what I consider a public official to be.

We were elected Representatives and Senators, if you will, chosen by the people to represent their interests in a public capacity and when we were elected we gave up a certain privilege, if you will, and that privilege was a luxury of remaining private citizens to the extent of our legislative capacities here. It seems to me that if any one of my constituents so chooses to come up here and go through the legislative research office, looking at my papers, I have absolutely nothing to hide.

I can't conceive of anyone else here having anything they should hide. The minute I find that we have got to pass a law that suggests that we are going to put on the books that they do not do that, then I seriously question just what it is in there or out there that must be hidden. I suspect there really is nothing but it does cause a certain amount of stigma, suspicion or what have you to say that we have got to pass a law in order to prevent the general public from viewing our public activities, this refers to public records in the sense that it is our working papers, if you will.

I can only reiterate that the Errors and Inconsistencies Bill is supposed to be for just that purpose. It is to take care of those errors or inconsistencies as a result of legislation which is in conflict, one with another, or where there is any particular date that is inserted as a part of an act and it is no longer appropriate, as for example, the criminal code will go into effect as of March 1, 1976 and during the next legislative session, it is no longer necessary to refer to that statutorily and may be deleted. For the most part the Errors and Inconsistencies Bill has been taken care of along those lines. There are some amendments that do not do that. This one, in particular, is one that does not do that. This, in fact, passes a new law and I sincerely hope that you will defeat it on my motion for indefinite postponement.

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

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: I will reply to the gentleman from South Portland, Mr. Perkins, although I know he feels very strongly about this issue, I think the House should be made aware of some of the questions at hand.

First of all, the only reason that Senate Amendment "H" is back to us is because it is word for word my House Amendment "F" yesterday, it was due to a technicality which the gentleman from Bangor, Mr. McKernan, noticed yesterday that there are some problems with numbering and I had an amendment prepared and this guy in the Senate had the amendment prepared and they both went on and they are inconsistent. The only way to make them consistent was to put on a new amendment, that is technically why it is here.

Number two, the question of whether or not this is a substantial change in the present law. The only reason this entire question was brought to my attention was that the very good gentleman from South Portland, Mr. Perkins, from his position on the Judiciary Committee had written into this new section, Section 1 of the Errors and Inconsistencies Law an exception to the exception which would, in a sense, open up so that he could bring his suit after the session was over to open up the legislative files.

So, I just think that what we are trying to do here, and all this amendment does is to preserve the status quo as to preserve the confidentiality of our records in the legislative research office, an issue that this House has directly addressed when it, by a substantial margin, defeated the order presented earlier by the good gentleman from South Portland.

Now, with the technicalities out of the way, I would like to talk to the policy behind this amendment. I have voted for just about every openness in government scheme that has come through here last session and this. Some of them were pretty half baked but I voted for them anyway. I guess, in some sense, I have admitted I was wrong on some of those votes, because what has happened generally through some of our desires to be open has been a factual result of increased power on the

fact of members of the lobby. What this does is say that when you have a file with Dave Silsby, it is your file. Now, no constitutent of mine has ever tried to see that file. It is not a question of your constitutents driving here to Augusta and asking to see your file. The people who want to see the file are the lobbyists, they want to be able to come in on a Monday morning and say that they want to see Jim Tierney's file to check out all the labor bill and any amendments he might want to put on. They want to come in and look at the file of the gentleman from South Portland and see what he has cooking on any amendments he might want to put in on a Judiciary bill. It is that simple. I don't blame the lobbyists for wanting to know absolutely everything in there. They want to see every letter you receive from a constituent that might end up in that file. It just doesn't make any sense. It seems to me that as I am working out in my own mind what I want for the content of the bill or content of an amendment that that input, the working papers which go into that input deserve to be confidential. When I take that amendment and put it on the floor of this House, then it is for the people and, at that time, of course, I do have nothing to hide. I hope that we do not indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Dover-Foxcroft, Mr. Smith.

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I am going to say just one word. I was the original sponsor of the Right to Know Law that went through here and now is being corrected in the Errors and Inconsistencies Act. I want you to know that I think this is a good amendment, it was brought to the attention of those who worked on the Right to Know Law, long after it had been signed by the Governor and it is something that we had not thought of at the time. The agrument that it would be the ideal tool for the member of the third House, I think, is a compelling one, and I am sure that files that I put together down in the Research Office of ideas and notions that I might someday turn into a bill, I don't care about lobbiests going through and becoming a public record before I actually am willing to go public with it myself. I think there is a slight danger here that that kind of thing could be misused and I hope that you will not vote today to indefinitely postpone this item.

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

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: Just to review the history of this, a little bit, since it has been brought up. A proposed amendment was presented to the Judiciary Committee dealing with the public records and the definition of public records. I attempted to determine just where it came from and I found the Attorney General's Office was interested in being more specific than the bill that was originally presented by Representative Smith from Dover-Foxcroft. In checking with the Attorney General's Office, I found that the reason that they were more concerned with specifics was that under Section 3 which is now a proposed amendment to Section 3, it originally read inter-office memorandums or working notes of public officials. "Inter-office memorandums or working notes and papers of a public official that are not the sole public record of action or any information considered in taking action on any matter committed to the discretion of that official," That was an exception to what is a public record. They felt it was very necessary to have that for a couple of reasons. One was, they wanted to prevent defendants from being able to view their working records. The other was that, as you know, the Attorney General's Office gives opinions on occasion as the constitutionality of a given act, the legality of a given bill. These are so-called informal opinions and they don't like to get themselves locked into having to show this to the general public or being committed to it, is what it amounts to. That is the reason that they proposed this amendment to the definition of public records and had they left it alone, I wouldn't have had any cause of alarm. Unfortunately, when they chose to do it this way, I went down there and they agreed that it was substantive matter, it was not a procedural matter, it was a substantive matter. I said, I will tell you one thing, I am going to ask to kill; the whole bill, call it an omnibus bill if you want, it is an omnibus bill. I will move to indefinitely postpone the whole bill if this thing goes in the way it is at the present time, as presented by you people and they agreed that they didn't like to rock any cages including my own and, therefore, it was amended to make sure that it said, except public officials involved in the legislative process. I agree that was the result of my doing.

Then we had Representative Tierney present his amendment which would have specifically made sure that we were considered one of the exemptions from the public Right to Know Law. Then Senator Clifford decided to delete that whole section 3 because he didn't like the idea that the Attorney General's opinions, they wanted to keep to themselves or their inter-office memos and things of that nature should be open to us. He was concerned the legislature should be aware of what was going on and, therefore, we have Section 3, if we pass the amendment as proposed, completely deleted which takes care of the problem of the Attorney General's Office records are no longer longer being confidential but having replaced it with one even more directly involved with us, as people, That is to say, ladies and gentlemen, no, the Attorney Generals Office records are no longer confidential by this, but ours remain so. As far as I am concerned, ours happens to be the only ones that do remain so, if we pass this amendment. I suggest and submit that the general public does not think that way. I hope that we indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: At the time that we debated the original order the gentleman from South Portland, Mr. Perkins, I made the offer to him that he could come and look at my files in the Legislative Research Office any time he chose. Either he is not interested or he is rather slow in getting around to it. To my knowledge, he hasn't come over and looked at them. At the same time, I also made the same offer to the editor of a newspaper in the state who had written an editorial unfavorable to our action. To my knowledge, he has not come and looked at my files in the Legislative Research Office.

I am sure that all of us, if we were asked by our constituents if they're burning with curiosity to find out what was in our files would be able to make the decision and allow them to look at them. I would even be willing to allow lobbyists to look in my files if they so chose. I can't see that this should be mandated as the argument I made the time this could lead to a politicizing of the Legislative Research Office which we have been very, very careful to keep completely away from all politics. I hope that you will not vote to indefinitely postpone this amendment.

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. The thing that bothers me the most, I guess, about this amendment and why I am going to support indefinite postponement is the remarks made at the end of Mr. Perkins speech and that is that we have gone now from one extreme to the other and we are saying that no longer are other public officials inter-office or into our office memo's going to be confidential but we are now going to allow legislative inter-office memo's or working papers to be confidential. I think that we ought to do both or neither. I think that it is inconsistent to say that the legislature should, for some reason, be above other public officials and not be subject to the scrutiny that these public officials are going to be subject to now with their papers not being confidential.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I want to commend the courage of the gentleman from South Portland, Mr. Perkins. I wonder if we are trying to be holier than thou or are we hypocrits? We want openness in government for everybody except ourselves. I don't think that makes sense. If we are going to have openness in government, it should apply to us just as well as everybody else. School boards have to, municipal officials, why are we so select that we can be exempted from this law? We have heard of sunshine laws for years.

The gentleman from Dover-Foxcroft sponsored a bill and worked hard to get it through a lot of debate and was successful. I don't think, that we ought to, now, exempt ourselves even though it is a lobbyist or any other interested citizen. I don't see why interested citizens should be denied the right to look at our records and our memo's and things of that nature.

I certainly hope you will vote to appreciate the Majority Leader who spoke and perhaps this is a lost cause. I hope that you will vote to indefinitely postpone this. If we don't, I don't know if the two-th rds will be there tomorrow or whenever we get around to vote for the final enactment of this bill, which I hope will be tomorrow. This is a matter of substance, the amendment in question was offered June 25, 1975 and I don't think that it ought to pass.

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

Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: I hope we don't vote to indefinitely postpone this amendment.

I have been put out quite a few times during this session when we, of some committees, had meetings and department heads came in there, not seeking our advice or giving us advice but

telling us what to do. It happened two or three different occasions when I was present and I didn't like it. Even last week, had an order that I wanted drafted, I went to the right source, I went down the next day, the order was not drafted. Then I was told that they had contacted a certain department head and the department hed had told him we better go easy on this., I don't think it is a good idea to hae this order drafted. That I don't agree with and I think when we get down to Legislative Research or when we go to the Attorney General's Office or anyone else and ask them to give us advice, well and good, but I don't think they should stick their noses where they have no business in, by going to our files and try to have us change our mind or spreading out what we are trying to do here, and as we introduce, whether it is a bill or an order, it becomes public property at that time and that is when it should be recognized by everyone. So, I hope we don't indefinitely postpone this thing.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I would just simply like to make one comment. I am a little bit disturbed by the implied threat of the gentleman from Cape Elizabeth unless we go along with this, the entire Errors and Inconsistencies Bill will be defeated.

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I wonder the majority leader or someone else can tell me whether the allegation is accurate that the legislative files are less open than the files of the administration, the bureaucracy? Is it, in fact, true or are these memorandums accepted the same as they are in the executive area?

The SPEAKER: The gentleman from Bangor, Mr. Henderson, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the gentleman from Dover-Foxcroft, Mr. Smith.

Mr. SMITH: Mr. Speaker Ladies and Gentlemen of the House: I think I am correct in saying the legislative files themselves are as open as any in the state government today. The files that we are talking about are a little bit special, in that, the people that work in the research office are attorneys, they are people that very often members of this House go to almost on an attorney client basis and the policy of that office has been one of attorney-client business, that the advice that they give, the suggestions that they write, the thoughts that they have are with their clients who are the legislators, and many of the things that are said or written in that office have been somewhat privileged on that basis and on that policy. Basically, all this amendment, to the Right to Know Law that so many of us worked so hard to get through this session is to continue that realtionship and it is not an unusual relationship in our society. I am sure that you all know that it exists outside the legislature and without further study, I do not mind an amendment of this sort going on to modify that Right to Know Law very slightly. I think it is something that if we are interested in doing, we could do perhaps between now and the special session and modify it at that time, but at this late date in the legislative session, it seems to me, a bit of caution is warranted and that we could give this matter some thought and perhaps even change it the very first thing in the next session if we consider it wise. I frankly, have not come to the conclusion that that relationship ought to be disturbed without a heck of a lot more thought on my part and I am sure that some of you others feel the same way.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Snow.

Mr. SNOW: Mr. Speaker, Ladies and Gentlemen of the House: If our records, as they exist in the research office, should become as open as the gentleman from South Portland would like, I hope that we all are good spellers, for one thing. I would hate to think of someone looking in there and finding out that we did not know how to spell and see it in someone's column. hope that none of us ever doodle on our notes, which we give to the research office. I hate to think what might come out if our doodles are looked at. I think very often we use suggestions which we receive from friends and because we are busy people, we use their letters, we turn their letters in, their names are on the letters, their words are there. I have no intention of involving the people who asked me to introduce legislation in this kind of exposure, so, therefore, I hope that you will maintain this amendment.

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

Mr. McKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: In response, I guess there is not an answer to the question of the gentleman from Bangor, Mr. Henderson. I would just like to say that he is, in fact, correct, we are giving ourselves a privilege that we have decided, even though it was in the original committee amendment, that we don't want other public officials to have and that is very clear, if you just want to look at the original subsection 3 and the new subsection 3.

I think one thing Mr. Smith said though is something we should all think about before we vote on this motion and that is, if we don't pass this amendment, we will be leaving things just the way they are and I think that rather than pass it, if we want to study it more, we should go ahead and do it. I think this is not the thing we should go ahead and do right now, to give ourselves the privilege that we don't have now.

The SPEAKER: The pending question is indefinite postponement. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Higgins of Scarborough requested a roll call.

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

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

The SPEAKER: The pending question before the House is on the motion of the gentleman from South Portland, Mr. Perkins, that Senate Amendment "H" to Committee Amendment "A" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

**ROLL CALL**

YEA — Ault, Bagley, Berube, Byers, Carpenter, Curtis, DeVane, Dudley, Dyer, Farnham; Gauthier, Henderson, Hewes, Higgins, Hinds, Hutchings, Immonen, Jackson, Kany, Leonard, Lewis, Littlefield, Lizotte, Lunt, Mackel, McBreairty, McKernan, Morton, Norris, Perkins, S.; Pierce, Silverman, Snowe, Sprowl, Torrey, Twitchell.

NAY — Albert, Bachrach, Berry, G. W.; Berry, P. P.; Birt, Blodgett, Boudreau, Bowie, Burns, Bustin, Call, Carey, Carroll, Carter, Chonko, Churchill, Clark, Conners, Connolly, Cote, Cox, Curran, P.; Curran, R.; Dam, Davies, Doak, Dow, Drigotas, Durgin, Faucher, Fenlason, Finemore, Flanagan, Fraser, Goodwin, H.; Gould, Gray, Greenlaw, Hall, Hennessey, Hobbins, Hunter, Ingegneri, Jensen, Joyce, Kelleher, LaPointe, Laverty, LeBlanc, Lewin, Lovell, Lynch, Mahany, Martin, A.; Martin, R.; Maxwell, McMahon, Miskavage, Mitchell, Mulkern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Peterson, T.; Post, Powell, Quinn, Raymond, Rideout, Rolde, Rollins, Saunders, Shute, Smith, Snow, Spencer, Stubbs, Talbot, Tarr, Teague, Theriault, Tierney, Tozier, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship.

ABSENT — Bennett, Cooney, Farley, Garsoe, Goodwin, K.; Hughes, Jacques, Jalbert, Kauffman, Kelley, Kennedy, Laffin, MacEachern, MacLeod, Mills, Morin, Palmer, Perkins, T.; Peterson, P.; Strout, Susi, Truman.

Yes, 36; No, 92; Absent, 23.

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

Thereupon, Senate Amendment "H" to Committee Amendemnt "A" was adopted in concurrence.

The SPEAKER: The pending question now is indefinite postponement of House Amendment "E" to Committee Amendment "A" in concurrence.

The Chair recognizes the gentleman from South Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is mine, I put it in last night to take out a section that was put in the Errors and Inconsistencies that I thought was a substantial change. Since that time, I have been able to do some work on this. I have found that the section that was put in the Errors and Inconsistency is not going to create a lot of difficult problems, in fact, a lot of people do want that, it is not that bad an idea perhaps. It is still a substantial change. I am not going to fight this, I am going to go along with it, but I do want the people in this House to know that this is a substantial change, a particular bill that is going in in the Errors and Inconsistencies. I do not like the procedure but at this point in time I am not going into a big hassle between two branches or anything on this. I just think that everybody in here should be aware of what is happening.

Thereupon, House Amendment "E" to Committee Amendment "A" was indefinitely postponed in concurrence.

House Amendment "F" to Committee Amendment "A" was indefinitely postponed in concurrence.

Senate Amendment "E" (S-368) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to make any motion or anything, I don't want to prolong this thing, but I do want to call your attention to the fact that in Section 24B of this particular amendment, the number of signers on a petition for nomination for House of Representatives is increased from 25 to 75, or not more