

HB 5173

PA 578

1971

Judiciary 703, 714-719, 735-736

House 4442-4445

Senate 3226-3227

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY**

**PART 3  
689-1000**

**1971**

H.B. #5173 - AN ACT PROVIDING A MASTER MORTGAGE RECORDING ACT.

The F.H.A., the V.A. and all the Federal Savings are completely in favor of this Bill. What it does is to permit a lending institution to record a form of its mortgage instrument on the land records and the Town Clerk is directed to give that a volume and page. In all subsequent mortgages, all the lending institution has to do is refer to this master mortgage form on record and incorporate the provisions of it by reference. You don't have the lengthy mortgages. You can incorporate all the provisions of the master form that is on record or you can incorporate any one or more of the provisions simply by reference.

So that the adoption of this Statute would go a great way towards eliminating the bulk and the expense of the present day cost of recording the F.H.A., V.A. and many of the the Federal Mortgages that are now up around \$19, \$20, \$21 in cost.

S.B. #889 - AN ACT CONCERNING LIMITATION OF ACTIONS FOR VIOLATION OF LAND USE RESTRICTIONS.

A statute of limitation Bill applicable to violation of private restrictions limits the private restrictions to a one year statute of limitations.

We all must appreciate that as long as there is the violation of a private restriction, the market is rendered, the title is rendered unmarketable and the one year statute of limitation brings this type of a right within the normal one year statute of limitation - and even within one year, there is a period of when somebody is not going to be able to transfer or mortgage the property. But certainly, he cannot make it less than a year but it shouldn't be more than a year.

Again you will see the philosophy prevailing through many of these Bills that I am here on which is to make our land records say what we think they say and which they don't say and that is to tell us the status of the title. So often the land records do not disclose the status of the title and we have to go outside the land record or else pass a title strictly on a casualty basis.

Now I spoke last week on H.B. #7002 that was incorrectly assigned, does this Committee want me to refer to it again, Senator Jackson?

Sen. Jackson: Do you want to give testimony on it?

Mr. Gallivan: Last week it was down incorrectly and you appointed a sub-committee of Mr. Healey....

Sen. Jackson: I would say .....

Mr. Gallivan: All right. I would like to direct my personal attention, I am not now speaking as a representative of the Real Property Section - that is speaking in favor of H.B. #1049.

H.B. #1049 - AN ACT CONCERNING AMENDMENTS TO THE MECHANICS LIEN STATUTES.

The reason I am speaking in an individual capacity is simply because Real Property Section did not have a chance to see this Bill at the time we went

Rep. Carrozzella: Let me ask you, apparently Mr. Galligan - Gallivan indicated that there might be some area where you can get together, is that so?

Mr. Hartigan: Oh yes, we

Mr. Gallivan: Mr. Hartigan and I can get together whether Mr. Hartigan's clients can get together with this

Rep. Carrozzella: Well, why don't the two of you see if you can sit down and draft a Bill that, you know, is sort of a compromise Bill which would accomplish the purpose of the Bar Association and protect some of the interests of your client.

Mr. Hartigan: We will try, we will try, Representative Carrozzella but I must report to you last time we did this, the negotiations were something like the negotiations in the Middle East, we were stuck.

Rep. Carrozzella: Well, try again this time.

Mr. Hartigan: We will try.

Sen. Rome: Could you indicate to both of your interests that I think it is safe to say that the Committee is very interested in making improvement and progress in this area, perhaps that would help some to make a decision or

Mr. Hartigan: And so am I. As a lawyer I am interested in this and it just seems to me that this sort of Bill is too burdensome. I think we do have to do something else.

Rep. Carrozzella: Thank you. Mr. Copeland, I think it is - oh, he left. Mr. Tomkiel.

Mr. Tomkiel: Mr. Chairman, Ed Tomkiel representing the Connecticut Town Clerk's Association. The Association endorses the adoption of the Master Mortgage Recording Act - Act #5173 and also Bill #7002 which we were last week and we did not speak on. This provides for the short form warrantee with claim deed and assignments.

H.B. #5173 - AN ACT PROVIDING A MASTER MORTGAGE RECORDING ACT.

We do sincerely request though, that adequate fees be assigned to the recordings to enable us to fulfill our statutory duties.

The expense here, we believe, should be on the person recording the deeds and not on the rest of the citizens of our community. I just want to give you one example in my town through the Conveyance Tax Bill - my Townfathers permitted me spend \$82,000 on a printed index from 1823 thru 1966. This cuts down the Titled Searching Time of the attorneys by about two-thirds to one-half. Just give us the money, and we will provide you with the best records - we can do it.

Sen. Rome: Increase your golf time! #7002 is being redrafted because of that very point.

Rep. Carrozzella: Mr. Potter to be following by Mr. Bowlby of the Connecticut Association of Lumber Dealers.

Mr. Potter: Mr. Chairman, Members of the Committee, I am Rockwell Potter, the Public Records Administrator. I am appearing in favor of H.B. #6883 which is introduced at the request of the Records Management Committee.

H.B. #6883 - AN ACT CONCERNING ANNUAL INSPECTION OF LAND RECORDS AND INDEXES.

A very small bit of history to backup this appeal for your approval. The first mention of general index in the statutes that I can find, was in 1899 when the provision of a general index or land records was made optional.

In 1902 a requirement was added that the general index should be inspected annually for accuracy. In 1915, provision of the general index or land records was made mandatory on each town and in 1917, a provision for fine was added to the statute in cases where the annual inspection was not carried out. The fine was set at not less than \$5.00 nor more than \$25.00 for each month of delay.

Now this statute has persisted virtually unchanged up until 1967 at which time we asked the General Assembly to provide that the Chief Administrator Officer of each town should certify to the Public Records Administrator that this annual inspection had been carried out. Up until that time, experience had been that most of the towns were ignoring this requirement and we felt that it would be a way to enforce compliance with the requirements. To have these certifications sent in to the Public Records Administrator.

Well, the change was made as we suggested, but in making the change, somehow the last few words in that section of the statutes were dropped so that in fact, the statute now provides for a single fine of not less than \$5.00 or more than \$25.00 for any town which fails to complete this annual inspection. Now it is manifestly to the benefit of the - or the short term benefit of any town to avoid making the annual inspection which is a relative costly process, if the only penalty is a maximum fine of \$25.00. For this reason, we are suggesting that the wording of the original statute be replaced and we are asking, in addition that the fine be increased to \$100.00 for each month's delay. This will give us some kind of handle that we can take hold of in getting these towns to do the inspection which is, in itself - I think, a very worth while thing. Thank you.

Rep. Carrozzella: Thank you. Mr. Bowlby.

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Mr. Bowlby: May it please the Committee, my name is Samuel Bowlby. I am an attorney in New Haven, Connecticut. I am appearing on behalf of the Lumber Dealers Association of Connecticut. I appear in opposition to #5095 and primarily in opposition to #1049 which has been discussed earlier today.

H.B. #5095 - AN ACT PROVIDING FOR A REVISION OF THE MECHANIC' LIEN LAW TO PROTECT THE INNOCENT PURCHASER FOR VALUE.

H.B. #1049 - AN ACT CONCERNING AMENDMENTS TO THE MECHANICS LIEN STATUTES.

I have sent a detailed letter to each Member of the Committee outlining our specific objections to this legislation and I will not go into those details at this point.

I do want to give you a feeling that this Bill is of utmost importance to the Lumber Dealers, who I represent, and to others - material suppliers and people who render services. As we believe, contrary to what has been stated, that this is a major change in the lien law in Connecticut.

As you know, people - and they are not all sophisticated large operations, those who supply materials and services, sub-contractors - many are very small operations and relatively unsophisticated. As you know, this is the only way by which somebody supplying lumber maintains a lien on these services. The lumber becomes part of the building or what-have-you and there is no way really that it can be taken back. So the mechanic's lien is a way by which the lumber dealer, in this case, can maintain security interest in his property.

In effect, this is the way that much of this business is conducted. It is the way credit is given in this industry and the problem with the Bill is that it injects what we believe that unduly uncomplicated filings, which many of the people will not be able to follow, which will require additional time and expense on the Lumber Dealers and we really do not see the need. I think if you check the Town Clerk Offices, you will find certificates of lien are filed very occasionally. This isn't something that is filed every day. There are very few file - very few times when a Mechanic's Lien is actually foreclosed.

These statutes have withstood the test of time and are understood by most of the people who deal with them in Connecticut. There are ways to protect against unexpected liens by obtaining the proper waivers, obtaining proper warrantees from the people you are dealing with and we don't see where - I think it boils down to this. That in order to give absolute protection to few banks - to banks - to relatively few in number, developers and other financial institutions from an isolated risk, the whole theory of the lien law will be changed so that the detriment and the burden will be applied to the hundreds of the small suppliers and small operations who supply services in this State and I think that in balancing the social

and commercial values that are involved in these statutes, that the hundreds of material men should not be the ones that you require to bear the risks over and above the financial institutions who simply are seeking absolute protection.

Rep. Carrozzella: Don't you think really the Bill is designed to protect rather than ban the purchaser.

Mr. Bowlby: Well, it protects both.

Rep. Carrozzella: That is who we are really looking at here, the purchaser.

Mr. Bowlby: It does protect purchasers but it also protects mortgagees, that is the

Rep. Carrozzella: True, but really ultimately we are trying to protect the purchaser by this Bill.

Mr. Bowlby: Ultimately, also you have to keep in mind the rights and the way the business of materialmen is conducted. You know the statutes, and it wasn't mentioned earlier today, the statutes give protection to the purchaser on a lien to the extend of the contract price. If he is paid in good faith, the contract price to a contractor, the lien is no good. Now we just didn't hear about that today, but there is a law against that purchaser protection right now. I think one person mentioned, well he has a defense but he has got to do that in court, but the law does provide that he is secure up to the extent of the contract price from any given lien.

I think there is one interesting thing, in Massachusetts a similar legislation is in effect and what happens when you have to file a notice of intention to perform a lien, obviously that assumes that you file it before you start performing services or providing materials - that in many cases, they simply require the lienor, the materialman to waive that lien right in the beginning or they won't continue with the contract and they just cancel his contract.

I mean, if they have a legal contract but it is an impractical matter, they can simply cut it short or if they say if you are going to file a notice of lien, we are not going to deal with you and who that benefits, is the marginal sub-contractor who will do anything for business and it takes away, in effect, the right before any services are performed of the person who heretofore has been protected from the Mechanic's Lien Statute.

Now, one other point is that they were talking about liens that come up three years later. Well, under existing law, you, even if you start performing services three years ago - first of all I think that somebody

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would know about that person if he had been performing - started performing services three years ago because he must file a certificate of lien 60 days, under existing law, after he has finished supplying services. So that is really not the spector of these hidden liens, it is really more apparent than real.

But I think that what this Committee has to do is simply balance the interest of mortgagees, purchasers who are protected to the extent that they paid their full contract price against the many and I take serious issue with the fact that the impression that was given that the sub-contractors have large payrolls and have sophisticated knowledge of these things, that is not true in some occasions, but it is not generally true. A lot of these operations are quite small and you have got to balance

Rep. Carrozzella: You get my point, that you are going to be protecting yourself too, really. And this is what the Bill....

Mr. Bowlby: If it works out to the situation where we are given more protection, we will not

Rep. Carrozzella: Why don't you see if you can sit down with Attorney Gallivan and see if you can come up with something that is a workable thing on both sides.

Mr. Bowlby: Yes we will, thank you.

Rep. Carrozzella: Thank you. Mr. Stapleton, I called you earlier and you were not here so

Mr. Stapleton: I am sorry, Mr. Carrozzella. James Stapleton, representing the Connecticut Board of Title Underwriters. A number of people have spoken on the Bill so I will not go over the same ground except to say, of course, we support H.B. #1049.

H.B.#1049 - AN ACT CONCERNING AMENDMENTS TO THE MECHANICS LIEN STATUTES.

I think it is not as onerous, that it does not invalidate the Mechanic's Lien as H.B. #5095 might, it is a - what we felt - was a compromise that it keeps liens in effect as against the owner, merely requires a notice.

If you want to get priority over a certain class of subsequent good faith

Rep. Carrozzella: Would you be willing to sit down with the people objecting this Bill and see if you can make it more workable for their interests.

Mr. Stapleton: I am sure, Mr. Chairman, we would be happy to do that.

Sen. Jackson: David Schwartz to be followed by Richard Woodhull.

Mr. Schwartz: My name is David Schwartz, my address is 799 Main Street in Hartford. I am here on behalf of the Savings Banks Association of Connecticut. We support Bill #6754.

H.B. #6754 - AN ACT CONCERNING LIENS ON PROPERTY CONDEMNED AS A NUISANCE.

This is a Bill which would amend Section 54-33g of the General Statutes. Under that Section of the General Statutes, the State may condemn, without compensation, any property used in connection with a crime. The Section is not limited to property which is itself, inherently criminal such as heroin or gambling apparatus, it applies as well to - for example a car used for transporting heroin or a house in which illegal gambling is conducted.

The Savings Banks have secured lenders, frequently have on cars and mortgages on houses. Our concern is that we not lose our security interest on a car/house which the State condemns pursuant to Section 54-33g. That is the purpose of Bill #6754. It provides that the car/house become the property of the State, subject to the land.

Representative Stevens, who introduced the Bill, has expressed concern that the Bill might be used by a criminal to evade Section 54-33g. For example, he suggested that the gangster might give us security interest in his car/house to his wife with the result that when the State condemns the property, the effect would merely be to transfer ownership of the property from the criminal to his wife. For that reason, we have prepared to modify the Bill which by its terms, excludes the lien given for the purpose of evading the act and I would like to present that modified Bill to the Committee. Thank you.

Sen. Jackson: Would you leave that for the Secretary, please.

Mr. Schwartz: The Savings Banks Association of Connecticut also supports a number of other Bills that are before you today. Nos. 5095, 5164, 5168, 5169, 5172, 5173, 5868 and 1049 and we have a written statement in support of those which I would like to leave with you.

H.B. #5095 - AN ACT PROVIDING FOR A REVISION OF THE MECHANIC'S LIEN LAW TO PROTECT THE INNOCENT PURCHASER FOR VALUE.

H.B. #5164 - AN ACT CONCERNING INDEFINITE REFERENCES IN RECORDED INSTRUMENTS.

H.B. #5168 - AN ACT CONCERNING THE POWER OF LENDERS TO SECURE FUTURE ADVANCEMENTS OF MONEY AND TO COMPLETE WORK IN PROGRESS IN THE EVENT OF DEFAULT.

H.B. #5169 - AN ACT CONCERNING THE REVOCATION OF POWERS OF ATTORNEY.

H.B. #5172 - AN ACT CONCERNING A MARKETABLE TITLE ACT.

H.B. #5173 - AN ACT PROVIDING A MASTER MORTGAGE RECORDING ACT.

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March 9, 1971

Joint Committee on Judiciary

STATEMENT OF THE SAVINGS BANKS' ASSOCIATION  
 OF CONNECTICUT IN SUPPORT OF HOUSE BILLS NOS.  
 5095, 5164, 5168, 5169, 5172, 5173 AND 5868  
 AND SENATE BILL NO. 1049

Gentlemen:

As mortgagees, the savings banks have an interest in improving and clarifying the law of real property. We support these bills because we believe that their enactment would improve and clarify the law of real property.

House Bill No. 5095, "AN ACT PROVIDING FOR A REVISION OF THE MECHANIC'S LIEN LAW TO PROTECT THE INNOCENT PURCHASER FOR VALUE", would revise the mechanic's lien law so that a title searcher examining the land records would know to what liens the property may be subject.

House Bill No. 5164, "AN ACT CONCERNING INDEFINITE REFERENCES IN RECORDED INSTRUMENTS", would invalidate indefinite references in recorded instruments, and would thus remove an unreasonable burden on title searchers.

House Bill No. 5168, "AN ACT CONCERNING THE POWER OF LENDERS TO SECURE FUTURE ADVANCEMENTS OF MONEY AND TO COMPLETE WORK IN PROGRESS IN THE EVENT OF DEFAULT", would improve and clarify the law of construction mortgages.

House Bill No. 5169, "AN ACT CONCERNING THE REVOCATION OF POWERS OF ATTORNEY", would eliminate the hazard presently involved in accepting a deed from an attorney-in-fact.

Joint Committee on Judiciary

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House Bill No. 5172, "AN ACT CONCERNING A MARKETABLE TITLE ACT", would strengthen the Marketable Title Act.

House Bill No. 5173, "AN ACT PROVIDING A MASTER MORTGAGE RECORDING ACT", would furnish a useful device for cutting down the volume of material recorded on the land records.

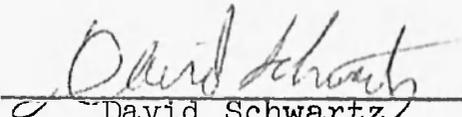
House Bill No. 5868, "AN ACT CONCERNING INSTRUMENTS FOR CONVEYANCES OF LAND", like House Bill No. 7002 which was heard by your committee on March 2, 1971, would simplify and shorten the forms of deeds.

Senate Bill No. 1049, "AN ACT CONCERNING AMENDMENTS TO THE MECHANICS LIEN STATUTES", like House Bill No. 5095 described above, would revise the mechanic's lien law so that a title searcher examining the land records would know to what liens the property may be subject.

Respectfully submitted,

THE SAVINGS BANKS' ASSOCIATION  
OF CONNECTICUT

By



David Schwartz  
Its Attorney

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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

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PART 10  
4344-4830**

Wednesday, June 2, 1971 99

THE SPEAKER:

Unless there's objection, without objection, the gentleman from the 84th for the purpose of summarization of House "B".

MR. RYAN (84th):

Mr. Speaker, this amendment only allows that the agent of an owner may give written permission as well as the owner of land and it also clarifies for the sake of any lawyers that may be involved in any suits I'm sure, in line 27, it includes, excuse me, it deletes the words "or where consequential damage has" in order to make it clear or clearer to all those finding use for this law, and I would move that it's a good amendment and urge its passage.

THE SPEAKER:

Question is on adoption of House "B". Will you remark further on the amendment? Will you remark further? If not, all those in favor of adoption of House Amendment Schedule "B" will indicate by saying aye. Opposed? House "B" is ADOPTED. The Chair rules that it's technical. Will you remark further on the bill as amended?

MR. RYAN (84th):

Mr. Speaker, I would now move the passage of the bill as amended by House Amendments Schedule "A" and "B".

THE SPEAKER:

Will you remark further? Will you remark further on the bill as amended? If not, the question is on acceptance of the Joint Committee's favorable report and passage of the bill as amended by House Amendment Schedule "A" and "B". All those in favor will indicate by saying aye. Opposed? The bill is PASSED.

THE CLERK:

Calendar No. 1249, H. B. No. 5173, An Act Providing a Master

djh

Mortgage Recording Act.

djh

MR. DOOLEY (47th):

Mr. Speaker, I move for acceptance of the Joint Committee's favorable report and passage of the bill.

THE SPEAKER:

Question is on acceptance and passage. Will you remark?

MR. DOOLEY (47th):

Mr. Speaker, this bill permits a master mortgage form to be recorded in the land records in the Town Clerk's Office and so identified as a master form. Subsequently, any mortgage recorded may incorporate the provisions of this master form by reference to the master. The effect would be as if these provisions were included in each and every subsequent mortgage that referred to the master form. The purpose of this bill, Mr. Speaker, is to cut down the volume of the recording material on the land records in the town clerk's office and to lessen the increase in cost of recording real estate documents. It is also the purpose of this bill to conform to the desires of the F.H.A. and federal administration officers who are endeavoring to promote the adoption of statutory short form mortgage deeds in the various states. I think it is a good bill and I would urge its passage.

THE SPEAKER:

Will you remark further on the bill? Will you remark further?

MR. KING (48th):

Mr. Speaker, through you if I may, a question to Rep. Dooley.

THE SPEAKER:

Please frame your question.

MR. KING (48th):

The bill is silent, Rep. Dooley, on who drafts the master form and who files it. Are you in a position to indicate to this House who would take the initiative in these two respects?

djh

THE SPEAKER:

Does the gentleman from the 47th care to respond?

MR. DOOLEY (47th):

Mr. Speaker, through you, under the provisions of the bill, the individual mortgagee would normally be expected to draft the mortgage. Now this would normally be a lending institution or a corporation that was in the business of loaning mortgages, loaning proceeds and having mortgages recorded. So I would guess that the counsel for the bank or for the potential mortgagee would do the drafting and it would be their responsibility to see that the master mortgage was recorded in the town clerk's office. Subsequently, in dealing with potential mortgagors, the mortgage which would be drafted would refer to the master form and the provisions contained in such master form.

MR. KING (48th):

So to be perfectly clear, Mr. Speaker, may I pursue this with one further question? Suppose that I, representing a bank, file what seems to me to be a satisfactory master form for a particular client of mine. You're practicing in another area, for example, may you refer in a subsequent instrument that you file to the master mortgage that I have filed? Can there be cross-references? If there can be cross-references, is there any provision at all that presents duplications of the number of master forms that may be on file in any one town clerk's office?

THE SPEAKER:

Would the gentleman from the 47th care to respond?

MR. DOOLEY (47th):

djh

Through you, Mr. Speaker, there may be, if there are several lending institutions in an area, many of these master forms because I would envision different provisions in different mortgages. However, once a lending institution has filed its master mortgage form, unless it changed the provision for any future mortgage, there'd be no necessity to file another. And finally, I should point out that each and every subsequent mortgage under the provisions of this bill could contain provisions which are identical to those in the master mortgage with a reference to the town clerk that these not be recorded. And this is possible under the bill so long as those pages could be left off of the recording process so as not to cause problems for the town clerk. But this would permit the mortgagor signing the mortgage to see each and every one of these provisions and for this counsel to see each and every one of these provisions at the closing and not merely having a mortgage a reference to some provisions that isn't before him.

THE SPEAKER:

Will you remark further? Will you remark further on the bill? If not, the question is on acceptance of the Joint Committee's favorable report and passage of the bill. All those in favor will indicate by saying aye. Opposed? The bill is PASSED.

THE CLERK:

Calendar No. 1250, substitute for H.B. No. 8816, An Act Concerning Waiver of the Statutes of Limitations in Regard to Wrongful Acts Committed Against Earlene Wilkerson.

MR. PRETE (114th):

Could we pass this matter temporarily please?

THE SPEAKER:

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PART 7  
2874-3413

June 7, 1971

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indicate by saying aye. AYE. Opposed no? The ayes have it.  
The amendment is carried.

SENATOR SULLIVAN:

Mr. President, the act changes the make up of the present Ambulance Commission by adding, or by deleting the three electors and adding the Commissioner of State Police to serve along with the Commissioner of Health and the Commissioner of Motor Vehicles along with the fourth member who may be a member of the Ambulance Association. And it is hoped by changing the make up of this Commission it will reduce some of the problems that now exist within the commission.

THE CHAIR:

Any further remarks? If not all in favor of the bill as amended indicate by saying aye. AYE. Opposed no? The ayes have it. The bill as amended is passed.

THE CLERK:

Cal. 1185, File 1370 Favorable report of the joint standing committee on Judiciary on H.B. 5173 An Act Providing A Master Mortgage Recording Act.

THE CHAIR:

Senator Jackson.

SENATOR JACKSON:

Mr. President, I move acceptance of the committee's report and passage of the bill.

THE CHAIR:

Will you remark?

SENATOR JACKSON:

The purpose of the bill is to cut down the volume of recording material on the land record and to lessen the increasing costs to filing same. I might point out that this is an optional provision and you can continue to continue recording in the present manner but it gives a way of facilitating things.

THE CHAIR:

Any further remarks? If not all in favor of the bill

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indicate by saying aye. AYE. Opposed no? The ayes have it, the bill is passed.

THE CLERK:

Page 11 please. Cal. 1211, file 1371 Favorable report of the joint standing committee on judiciary substitute for H.B. 6272 An Act Providing for Consultation Between the Judiciary Committee and The Rules Committee of the Superior Court.

THE CHAIR:

Senator Jackson.

SENATOR JACKSON:

Mr. President, I move acceptance of the committee's favorable report and passage of the bill.

THE CHAIR:

Will you remark?

SENATOR JACKSON:

Mr. President, this sets up a provision where members of the Legislature will be able to meet with the Judges to work out possible changes in court rules. And I urge passage.

THE CHAIR:

Any further remarks? If not all in favor of the bill indicate by saying aye. AYE. Opposed no. The ayes have it. The bill is passed.

THE CLERK:

Page 13 Cal. 1224, File 930 Favorable report of the Committee on Appropriations on H.B. 8453 An Act Concerning Military Funerals for National Guardsmen.

THE CHAIR:

Senator Houley.

SENATOR HOULEY:

Mr. President, I move the acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Will you remark?