

Legislative History for Connecticut Act

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mechanics to levy a tax of two cents on a bottle of 16 ounces or less, and five cents on bottles over 16 ounces. In previous sessions we have had similar legislation before us and the major objection was that a tax would not discourage the indiscriminate littering with bottles, but might actually encourage it. S.B. 589 has provided for a redemption of this tax by persons who would salvage and return them for recycling. Presently the Glass Container Corp. of Dayville, Connecticut, redeems bottles for 1/2¢ each or 1¢ a pound. Coca-Cola has just embarked on such a program. With the redemption feature of this bill, there is no question that salvage operations will take place both by individuals and municipalities as it will be profitable. The additional bonus accruing to our municipalities is a possible reduction of 6% in our solid waste. I urge favorable report of S.B. 589. Automobile disposal displays a fantastic example of the complex web of our society. A few years ago dead automobiles were recycled. They once made excellent food for the mouth of an open hearth furnace as it digested iron in its great belly. But now they clutter our city streets and dot our landscape. S.B. 590 would prohibit the abandonment of motor vehicles anywhere but a licensed junkyard. This act would provide for our police departments taking into custody an abandoned motor vehicle, determining the last owner of record, and making him responsible for the charges of towing and proper disposal. If the owner does not pay the charges or reclaim the vehicle, his current motor vehicle registration will be revoked until such action is taken. If the owner cannot be located or the vehicle is not claimed, it will be sold and the proceeds used to defray any costs. The time has come when we can no longer allow the motor vehicle owner to ignore his responsibility for the ultimate disposition of a vehicle when he has no further use for it. S.B. 590 will place the responsibility where it rightly belongs - on the owner of record. I ask your favorable report on S.B. 590. I should take my hat off and at least plug my S.B. 16 (AN ACT CONCERNING CONTAINERS FOR CERTAIN BEVERAGES SOLD IN THE STATE). This is the third time I've put this in. In 1967 I was somewhat of an idiot for even entertaining the thought of outlawing the one-way bottle or can. In 1969 the Council of Town Managers asked me to put it in, and I got some support, and of course, we got the same dialogue from the can and bottle producers that this is a horrible thought. But I think it's getting to the point that, if we don't take the compromise which has been offered by the Governor in the tax and redemption set-up, I think it's about time we sat down and really seriously thought of outlawing it completely. Now when I say that, I know darn right well we'll get some dialogue on why we can't; but I'll tell you there's only one way I know how to make people shape up and ship out, and that is to take and outlaw these things, and they'll find solutions for them, and it won't be our problem. So I would strongly recommend either the Governor's recommendation or my S.B. 16.

Mr. Wade: Thank you, Senator. My name is Attorney James Wade, I'm counsel for the majority leadership in the House of Representatives, and I'm here at the request of House Speaker William Ratchford to testify in connection with H.B. 5037, AN ACT CONCERNING A RIGHT OF ACTION FOR DECLARATORY

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AND EQUITABLE RELIEF FOR THE PROTECTION OF THE AIR, WATER AND OTHER NATURAL RESOURCES OF CONNECTICUT, and in doing so, I would also like to comment upon S.B. 400 which Sen. Gunther has just referred to. These two bills are very similar in nature; they both provide for citizen law suits against those who pollute the environment, and I think that I would like to point out some subtle distinctions which the committee should take into account, since both of these bills do intend to achieve the same end. You will note that in H.B. 5037, which is Speaker Ratchford's bill, it establishes the right of a citizen law suit, or any other person, just as S.B. 400 does, against those who unreasonably pollute the environment. S.B. 400 in Section 3 permits a citizen law suit against anyone who pollutes the environment in any way. Now in framing this legislation, it was our judgement that all of us pollute the environment to one degree or another, simply by breathing, obviously we introduce elements into the environment which are not natural. And therefore, if we are going to permit the use of the courts by citizens to bring law suits against those who do pollute the environment, we believe there must be a check to prevent those suits which are brought simply for harassment, and for no other purpose. Therefore, H.B. 5037 which Speaker Ratchford has introduced, permits law suits against those who unreasonably pollute the environment. Both bills set up a burden-shifting device, in which the plaintiff comes forward, must produce evidence for the court to show that there is pollution. Under our bill, he must prove to the satisfaction of the court that the pollution itself is unreasonable. Once he has satisfied that burden of proof, the burden then shifts to the defendant to show either that it is not unreasonable, or that under all the circumstances then and there existing, there is no feasible alternative. I note that Sen. Eddy's bill, S.B. 400, also includes that same provision, that the defendant can present an affirmative defense and avoid the equitable relief sought in the court, if he can show that his pollution is not unreasonable, and there is no feasible alternative. S.B. 400 includes a provision that when the suit is brought, the suing party must include an affidavit of two persons, who attest in their affidavit that in their judgement the pollution is dangerous to the community or the environment. I would submit that that affidavit probably is meaningless, since the bill does not have any standard for the person signing the affidavit. It could be anyone. There's no one, there's nothing in that bill that requires any show of expertise, that he knows anything about the subject matter to which he is signing the affidavit. And therefore, it raises the specter of possible harassment suits which have no other purpose than bothering other people. Similarly, if S.B. 400 were passed with no check, then you might wind up with spite suits between neighbors and that sort of thing over conditions that are nothing more than spite between neighbors. We feel our bill, which imposes the reasonable standard, would be such as to eliminate that possibility. Now, in reviewing the two bills, I do feel that perhaps H.B. 5037 could be improved in this respect. I recognize the fact that a person or company or corporation could be polluting the environment, and his pollution alone is not unreasonable. But when his pollution is introduced into the environment in combination with

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others, it does become unreasonable, and the best example might be if someone is pouring filth or pollution into the Connecticut River. A large body of water, which standing alone would not be unreasonable, but when you combine it with everybody upstream, his little bit adding thereto, makes it unreasonable. I have come to the conclusion that it might be preferable to insert into H.B. 5037 in Section 3 at the end of it on page 2, that this citizen will be allowed to bring a law suit against any person, partnership, corporation, association or other legal entity for the protection of the public trust in the air, water, and other natural resources of the state from unreasonable pollution, impairment or destruction, either alone or in combination with others. I think that phrase might be added to the end of Section 3. And then in Section 4, part 1, it might be changed to read as follows: When the plaintiff in said action has made a prima facie showing that the conduct of the defendant or defendants, acting alone or in combination with others, has or is reasonably likely to unreasonably pollute the environment, etc., that phrase might get over the problem of the fact that someone, acting alone does not pollute unreasonably, but acting with others does. I do think, Sen. Gunther, that that phrase might achieve the same result that is being sought in the administration's bill, and therefore might be a means of achieving that goal. I recognize that the desire of both Sen. Eddy and Speaker Ratchford is to enable persons to seek redress in the court when someone is pouring filth into our environment. I do think that our bill does provide a safety valve to avoid the hazards of harassment suits, and I urge its passage on behalf of Speaker Ratchford, I urge a favorable report by this committee.

Sen. Pac: Any legislators in the audience wishing to speak? If not, I think we'll transfer this hearing to another room, the Finance Room, 409A.

The first speaker will be Norman L. Dobyns.

Mr. Dobyns: Good morning, Mr. Chairman and gentlemen. My name is Norman Dobyns, I am employed by the American Can Company, I have a prepared statement which has been submitted. If all of you do not have a copy, along with some other material which is in a manila envelope, I'd be delighted to pass around additional copies at the conclusion of my statement. It is a lengthy statement containing a myriad of facts and figures. I do not intend to read it or, indeed to refer to it. I would be grateful if you busy gentlemen, however, could find a moment in the next few days to look through the material, and look through the statistics which have been put together. I plan, Mr. Chairman, to be exceedingly brief. I would like to make myself available as an industry witness for your questions. I do feel it is more important, as busy legislators, with many, many pressures, that it is important that you have an opportunity to ask questions; it is not important that I have an opportunity to engage in rhetoric. However, there are a couple of major points that I would like to make for you, because they are extremely significant, as you consider

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over by the dairy. We hope that soon the whole school system will take part in the program. One thing our efforts have taught us is that the nightmare of salvaging thousands of little plastic bottles must be the responsibility of the people who make them - that successful recycling cannot survive on the sole forces of conservationists and kids. Therefore, we are quite indebted to the very rumor of S.B. 589, because without the economic pressure it placed on the dairy, I am sure we would never have received the patience and cooperation which were accorded us by the dairy. In behalf of my organization, I urge that plastic beverage containers, which are fast replacing plastic-covered paper and many glass containers, be included under the beverage container tax.

Sen. Pac: That was a wonderfully well written statement. Thank you.

Mr. Van Winkle: Thank you, Mr. Chairman, members of the Committee. I'm Dale Van Winkle, as in Rip. I'm an employee of United Aircraft Corporation, and I'd like to speak with you for a few minutes about two bills that have been introduced with respect to citizens' suits, S.B. 400 and H.B. 5037. Let me first say that I think that the natural reaction is, well we must be trying to protect, we must be trying to hide something. I believe that we are fully in compliance with all of the laws and regulations, state, local and federal, with respect to pollution control, and that further, we are in compliance with good environmental practices, whether expressed in law or not. However, we do face continued complaints from people who are poorly informed, and we have faced law suits from people who are poorly informed, who see things that they don't understand, bring suits, cause us harassment and difficulties. For instance, one of the common complaints is about the white clouds that rise above our plants for a few minutes at various times. We conduct some operations there which are conducted at very high temperatures, three or four thousand degrees. In order to cool these cement buildings in which these operations are conducted, we have to spray water on the walls, or the walls would disintegrate. So what rises above our plant is steam or condensed vapor. But this is a very common complaint, it occurs over and over and over. We've had a suit in the past brought against us for problems with tobacco plants. It was a very expensive proposition for us, and we had to hire consultants from the University of Connecticut to demonstrate that this was a disease and it did not in any way relate to our operations. We've had complaints in the form of Letters to the Editor in East Hartford about odor problems. We've investigated these with the people who made the complaints, and in each instance, it turned out to be a fuel company. Particularly when you're large, anything that goes wrong in the environment is blamed on the largest industry, so we sort of reap the harvest of anything that happens in the area. In addition, I'd like to speak just a minute about Sen. Gunther's comment about modifications of water pollution orders, for instance. We have been on a fixed schedule with the Water Resources Commission, even though as early as 1950 we installed water treatment plants to treat our industrial wastes. What we're treating now, what we're going to treat with the facilities we have under construction, are very

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highly diluted wastes that are extremely difficult to treat. I won't mention the name, but we hired the best engineering consulting firm that we could find in the area, a firm from Boston, and they designed a plant for us. Shortly after they had designed it and we had had the plans approved, it was discovered that the plant wouldn't work. So it had to be redesigned. Now, we had to ask for a few months extension for that reason. We have another facility that has been ordered to connect up with a secondary treatment plant in the town of Stratford. Now that's the only pollution order we've received, but we had to go in and ask for an extension because the town of Stratford extended the time in which they were going to build this secondary treatment plant. So a lot of these modifications do have some basis. They're not all an attempt to prolong a bad condition or to cause a violation. The point I want to make with you, we're not opposed to a citizen-enforcement; however, we would like to see this done in the way that it's done in other areas of law, and that is that the administrative agencies are exhausted first. In most instances, you're not allowed to bring suit unless you have exhausted your administrative remedy. The Water Resources Commission has issued over 800 orders, and I think the reason that you haven't had suits to enforce them is we, and I don't believe any other industry could face the public indignation of not complying. Nobody has to bring a suit against you to take out your driver's license; nobody has to bring a suit against us to take out a permit for a new facility, which we construct. We just couldn't possibly face the public pressures, so you comply. In those instances where you can't comply, industries close down, as they have in this state, or they move out. You can't face this. Now I heard the Attorney General testify before a legislative committee, interim committee, this summer, and he spoke about the one or two suits that have been brought, they have brought some suits to enforce water pollution; but those are very rare instances. And if you had occasion to talk to these industries, you'd find that they cannot face the public pressure of not complying. So I think this is a partial explanation of why there haven't been more suits. There have been orders issued, we're on timetables, and everybody else is on timetables. We're spending \$6,000,000 for water pollution abatement for new facilities, and we're pleased to spend whatever is necessary to accommodate our problems, but we do not like the unnecessary expense of litigation by people who are not well informed, who do see a bugaboo where none exists. What I would prefer to have you do is to give the remedy only after the individual has gone to the Water Resources Commission or the Clean Air Commission and failed to receive cooperation or explanation as to whether there is or there is not a problem. They go to the Commission and find out whether they're looking at something that isn't really a problem, or whether it is a real problem; if they get no action out of the Commission, then let them bring their suit. But to allow it without some preliminary investigation and some basis, I think, is unreasonable. The last illustration I'd like to make is we are faced with one suit right now, brought by some individuals and a conservation association. It was a suit for an injunction to force us to abate a situation which they said needed immediate attack. That was many, many months

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ago, and the action has not been pursued, and the only evidence we've seen of that action is in the advertising of that association, which is advertising for new members, and advertises that they've brought a suit for \$1,500,000. They have not pressed the suit, we've had to retain attorneys to represent us in that action, but in that instance, I think it was brought just for publicity. And this is, I'm afraid, what we're going to face. And so I would ask you to please have the actions go first to the administrative agency; if there is no relief given there, then bring the action against the industry or commercial operation. Thank you very much.

Sen. Gunther: I'd like to give the United Aircraft an endorsement. I think they're one of the finer companies of the state that actually tries to do a job. The question I have - you've heard the testimony here earlier this morning from a representative of Rep. Ratchford on the unreasonable type of proof being placed on the person that wants to bring the suit. Do you feel that would or would not be sufficient in the bill?

Mr. Van Winkle: Well I think that would be sufficient after the person has taken the trouble to go to the expert in the field and find out whether there is a problem. If he would talk with Louis Proulx in the State Health Department or if he would talk with John Curry of the State Water Resources Commission, to find out what the problem is and what's being done about it at the time. Then, if he gets no satisfaction, bring his suit, and then I think he should have to establish that it is unreasonable pollution. As was mentioned earlier, all of us emit discharges or pollutants in one way or the other, and I think you have to establish some degree. Now the State Water Resources Commission has been the most strict of any water resources facility or agency in the country. They do not set standards as to what should be done, whether it's .05 parts per million mercury or whatever it is, the only standard they follow is to accomplish the maximum treatment that is technologically feasible. I don't care whether it's reasonable or unreasonable, you do the maximum that's technologically feasible under the state of the art, and that's what we're meeting here in Connecticut, and I think they have done a very effective job. But I do think in the litigation, after the administrative remedy has been followed, that it would be good to ask that at least the person establish that the pollution is unreasonable, because it may be something that is minimal, has no consequences whatsoever, or something that just can't be treated.

Sen. Pac: Thank you. May I ask a question? In Mr. Ratchford's bill, it's incorporated that the court may refer the the plaintiff to the administrative department who would handle it. Now would this satisfy you -?

Mr. Van Winkle: That's a discretionary reference. In most matters of administrative law, there's an absolute requirement that they find out from the administrative agency that has responsibility what that agency is doing, and what actions are under way, and I would prefer to see it mandatory rather than discretionary on the part of the court, that the court is compelled to go to the agency and say

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what are you doing, what have you done, let the private petitioner explore that avenue first, and then pursue his litigation. I'd rather have it mandatory than discretionary as in the bill.

Mrs. Shaw: I'm Jocelyn T. Shaw, Mrs. Harry Shaw, of Fairfield, Connecticut. I'm the director of an environmental education program in our community, and the president of a parent conservation organization, both of which have become aware of the serious threat to vital parts of our environment posed by waste disposal, and I wish to express our support of S.B. 589. We see year round the threat to children's learning and enjoyment in the out-of-doors, even in dearly purchased open space, because of the increasing amounts of discarded glass containers. You can't allow bare feet in any educational program in Fairfield, you can't get to know the environment that way, even though it's a fad, it just doesn't work, when you really get down to education. We know that the mounting problem of waste disposal which threatens Fairfield's remaining tidal wetlands is only one example of many throughout the state. The importance of maintaining such holdings as inland swamps, bogs, marshes, even riverbanks, is barely becoming understood. Legislation to protect these is still almost, if not in reality, non-existent, and population and consumption continue to rise. Dumps are most often placed in the most vulnerable, unappreciated areas, and alternative systems of disposal either risk further air pollution or require water, power and space for landfill. Thus, every possible means of cutting down the five pounds of waste per person per day in our communities is of utmost importance to preserve those vital aspects of our communities which can nourish the total health and hope of future generations. We therefore urge you to give this bill your most serious attention and to act favorably upon it. And I just want to add, although the plastic situation has been well referred to here this morning, that I brought my own can-crusher with me, and I wish he'd stand up a minute. He uses a sledge-hammer, and we have a carton this high, as long as about half of this table, standing in the garage, and it's full of the cans that we've collected, just our own home cans and those right immediately around us since last July. It's certainly weighs nowhere near a ton yet. We've been trying because we realize a town has to have a recycling program before it can do anything about saving its marshlands. Your town engineer can only do so much, he's not a magician. So we've been looking into recycling all the different materials, and one of the biggest problems has been the can. We have even written to North Dakota and have just this month received a letter from Fargo, North Dakota, from the steel company out there, saying that there was a program that did force an Atlanta company to take back cans off the University of North Dakota campus but that this was given up when there was no money involved in it, and they couldn't make it financially feasible. So that this is an enormous problem. I also wanted to say that I think there should be a tax on a can-crusher. That uses power. That ups our pollution through air. That certainly is nothing this company should be getting any money for, there should be a tax on it, if possible, and all other kinds of can-crushing that have been mentioned here this morning should continue. All the costs that this gentlemen this morning

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1969, show that the average profit after expenses is 1.25 - 1-1/4%, so there isn't much room for any additional costs or expenses. I believe that you have heard all of the technical information here this morning. We're not equipped to give you that sort of thing, but I can tell you this - that the people who have been asked whether they would like to see returnable bottles come back to the store react violently in some cases. 90% want no part of them. Thank you very much.

Sen. Pac: Just one thing, you said the public is not impressed. I think the only time the public is impressed is when it gets its tax bill, and a substantial part of that tax bill today is the amount allotted for solid waste disposal. Currently, I think the costs of incineration is around \$6.00 a ton, not combustible, but bulky waste for instance, is around \$18.00 to \$20.00 a ton; and when this comes up to two or three mills, I think at that point they are interested.

Mr. Courtney: You're now speaking of the overall problem, however. We're referring to just one small segment.

Sen. Pac: This is probably the biggest part of the problem, the solid waste generated by cans and glass. This has to be transported. Here again, I just quoted you the figures on incineration, but transportation is three or four times the cost of actual disposal itself.

Mr. Courtney: Well, I might say, Mr. Chairman, that the conflicting figures that were brought out here today demonstrate better than anything else the need for the study bill to be passed.

Sen. Pac: I was here in '67 and I heard you say that same thing. I was here in '69 and it was repeated. This is the third time around. I think I'll wait around, I'll grow a beard, and I will be, I think, a member of the Van Winkle family.

Mr. Darius: My name is Henry Darius, I'm appearing here today on behalf of the Connecticut Light and Power Company and the Hartford Electric Light Company. For a few minutes I'd like to speak about something other than bottles. I'd like to speak about H.B. 5037 and S.B. 400, both of which relate to citizen suits. In much the same manner as was expressed by Mr. Lemaire and Mr. Van Winkle sometime ago, I can say that our companies favor what are the objectives of these bills, but like both of the gentlemen who spoke earlier, our companies fear harrassment under a system of citizen suits. We are perfectly well aware, though, that continued and perhaps greater efforts are needed to save or preserve our environment. Our concern is that the administrative process be allowed to run its course. We feel that administrative agencies in theory and in practice are better equipped than courts to solve certain kinds of problems, those requiring continuing surveillance, particular expertise. We are inclined to believe that a better way to solve the problems that these bills seek to solve

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is to give whatever additional direction and powers to the agencies. Perhaps to create additional agencies or councils. We further would agree with the comments made by Mr. Van Winkle about the exhaustion of administration remedies. We feel that where an administrative agency has jurisdiction over a problem, that agency's powers should be allowed to be exercised without court interference, until such time as the agency's actions have been completed. Then they are properly reviewable by the courts. I might comment, lastly, that there are three, not two, bills that basically provide for the same thing. In addition to the two listed for hearing today, S.B. 675 which was referred to the Judiciary Committee, all three of them are based on legislation drafted by Professor Sachs of Michigan, and they're so nearly identical as to have obviously come from the same source. In the way that each has treated the problem of the extent to which the administrative agency has concurrent jurisdiction or primary jurisdiction or what have you, the three bills all differ. S.B. 400 says very little other than that the court can have concurrent jurisdiction. In Section 5 of S.B. 675, the matter is spoken of in the greatest amount of detail, and that provision is very similar to Section 7 of H.B. 5037. The last comment I might add is on the 24th of February, I believe it is, the Judiciary Committee will be holding a hearing on their bill. Thank you. Are there any questions?

Rep. Ciampi: I think we're interested in bottles.

Mrs. Lakhdir: I'm Ann Lakhdir of Westport, Connecticut, and I'm simply a housewife, and it isn't easy in Westport to know when there is a hearing, it wasn't for me, and I'm not really prepared in that I have not been able to read the bills that you have before you. I just picked them up this morning. However, as far as saying that the general public is not concerned, I think there is a big difference now from ten years ago. I think there are a great many in Westport that are concerned, because we have such a tremendous garbage problem with the site running out and never knowing from one day to the next which community is going to take our garbage. And I think there are a great many in Westport now that would be glad to see a tax or anything else that's going to make it easier to eliminate that part of the waste problem. I know in Westport it's extremely hard to find a place where you can buy returnable bottles of any sort, so anything that changes that would help, I presume, a lot of other communities besides Westport that are running into the same kind of problem. Thank you.

Rep. Ciampi: Thank you. I'm going to skip here for a minute and call another concerned citizen. Paula?

Mrs. Elterich: I always get on a different aspect of it. Concerned citizen, conservationist Paula Elterich, and a member of the Governor's Environmental Policy Committee. I went to move my car. I made it by three minutes. I purchased this lovely can of Fanta downstairs in our lovely lobby, and it cost me 20¢, it wasn't even iced they are selling them so fast. The contents are orange soda with artificial flavoring, and coloring, 1/20th of 1% of benzoate of soda as a

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Mr. Swatzburg: My name is Rutherford Swatzburg, I come from the southeastern part of Connecticut, down in Norwich, and I'm one of those comparatively small bottlers Mr. Roberts referred to earlier in his speech. I've been in the business some thirty odd years. I heartily concur with all the statements that Mr. Roberts made and the various members of the soft drink industry that have been here, and I'm not going to become repetitive in their statements. However, I would like to state one fact explicitly. About four months ago, we upped our deposits on the returnable bottles from two to five and from five to ten. Approximately 20% remains in the returnable bottles. Now we would say offhand that 10¢ for the return of a large bottle should be conducive to bringing back the large bottles, but much to our amazement, we found that it did not return the large bottle. Our ratio of returns is exactly two uses on a large bottle, and about two uses on a small bottle. With the cost of these bottles, of course, it makes it uneconomically feasible to continue in the business of returnable bottles. However, we do insist on selling it wherever possible. In this day of affluency amongst the republic, the 5¢ and 10¢ has evidently gone the way of the 1¢ and 2¢ deposit. I'm not going to bore you with any more statistics on it, except to say that the problem is tough, tough for us, and it's also tough for you. And if I might make a facetious remark here, I understand that this is the Environmental group, is it not, Mr. Chairman. If you will look up there, we're getting soot out of there. We ought to do something about that, don't you think? Thank you very much.

Mr. Beizer: My name is David B. Beizer, I am Executive Director of Connecticut Action Now, and I wish to speak in favor of H.B. 5037 and S.B. 400. These are the two bills that provide for citizen action through equitable and declaratory relief in the courts. The first point I'd like to make is that there is a great deal of citizen concern about the environment, but really to date, there is very little citizen action in the courts. And the reason for that is rather clear, there is no authority today for the citizen to go into the court to initiate an action unless there is a special situation. Those special situations are those where there are already existing statutes that allow the citizen to respond in a, to an application that's already been filed by someone who wants to make a change in the environment. The citizen today is not in a position where he can initiate litigation, absent some sort of application by either someone to build a highway, which would be a state agency, or someone to fill in a marshland, or like type of concern. Now, just a few points that are rather brief. First, under our state constitution, something which the entire committee should look at, there is the general right for all citizens who are injured to have their day in court. Unfortunately, this constitutional mandate has never found its way down to the environmental area, because until very recently, injured citizens were not citizens who were injured as a result of degradation of the environment. Today however, the ball game has changed, and environmental insults are now those types of insults which I believe deserve constitutional protection, and more specifically protection from laws such as the two that I am speaking here in favor of. I think specific mechanisms, in other words, ought to be provided

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to allow the provision in our state constitution to be complied with. Now, several gentlemen suggested that some of the ecological problems are very complex, and therefore, it wouldn't be a good idea. I don't think that argument is a particularly good one. Lawyers are unusually adept at getting at the crux of problems, and I think that shouldn't pose a problem. The other answer is, to the extent, and this is a good criticism that was made, I think the only good criticism that's been made of these bills, is that we should rely to the extent we can on the administrative process. I wholeheartedly agree, and I think with a minor change in wording, this criticism can be taken care of. In other words, where there is an administrative agency, be it the Water Resource Commission or the Clean Air Commission, or what have you, that agency should be consulted first, and administrative action should be sought first, prior to the citizen going to court. However, there are two things about this that deserve attention. One, there are a lot of ecological problems for which there is no agency that's appropriate. For example, noise. A citizen would have no administrative agency to run to for a noise problem. Another one is land-use development. There is no state agency which is appropriate to handle major ecological change as a result of land development. These two areas would be ones where citizens should be able to go to court without having to look for some administrative agency. Secondly, I think you'll find in looking at the bills, that they already provide that the court may refer matters brought to the court to the administrative agency, and it's in the discretionary 'may' and I think that's perfectly proper. Most courts want to duck business, as lawyers know, and if they find they can refer a matter back to the Water Resources Commission or the Clean Air Commission, they sure are. So I think that it's perfectly appropriate to leave the language as it is and simply put in some language suggesting that where appropriate, the matter should be referred back. One final comment, and that is, by and large, well - let me say this, there was some mention earlier about only one citizen suit having been filed in this state concerning the environment and pollution. I don't know if that's altogether accurate, but I can say that I am counsel of record on one suit using the federal law that was alluded to, and that was a suit by Connecticut Action Now and two individuals against Roberts Plating Company, that's in the Federal District Court, and I think that was the matter that was mentioned. And the fact that there are so few suits is reason to believe that there is a need for giving standing to citizens to bring suits. Furthermore, we are relying on a federal law. Most other environmental actions in other states rely on federal laws, specifically the National Environmental Policy Act of 1970 and the 1899 Refuse Act, so it would be a great help to citizens and citizen groups, such as Connecticut Action Now, if you were to provide the mechanism where we might reasonably go into court. One thing that did slip my mind, and if I can take a minute more, another gentlemen, Mr Darius mentioned the fact that industries were afraid of harrassment, and that's a legitimate concern. On the other hand, I think the answer to that concern is found in the very acts themselves, and without reading the provisions, let me simply make these comments. That as far as protection to industry goes,

there is the provision that an affidavit of not less than two persons be filed, attesting to the facts complained of, that costs may be apportioned as justice requires. If it's a frivolous suit, the plaintiff's going to be cost, he's going to be taxed costs, and he's going to be hurt. Third, that if the standard is unreasonably pollute, and it's been knocked out of court quickly on a motion, if it's been shown that it's an insignificant or non-substantial complaint. Fourth, there's a security requirement that you have in there. And fifth, there's the matter of collateral or res judicata. In other words, once one suit's been brought, conceivably all other suits that might be brought by other individuals are foreclosed. That one suit is it, and that can be a disadvantage to people who are presenting the environment, such as myself, as that is not good, that this act would create a problem for environmentalists that doesn't exist now. In other words, I feel that the objections raised by the opponents of these two measures are taken care of in the acts themselves, and that both these bills are worthy of support.

Sen. Cashman: In Section 2 of H.B. 5037, do you have that there? You alluded to the one possible legitimate objection, that the court before which said action is brought may appoint a master or referee. Would you object to changing that to 'shall appoint'?

Mr. Beizer: You're talking about Section 2 of H.B. 5037? I have Section 2 reading 'It is hereby found and declared that...'

Sen. Cashman: Section 4, excuse me, Paragraph 2, I'm not a lawyer, you'll have to forgive me.

Mr. Beizer: Sen. Cashman, no, I'm not really addressing my comment to Section 4, Paragraph 2. That has to do with the taking of testimony. What I'm talking about really is Section 5, Paragraph 2.

Sen. Cashman: Yes, I understand that, but both paragraphs are involved in this particular objection to the bill, as a matter of fact.

Mr. Beizer: It wasn't my impression that there was any real objection to Section 4, Paragraph 2, the appointing of a master or a referee. That's simply to aid the court in getting the factual basis to be adjudicated.

Mr. Robinson: My name is Wes Robinson, and from October to November of last year, I was the director of a committee called Citizens Committee Against Initiative 256 in the state of Washington. This committee opposed an initiative which is, in substance, what you people are considering in your various bills to prohibit nonreturnable containers. The Initiative was drafted up, and the story is kind of interesting, and I hope you'll bear with me a little bit. The Initiative was drafted up by concerned college students in a town called Bellingham, Washington, and they took it before the people, as the initiative process has to have so many signatures, before it goes on the ballot. They took it before the people, and in a record short period of time, they had more signatures on that

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Mr. Robinson: Well, this is the consumer that is paying for it at this moment, as I understand it.

Sen. Pac: The taxpayer is paying for it, not the consumer. It's not synonymous.

Mr. Robinson: Well, now, when you charge a nickel for the bottle, and then the person that drinks that bottle pays that nickel, and if he doesn't return it, he has paid a 5¢ fine in effect for that bottle. What if that gentleman takes it and tosses it out beside the road? The taxpayer then has to clean it up. Now, we said in the state of Washington that what you are doing here, it was a specific 5¢ amount of money returned for each bottle, - we were saying that you are, in essence, giving a 5¢ license to litter to the people who want to litter. If they pay their 5¢, if they pay their deposit, you are prohibiting them, you are prohibited from doing anything more except sending a truck out and picking it up, and that is it. If they want to waste their nickel, that's their business. Now, this was brought out to me very strongly by a man who said, all you have to do to solve this litter problem is do as they do in Hong Kong. He said you walk through the streets of Hong Kong, and you will not find a scrap of paper, you will not find a piece of litter anywhere. It's not that those people over there are any more conscientious than we are, although materials are much scarcer in that part of the world; but the fact is they have a fifty pound fine for every act of littering, and that is enforced. You drop a match on the sidewalk in Hong Kong, and you are arrested, and it costs fifty pounds. And people don't do it, they just don't do it.

Sen. Pac: Yes, when I was talking about the costs, I'm not just talking about the littering, the costs of picking up all this litter, but really the costs - even if it's disposed of properly, in wastebasket and so forth, the cost is still there. It doesn't change. It's expensive.

Mr. Robinson: Well, the solution appears to be more in the fact that the packaging will have to change, the nature of the bottle, the nature of the package, will have to change, rather than adding more money to this way of disposing of it. You still have this land problem. If the manufacturer pays for taking it back and dumping it out somewhere, you still have the land problem. The only solution that we were able to offer the people was that the packaging is going to be changed, and I think industry is on notice that they have only a limited amount of time to get this packaging problem solved.

Mr. Taubman: I'm Elliot Taubman, I'm an attorney in Hartford, and I work with Neighborhood Legal Services. Now, this gives me a particular attitude towards environmental problems as they relate to the city. I also was on the Committee for Conservation and Environmental Quality of the Connecticut Bar Association, which drafted one of the statutes which is presently under consideration, the Environmental Protection Act of 1971. I feel that all the bills are good. The one by Senators Gunther and Eddy and the one by Representative Hatchford, and the one by Senator Jackson. I feel there is a real need in this state for legislation which will allow the bringing of actions by individuals or by legal entities

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who are concerned about the problem. One of the problems we have right now is that there are one or two Assistant Attorney Generals working part-time on the environmental problems. What the hope is, I should think, when this bill gets passed, which I hope it will, that you will have hundreds of Assistant Attorney Generals who are concerned with the problem. Although I wouldn't say it's really a basis of age, but I think you will find that there are the younger attorneys coming out of law school now, who are a little bit more concerned with things like the environment, and I think you would find more of them doing it. And maybe it's because they aren't representing big companies right now. I don't know the reason for it, but I can't say it just is the young attorneys, because on our committee, there were a number of older attorneys who were extremely concerned with the problem. And they have brought actions purely out of public spirit, without any hope of getting paid for it, which have had effect. But the problems they've had are that, right now standing to sue is very much a problem, particularly say, a conservation commission or a private conservation group cannot bring an action very often. The air problem is a class action, that an action under Connecticut law is very hard to bring for more than an individual. These things are concerned of in the bill. I realize that the manufacturers and certain other people who have spoken feel that this would be a technique for harrasing supposed polluters, and I realize that there might be some legal expense involved for these people. However, the environmental problems we face right now are very severe, and where you have many, many people who are polluting, who might damage the environment, the state agencies involved cannot handle all the cases. It's not physically possible with their present resources to do it. I mean, I've spoken with individuals from these agencies, and they say that they just can't handle the problems. Also, they don't have legal training. In fact, in a specific instance, a man from the Health Department told me that they lost a case because they just didn't know a rule of law. In this particular case, they were bringing a criminal prosecution, and the prosecutor didn't care that much about the case, he didn't know anything about the environmental area or the health area, and they lost it. The hope is with this kind of a bill, more action could be brought and more actions would be won, which would affect more people. Now, I would like to speak with one particular provision of the bill, this is on the bond requirement. In the Michigan bill, which has been spoken of before, which was drafted by Professor Sachs, there's provision for a \$500 bond as a maximum. Now, although I feel this is a good idea, I under Connecticut precedents think this would probably be declared unconstitutional, since it might result in confiscation in particular instances. The alternative is the provision in Senator Gunther and Eddy's bill, which is that there be clear and convincing evidence that there will be irreparable harm to the defendant before a bond shall be imposed, and that the bond shall not be more than \$500 unless there is a finding of confiscation. I think this is as about as strong as you can make it under Connecticut law, and still allow the action to be brought by the plaintiffs. The problem is that, a lot of times, a plaintiff will not be able to come up with say, a \$1,000,000 bond, which might be the amount of damage involved. Yet the damage to the

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environment would be irreparable. Let's say the destruction of natural resource, or let's say salt water marsh. Just a couple of examples of cases which would be irreparable to the environment. And yet if you have to give a bond to the defendant, the action just could not be brought. Period, it would just be impossible, and I think based upon the findings in all three bills, that there is a real need in this area. I think the court would uphold the provisions as to limited bond. Now as to class action, in none of the bills is there a specific provision on the conditions for a class action, although there is in Senators Gunther and Eddy's bill a provision about the interpretation being bound by the federal Rules of Civil Procedure. However, it might be worth studying or getting involved with requiring that the court be bound by the federal Rules of Civil Procedure - or supporting a separate bill regarding class actions. The Problem involved here, I know it's very technical, but it's very important to this area, is that the courts have imposed very strong notice requirements on plaintiffs who want to bring class actions, and this could involve quite a bit of money. Let's say, all the inhabitants of the state of Connecticut are involved. This would mean that you would have to publish in every newspaper in the state, that you might have to send letters to all the inhabitants of a particular town. It just is impossible, it cannot be done. In any case like this, which you'll have if it is an important action, and in the area which is involved, you'll have publicity. In fact, in a particular United States Supreme Court case, they upheld the lower court in ruling that class action was proper even though there wasn't actual written notice given to all members of the class, because there was so much publicity in the newspapers about the case. Now I think this would be the case with most environmental cases. If it isn't something that would not be of great public interest, I think then, as required by the Federal Rules, you would have to give a certain amount of notice to members, people involved. Of course, they also would not be bound by the suit if they didn't have notice of it. I think this is something which is in the Federal Rules also. The other issue about harrassment of manufacturers, I think is not a true issue. I think that what we're talking about here are complaints being brought by attorneys. Now there aren't that many attorneys in the state, and they don't have a lot of extra time. I just don't believe that there will be harrassing suits brought. I think that if there is a suit brought, there will be a real issue, that people will be truly concerned with, and that this harrassment issue just isn't true. You can also rely upon the good faith of most attorneys who will be bringing the action. Also there is provision for attorneys' fees in the bill, but attorneys' fees will not be awarded if it is a frivolous suit. In fact, in most cases they will not be awarded unless the attorney wins the case, and then, obviously, it wasn't a frivolous suit. It wasn't harrassment, so that I think this is a false issue, and I think that the strongest of the three bills should be supported or the combination of the three. That's on the Environmental Protection Act. I just want to make a couple of comments on the other bills. As to the abandoned car bill, I think it's a very good idea, except for one small problem. I had a particular case involved this, where they took away some so-called abandoned cars that weren't abandoned, and it's in the courts right now, but I think you'll have a problem with notice and hearing on these

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Representative Ajello.

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MR. AJELLO:

I move that Calendar 74 substitute for House Bill 5108, file 64, be placed at the foot of the Calendar.

MR. SPEAKER:

Is there objection? Hearing none, this Calendar No. 75 will be placed on the foot of the calendar.

CLERK:

Calendar 77 - substitute for House Bill - An Act Concerning the Definition of "Vehicle".

MR. AJELLO:

Mr. Speaker.

MR. SPEAKER:

Representative Ajello.

MR. AJELLO:

I move that Calendar 77, substitute for House Bill 6211, File 62 be recommitted to the Committee on Judiciary.

MR. SPEAKER:

Is there objection on either side of the aisle to recommitting this item. Hearing none, the item indicated will be recommitted.

CLERK:

Calendar 78, substitute for House Bill 5037 - An Act Concerning a Right of Action for Declaratory and Equitable Relief for the Protection of the Air, Water and Other Natural Resources of Connecticut.

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MR. PAPANDREA:

Mr. Speaker, the Clerk has House Amendment Schedule A.

MR. SPEAKER:

Questions on acceptance and passage, and Clerk has House Amendment Schedule A.

For the benefit of the Clerk and records, has A been officially withdrawn.

MR. PAPANDREA:

My understanding it has.

MR. SPEAKER:

That would be, in view of the fact it was not offered, relettered as House Amendment Schedule A. The Clerk please read this Amendment.

CLERK:

House Amendment Schedule A. In line 47, beginning with the word "promotion", delete everything through and including the word "destruction".

In line 51, and substitute in lieu thereof "reasonable requirements of the public health, safety and welfare".

MR. SPEAKER:

Representative Ciampi from the 89th.

MR. CIAMPI:

Mr. Speaker, I move acceptance of the committee's favorable

report and passage of the bill.

MR. SPEAKER:

Question correctly is on acceptance and passage which places this item before us, the Clerk has read House Amendment Schedule A. Will you remark on House Amendment Schedule A.

MR. CIAMPI:

I am in favor of Schedule Amendment A.

MR. SPEAKER:

Further remarks on Amendment Schedule A.

MR. COLLINS:

Mr. Speaker, I rise in support of Amendment Schedule A to this Bill. This is a rather technical amendment and the intent of it is to keep the language in two different sections consistent and I think it's an attempt on behalf of both sides of the aisle to make a good bill a little bit better. What in effect, if I may briefly summarize what in effect it does, is that in Schedule 4 it sets the same standard for a party who is exerting an affirmative defense sets the same standard for that person as it does in Section 6B on page 4 in line 126 through 128. There apparently is the same intent in each of these sections but differing language used, in an attempt to hopefully straighten out the bill and make it easier of application when it, if and when it becomes law. We have changed it so that the reasonable requirement of public health, safety and welfare be the standard that's applied in each of these sections.

MR. SPEAKER:

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Further remarks on the amendment. Representative Papandrea of the 78th.

MR. PAPANDREA:

Mr. Speaker, this Amendment has been thoroughly investigated by counsel for both the Republicans and Democrats and I rise to urge House support of it and its adoption, which I don't think was formerly moved.

MR. SPEAKER:

Question is on adoption of House Amendment Schedule A. Will you remark further. If not, all those in favor of its adoption, indicate by saying "Aye". Those opposed. The Amendment is adopted, ruled technical. Question would now be on acceptance and passage of the bill as amended by House Amendment Schedule A. Representative Ciampi of the 89th.

MR. CIAMPI:

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

MR. SPEAKER:

Question is on acceptance and passage as amended. Would you remark?

MR. CIAMPI:

Mr. Speaker, House Bill 5037 is an act authorizing a right of action for declaratory and equitable relief for protection of air, water and other natural resources of Connecticut. The thrust of this bill is to give anyone, including the state in

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its subdivision and any person or other legal enemy a cause of action in court of law against anyone else including the state or any of its subdivisions or any other person or other legal enemy who unreasonably pollutes the environment. I want to emphasize the operative phase there is unreasonable pollution. All of us, to one degree or another, pollute the environment, the mere act of breathing constitutes pollution. This Bill is intended however, to bring judicial relief to bear only just those who unreasonably foul our environment. Both in public hearing and the Bill in executive session of the Committee on Environment was discussed, this Bill received bipartisan support. We really bet it will be a major step forward in the fight against pollution and at the same time a forge necessary protection against capricious lawsuits. I would now yield, Mr. Speaker, for the Deputy Majority Leader, John Papandrea, who will discuss some of the technical aspects of the Bill.

MR. SPEAKER:

Representative Papandrea.

MR. PAPANDREA:

Mr. Speaker, I would like first to publically thank the Chairman of the Environment Committee, Mr. Ciampi and also the members of this Committee for bringing a Bill in this magnitude out this early in the session. I think it shows in clear perspective the intent of the reapportioned legislature to get on with its business early and to avoid

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the customary pitfall of last minute consideration of bills of ad this type. When the history of this session is written, I am quite confident that this bill will be remembered as one of the landmarks measures adopted by us. Very careful research has gone into the preparation of this bill and I would like to commend on our side the work that was done by Attorney James Wade as counsel for majority. This is a bill which was modeled after a law which was passed by the State of Michigan last July, the states of Massachusetts, Texas, Pennsylvania, Colorado and California also have statutes quite similar and these were also reviewed before the adoption of the present measure. I think most of us are aware that the United States Senate presently has pending legislation quite similar which would affect all federal agencies and those private companies which are engaged in interstate commerce who in any way may foul the environment. I would urge that by adopting this measure we will continue Connecticut in the forefront that has long maintained in adopting and being a leader in progressive legislation. There has been a great deal of concern over some of the implications of this legislation and I would like to address myself for a few moments to some of the problems that have been raised and to clarify some of the confusion. Let me first say that this does not in any way expand the present common law right of any individual in the state of Connecticut to bring a lawsuit in nuisance against anyone who is directly damaging him or his property by way of pollution. To be

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specific there has been some concern that perhaps a farmer using a spray or an insecticide might possibly cause some damage on adjacent property and thereby be affected by the application of his measure. Let me make it clear that there is already in this state an action at law available to an abutting property owner. If his private property interests are adversely affected he presently has a clear legal remedy to seek an injunction from an appropriate court with jurisdiction. The one thing that we should understand about this bill in this connection however, is that it expands the right of a person to have access to the courts when property which we might say belongs to all of the public is jeopardized by the alleged polluting activity. Presently a person, unless he can show a personal direct ownership or other interests in the land which he claims as being affected by the alleged activity does not have legal standing in the court of law. Consequently, some of the most beautiful aspects of our environment, some of those most vital not only to our survival, but to that of future generations are such that they do not lend themselves to a proprietary or a personal interest and this bill makes the guaranteeing and the preservation and the protection of these rights available to the general public which they are not presently under our law. This bill, does not, Mr. Speaker, expand the power of the court to award money damages in these suits. It should be clearly understood that the only relief that is available here is equitable relief, namely a declaratory

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judgment which does not involve dollars or an injunction prohibiting the carrying on or conduct of the activity which is a subject matter of the lawsuit. Further, Mr. Speaker, this legislation does not expand or change the present law regarding suit wherein the relief sought is injunctive or declaratory. By that, and I want to make this very clear and emphatic there is no intention to change the present law regarding the posting of bond with surety which is presently required in all suits seeking injunctive relief. There has been a great deal of concern in this particular aspect and to make our record clear so that there will be no question about what we intended, I would like to have made part of the proceedings Section 52-472 entitled "Bond on Issue of Temporary Injunction" and I'd ask you to bear with me while I read this into the record. No temporary injunction shall issue in any case, except in favor of the state or of an office, public officer thereof, in respect to any matter of a public nature until the party making application therefore gives bond with surety satisfactory to the court or judge granting the injunction to the opposite party, to answer all damages, and I want to emphasize that, to answer all damages in case the plaintiff in the action in which the injunction applied for fails to prosecute the action to effect, provided a bond not be required when for good cause shown the court or judge is of the opinion that a temporary injunction ought to issue without bond. Now I'd like to make it very clear

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that counsel for the majority and minority have both read the court cases that have interpreted the application of Section 52-472 and have found without question that when we say all damages, we mean all damages and it incorporates specifically into the record the case of Lawler vs. Merritt which appears in 81 Connecticut at 718. As a matter of fact, in comparing the language of 52-472, Mr. Speaker, in comparing this with the language of what I consider to be the most stringent amendment that had been proposed requiring the posting of bond with surety, that language did not at all mention the words that are very carefully mentioned in 52-472 and that is answer all damages. So I think that if anything by making clear that we intend to incorporate 52-472 and its provision for bond with surety, we are granting the broadest possible protection to property owners who had fears that this might be used to harrass or that it might be misused.

Now let me get to the positive aspect, what the bill does, Mr. Speaker. First it declares that there is in this state a public trust in the environment. Then it permits any citizen of this state to bring a suit for declaratory or equitable relief against anyone else including the state and any of its subdivisions which would include any municipality or its subdivision, or any other person or legal entity who unreasonably pollutes the environment. Once having brought the law suit, the plaintiff, the person who brings the law suit, have the burden of proving not just the fact that pollution has, or is about to occur. He

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must prove that the pollution complained of is unreasonable and unavoidable. The resolution of that issue is a question of facts that a court must answer. Since unreasonableness is a matter of fact to be determined by the judge after listening to both sides and all of the evidence which they have to present, there is no question that the judge will have access to all of the merits, to all the implications, to all of the potential problems before he is called upon to make a decision. Once the plaintiff has met the burden of showing the pollution that he complains that is unreasonable, and he has made out, what we in the law call a first prima facie case, that unreasonable pollution exists, the burden of proof then shifts to the defendant to prove either that his pollution is not unreasonable or by means of an affirmative defense to show to the satisfaction of the court that under all the relevant circumstances, there is no other feasible and prudent alternative to the conduct that is being complained of by the plaintiff and in this case the court might deny the injunction, but impose whatever terms and condition the court deems necessary and proper to bring the pollution and the condition that is complained of to its speedy and satisfactorily an end as is possible. In addition the bill provides that where administrative procedures are available the court, in its discretion can refer the case to the appropriate administrative agency for action, but once it does so, it will continue to retain jurisdiction over the case. So that if it is simply

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put to one side and forgotten, or not given the attention that it properly deserves, the plaintiff without incurring additional costs simply must bring this matter to the attention of the court and the court can then prod the agency and impose whatever orders it deems necessary to get the matter rolling. Now what are the safeguards in the bill. Because the only relief that is obtainable is equitable it is doubtful that any case will be taken by any attorney on a contingent basis. Let me explain that, since a lawyer is not going to be dealing with money damages, which would be the result of a lawsuit since all he can get is an order of the court that certain conduct be terminated. He's not going to be able to say "I'll take this case for you on one third or twenty-five percent basis", so I think immediately it should call to our attention the fact that a person before pursuing this remedy in court is got to be prepared to expend a rather substantial investment in time and money to see it through to conclusion.

I think I've already discussed the mandatory bonding procedure to a point that is satisfactory and would certainly yield to any questions on that point. I think that I probably said enough, I would urge that all of us consider that despite some of the possible problems that have been discussed, both at the hearing and in the newspapers, that we realize that with this the protection of one of our most precious treasures, the environment, that there is a price to be paid for progress and that this bill in some large measure has us put our conviction

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and our commitment on the line. These days we hear a great deal about the environment and necessity of preserving it and I submit to you that this is the type of nuts and bolts legislation that translates our words into deeds and we will make the State of Connecticut a much better place, not only for ourselves but for many future unborn generations as well by adopting this legislation. Mr. Speaker, before I close, may I commend you personally for the dedication and for the effort that you have expended in personally guiding this matter through during the interim right up until today and I'd like to publically thank you for your effort.

MR. SPEAKER:

Further remarks on the bill. Representative Collins from the 165th.

MR. COLLINS:

Mr. Speaker, I want to thank the Deputy Majority Leader for giving us a rather thorough and I think exhaustant review of the provisions of this bill. I think this particular bill is an interesting landmark for the 1971 session of the legislature. It marks one of the first, I think major bills, outside of the adoption of annual budgets, that we have had before us for consideration and I think it also marks the concern of the members of the General Assembly towards a problem that is becoming increasingly evident to all of us, that of pollution. And without taking anything away from you, Mr. Speaker, or Mr. Wade, the counsel for the majority, I

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would just point out that similar bill, extremely similar, was filed by the Republican house leadership and based on Governor Meskill's campaign proposal in the 1970 Republican party platform, to make class actions on pollution matters a reality in the state of Connecticut. I think the state of Connecticut now joins several states which have already passed similar type legislation. And in speaking very much in favor of a bill of this nature, I think that there is a little note we might take of our past history on matters of water, particularly water and air pollution in the state of Connecticut. In 1967 we passed a rather extensive and significant water pollution bill. We did the same thing with the clean air bill in 1969. If those bills and the programs implementing those bills had been properly and thoroughly carried out by the state agencies and the attorney general's office charged with their administrations, it might just be that a bill of this nature would not be necessary. It is unfortunate that we have not had over the last four years thorough and exhaustive state leadership on areas of pollution. And I do think this is a necessary bill because it may well prod many of our state agencies charged with the protection of the environment on a state level. It may well prod these agencies into more thorough and responsive carrying out of the legislative programs. I think this bill does show the concern of the legislature for the environmental crisis in this state and I would certainly agree with the Deputy Majority Leader in his comments about the bonding provisions and the provisions in the statutes regarding

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temporary injunction. This was a matter of some concern to us, we had gone to the extent of preparing an amendment to provide for this and after consultation on both sides of the aisle and with their counsel, it was our understanding as outlined by Representative Papandrea, that the existing state statutes would provide for damages if the court required a bond be posted on an application for a temporary injunction. This bill will provide an individual or group of individuals with the right to seek legal redress on environmental matters. I think it is a bill that is necessary, I think it's important and I'm happy to be associated with it and more happy that it marks one of the first real important environmental bills of the 1971 legislature has passed.

MR. SPEAKER:

Further remarks on the bill. Representative Newman from the 146th.

MR. NEWMAN:

Mr. Speaker, this is an excellent bill. As it has been said, it's landmark legislation, but further than that, for want of a better word, I would say it's pathfinder legislation, such as the legislation that this Assembly passed for consumer protection and for truth in lending, even before the federal government got around to it. Connecticut has lead the way in those fields and I feel that it is going to lead the way in the conservation field also. The bill will permit, will entitle an individual or a group to seek redress without waiting to go

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through the water resources commission or some other commission or board with its necessary delays and staggering along on the complaint. However, I have one observation to make on the bonding provision, I'm just wondering if an individual of moderate and small means or small organization will be able to afford to put up such a bond to cover all the damages. Suppose they want to stop a manufacturing company from polluting a stream, suppose they want to stop an electric company from causing pollution, they'd have to put up a tremendous bond to take into effect all the damages that might ensue. Today we can start an action without putting up a bond and getting an attachment, but here we have to put up a bond and I'm just wondering what the little fellow, if he wants to bring an action under this law, can do so. But on the whole, it is an excellent bill, I'm going to support it and I think the rest of the legislature should also.

MR. SPEAKER:

Representative King of the 48th.

MR. KING:

At the risk of inheriting the displeasure of some of my good friends on both sides of the House, I would take exception to the boring reports of the merits of the major before us. Substitute House Bill No. 5073 is an act which would empower individuals, groups and organizations or combinations of these to go into court and attempt to stop what they perceive to be an abuse of the environment. Two

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fundamental questions, is this power wise and is this power necessary. All concepts of correction or restraint involved in this Bill are within the present jurisdiction of government. But there is no action within its purview which cannot or should not be handled by assisting departments of our state government, including the Water Resources Commission, the Clean Air Commission, the Department of Health, the Department of Natural Resources, the Attorney General's Office and perhaps others. We should be concentrating our efforts on improving and strengthening these branches of government rather than surrendering their functions to individual or groups who may or may not be responsible, who may or may not have a valid view, or who may or may not have harrassment as their main objective. I recognize that this House must be responsive to the demands of the people. Certainly this is a basic pendent of government, but I inquire, Mr. Speaker, how many of the public knows the scope of this Bill, or its inordinate potential for destruction and evil. Does the fact that the whole country is now acutely aware of our environmental and ecology problems, justify extreme and potentially destructive legislative at the urging of vocal (inaudible) and sometimes hysterical spokesmen for this movement. Mr. Speaker, this Bill is an open invitation to every ecology kook in the state to zero in on his pet project regardless of its effect on the state as a whole. We should weigh carefully the fundamental functions that are involved here. By the mere act of bringing suit, the plaintiffs can in our congested courts,

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consign the case for weeks, months, or even years and when eventually the issue reaches trial, the legal maneuvering will add to its measure, will add its measure to the delay. Now, suppose the court ultimately rules against the plaintiff, which is going to happen at certainly some of the cases. Who compensates the farmer that we heard about for the ruined fruit crop he has been enjoined from spraying. Who rescues from bankruptcy the manufacturer who production was unjustly halted and who can even calculate except by counting the number of brown-outs and black-outs, advantage to every citizen and the economy because destruction of an electrical generating system has been delayed for years. Under this Bill, farmers are enjoined from growing and protecting their crops, if utility companies are (inaudible) transmission lines and generating plants, if business is prevented from manufacturing and processing goods is material. Who is to say that good is greater than the harm done. I submit, Mr. Speaker, that we as a state have not reached the point where these decisions should be forced upon our economy by the procedures permitted under this Bill. The issue of how much environmental control must be delicately balanced against the basic need of the economy. This should always be a decision to be made by the specialized agencies who have an overall view and not be isolated groups or individuals armed with this thing called (inaudible). This is a potentially dangerous Bill, Mr. Speaker, full of perpetration of the enormous havoc. If this House

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passes the measure, the evil would we do today, Mr. Speaker, will surely survival.

MR. SPEAKER:

Further remarks on the Bill. Representative Matthews of the 161st.

MR. MATTHEWS:

Mr. Speaker, I'd like to rise in support of this Bill. It is my position that we have to place trust in individuals to be fair and equitable with one another. Now, in response to the previous speaker, in his comments relating to a farmer whose crops may be destroyed because he is not permitted to use a spray, the Bill in my estimation would not prohibit him from using a spray, he has the right to earn his living in his profession or occupation, and certainly unless he sprays indiscriminately all over and destroys things well beyond his own property line, there is certainly no restriction on it. Secondly, the Bill in my mind most assuredly gives individuals an opportunity to relate to one another in what we are running into as a serious problem in the environment. Each one of us must take a responsible position and relate to each other, if we are ever going to solve the environmental problem. I am very much in favor of the Bill.

MR. SPEAKER:

Representative Morano of the 151st.

MR. MORANO:

Mr. Speaker, I rise to support the Bill as amended, as

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one who lives in an assembly district, has had a pollution problem for the last 20 years and as representative from that district, I've been called in to do something about it the last 3 years, I've had the experience of dealing with some of the state agencies and I know, Mr. Speaker, with this legislation before us, that we will be able to take care of this problem immediately. I support the Bill and I urge the members of this side to support the Bill.

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MR. SPEAKER:

Representative Ciampi of the 89th.

MR. CIAMPI:

Mr. Speaker, in regards to all the environmental cuckoo clocks that Representative King said was going to bring suit against our particular bill for harrassment, I myself, as the Chairman of the Environment Committee, contacted a representative in Michigan, Environment Act, I asked him a few questions myself. I asked, "Did Michigan's House Bill 3055 become law?" Yes, the Governor signed it July 27, 1970. "How many suits have been brought under this act?" Any conclusion. One suit is pending. That is all. Any so called harrassment suits? None. In other words, this is a good Bill, Mr. Speaker, and I know the people in Connecticut are not going to harrass the big manufacturers or the big water companies. All they want is their right, their right in court. Thank you.

MR. SPEAKER:

Further remarks. Representative Fox.

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MR. FOX:

I think we're all in favor of improving the environment and the ecology. I submit that this Bill does not accomplish this purpose and I support the remarks of Representative King. The Bill has been presented by the majority leadership as being so protective to the business community, to the farmer, as to make the Bill innocuous. The protective measures are such that we are lead to believe that technically no action would be taken under it. If this is the case, the Bill is not a good Bill. If it is not correct, and if there will be and can be under the Bill, as many people feel there can be harrassment, suits, self seeking publicity suits, then the Bill is a bad one particularly bad at this time, where Connecticut is having financial and economic difficulties, it needs business, it needs jobs. This Bill is not going to encourage people and business to come to this state, invest their money and their time here and create jobs. It is even going encourage people to leave this state and worsen our position as it stands at the present time. I think that we at best, should defeat the bill and at worst, we should re-commit it for further consideration. Thank you.

MR. SPEAKER:

Further remarks on the bill. Representative Newman speaking for the second time.

MR. NEWMAN:

Mr. Speaker, this is an important bill and I would

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request that when the vote is taken, it be taken by roll call.

MR. SPEAKER:

All those in favor of roll call, indicate by saying "Aye". Opinion of the Chair, not sufficient amount is requesting the roll call. Further remarks on the bill as amended.

Representative Camp.

MR. CAMP:

Mr. Speaker, I support the legislation. However, I have a question or two for Mr. Papandrea. First, is it your understanding that a decision reached by a court in one of these cases would be res adjudicata as to a future case brought by any plaintiff against that same defendant?

MR. SPEAKER:

Gentleman from the 78th, care to respond.

MR. PAPANDREA:

I care to respond, but I don't know really whether I can adequately. I think the question of res adjudicata is a very involved and difficult one and I think we have to see the facts of the case that had been decided and define each and every material aspect of that case in comparison with the case that would be pending and I think that calls for decision to be made at that time by the judge who would be presiding on the subject matter. Offhand, I would say it would be difficult to consider it to be res adjudicata.

MR. CAMP:

My concern in this bill is exactly that I think, and

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that is, that I think it could be, from reading the bill and I wonder out loud what protection the public has against the weak or incompetent plaintiff. That is to say, suppose some individual decides that the UI Company, which has been disputing for an advertised degree of smoke from stacks that have proudly proclaimed that are UI's down in New Haven, determines to bring an action against them and hires a lawyer, the problem is at this point, if he's either unfunded or incompetent and for one reason or another, doesn't begin to bring a muscle to bear on this case that someone else might well do or the state of Connecticut could. Once the case has been decided, the question would be, it seems to me, in an agency proceeding later, or in the case that was begun here, was that they couldn't be brought action against again as the issue of res adjudicata would be raised. I therefore wonder if the majority would be amenable to an amendment to this bill which would make the Secretary of State or rather the Attorney General a necessary party to an action in order that the public at large be protected, because these are not essentially private rights which you're protecting, you are protecting the rights of all the people of the state of Connecticut and as such, it seems to me that instrumentality which is responsible to all of the people of the state of Connecticut are represented. I also commend this to your attention, in view of Mr. King's problems, because it seems to me that a court, after all, is basically a non-interested party. The

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plaintiff in the action has some interest and the defendant probably has a good deal of weapon in his command. The court would look certainly with favor if the Attorney General's Office together with the support from one of the agencies involved could come to bear and bring its power to bear upon this matter and bring its what would be basically neutral advice. I think this is good legislation, I think it could be so improved and I would move that the Bill be passed temporarily retaining its place in order than an amendment be prepared along the lines I've suggested.

MR. SPEAKER:

Representative Ajello.

MR. AJELLO:

I would object to that.

MR. SPEAKER:

The gentleman is, I'm not quite sure what he has moved, I heard a motion to move temporarily and to retain, which motion do you offer at this time?

MR. CAMP:

To pass retaining its place. That would bring it up to tomorrow, I take it.

MR. SPEAKER:

There has been objection, the motion is debatable. Would you remark on the motion. All those in favor of retaining a Calendar item as indicated, indicate by saying "Aye". Opposed. Motion is defeated. Further remarks on the Bill as

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amended.

MR. AJELLO:

Mr. Speaker.

MR. SPEAKER:

Representative Ajello.

MR. AJELLO:

Rising in support of the Bill, I tried to stay out of this debate since Representative Papandrea has done such an excellent job of expounding upon it. However, it seems to me that the remarks of the gentleman just preceding me are somewhat nonsensical in the sense that they do violence to the very concept of the Bill. If the attorney general rather were to be the party bringing action, it would defeat our purpose which is to have the ordinary citizen of the state of Connecticut be able to get a piece of this particular action by taking action where it seems that no one else will or can. So that it is an entirely different Bill and an entirely different concept and would do violence to what we propose to do here and just think of the incongruent situation which might arise where a citizen decides the state of Connecticut is indeed the polluter, and then goes to its own attorney, the Attorney General and asks him to bring suit. That would be quite impossible. So I think that the suggestion is not a good one and is exactly the opposite of what the purpose we are trying to accomplish here.

MR. SULLIVAN:

Mr. Speaker.

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MR. SPEAKER:

Representative Sullivan.

MR. SULLIVAN:

Mr. Speaker, briefly, in regard to the question of res adjudicata, I don't think that that would normally apply in a situation such as this, about the only instance I can think of where it would apply would be one specific instance of pollution and if that question had been decided, then it would be res adjudicata. But any problem that was a continuing menace to the environment would be subject to action any number of times until it was terminated. So I don't think that that's a problem in this bill.

MR. SPEAKER:

Further remarks on the bill, as amended. Representative Hogan from the 177th.

MR. HOGAN:

At the risk of polluting the environment by speaking twice in one day, I must rise to oppose this bill. It becomes necessary in the conduct of our business or occupation, whichever you want to call it, to at times pollute the air by kicking up a stink, and this bill, as I read it, would also give our neighbors a right to kick up a stink also. I object.

MR. SPEAKER:

Further remarks. Representative Miller of the 156th.

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MR. MILLER:

Mr. Speaker, I rise to support this Bill, I represent a district on Long Island Sound which has been plagued by industrial air pollution and industrial water pollution. The people in my district have communicated to me their support for such a Bill. Often when they seek a regress of their grievances with administrative agencies on both the state and city level, they find it distressingly difficult to get action and I would like to state that often we are dealing with polluters who just try to see how much they can get away with. These people are defiant, they're doing it deliberately and I strongly support this Bill. Thank you.

MR. SPEAKER:

Further remarks.

MR. PAPANDREA:

Mr. Speaker.

MR. SPEAKER:

Representative Papandrea.

MR. PAPANDREA:

Mr. Speaker, I move that when the vote is taken, it be taken by roll call.

MR. SPEAKER:

Motion on a roll call. Those in favor indicate by saying "Aye". Opposed. Opinion of the Chair, more than 20 percent having called for it, a roll call will be ordered.

While we're awaiting the return of members, are there

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announcements, I understand the Clerk initially has some bills. ad

THE CLERK:

Favorable report, Joint Standing Committee on Labor,
House Bill 6769 - An Act Concerning Annual Reports of Labor
Organizations.

MR. SPEAKER:

Tabled for the Calendar and printing.

CLERK:

Favorable report, Joint Standing Committee on Labor,
House Bill 7661 - An Act Concerning Extending Minimum Wage to
Public Employees and Educational, Charitable and Like Employees.

MR. SPEAKER:

Tabled for the Calendar and printing.

CLERK:

Favorable report, Joint Standing Committee on Real Estate,
House Bill No. 6263 - An Act Concerning Proof of Financial
Responsibility.

MR. SPEAKER:

Tabled for the Calendar and printing.

CLERK:

The Clerk has a raised bill, Committee on General Law -
An Act Concerning Certification of Municipal Building Officials
Holding Office Prior to October 1, 1970.

MR. SPEAKER:

The raised bill will be referred to the Committee on
General Law.

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Will you remark further on the bill as amended.

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Representative Fox.

MR. FOX:

I just want to draw attention to one or two important aspects of this bill which several of us feel is not going to accomplish the objective that everyone, I am sure wants of maintaining and improving the environment and ecology. The bill will do the various things, encourage harrassment, it will discourage business, industry from coming to Connecticut, it will curtail jobs and have other undesirable effects on our economy. Why will it do this? Because the bill is not a good bill as it is drafted. It allows anyone to go into court to get an injunction against the words and I quote "unreasonable pollution" and what is unreasonable pollution is completely undefined and is left entirely to the discretion of various judges, this can be a very disconcerting thing, it can be an inconsistent thing and it is going to be damaging, and I call your attention to what you read in the press the frequency and ease with which injunctions are obtained and I also call your attention to the very few, if not practically no occasions when bonds of any significance are required to prevent harrassment, publicity seeking suits. For these reasons, Mr. Speaker, I again repeat for the benefit of those who were not here before, I would recommend that this bill either be defeated or at least re-committed for further consideration.

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Further remarks on the bill. Representative Bard from the 145th.

MR. BARD:

Mr. Speaker, I'd like to rise in support of the bill. I think the tendency might very well be that the state agencies will now start to act, knowing that if they don't, individuals will.

MR. SPEAKER:

Further remarks. Representative Stevens of the 122nd.

MR. STEVENS:

Mr. Speaker, just to say once more, that we on this side of the aisle do support this bill as a meaningful piece of legislation and to put at rest the fears that have been expressed by some. I would like to reiterate what Representative Papandrea said, that there is a statute that will require the posting of a bond by a person who is to obtain a temporary injunction, the bond would have to cover all damages that the defendant in the law suit could possibly suffer if the temporary injunction were granted and let me also say that as the members of the Bar in this House I am sure are well aware, it is not that easy in Connecticut to obtain a temporary injunction, because by obtaining a temporary injunction you may in effect, be shutting down a person's business. Courts do not grant them indiscriminately. This bill combined with the existing statutory provision of the posting of the bond, does in our opinion, balance the equity of the individual with a need

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to clean up the environment in this state. We feel the balance is well taken, it is a good bill and we hope it will pass this House.

MR. SPEAKER:

Further remarks on the bill as amended. If not, would the members please be seated and the aisles cleared.

Representative Votto of the 116th.

MR. VOTTO:

Mr. Speaker, I've heard the remarks and some of the fears that have been expressed thus far. I can say as a practicing attorney who has been involved in several cases involving injunctions, having cases of this nature, the courts do not indiscriminately grant injunctions. Also, preliminary hearings are accorded all those who request so in a court before the injunction is granted. In my opinion, the general substance of the bill, the nature of what we are talking about, is going to require as a matter of practicality for any lawyer or litigant a certain degree of expert evidence, this is going to cause money and money has a way of preventing indiscriminate litigation. I rise in support of the bill.

MR. SPEAKER:

Further remarks. If not, will the members please be seated, the aisles cleared, we will proceed with the vote.

Representative King of the 48th, speaking for the second time.

MR. KING:

To reiterate for the benefit of those who may not have

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been here during the first part of the debate. Several of us, including myself, took the position that this bill has many very unfortunate aspects. One of them, as Representative Fox has indicated, is the very strong likelihood of harassment. The other is the likelihood of damages to the alleged polluter that are later not proved by the suit. What happens, who compensates this individual for the damages he has suffered. Well, we've heard talk of bonds. But I must say as a practicing attorney and this seems to be the key word here this afternoon, I agree with some of the previous speakers who have said that in their experience they have never found a court requiring a sufficient bond to properly compensate for possible damages. And I think in this case, in this situation that that is even more true because of the likelihood of a great multiplicity of suits and the likelihood of the difficulty in determining the ultimate scope of the damages. But I think more important, Mr. Speaker, the point that I would make, is that we have existing agencies, certainly it's an open secret, and we're very proud of the fact that Connecticut leads the nation in environmental consciousness. We have the Clean Water Act which was the first in the nation and the model for the whole country. We have the clean air task force which has lead the nation, we are recognized as the leaders, now in effect, what do we do. We come along with the class action bill and we say in effect, our agencies are not doing the job, we're going to turn this over to the public. And as I said before, let every

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ecology kook in the state bring his own action. Of course, I'm not saying that the courts are going to advocate their responsibilities, they're not. But when you have 30 or 40 judges or more, with a possibility of all hearing these cases, who is to coordinate, who is provide the balance view. I think the alternative ought to be to strengthen those environmental and ecology agencies that we have, give them the power to move in where there is a complaint and if they feel that the complaint is justified, let them take action. We have nothing to be ashamed of, we are number 1 in the nation, why should we under-rate, why should we under-cut, why should we discount. What heretofore we have said are the best environment and ecology agencies that there are to be found anyplace. Have we lost face in what we did 2 years ago, 4 years ago. It seems to me that if we pass this bill, we are saying in so many words, that we don't trust you guys, we don't think you can do the job.

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MR. SPEAKER:

Further remarks. If not, will the members be seated and we will proceed with the vote. The machine will be open. Has every member voted. Is your vote recorded in the fashion that you wish? The machine will be locked and the Clerk will take a tally. Clerk will announce the tally.

CLERK:

Total number voting 161
 Necessary for passage 81
 Yea 150 Nay 11
 Absent and Not Voting 16

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MR. SPEAKER:

The bill is passed. There is further Calendar business, Representative DellVecchia.

MR. DELL VECCHIA:

I move suspension of the rules for immediate consideration of this resolution. HSR # 131

MR. SPEAKER:

There is a resolution pending before you, the gentleman outlined it in lieu of having it read in view of the lateness of the afternoon.

MR. DELL VECCHIA:

Yes, I will, Mr. Speaker. When fall comes and the professional football season begins, you in the western part of our state will most likely be rooting for the New York teams, while our colleagues in the northeastern part will be rooting for the Boston team. However, we in the town of Southington will be focusing all of our attention on a mid-western team the Minnesota Vikings, because a gentleman from the town of Southington, Vinnie Clemens, has been drafted by the Vikings.

MR. SPEAKER:

Further remarks on the resolution. Representative Clynes.

MR. CLYNES:

Mr. Speaker, it is a great pleasure that I stand and pledge my support of this resolution. We are very proud of

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Vinnie in Southington. Mr. Speaker, I move adoption of the resolution and immediate transmittal to the Senate.

MR. SPEAKER:

Further remarks on the resolution. Representative Ajello.

MR. AJELLO:

All of us on this side of the aisle join in support of this resolution. We certainly wish Vin well in his career.

MR. SPEAKER:

Further remarks. If not, all those in favor indicate by saying "Aye". Those opposed. Resolution is adopted.

Is there objection to suspension and transmittal to the Senate. Hearing none, the rules are suspended and the resolution is transmitted to the Senate.

The Clerk will return to Calendar business.

CLERK:

Page 3. Calendar 82, substitute for House Bill No. 5886 - An Act Concerning the Performance of Certain Hairdressing and Cosmetology Functions by Licensed Manicurists.

MR. COHEN:

Mr. Speaker.

MR. SPEAKER:

Representative Cohen.

MR. COHEN:

I move acceptance of the Committee's Joint favorable report and passage of this bill.

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MR. SPEAKER:

Questions on acceptance and passage. Will you remark.

MR. COHEN:

I believe there should be an amendment.

MR. SPEAKER:

Clerk has House Amendment Schedule "A". Will you read it.

CLERK:

House Amendment Schedule "A". In line 19 before the word "upon" delete the word "only".

MR. COHEN:

Mr. Speaker, this is just a minor correction and makes the bill a little bit better. This bill merely delineates and spells out some of the duties of the manicurists. As you know, manicurists have to take 500 hours of study before they can be professionals and have to be certified by the Department of Health. This is a good bill and I hope it passes.

MR. SPEAKER:

Initial question is on adoption of the amendment. Will you remark further on Amendment Schedule "A". If not, all those in favor indicate by saying "Aye". Those opposed. The amendment is adopted. We'll rule it technical. We can proceed with the bill as amended.

MR. COHEN:

It's a good bill and I move its passage.

MR. SPEAKER:

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Further remarks on the bill as amended. If not, all those in favor of acceptance and passage as amended by House Amendment Schedule "A" indicate by saying "Aye". Those opposed. The bill is passed.

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CLERK:

Calendar 83 - House Bill 7010 - An Act Concerning Equally Employment Contract and Compliance.

MR. AJELLO:

Mr. Speaker.

MR. SPEAKER:

Representative Ajello.

MR. AJELLO:

I move Calendar 83, House Bill 7010, file 72, be passed, retaining its place on the Calendar.

MR. SPEAKER:

Is there objection. Hearing none, so ordered.

CLERK:

Calendar 85, substitute for House Bill 5605 - An Act Concerning the Waterford-East Lyme Shellfish Commission.

MR. SPEAKER:

Representative Rose of the 69th.

MR. ROSE:

Mr. Speaker, I move that this act be favorably accepted and passed by this House.

MR. SPEAKER:

Question is on acceptance and passage. Will you remark.

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MR. ROSE:

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Yes, Mr. Speaker, this is a bill which has been brought in at the request of the selectman of both the towns of East Lyme and Waterford to reform the East Lyme Waterford Shellfish Commission to 8 members whereas it was previously 10, to reduce the number of selectmen to 1 instead of 3 and to increase the number of the public appointed by the selectman to 3 instead of 2. This is a result of considerable activity by this Commission over the years and is considered a vast improvement to make their work much more effective. I move passage of the bill.

MR. SPEAKER:

Further remarks. Question is on acceptance and passage. All those in favor indicate by saying "Aye". Those opposed. The bill is passed.

CLERK:

Calendar 86 on page 4, substitute for House Bill 6051 - An Act Concerning the Powers of the Commissioner of Agriculture and Natural Resources in Preserving Tidal Wetlands.

MR. IWANICKI:

Mr. Speaker.

MR. SPEAKER:

Representative Iwanicki of the 79th.

MR. IWANICKI:

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

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MR. SPEAKER:

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Question is on acceptance and passage of the bill. Will you remark.

MR. IWANICKI:

Mr. Speaker, this bill is to empower the Commissioner of Agriculture and Natural Resources to enter upon public and private property to carry out the provisions of Section 227H to 227 O inclusive. I urge the passage of this bill.

MR. SPEAKER:

Further remarks on the bill. If not, the question is on acceptance and passage. All those in favor indicate by saying "Aye". Those opposed. The bill is passed.

CLERK:

House Joint Resolution 133 - Expressing Sympathy on the Death of Representative Sabath Nigro.

MR. BIGOS:

Mr. Speaker.

MR. SPEAKER:

Representative Bigos.

MR. BIGOS:

I move the suspension of rules for the immediate consideration of the resolution.

MR. SPEAKER:

Is there objection to suspension of the rules for immediate consideration. Will the Clerk please read the resolution.

CLERK:

Resolved by this Assembly:

WHEREAS, the members of the Assembly were all deeply saddened upon learning of the sudden death of our friend and colleague, Representative Sabath Nigro, representative of the 44th District;

WHEREAS, he had been an English teacher, Vice Principal of the Enfield High School, head of the English Department and a member of the Enfield School Board during his distinguished career in education;

WHEREAS, we join his family and many friends in deeply mourning his loss.

NOW THEREFORE BE IT RESOLVED, that the members of the General Assembly unite in expressing their deepest sympathy to his family.

BE IT FURTHER RESOLVED, that the Clerk of the House and Senate cause a copy of this Resolution to be sent to his widow as an expression of the high esteem in which he was held.

MR. BIGOS:

Mr. Speaker, I move the adoption of the resolution.

MR. SPEAKER:

Questions on adoption. Will you remark.

MR. BIGOS:

Mr. Speaker, as we all know, the funeral of our colleague Sabath Nigro was held yesterday. His passing was a shock to all of us. It is sad to lose a colleague and tragic to lose

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a friend.

MR. SPEAKER:

Further remarks on the resolution.

MR. PAPANDREA:

Mr. Speaker.

MR. SPEAKER:

Representative Papandrea.

MR. PAPANDREA:

Mr. Speaker, Sam Nigro was with us such a very short time, that I am afraid for many of us it was impossible to get to know him well enough to truly appreciate the very many qualities that he possessed.

MR. SPEAKER:

Representative Sarasin.

MR. SARASIN:

Mr. Speaker, we wish to join with the members of the other side of the aisle in expressing our heartfelt sympathy and condolences, not only for Mr. Nigro's family but for the city of Enfield.

MR. SPEAKER:

Representative Tudin from the 42nd.

MR. TUDIN:

Mr. Speaker, I've had occasion to spend many a happy moment with the gentleman and as it has been expressed, the man was sincerely dedicated. I'll miss this gentleman.

MR. SPEAKER:

Further remarks. If not, all those in favor of

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acceptance and adoption of the resolution, indicate by saying "Aye". Those opposed. Resolution is adopted.

MR. BIGOS:

Mr. Speaker.

MR. SPEAKER:

Representative Bigos.

MR. BIGOS:

Mr. Speaker, I move the suspension of the rules for the immediate transmittal to the Senate.

MR. SPEAKER:

Is there objection to suspension of transmittal. Hearing none, the rules are suspended, the resolution is transmitted to the Senate.

CLERK:

No further business on the Clerk's desk.

MR. SPEAKER:

Further announcements. If not, the gentleman from the 118th.

MR. AJELLO:

Mr. Speaker, if there is nothing further, I move that we adjourn until tomorrow afternoon at 1:30 P.M.

MR. SPEAKER:

Questions on adjournment until tomorrow at 1:30 P.M. All those in favor indicate by saying "Aye". Those opposed. The House stands adjourned.

TIME: 4:00 P.M.

Ann T. Delaney
House Transcriber

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SENATOR CALDWELL:

Mr. President, in that case may these two matters be held because we have information, I believe, if I might direct a question to Senator Pac that at the public hearing, information came from the Commissioner's office that no extra money was needed.

SENATOR PAC:

Mr. President, I would move if the move hasn't been made that we postpone temporarily, these two matters because I have testimony from the Commissioner of Mental Health to the effect that this would not entail any new spending.

SENATOR IVES:

Matters be held.

THE CHAIR:

Then we have reached the conclusion that they will pass and hold their place on the Calendar? Otherwise, all of the motions incomed by Senator Caldwell's remarks are carried out and so ordered.

THE CLERK:

CAL. NO. 113, File No. 65, substitute for House Bill No. 5037. An Act Concerning a Right of Action for Declaratory and Equitable Relief for the Protection of Air, Water and Other Natural Resources of Connecticut. Amended by House Amendment Schedule A. Favorable report of the Environment.

SENATOR PAC:

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

THE CHAIR:

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THE CLERK:

SENATE AMENDMENT A. offered by Senator Dowd.

Amend Substitute House Bill 5037 by deleting the word "may" and substituting the word, "shall" in line 72 thereof; and by deleting the word, "may" and substituting the word "shall" in line 132 thereof.

SENATOR DOWD:

Mr. President, I move adoption of the amendment. All of us in this circle, are concerned with the quality of air, water and natural resources, in our State. Without exception, I believe all of us in our past legislative careers have voted strongly and sighted strongly on such issues. In this measure, we are granting individuals citizens some powerful weapons, the right to seek injunctions, the right to intervene in proceedings. The citizen is also given these rights in cases where there's even a reasonable likelihood to pollute. And, it seems to me, Mr. President, that before we grant these rights, which I hope we will, but before we grant these rights, which could result in dragging business into court with the exposure to costly time consuming litigations. Is it not reasonable to require the individual to at least first exhaust the administrative procedures which we ourselves in this General Assembly have set up. I don't think that's an unreasonable requirement. Is it not reasonable, safeguard against a harassment or frivolous action particularly in the case of the often repeated concern in this very chamber, about our crowded court dockets.

If, after exploring the administrative procedures he's still unsatisfied, there's nothing in this amendment to my mind, that would prevent exercising his full rights which we will be granting under this bill.

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Mr. President, in my judgement the amendment is both sound and reasonable and it's one which will insure that existing procedures, which we so painfully worked out are not routinely by-passed to the detriment of businesses and a crowded court calendar. I urge its adoption.

THE CHAIR:

Question is on adoption of the amendment. Will you remark further?

SENATOR PAC:

Mr. President, I oppose this amendment. The amendment refers to Section 5 which permits the court to remand the party to administrative and licensing procedures. Now the party may, the defendants may have been remanded previously to these procedures and this would make mandatory a second repetition. So at this point, this is dilatory tactic, I think. It's a totally unnecessary amendment. And I think we should beat it down.

SENATOR EDDY:

Mr. President, I really wish to echo what Senator Pac has said. This has been businesses of manufacturing concerns objection to this legislation.

In my view, if this amendment were passed, it would quite effectively emasculate this legislation. What we are attempting to do here, is beginning in our own way to let the citizens say that they have at stake, the right to live in clean air, clean water and a generally favorable environment. So often these matters do drag through administrative processes and no action was taken and the citizens needs and is entailed in this bill, some direction. Direct action. Now, the accusation that it will result in frivolous or harrassing tactics, has not proven to be a fact, in a State where this law has been passed. Because the fact of the matter is, that no court is going to listen to just one individual who doesn't like what some

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factory is doing. He's not going to be able to get an injunction. He has to have some sort of a legitimate complaint before this sort of case is going to get a complete hearing.

So this is a delaying tactic on the part of business, organized business while they say, they are for all environmental protection. Basically, in too many cases, are not. I think this amendment should be beaten down. And I hope it is.

SENATOR GUNTHER:

Very briefly, Mr. President, I agree with the Senator from the Sixth and the Ninth. I think there are sufficient safeguards in the existing legislation. I think one of the problems that we're having right now is, the fact that the administrative process of taking so long that I certainly don't want to give any grounds for them to be dumped back into that merry go round, that we have been having over the past four years. And clean water, in the past two years and clean air. I think this would be extremely difficult for anybody to come with a frivolous suit. I think the court itself, is certainly going to take cognisance of actions that were taken. I would strongly oppose this amendment.

SENATOR MACAULEY:

Mr. President, I agree with speakers who oppose this amendment. I just simply would like to add further, my reading of it to changing of this one word, would change this statute from a statute whereby the public can sue to a statute whereby it would be in essence, simply a statute which grants an appeal, from the action of the administrative agencies. This is certainly not the intent of the full statute.

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THE CHAIR:

Will you remark further? If not, all those in favor of adoption of the amendment signify by saying, "aye". Opposed, "nay". The nays have it. The amendment is defeated.

THE CLERK:

SENATE AMENDMENT B offered by Senator Cashman.

In Line 68, at the end of Section 5, add the following:

Except where the attorney general, any political subdivision of the State, any instrumentality or agency of the state or of a political subdivision thereon applies for relief under this act, no temporary or permanent equitable relief shall be granted by the court unless as a condition precedent thereto the plaintiff posts an adequate indemnification bond with surety sufficient to protect the defendant in the event that the ultimate final judgment in the case is in his favor.

SENATOR CASHMAN:

Mr. President, this bill that we have before us, is I think, one of the most important that we will have before us in the entire session. And I support it wholeheartedly. However, I am somewhat concerned about the possibility of harassment suits. And under our present legislation under present law in Connecticut, it is possible for the Judge to create, to provide for an injunction without requiring a bond. And the purpose of this amendment, is simply to require a bond so that those who bring suits are people of extremely good conscience who know what they're doing.

It's my belief, that this particular amendment will provide just that sort of strengthening of the bill. I might point out, to the Senator from the Ninth, that the only other State which has a Class Action Suit Bill does

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have a bonding requirement in it, similar to this one. And it would seem to me, that this particular amendment will have the affect of prohibiting harrassment suits against farmers, small manufacturers or other people who are or who would go to great expense perhaps, to defend themselves against a frivolous suit. I believe very strongly that this amendment is a good one. And it should pass. That we should make haste slowly in this particular field. And I move that, when the vote is taken, Mr. President, it be taken by roll call.

SENATOR PAC:

Mr. President, I oppose this amendment. This amendment strikes at the very heart spirit of the whole class action suit. To put another impediment in the nature of a \$500 bond, I think, in respect, the party may as well go to a suit under tort law, where they can risk the possibly gain of some damages, rather than under these civil suits. Now, I think we have enough dampers, enough deterences in the act, itself. The fact that the court may apportion the costs, there is a deterence right there. And I think the biggest deterrent is the fact that the courts in the past, dealt rather harshly with all suits that are without merit. This is the reason, I oppose it.

THE CHAIR:

Will you remark further?

SENATOR EDDY:

Mr. President, just to add my word with Senator Pac. I have nothing more to say except the big fear here is, or appears to be frivolous suits. And whate we're saying here, is that the courts, or what you're implying is that the courts can't recognize a frivolous suit when they see one. And they're just not going to grab injunctions that easily. And furthermore,

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to force an individual to take out a bond of this nature, in many cases, is to say, that only certain people of adequate means who can get the bond will be allowed to do this. And this is not the purpose of this bill. This is to give the ordinary citizen some protection. And that's what we're trying to do here and I oppose this amendment.

SENATOR CALDWELL:

Mr. President, I rise to oppose the amendment also. It seems to me, that there aren't going to be many lawyers dashing around looking for frivolous suits to bring. When they know full well, that they'll probably end up in the Supreme Court. This isn't like a tort type case where you take a matter on a contingent basis expecting to receive a large fee, if you're successful. I don't think they'll be many people in the legal profession who will be very anxious to handle this type of action without receiving a very substantial fee. And for this reason, I don't think we have to be concerned about harassment suits.

THE CHAIR:

Will you remark further? If not, a motion has been made that there be a roll call vote. All those in favor of a roll call vote signify by saying, "aye". Opposed, "nay". More than 20% requested a roll call vote. A roll call vote is ordered in the Senate, on Senate Amendment Schedule B.

THE CHAIR:

The following is the roll call vote:

Those voting yea were:

SENATORS CASHMAN

SENATORS POWER

IVES

HOULEY

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Those voting nay were:

SENATORS ODEGARD

FAC

ROME

CIARLONE

ZAJAC

CRAFTS

GUNTHER

CALDWELL

RIMER, JR.

KINIELLI

DENARDIS

SENATORS JACKSON

ALFANO

EDDY

HAMMER

SULLIVAN

MURPHY

MACAULEY, JR.

DOWD

DUPONT

MONDANI

FINNEY

Those absent and not voting were:

SENATORS FAULISO

BURKE

BLAKE

BUCKLEY

STRADA

SENATORS SMITH

LIEBERMAN

CUTUILLIO

PETRONI

RUDOLF

THE CHAIR:

The result of the roll call vote:

Whole number voting 26

Necessary for passage 14

Those voting yea 4

Those voting nay 22

Those absent and not voting 10

The amendment is defeated.

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SENATOR PAC:

Now, I guess it's proper to remark on the bill? First of all, I'd remark on the House Amendment Schedule A.

All this did was to delete all the matter beginning with line 46 and the word, "and". And it deletes line 47, line 48, line 49, 50 and 51. To the period after destruction. What it succeeds in doing is shifting some of the burden of truth from the defendant to the plaintiff.

Now, the bill itself, this is one of the more important environmental bill before us. As a matter of fact, I think this is the most important bill that we have. Michigan is the only other State with similar legislation. And not so strangely, ours is almost identical with this. Now this bill will permit a suit for declaratory judgment and equitable relief. It does not concern itself with damages and if any are sought, they would have to be pursued in subsequent litigation.

Now, whatever environmental legislation we pass, its success is really dependent on its enforcement and its right to legal redress. To me, this is the whole guts of the conservation movement. I am convinced, that our ability to clean up the air in our environment, rests not so much on this legislation, some small legislation but rather, in the courts of this land. And though we have the basis for legal redress and sucker in tort law, with this bill we give the courts and we give the aggrieved, I think, a helping hand. Now, the Supreme Court has implied the right of the citizen to seek injunctive relief and its interpretation of the Harbors and Rivers Act, all familiar with that one. And with this bill, we're following in a similar vein. Now, I think it was stated most ably by Victor Yanacone of the

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Environmental Defense Fund and I quote him, "he said, Let each man and in every corporation so use his property as not to injure the property of another, particularly that, which is the common property of all the people, and let not wrong be without a remedy." Now, as to that itself, Section 1 deals with the nomenclature of the Act. Section 2, states there's a public trust in the air, land and our natural resources. And the key word here, is, of course, trust. It provides each and everyone of us, the right of protection to the same. Now, we have a trust there and anybody that violates this trust, we're provided with a remedy. Under Section 3, it confers the right of each and everyone of us, the Attorney General, political subdivisions to bring a suit, in the Superior Court wherever the pollutor resides. And if the defendant happens to be the State of Connecticut, it would be brought to the Superior Court of Hartford.

Under Section 4, the plaintiff in marshalling evidence that the defendant is reasonably likely to unreasonably, these are words that are used continually, that unreasonably pollute environment, may be rebutted by evidence to the contrary. Now, in addition, the defendant may, as an affirmative defense, bring up the fact that considering the relevant circumstances, there is no feasible alternative to his conduct. This is not oppressive legislation. Otherwise you have the other principles of burden of proof that are applicable in civil cases that prevailed in all instances.

To me, this whole section in the law stands on the state of the yard. And I'm confident that the court, will find that in most cases, the State of the yard, is farther advanced than the defendant that resorted to.

In section 5, the court reasserts its preeminence over the action. It may remand the parties to further administrative and licensing procedures.

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But, meantime it can grant temporary relief. And, after, any administrative proceedings, the court may disregard, may in its judgement, consider that the consideration has been inadequate and it may judge the defendant's conduct in the light of this act, itself. So the courts action of course, is preeminent over this and it hangs all over this act.

In Section 6, in all the administrative and licensing procedures and any Judicial view, any of the parties previously mentioned, may intervene. They have to file a verified pleading, to the fact that the defendant is reasonably likely, here again the words, to pollute and impair our environment. Meantime none of these agencies can authorize any action that will impair our environment, if there is a feasible alternative.

Under Section 7, once again, it just redefines the procedures that we can go through and in case of a judicial review, it permits the additional evidence to be brought up.

I've tried to refrain from any comments or embarking on this whole area of environmental protection and preservation. I think this is self-apparent. I tried to be germane to the bill, itself. To me, it's a testimony in my faith in the courts. Frankly, perhaps my distance from the courts hasn't diminished my admiration of the courts. Some of you, who are very close to them, the imperfections perhaps, are greater than I see them. But being in the fourth, perhaps you like the trees at times, you stand in each others way and you don't see the sunlight streaming in. But, if I don't have this confidence in the courts, I don't know where are we. Where are we, really? So, in closing, I would just say this, I would quote once again, Victor Yanacone and he mentioned the fact that, only imaginative legal relief, legal actions, on behalf of the general public in Class Action

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suits for declaratory judgement an injunctive relief will get this story told and lay the matter before the conscience of the public, in a forum where it can be tested and resolved under cross examination. To me, this is a tribute and honor to all of the people who engage at the Bar. I rest my case.

SENATOR CASHMAN:

Mr. President, I just simply like to associate myself with the remarks of Senator Pac, who has hit the nail right on the head. It is extremely important legislation. I support it wholeheartedly.

SENATOR DOWD:

Mr. President, I rise to support this bill. I would quite agree with my distinguished colleague from the Sixth, that this is a major bill and I would hope that when the vote is taken it be by roll call.

To me, this lets the word go forth to one and all that Connecticut really means business, in terms of trying to secure clean environment. It's a major bill and I think we are taking a giant step forward with it.

SENATOR PAC:

A motion that we have a roll call vote.

SENATOR EDDY:

Mr. President, I just wish to add one more word, that I think, this is the start toward something that is strange to people in New England because we've always had so much water. We've always had so much, such an abundance of what we now begin to see being destroyed. And this is the beginning which says, that no man or no group of men, own water or own air or own what is necessary to all of us. We're now saying, we all own it but no individual owns it and that is ~~that~~ ~~no~~ ~~one~~ ~~has~~ ~~the~~ ~~right~~ ~~to~~ ~~destroy~~ ~~it~~.

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SENATOR MONDANI:

Mr. President, through you, a question to the Senator from the Sixth? There was some question about posting a bond in this suit for the protection of particularly the farmer. Are there provisions that would offer him protection?

SENATOR PAC:

Mr. President, in answer to this question. I think it's covered very well in the bonding statutes, Section 52-472 and if I may, I'd like to read it.

Bond on issue of temporary injunction: no temporary injunction shall issue any case except in favor of the State or of a public officer thereof. In respect to any manner of a public nature until the party make the application therefore gives bond which surely satisfaction to the court or Judge, granting the injunction to the opposite party. To answer all damages in case the plaintiff in the action in which the injunction is applied for fails to prosecute, the action to effect. Provided a bond need not be required and for good cause showing the judge or court of the opinion that a temporary injunction ought to issue without bond.

So it really leaves it to the discretion of the court. In most cases they require, as I understand, and if in his descretion he feels none is necessary, he may omit it.

THE CHAIR:

Senator Pac, would you answer a personal question? Did you at any time, attend law school?

SENATOR PAC:

No, sir, I had a latin course when I was in grammer school.

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SENATOR DENARDIS:

Mr. President, members of the circle, I rise to associate myself, in favor of this piece of legislation but, not just to do that. Certainly, I agree with the Senators that have spoken in praise of this legislation. And indeed, it is praiseworthy. But, I would like to enter one reservation. I think we must be aware of the fact that this piece of legislation deals with the problem of pollution after our environment has been be-fouled. I think that the courts will be very stringent in the way in which they deal with serious cases and even those less serious that arise that will arise under the act.

I would like to however, seriously urge this body, and all legislative bodies at all levels of government in this country, that the answer to the pollution problem is not simply to allow the courts of this country to deal with the problems of pollution after the fact. We have to continue in our efforts to deal with the question of good environmental design, legislation and take the necessary steps in planning and promoting a good environment before it reaches the polluted stage. So while, I'm happy to associate with this bill and while I agree with the Senators who have spoken in praise of this legislation, I enter the one reservation or in fact the one question that I would hope that our efforts do not stop at this point but we deal with the question of pollution before the fact in addition to, after the fact solutions.

THE CHAIR:

Question is on passage of the bill. Will you remark further? The motion has been made that there be a roll call vote. All those in favor of a roll call vote say, "aye". Opposed, "nay". The motion is carried. A

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l vote will be taken in the Senate.

THE CLERK:

The following is the roll call vote on House Bill No. 5037, as amended.

Those voting yea were:

SENATORS ODEGARD

SENATORS JACKSON

PAC

ALFANO

ROME

EDDY

CIARLONE

HAMMER

ZAJAC

CRAFTS

MURPHY

CASHMAN

GUNTHER

MACAULEY

CALDWELL

DOWD

RIMER, JR.

DUPONT

POWER

KINIELLI

IVES

MONDANI

DENARDIS

HOULEY

FINNEY

Those voting nay were:

NONE

Those absent and not voting were:

SENATORS FAULISO

SENATORS SMITH

BURKE

LIEBERMAN

CUTILLO

BLAKE

SULLIVAN

BUCKLEY

PETRONI

STRADA

RUDOLF

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THE CHAIR:

The result of the roll call vote:

Whole number voting	25
necessary for passage	13
Those voting yea	25
Those voting nay	0
Those absent and not voting	11

The bill is passed.

THE CLERK:

On page 2, of the Calendar.

CAL. NO. 196. File No. 211. Favorable report of the joint committee on Public Health and Safety. Substitute for Senate Bill No. 1013. An Act To Provide a Minimum Age for Patent and Proprietary Medicine-Sale Permits and a Penalty for Failure to Report a Change of Permittee.

SENATOR PAC:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill. I think the Clerk has an amendment.

THE CLERK:

SENATE AMENDMENT SCHEDULE A, offered by Senator Pac:

In line 37, after the word "age", and before the comma insert the words "or older."

SENATOR PAC:

Mr. President, the amendment would really correct a grievous error. It would confine the issuance of a permit to 21 years old and of course, this is rather assinine to put it mildly. This would make it 21 years of age or older as the holder of a permit. I move adoption.