MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Ninth Legislature

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

REPORT, HEARING TRANSCRIPT AND RELATED MEMORANDA OF THE JOINT SELECT COMMITTEE ON INDIAN LAND CLAIMS

STATE OF MAINE
One Hundred and Ninth Legislature
Second Regular Session
JOURNAL OF THE SENATE
April 2, 1980

Senate called to order by the President.

Prayer by Father Valmont R. Gilbert of Saint Augustine Catholic Church of Augusta.

Father GILBERT: Let us pray! Almighty God endow with your Spirit of Wisdom those here present in your name in whom we have entrusted the authority of our government.

Send your blessing on the members of this Senate and enkindle in all of us a love for the many unfortunate people, whom poverty and misery reduce to a condition of life unworthy of human beings.

Arouse in the hearts of all those who call you Father a hunger and thirst for social justice and for fraternal charity in deeds and in truth.

Grant, O'Lord, peace in our days; peace of souls; peace to our families; peace to our State and Country, and peace among nations. This we ask through Christ, Our Lord, Amen.

Reading of the Journal of yesterday.

Senator Pierce of Kennebec, was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed until the sound of the bell.

Recess

After Recess

The Senate called to Order by the President.

(Off Record Remarks)

Out of Order and Under Suspension of the Rules, on Motion by Senator Katz of Kennebec, the Senate voted to remove from the Table, Bill, "An Act to Create the Maine Spruce Budworm Management Act." (H. P. 1980) (L. D. 2015) EMERGENCY

Tabled—March 26, 1980 by Senator Katz of Kennebec.

Pending—Enactment.

This being an emergency measure and having received the affirmative votes of 22 Members of the Senate, with 4 Senators voting in the negative, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Having voted in the prevailing side, I would ask for Reconsideration and hope you'll vote against me.

The PRESIDENT: The Senator from Hancock, Senator Perkins, moves that the Senate Reconsider its action whereby this bill was Passed to be Enacted.

Will all those Senators in favor of Reconsideration, please say Yes.

Will all those Senators opposed, please say No.

A Viva Voce Vote being had.

The Motion to Reconsider does not prevail.

(Off Record Remarks)

Communications
House of Representatives
March 26, 1980

Honorable May M. Ross
Secretary of the Senate
109th Legislature
Augusta, Maine 04333
Dear Madam Secretary:

The House today Adhered to its action whereby it Indefinitely Postponed Joint Order relative to the Joint Select Committee on Legislative Finances (S. P. 819)

Respectfully,
EDWIN H. PERT
Clerk of the House

Which was Read and Ordered Placed on File.

The Senate of Maine
March 28, 1980

Mrs. May M. Ross
Secretary of the Senate
State House
Augusta, Maine
Dear Mrs. Ross:

Pursuant to my authority under Title 1 M.R.S.A. Chapter 25, Subsection 1002, I am today appointing William B. Troubh, of Portland, Maine, to the Commission on Governmental Ethics and Election Practices.

Sincerely,
GERARD P. CONLEY
Democratic Floorleader

Which was Read and Ordered Placed on File.

The PRESIDENT: Is it now the pleasure of the Senate to confirm this nomination according to Title I. Section 1002 of the Maine Revised Statutes the confirmation of this type of appointment requires a two-thirds affirmative vote of those Senators present.

Will all those Senators in favor of the confirmation of William B. Troubh to the Commission on Governmental Ethics and Election Practices, please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

27 Senators having voted in the affirmative, and No Senators in the negative, and 27 being more than two-thirds of the Senators present, it is the vote of the Senate that the nomination of William B. Troubh is confirmed.

Committee on Judiciary
April 2, 1980

The Honorable Joseph Sewall
President of the Senate of Maine
State House
Augusta, Maine
Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 109th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Jessie H. Briggs to the position of Superior Court Justice.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the 109th Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Clerk called the roll with the following result:

YEAS: Senators 2
Representatives 8
NAYS: Senators 0
Representatives 0
ABSENT: Senators 1 Sen. Trafton
Representatives 2 Rep. Carrier & Stetson

10 members of the Committee having voted in the affirmative and 0 in the negative, it was the vote of the Committee that the nomination of Jessie H. Briggs be confirmed.

Sincerely,
SAMUEL W. COLLINS, Jr.
Senate Chairman
BARRY J. HOBBINS
House Chairman

Which was Read and Ordered Placed on File.

The Joint Standing Committee on Judiciary has recommended that the nomination of Jessie H. Briggs be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Judiciary be overridden? In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 38 of the 109th Legislature, the vote will be taken by the yeas and nays. A vote of YES will be in favor of overriding the recommendation of the Committee. A vote of NO will be in favor of sustaining the recommendation of the Committee. Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — None.

NAY — Ault, Carpenter, Chapman, Clark, Collins, Conley, Cote, Devoe, Emerson, Gill, Hichens, Huber, Katz, McBrearty, Minkowsky, Najarian, O'Leary, Perkins, Pierce, Pray, Redmond, Shute, Sutton, Teague, Trafton, Trotzky, Usher, Sewall.

ABSENT — Danton, Farley, Lovell, Martin, Silverman.

No Senators having voted in the affirmative and 28 Senators in the negative, with 5 Senators being absent, and none being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of Jessie H. Briggs is confirmed.

(Off Record Remarks)

Committee Report
Senate
Divided Report

The Majority of the Joint Select Committee on Indian Land Claims on, Bill, "An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." (S. P. 827) (L. D. 2037)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-536).

Signed:
Senators:
COLLINS of Knox
CONLEY of Cumberland
Representatives:
POST of Owl's Head
BROWN of Livermore Falls
SEWALL of Newcastle
MITCHELL of Vassalboro
HOBBINS of Saco
VIOLETTE of Van Buren
PEARSON of Old Town
GILLIS of Calais
DOW of West Gardiner

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:
Senator:
REDMOND of Somerset
Representative:
STROUT of Corinth

Which Reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President and Members of the Senate: Today we are called upon to make history by participating in the settlement of the largest lawsuit which the State of Maine has ever known, a law suit in which a verdict in favor of the Indian Tribes could be measured in terms of many billions of dollars.

8 years ago most of us would have viewed as ludicrous the idea that land titles founded in English and American Law could be disturbed after 200 years by aboriginal claims of native american Indians. I myself recall giving legal opinion about the extreme remoteness of such an idea.

To acquire a proper perspective, about Indian affairs and the relationship of our own land law to Indian rights, we must start with the realization that it is Federal Law which is supreme in this area, not English American Common Law, nor State Statutes. We must start with the United States Constitution, adopted in 1789 where we find the Grant of Au-

thority to the Congress to regulate commerce with the Indian tribes.

Congress quickly used this power to establish pervasive restraints upon the transfer of Indian land, beginning with the Trade and Intercourse Act of 1790. The application of this and subsequent Federal statutes to the Eastern Indians is the basic question in the litigation which causes our deliberation today.

Step by step the Indian legal strategists and the courts have built a framework of pieces supporting Indian contentions. For example, Oneida Indian Nation against the County of Oneida, Passamaquoddy against Morton, Narragansett Tribe against Southern Rhode Island, Mohegan against Connecticut, State against Dana.

I commend to your reading the November 1979 issue of the 'Maine Law Review,' which contains a balanced symposium on the Eastern Indian Land Claims including articles by James D. Sinclair, and John M. R. Paterson, Maine's Deputy Attorney General.

In urging your support for the Majority Report of the Joint Select Committee on Indian Land Claims I pay tribute to the members of that panel for their perfect attendance and hard work.

I served on Governor Longley's original committee formed to study the financial crisis engendered by this law suit in 1976 and 77 and headed by Banker William Bullock of Bangor, a proponent of our present report.

The 108th Legislature had a special committee to monitor Indian law suits development on which I served, with Senators Gerard Conley and Richard Morrell. My intensive education in this topic over a period of 4 years leads me to the inescapable conclusion that we take the prudent course when we support our Governor and our Attorney General and his Staff in playing an affirmative and essential role in this drama.

This bill, if enacted, will not become a general statute of the State. It will be a unique document that is similar to an agreement between the State and the Indian Tribes that has been authorized and ratified by the United States Congress. In enacting this bill the Legislature will be exercising in effect, an authority delegated by and subject to the Federal Government's authority over Indians. The act will not take effect unless the Congress adopts it and finances it.

Though the status of Maine's Indians is presently unclear, and the subject of ongoing litigation the premise of this bill and the entire settlement agreement is, that the Indians are Federal Indians. This means that the Indians and their lands are within the exclusive jurisdiction of the Federal Government, and its Indian Laws. Under this premise the State has no jurisdiction at all, but, the Federal Government has that authority and can presumably delegate it to the State, or in this instance, ratify and incorporate into Federal Law an agreement between the State and the Indians.

A basic consequence of the unique nature of this bill is, that the Legislature may not subsequently amend this act once it has been ratified by the Federal Congress, except as the ratification allows. The Congressional Bill allows amendments only with the consent of the respective tribe or nation.

Another consequence is that limitations in the act that restrict or bind future Legislative action may be affected. Usually a Legislative action may not bind future Legislatures. However, in this act the limitations on Legislative action such as the municipal approval provision in Section 6205, Sub-section 5 and the Indian Approval and Size Limitations for extended reservations under Section 6209, Subsection 5 appear to effectively limit future Legislative action.

Though this act will limit the authority of the Legislature in some ways, it does not limit its authority to enact, amend, or repeal general legislation that will indirectly affect Indians. For example, the Legislature could change the powers of municipalities which would indirectly change the Passamaquoddy Tribes and Penobscot Nations, powers to the extent that they are municipalities without securing the Indian's consent. Thus, the Legislature's general powers are not impaired.

To take the prudent course is not always pleasant or politically popular. We will be following the advice not only of the State's own highly competent lawyers, but also the advice of the best legal brains that money can hire in these United States.

Will we be creating a nation within a nation? We think not! Our own State Court in the Dana Case has already ousted us from criminal jurisdiction and we will be regaining most of that.

We will be extending some hunting, fishing, and trapping rights to about 800 Indian people in 300,000 acres. But we should remember that to the Indians such rights were property rights over the entire State of Maine, before the European Boat People ever arrived on this continent. Is that too much of a price to pay to settle a $25,000,000,000 law suit?

Are we passing the buck to the Congress? The constitution which we are sworn to uphold places the buck with Congress in the first place. In my judgment we are not passing the buck. We are merely playing an essential role in a legal process where Congress has all of the ultimate power. What Congress will do we cannot predict, but we must do our part and hope and trust that Congress will do its part, whatever that may be.

If Congress acts by accepting this Legislature's contribution and by providing funding the State of Maine will save a great deal of money which we shall otherwise be obliged to appropriate for generations to come.

It is time for the Congress to accept the role which the Department of the Interior, the Department of Justice, and the Office of the President of the United States have been telling the courts of our land these past 8 years, is the responsibility of the entire nation, not of the State of Maine alone.

The Amendment which is a part of the committee report is largely technical in nature. I think the only thing of real substance is the definition of the words 'fish in Inland Waters.' The other matters fill in an omission or 2 about the land from which the future territories will be chosen.

It is the expectation of the committee that if this bill moves to enactment, that at the time of enactment, we will have before you a further report of the committee in which we express some of our understandings of various words and provisions of this very complicated document, so that you may have them as a part of the Legislative history of the act.

No Act of this complexity will be free from question marks. There will be interpretations necessary through the years just as there are interpretations necessary of all the statutes that we pass.

I commend to you this package. It is a package, it has to fly or be destroyed in its entirety. The amending process is not open to the Legislature in the manner of our usual legislation, because this is the settlement of a law suit. The bargaining parties have bargained and bargained hard and long and they have come to a position. Just as with a negotiated labor contract we cannot make the changes. We have to say Yes or No. If we say No it's back to the bargaining table. I hope you will support the motion to accept the majority Report.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and Members of the Senate: First, Mr. President, I wish to publicly commend the good Senator from Knox, Senator Collins, for his outstanding performance as Chairman of the Joint Select Committee.

As you are all aware we held a public hearing last week at the Civic Center and that hearing went on for numerous hours. Everyone was given the opportunity of having his/her voice heard at that public hearing.

The Committee also spent two days, in work sessions, in the Judiciary Committee hearing room, which was open to the public. Again, many many questions, again were presented to the Attorney General and Mr. Tureen, representing the Indians.

I just want to say publicly that the conduct of the hearings and the work shops were something that the Maine Legislature could be extremely proud of under the leadership of Senator Collins.

As each member of this Senate well appreciates, this is an issue of momentous and historic importance to the State of Maine. Considering the magnitude of the initial claims over 12,000,000 acres and $25,000,000,000. I believe that the resolution of this issue is the greatest challenge now facing our State and probably the greatest challenge we will ever confront in our Legislative careers.

The cost of court defense, the jeopardy to our bond rating, the cloud on transfer of Real estate title and ultimately the risk of loss of Maine land and Maine money are all matters that we must seriously ponder.

As long as my good friend the Senator from Knox, Senator Collins, I served as a liaison between the Legislature and the office of the Attorney General and former Governor Longley on this issue. I have followed with concern the very difficult and tortuous negotiations which have taken place from time to time during the last 6 years.

At last it appears that the State represented by Attorney General Cohn, and the plaintiffs and the landowners have reached a necessary agreement to erase this ominous cloud once and for all.

It is now the role of this Senate to act as a review board to consider this agreement and the implementing Legislation, fairly and dispassionately always keeping in mind what is best for Maine and all of our people.

In order for the Legislature to make a sound judgment the joint select committee had to find the answers to these questions. What are the economic costs to the State on this agreement? What other costs resulting from loss of jurisdiction arise from this agreement? Will any group reap undue economic benefits? Will the interests of the members of the Maine tribes be protected? Are the various costs justified by anticipated economic, and non-economic costs, of protracted litigation? The result of our asking these questions the bottom-line is the ultimate question that we are asked everyday. Is this Legislation in the best intersts of the people of the State of Maine?

In the past 10 years particularly since 1974, the Department of the Attorney General, has spent untold hours and hundreds of thousands of dollars, working toward this day, because the public good requires it. The public good requires that this divisive issue not drag on indefinitely. The public good requires that a firm, a fair, and a final settlement can be reached, should this Legislation be adopted.

Our job is not to rewrite or revise the agreement, which has been reached, but to review the overall results to determine if they are truly fair and reasonable under all the circumstances.

I believe that a vast majority of the membership of the joint select committee came to that conclusion, and I would urge the members of this Senate to support the Majority Report.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: Thank you, Mr. President, and Members of the Senate.

It is not easy for me to vote against a bill which represents the work of years by some very capable and knowledgeable professionals.

I have so many concerns about the proposed treaty with the Indians that no other course of action is open to me.

I represent a part of the state where there are no Indians and no Indian lands. The bill before us this morning identifies several large parcels of land which potentially may be acquired by the tribes. This will introduce into my Senate District a whole new host of problems, a whole new type of government, and a class of citizen whose rights and privileges would make him different from all other citizens now living there.

Whether or not you call the proposal a nation within a nation, the fact is that we shall be creating for all time a special class of citizens in the state of Maine. We shall have two types of society, two types of Government, a different set of privileges and to the extent that one group of citizens has more privileges than another, it follows that the other group has fewer.

We are creating a divided sovereignty and compounding problems for future generations. Although Indians are good citizens, I visualize the possibility that increased activism in the years ahead may make them more aggressive. If some future commissioner of Inland Fisheries & Wildlife opposed them in a course of action, they may feel that he is taking something away from them. I see real problems of law enforcement.

I believe the Attorney General when he says that Maine would ultimately win a suit before the United States Supreme Court. He says that our chances would be 60-40, but nonetheless believes we would win.

What we are doing here today is turning the clock of history back to give this generation of Indians lands that they have never before owned. If the Federal Government wants to give lands to the Indians which they would then own like any large paper company, that's one thing. But what we're doing here today is something very different indeed. I cannot believe that the United States Supreme Court would go back two centuries and impose a wrenching, massive dislocation on Maine people. On the same basis, we would then expect that the court would return the millions of acres which might be claimed by the Sioux, by the Utes, and all the other tribes if the Maine settlement established such a massive precedent.

So far, this treaty has been a non-issue with most Maine people. The phone calls, the letters-to-the-editor, the questions have not really begun, because Maine people are just beginning to become aware.

What is our big rush to enact this bill? Why such urgency to ratify this treaty? After years of negotiating, are Maine people to be given just a few days or weeks to understand what is being proposed?

This issue is more important than an amendment to our constitution, but proposed amendments are not rushed and then they require the support of two-thirds of both houses, and ratification by the people.

I urge you to reflect on the consequences of undue haste. What if you are wrong? How will our mistakes be undone?

I know my stand will not be popular with many, but I ask all of you to consider my concerns, and please slow this bill down.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President and Members of the Senate: I have talked with the people in my district over the weekend, about this Indian land Proposal. I have talked with them previously about what had been proposed and I just can't find much support in my district for it.

It seems honorable nowadays, to discriminate as long as you discriminate against the majority of the people, I say, a majority, the taxpayers in this nation, which are fast becoming a minority group.

Now with this proposal I think you are setting a very dangerous precedent. I think we have 1,900 other cases pending. How many millions or billions of dollars is this going to cost the United States? Cost the taxpayers of the nation?

Over the past 5 years I have listened to Attorney General, I have listened to Governor Brennan, the former Attorney General of this State, I have listened to Richard Cohen the present Attorneys General of this State, say that we have a solid case if we go to court. Now what has happened, or what has changed in the last month or few weeks? What happened to the solid case that we had?

It now seems to be expedient to settle this thing immediately, and this had been on the court docket since 1975, as I understand it.

I think anytime that we act on legislation like this, and where we have said that we are dealing with minority groups, I think that it is incumbent upon us to try to blend minority groups in with the populace, and not make special interest groups out of different groups of people.

Now I have heard here this morning that we should pass this thing and send it on to Washington without any amendments on it, without doing anything to it. I suppose that that is popular too, nowadays, pass the buck down to Washington because Washington has plenty of money plenty of taxpayers money, plenty of my money, to spend. What makes the difference whether you rubberstamp this thing and send it down to Washington for them, or whether you pay for it out of the State of Maine funds? It is all tax money, $81,000,000 isn't a small piece of change, and 300,000 acres of land is not a small acreage of land.

I will be voting against this proposal, and I would hope that the rest of the Senate would also look this proposal over some before they rubberstamp it and send it to Washington.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Mr. President, thank you, Ladies and Gentlemen of the Senate. I am going to vote to accept the report, but not because I don't have some terrible misgivings about where I stand on this. I think that what I want to do is see the bill get onto the floor and we have some time to continue debate on it.

I have listened very carefully to my learned colleague from Knox describe all of the ramifications the legal ramifications of this proposed Legislation. I have also listened to the people in Oxford County and to the things that they have told me over the weekend. So far I have got one person who supports the Legislation.

There are some real problems that I am concerned about and they are certainly included in the things that Senator Redmond and Senator Shute have already included. I am concerned about people who have camps who are going to have reservations next to them, now, that I am told are open for settlement. I am concerned about exactly what happens if the Federal Government turns down the $81,500,000 and it would seem to me in my judgment that there is a good chance of this happening. I am concerned about the 60-40 chance of our winning, because certainly if it is going to wind up in court it looks like certainly better than 50-50 chance that we are going to win.

Notwithstanding all the legal ramifications, and problems that have been brought up about this, I am not concerned yet that it is not just plain morally wrong. Two hundred years after an alleged indiscretion for 800 people to experience gain in this manner at the expense of virtually another million people, notwithstanding the rest of the taxpayers of the United States, I just can't believe that it is morally right.

But I am going to support moving the bill, along and I hope that within the next 24 hours that somehow I can find the wherewithal to vote properly on this, because if I had to vote the way that my constituents tell me I know how I would vote. I am not sure that the debate that I have already heard isn't very factual and the bottomline.

I am also concerned that we are rushing something terribly fast that has taken a long time getting here. I am also concerned about the fact that the Indians had the opportunity of voting on whether they liked this agreement, or not, but that the rest of the citizens of Maine have had nothing to say about it. These are some of my concerns and I hope that within the debate and the knowledge that we will gain in the next 24 hours, that we all can look at this thing in the proper perspective.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President and Members of the Senate: I have three questions, offhand that come to my mind, that I would like to have the Senator from Knox, Senator Collins answer, just so that I am sure exactly where we are at.

First of all, reading one of the newspapers today, it was my understanding that the question of eminent domain. The opinion of the Attorney General and the opinion of Tom Tureen, representing the Indian tribes, are a little bit different on the conclusion of eminent domain. I would like to have something in the Record in reference to that, as to the Legislature's intent.

The other 2 questions are rather simple. First of all, the State's relationship with municipalities changes through future Legislature, does the State relationship with the Indian Territory change, or are they locked into the existing relationship with municipalities at this time?

The second question would be if we Enact L. D. 2037, will the State have to expend any revenues during the transitional period or has the Federal Government through the Department of the Interior already recognized the Federal responsibility thus they will start to pick up immediately prior to any Federal action or congressional action their responsibility to the Indian Tribes?

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, I will try to answer the question of the Senator from Penobscot, Senator Pray, concerning the question of Eminent Domain. The Eminent Domain Section is on Page 5 of the Bill at the bottom of the page, says: Takings Under the Laws of the state. It sets forth a somewhat different procedure than what we usually follow. It says: "prior to the taking of lands within the Passamaquoddy or Penobscot Reservations the public entity proposing the taking or in the event of a taking proposed by a public utilities, the Public Utilities Commission shall be required to find that there is no reasonably feasible alternative to the proposed taking, and making this finding the entity or commission shall compare the cost, technical feasibility and environmental and social impact of available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking". Then there are the usual provisions about the notice and hearing and so on, which I think provide a very adequate process for this.

When we were working on these matters the Public Utilities Commission staff pointed out that this was somewhat different than the usual procedure. Of course, the reason it is different is that this is a compromise. This is the settlement of the law suit. The provisions are somewhat more favorable to protection of the Indian lands than they would be to the land owned by Senator Pray, for example.

The Attorney General has written some material on this. This material is contained in the memorandum which is on the desk, I think, of each Senator. There is a provision in the law about any substitute parcel of land acquired

within a municipality to replace the taking of reservation land. This treatment of land within the municipality if there should be any, meaning a municipality other than the Indian Municipality was one in which there was some discussion between, tribal council and the Attorney General. I commend the detail of that to the Senators who are interested and we may put some more in the record at a later point.

The other questions that have been raised by the good Senator I think deserve further discussion but I would like to do it at a later time because I feel it's extremely important to be accurate in this sort of thing. I need to shuffle papers a little bit more than I can do right in the heat of the debate. Thank you, Mr. President.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Thank you, Mr. President, Mr. President and Members of the Senate. We don't have any Indian claims in my district but over the weekend while I was working we did discuss this issue, just about every day I was working.

The people that I talked to thought that the proposal was a pretty good proposal. The concern that they had, and I would like to pose a question to the chairman, would be in the areas of the Wildlife and Fishing Areas. Do the Indians abide by a special law or do they abide by the State Law? The major concern was about possible abuse of these 2 resources to the point of no replenishing.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, I think it's important that we start with Section 6204, which is the general statement that says that "except as otherwise provided in this act, all Indians, Indian Nations and Tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States, or by any other person or entity, shall be subject to the laws of the State, and to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or lands or other natural resources therein."

So the question is what are the exceptions in the bill. The big exception as the Senator from Cumberland, Senator Usher, has suggested by his inquiry is the question about Fisheries and Wildlife. As I have stated along the way, this relates to historical material in which the Indians have always had certain privileges that other citizens of this State have not had. We are not exactly breaking new ground, we are changing things to some degree. It has never been the case that Indian citizens were exactly the same. There has always been a distinction in the history of this State in this respect.

As a general rule, State Fish and Game laws regarding hunting and fishing will not apply in Indian Territory. The taking of game and fish is controlled in the first instance exclusively by the Tribe or Tribal State Commission which as you remember is the 9 person commission. However, the Commissioner can do surveys and can check game registrations and can take remedial steps including superseding those regulations if he finds tribal or Tribal State Commission Regulations to be harming or and this, I think, is the important thing, because it's a preventive measure, or, that there is a reasonable likelihood that they will harm other fish or wildlife resources. In other words the State of Maine's Commissioner of Fish and Wildlife can step into a situation in advance of anything happening, if he wishes to do so, and see that reasonable regulations and ordinances, are enforced that govern these resources on tribal land.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President and Members of the Senate: It was my hope that we would be voting on this issue until it came up for Enactment, so that some of the questions that were asked would have an opportunity to be answered. I respect the fact that there is a lot of papers dealing with these matters, and understand the fact that the Senator from Knox, Senator Collins, wants to be absolutely correct in answering the questions which I posed earlier.

I would just like to raise a few points which have been raised to me over the weekend by a number of my constituents so that there might be a little bit better understanding where some people actually are coming from on this issue. I know that some people have already classified those in Northern Maine, those who are concerned with the Indian Land Claim and the impact it will have on them under some less than notable terminology.

There's not all that concern as the relationship with the Indian settlement itself. Some of it's in relationship with the land swaps not in opposition to the Indians but to the price of land that the paper companies, the paper industry or large landowners involved are going to be receiving.

I perhaps should preface my remarks with a little piece of material which I wrote about 2 years ago, and it found its way into the Democratic platform. It was the fact that the Democratic Party took a position that they supported an equitable solution to the Indian Land Claim Case, and called for total Federal responsibility and no Maine lands involuntarily contributed to a settlement. I have to say that, pretty much the agreement that we have at this time comes down to those lines, of which the Democratic Party defined its position on the case.

In relationship to the matter of equitable solution nobody wants to see anybody get rich or get something that they don't deserve. I want to commend Dead River, Great Northern Paper Company for offering to sell their land on those leasing that individuals have. You have to understand that most lease lots are roughly 120 by 120 ft. I might not be correct on this, but if an acre of land is a little bit larger than that, around 220 sq. ft. at the rate of $500 for that lot of land, we're coming out to a little bit over $1,000 an acre in value. Seemingly someone is making out rather well on that.

Also the last year or so the asking price for an acre of land has risen almost $90, from the paper industry side. I, at the time, I wrote the platform plank, mentioned the fact that we did not want to discriminate against either large or small landowners. The fact was that I did not believe at that time that the $5 an acre price was correct. I also have some questions as to whether or not if we're going to the extremities on the other side of the point at this time.

If we are to vote on this issue at this go round, prior to enactment, prior to the questions that I asked being answered so that I am absolutely sure as to what we're voting on, I do believe that we should have a fair and a firm and equitable solution to the problem? I support a settlement. My question that I have at this time and that I'm wrestling with myself is the timing that the Senator from Somerset, Senator Redmond, brought up, as to whether or not we're rushing this thing a little bit too fast. Just so that everybody has the capability of understanding it.

I believe that the responsibility is with the Legislature, that there is really no necessity to send it out to referendum. We are all elected to represent those people, in our district, of whatever decendants they are in this body. The remaining question that I would like to have for clarity is my understanding that numerical numbers involved in the Indian Settlement are a little bit larger than the 800 that the Senator from Knox, Senator Collins mentioned in reference to the hunting and fishing rights.

One of the things that many of the people in my district enjoy for relaxation after hard work is that closeness to the wilderness that they have, the ability to come off a shift in the paper mills and be able to immediately and do some hunting and fishing. In the reference he said that there would only be 800 individuals that would have the exclusive hunting and fishing rights. I think that number may be wrong. It may be a lot larger than that.

Also in reference to one other serious concern is on page 8 of the document half way down through the page, under 6207 where it states that "such ordinances shall be equally equitable on a non-discriminatory basis." Then we get over on page 9 and the tribes have the ability to promulgate, by the Commission, imposition of fees and permits and licenses required on non-Indians. There is some question as to whether or not it does not contradict itself under that same section. That is all under Section 6207.

The question of concern of the continuation of State expenditures of funds after we act on this Legislation. I notice that we have a document in our books also coming in I believe it's 2038 which is immediately the next LD after we take care of this bill, calling for another quarter of a million dollars expenditures. My concern is the fact that we sat here late last Thursday night and was told that we were only leaving $115,000 in the fund after we funded everything else that was funded. The question is where is that quarter of a million dollars going to come from, in reference to continue that on or is it not precluded that upon our action here today that the Federal Government through the Department of Interior will pick up its responsibilities to the Indian Tribes.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President and Members of the Senate: I guess I've been here long enough over the years to realize what has transpired from the inception of this Indian land claims suit to what might be its final disposition today. I can assure you that I do not have any worries in my Senatorial District in so far as losing land to any municipality or to any large landowner, but the questions raised in my district were very well discussed in debate in a full and fair debate here today.

I think I just want the record to clearly state that I too have some very, very serious reservations about enacting this particular piece of Legislation. The reservations I have correspond very well with what the good Senator from Oxford, Senator Sutton has said, as well as, Senator Redmond.

I think even though hundreds of man hours and many intellectual people were involved in making these particular determinations, I still have an inmate feeling that the taxpayers in the State of Maine, as well as throughout this Nation, have to be given more consideration than has been expressed by the various proponents of this piece of Legislation today.

I wonder if there is any relevancy if there are 9,000 or more suits pending in the United States Congress that have yet to be resolved, if we are not setting a very dangerous precedent here in the State of Maine today, by going along with this particular settlement.

I hear the figures of $25,000,000,000 being thrown around, 12,000,000 acres of land, and I really believe after 200 years even though there have been many injustices heaped up on our Native Americans, that in good conscience and the way the country was formulated that we would not in the long run prevail, in so far as, winning this particular case.

I feel very strongly that the ones that will be hurt the most and especially during these trying times are not only the citizens of the State of Maine, but also the citizens in the United States who are paying the ultimate cost in the long run.

One final point Mr. President and Members of the Senate, are we really resolving this entire issue today with this piece of historic legislation, or will there be many avenues open beyond this particular point, of further liti-

gation which means many untold man hours and litigation costs again to be borne by the taxpayers of the State. I just want the record to clearly state today regardless of how compassionate I feel toward our native americans that I intend to vote against this piece of Legislation.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and Members of the Senate: I think if we as individuals review the history of this Legislation and what brought it about, the fact is that one could perhaps rationalize as was rationalized by the former Governor and the Attorney General at that time, was that not one cent of Maine's taxpayers money go into this settlement, nor should the State give any land.

I think that was my position, I concurred with that position a few years ago. This settlement brings about a different change, that the Federal Government as was the strong position of the Attorney General's Office and former Governor at that time and the present Governor at that time, today, was that this was a resolve that should be settled by the Congress of the United States. We are in that posture today.

Perhaps it would be easy for us to feel ourselves that we shouldn't give up anything. That's what happened 200 years ago no Maine citizen of today should be held accountable for. The very learned legal scholar, the good Senator from Knox, Senator Collins, the Attorney General Richard Cohen, Governor Brennan, Mr. James Sinclair, who has defended one town, the Town of Massapee Mass., as to whether or not the tribe in Massapee was a tribe. That decision went to court and he won it. It went on appeal and he won it, and it went to the Supreme Court and the Supreme Court rejected the case. Because of the fact that the United States Supreme Court rejected that case it is impossible today in the Town of Massapee to float any kind of a bond issue.

We're looking at what is good for all of the citizens of this State. We can go to court and try the case. We may win. It will be appealed. We can go into the district court, we may appeal whether it be the Indians or whether it be the State, and we may win. What happens if we get to the United States Supreme Court and they handle the Maine case the way they did the Massapee Case. We would forever have a cloud on all the lands in question, not the settlement but the initial suit.

No one has given thought, in fact, Mr. Sinclair and both the Attorney General agree, in fact, they are sort of in disagreement in the sense as to what the ultimate cost would be for the State to continue to proceed with this legal battle down through the years. It's estimated to be $1,000,000 in legal fees, again, with a cloud of doubt hanging over all these lands.

In fact, my good Senator, the Senator from Penobscot, Senator Pray, lives in an area, the Town of Millinocket, that could never be defended by the State as he explained to me was an Indian purchase that the State went in and took away from them. All we have to do is look at one of the tribes where Route 1 is right down through their reservation, with no consent by the Indians. We have some very, very, serious legal problems, with respect to how the State has handled Indians over the years. Although all of us may not be in total agreement the way each item is being resolved, again I would only reiterate the words of the Attorney General that it's been 13 months, as far as, he has been involved, 13 months of hard negotiations. The State got many of the things they wanted.

If this legislation passes, it becomes unique in a way that this will be the only State in the Union that does not have the nation within a nation, that all Indians are subjected to Maine Law and as we all know just recently it was ruled that they were not subjected to Maine Law. This document in front of you brings them in, and treats all citizens of the State equally.

We can nitpick on issue after issue, but I commend the Attorney General and Mr. Tureen representing the Indians on being able to come in with a document which I feel is a fair and equitable settlement. Again I would urge that the Senate support the pending motion.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator McBREAIRTY: Mr. President, Honorable Members of the Senate. I attended every minute of the hearing the other day, from 10 o'clock until quarter of 7, drove 260 miles after. I attended both work sessions.

I have agonized over this bill for several days, because I want to be fair to the Indians and to my people, as well. This morning I read the Maine Constitution. I read Section 6A that says "no persons shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of laws, nor be denied the enjoyment of the civil rights, nor be discriminated against in the exercise thereof".

Now at least the Indians gave their people the right to vote on this issue. This has been with us for over 200 years. Now if this Senate will give my people the right to vote on this, I'll vote for the bill. If they don't, I won't. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, and Ladies and Gentlemen of the Senate, I rise and I rise with caution because I mean no disrespect to either past or present Attorney General, or to the Committee who have worked very long and hard trying to find some equitable solution and come with a report to put before this body.

I do rise to address a subject which has not been addressed in the discussion here today. I agree with many of those who have addressed problems which I have with regard to Fish and Game and boundaries and to others. My problem I guess would be with the people or foundations who have underwritten the defense of the Indian cause in this. When will they then cease and desist on their part of the defenses? When will they call a truce and say, no longer will this be a cause of ours?

I guess I addressed the problem of a minority within a minority, because there is a very real possibility, that I feel that even though we should vote, some may vote today that there will still be a minority. Attending the hearings I found there were minorities within this minority who did not agree with this solution. Will these tax free foundations then still be defending these and will we not then be still having problems that will address us with boundaries that are not satisfactory to those who we are supposedly expressed sentiments.

It would be very easy, I think today to say Yes. Indeed we do not want a cloud over our property within the State of Maine. We would indeed not go through this trial and tribulations that Massapee, Mass. went through but ours is a bigger issue. This is not just one town, this is a State. Ours is a problem that faces the taxpayers within all this State and also addressed a landmark decision for this country.

We're not in plush times. We're in hard times. I have very grave doubts that the Federal or the Congress of the United States will fund this. Their not funding this then throws it back by our ratification in our laps. There are different interpretations of this but I still think that our ratification means that it then could ultimately come back to us. With these concerns in my mind 2 days, 2 weeks, 2 months, are extremely short to make these grave decisions. I therefore today will not vote for this.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Senator TROTZKY: Mr. President, and Members of the Senate, the senior Senator from Cumberland, Senator Conley, mentioned that the committee looked at trying to determine whether this Legislation was in the best interest of the State of Maine. As this Legislation possibly has momentous consequence to the State of Maine now and for the future.

Consequently, it is my feeling that this is a matter that should have an expression by the people at referendum. This afternoon I believe the bill will be given its Second Reading. At that time I will try to offer an amendment which would put this bill out to referendum.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President and Members of the Senate: the wide divergencies of opinion have been coming out. It's been an extraordinary debate. It's been an extremely profitable debate. I'm suggesting to you today that we keep the debate going.

I am proposing to you that this is a committee report. We are used to dealing with L. D.'s. Upon the report of a committee on a controversial bill very frequently we give it its first reading and take it one step at a time, and I'm asking to do that today.

There have been several proposals here. There has been expressions of some deep concerns if this is agreeable with you to give the bill its first reading this morning, we'll assign it for a second reading this afternoon. I would anticipate that the Senate when it recesses will come in 90 minutes after the time of our recess. I would like to ask each Republican to be back 60 minutes after our recess on time, each and every person without exception for a caucus so we can pursue it a little bit further.

It's my understanding that the Attorney General is going to be with us, Assistant Attorney General Paterson will be here. I would presume the Senator from Knox, Senator Collins will be available and others who are knowledgeable on the subject. Please let us use this time to good advantage and please let's raise the fears, raise the concerns and see if there aren't responses for them.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President and Members of the Senate: I would only hope that many of the questions that have been asked, many of the fears and reservations that many individuals have would not be answered only in caucus but would be answered in the debate and would be put on the record so that those who have those concerns and have already raised them, will know that there is something in that Legislative Record which clearly indicates not only the thought of the Attorney General but that of the Legislature.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Kennebec, Senator Ault.

Senator AULT: I request a Division.

The PRESIDENT: A Division has been requested.

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: I would ask for a Roll Call.

The PRESIDENT: A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President and Members of the Senate: I'm going to take the advice of the Majority Floorleader, perhaps the first time this session, on the proceeding vote I will support acceptance of the Committee Report at this time and make my final determination

either supportive or to reject this proposal upon enactment which will come later.

I believe there are a number of questions that have been asked and it would only serve the public good at this time to get the bill in a posture where amendments could be offered. It's my understanding the Senator from Penobscot, Senator Trotzky has one. To allow the debate to continue for a while. So at this time I will be supporting the Committee Report.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and Members of the Senate: I know this is an extremely important issue before us. It would be my hope to try to expedite matters in a sense with respect to the Attorney General's Office. So perhaps we might have a joint caucus of both Republicans and Democrats in the event that there are questions from our side of the aisle. I'm sure that it won't be redundant in that manner.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator McBREAIRTY: Mr. President, I'm going to vote for this first move to put it in the position for the referendum. That's the only reason that I'll vote this time.

The PRESIDENT: The pending question before the Senate is the Motion by Senator Collins of Knox that the Senate accept the Majority Ought to Pass, as amended, Report of the Committee.

A Yes vote will be in favor of accepting the Majority Ought to Pass, as amended, Report of the Committee.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Carpenter, Chapman, Clark, Collins, Conley, Devoe, Hichens, Huber, Katz, McBreairty, Najarian, O'Leary, Pierce, Pray, Sutton, Trafton, Trotzky, Usher, Sewall.

NAY — Ault, Cote, Emerson, Gill, Minkowsky, Perkins, Redmond, Shute, Teague.

ABSENT — Danton, Farley, Lovell, Martin, Silverman.

19 Senators having voted in the affirmative, and 9 Senators in the negative, with 5 Senators being absent, the Motion to Accept the Majority Ought to Pass, as amended, Report of the Committee does prevail.

The Bill Read Once.

Committee Amendment "A" Read and Adopted. The Bill, as amended, Assigned for Second Reading later in today's session.

Senator Pierce of Kennebec, was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed for 90 minutes, pending the sound of the bell.

Recess

After Recess

The Senate called to Order by the President.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Communication
Department of Audit

TO GOVERNOR JOSEPH E. BRENNAN AND MEMBERS OF THE ONE HUNDRED AND NINTH LEGISLATURE

In compliance with statutory requirement, I submit herewith the 60th Annual Report of the State Auditor for the fiscal year ended June 30, 1979.

We have made extensive examination of major pertinent transactions. We do not make a detailed examination of all recorded transactions on the general books of the State for the year. We did, however, make a detailed examination of accounting records, procedures and internal controls, and verified financial transactions on a selective basis in our post audits of the activities of the various State Departments, Agencies, Boards, etc. during the year. The results of these audits, together with comments, observations and audit findings and recommendations are contained in our individual audit reports submitted to the respective State Departments, Agencies, Boards, etc.

Based on the scope of our examination, it is our opinion that, except for the exclusion of certain trust and operating fund transactions and balances recorded and controlled locally by State agencies and not reflected herein, the financial position and operating results of the various State Departments, Agencies, Boards, etc., of the State of Maine for the fiscal year ended June 30, 1979 has been fairly presented in conformity and with generally accepted accounting principles applied on a consistent basis.

Statements and schedules pertaining to the financial position of the various operating funds of the State of Maine at June 30, 1979 may be found in the Annual Report of the State Controller.

I would like to express my special appreciation to the Staff of the Department of Audit for their continued loyalty and devotion to duty and to the State Officials for their cooperation with this department.

Respectfully submitted,
GEORGE J. RAINVILLE
State Auditor

Read and, with accompanying papers, Ordered Placed on File.

Orders

Expressions of Legislative Sentiment recognizing:

Hollis Tapley for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 826)

Raymond Burge for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 828)

Steven Tapley for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 829) are presented by Senator Hichens of York (Cosponsor: Representative Lancaster of Kittery).

Which were Read and Passed.

Sent down forthwith for concurrence.

Second Reader

The Committee on Bills in the Second Reading reports the following:

Senate — As Amended

Bill, "An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." (S. P. 827) (L. D. 2037)

Which was Read a Second Time.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Senator TROTZKY: Mr. President, I move the Senate Reconsider the adoption of Committee Amendment "A" for the purpose of amendment. I'd like to present Senate Amendment "B" Filing Number S-538 which would put a referendum on this bill for the June 10th Primary Election.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, moves that the Senate Reconsider its action whereby it adopted Committee Amendment "A" to L. D. 2037.

Is this the pleasure of the Senate?

It is a vote.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Senator TROTZKY: Mr. President, I present Senate Amendment "B" to Committee Amemdment "A", Filing Number S-538 and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, now offers Senate Amendment "B" to Committee Amendment "A" and moves its adoption.

Senate Amendment "B" (S-538) to Committee Amendment "A" Read.

The PRESIDENT: The Senator has the floor.

Senator TROTZKY: Mr. President and Members of the Senate: what this bill does, it sets up large Indian Territories within the State of Maine, which eventually could become parts of the reservation proper. I feel this is of momentous consequence to the State of Maine, not only now but possibly in the indefinite future, and therefore feel that the people of the State of Maine should have a chance to vote on this.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President, if there were plenty of time to accomplish all that is best for the State by having a referendum I would certainly have no objection to it.

I think the Senator from Penobscot is not fully aware of the dangers of delay in the process of settling a law suit. He thinks of this, perhaps as conventional Legislation which it is certainly not. I agree with him about its great importance to the State, but the fact is that this will delay the matter beyond June 10th. We have just been told in a bi-partisan general caucus that it is essential that the ingredients of this settlement begin the process in the Congress in the month of May. So I wonder if this is simply a way to scuttle the bill and say well, to the home folks, we put it in your lap.

I recognize that this has a great deal of political appeal. Send it to the voters, it's an election year. I would like to think that this Senate has the guts, the guts to stand up and make this decision. This morning I likened our position to the position of a patient, of a physician where there is a bursting appendix. The question is shall there be an operation or not? The doctor says there is a 60% chance that you will survive without the operation. I wonder how many of us would take the 40% chance that we would die without the operation. I think it's a matter that's that serious, I think we are in time constraints through no fault of our own, but we have to deal with them, and we can't wish it away.

So I hope that we'll bite the bullet, and decide that we have the intelligence to make this decision, that we have the intelligence to consult the best brains that are available, and to pass judgment after we have heard those opinions. The patient can refuse treatment. Maybe that's what the Senate wants to do, refuse the advice of its legal advisors. I submit that that's a risk that I'm not willing to run.

If this was my child and I feel very strongly that the State is my child in this situation, that I tried to analyze for you, I'm going to order that operation done. I think it's just as serious as that for this State. I would urge you to defeat the motion for the referendum.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Mr. President, and Ladies and Gentlemen of the Senate, I find it rather nerve-racking and uncomfortable to be debating my good friend and colleague from Knox County. He has made a very interesting analogy, that of the doctor and patient. But I would like to take it just a step further and suggest that I don't think we're talking about a burst appendix, or a life and death situation. I'd like to suggest though that we are talking about major surgery. Yes, major surgery! It seems to me that in this day and age when one is faced with major surgery for their child, that they very often, and would be well advised to, seek another opinion, before taking that of their doctors.

I would like to suggest in all humility to the very learned minds that have put their best that they possibly could to this subject that I would like to see a second opinion of the people who are going to be most affected by this.

That's the people of the State of Maine. I would suggest that we get that second opinion in a referendum and that the world is not going to come to an end in the meantime.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and Members of the Senate: what we're voting on with respect to the proposed referendum is one that I'm sure everyone would recognize, could become extremely emotional throughout the State.

What is being recommended to us today is a settlement by some of the people, I feel anyway, who have the best legal minds of the State. The fact that the Attorney General's Office stepped outside of its own bounds to employ perhaps one of the most brilliant lawyers in Mr. James Sinclair to analyze and review the document before us today, and to review the case itself. I'm sure Mr. Sinclair as a trial attorney would love to have the opportunity of going before the courts from now on to the next 10 years to prove a point. But he agrees himself that no one can guarantee that we are going to win. We are presently in court.

The document before us is not a document of the Attorney General and his aids sat in a dark room behind closed doors and put together and brought it before a Joint Select Committee. As I stated this morning, there has been 13 months of negotiations going on between the tribes and the State. The Attorney General himself stated there are things in this bill that he doesn't like necessarily, but in order to gain something we had to give something. That's what negotiations are all about. You have to give as well as receive.

It would seem to me if we can just recall a few months ago when the president came to this State up in the Bangor auditorium and he revealed what he was going to do with respect to the Indians land claims, people became aroused because of the fact that, one, they didn't want Maine money going into this, and they didn't want lands being taken from Maine citizens.

What we're voting on again are negotiated settlement. Willing buyers and sellers. The money again has to be appropriated by the Congress. There is no guarantee that that's going to happen. I would suggest that if anyone has been involved in negotiations over the years, whether it's in labor contracts or what else, one knows that you have to bend somewhere. Personally this bill before us, if it's denied, or if the claims are successful, I don't know what the ramifications would be. I do know though that there are many Maine citizens in this State whose property is going to be in jeopardy.

Secondly, I think that there is some moral obligation on the part of this Legislature. I would urge the Senate to vote against the pending motion.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

Senator McBREAIRTY: Mr. President, Honorable Members of the Senate, I don't pretend to be any match in a debate with Senator Collins. I guess I never have been. Very seldom have I voted against anything that he's proposed.

I don't agree that it takes guts to vote for this. I think it takes some guts to ask that it go to referendum. The only time I've felt that I haven't shown any guts here is when I agreed and went along with everybody. That's the easy way. That doesn't take guts.

I would like to talk about an operation. I saw in the paper the other day where they hurried one and they got the wrong woman and they operated on somebody's back when it was the thyroid gland or something like that.

I think that maybe if we're going to have a real serious operation we better take a real look at it and take time to diagnose the case, and let the people in on it.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: Mr. President, and Members of the Senate, I would concur with the Senator from Aroostook, Senator McBreairty. I think it does take guts to take another look and take a further look and not just accept things as they are presented to us. By no means do I feel that I'm copping out. I feel that the simile the Senator from Knox, perhaps isn't quite accurate. The appendix is out of human control. This matter is within the human control of interested and I hope serious and understanding people, that realize the tremendous magnitude of this decision we're making.

Whenever we rush things, it seems more often than not that when upon reflection we find that we wish we had taken more time and perhaps done a few things differently. We all agree that this is momentous, with huge ramifications.

In my discussions with many people in my district I find that most don't really know too much about this matter. When we discuss it quite often they are not all that favorably disposed.

The tribes granted their members of the opportunity to vote on this issue and should we not also give our constituents that same opportunity? It seems to me that anything so momentous and so permanent has to be better resolved, so all the people truly are satisfied that is the right decision. So I would urge that we support the referendum amendment.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the adoption of Senate Amendment "B" please rise in their places to be counted.

The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: I request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The pending question before the Senate is the motion of Senator Trotzky of Penobscot, that the Senate adopt Senate Amendment "B" to Committee Amendment "A".

A Yes vote will be in favor of the motion to adopt Senate Amendment "B" to Committee Amendment "A".

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Ault, Chapman, Emerson, Gill, Hichens, McBreairty, Minkowsky, Perkins, Pray, Redmond, Shute, Sutton, Trotzky.

NAY — Carpenter, Clark, Collins, Conley, Cote, Devoe, Farley, Huber, Katz, Najarian, O'Leary, Pierce, Teague, Trafton, Usher, Sewall.

ABSENT — Danton, Lovell, Martin, Silverman.

13 Senators having voted in the affirmative, and 16 Senators in the negative with 4 Senators being absent, the Motion to Adopt Senate Amendment "B" does not prevail.

Committee Amendment "A" Adopted.

The PRESIDENT: Is it now the pleasure of the Senate that this bill, as amended, be Passed to be Engrossed.

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Passage to be Engrossed of L. D. 2037, please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

16 Senators having voted in the affirmative, and 13 Senators in the negative, the Bill as amended Passed to be Engrossed.

Sent down forthwith for concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Committee Report
House
Committee of Conference Report

The Committee of Conference on the disagreeing action of the two branches of the Legislature on, Joint Order introducing Bill, "An Act Converting Lakeville Plantation into the Town of Lakeville and Removing Lakeville Plantation from the Maine Forestry District." (H. P. 1811) have had the same under consideration, and ask leave to report: that they are unable to agree

On the part of the House:
Representatives:
DUDLEY of Enfield
PEARSON of Old Town

On the part of the Senate:
Senators:
McBREAIRTY of Aroostook
TEAGUE of Somerset
CLARK of Cumberland

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted, in concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Paper from the House
House Paper

Bill, "An Act to Revise Allocations from the Highway Fund for the Fiscal Years from July 1, 1979 to June 30, 1981, and to Provide Increased Revenues to the Highway Fund." (H. P. 2053) (L. D. 2039)

Reference to the Committee on Transportation suggested.

Comes from the House, Passed to be Engrossed without reference to Committee.

Senate at Ease

The Senate called to Order by the President.

Senator Katz of Kennebec was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed until the sound of the bell.

Recess

After Recess

The Senate called to Order by the President.

Under Suspension of the Rules, the Bill Read Twice, and Passed to be Engrossed, in concurrence, without Reference to Committee.

Sent forthwith.

Enactor

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

AN ACT Relating to Games of Chance at Agricultural Fairs. (H. P. 1797) (L. D. 1919)

Which was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Senator Pierce of Kennebec was granted unanimous consent to address the Senate, Off the Record.