

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD
OF THE
One Hundred And Fifteenth Legislature
OF THE
State Of Maine

VOLUME VI

SECOND REGULAR SESSION

House of Representatives
March 10, 1992 to March 31, 1992

Senate
January 8, 1992 to March 9, 1992

Committee Amendment "A" (S-553) **READ** and **ADOPTED**.
The Resolve as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Senator **KANY** for the Committee on **BANKING & INSURANCE** on Bill "An Act to Prohibit Undocumented Insurance Trade Practices"

S.P. 843 L.D. 2147

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-550)**.
Which Report was **READ** and **ACCEPTED**.
The Bill **READ ONCE**.
Committee Amendment "A" (S-550) **READ** and **ADOPTED**.
The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Senator **VOSE** for the Committee on **MARINE RESOURCES** on Bill "An Act to Clarify the Definition of Resident as it Pertains to Marine Resource Licenses"

S.P. 800 L.D. 1999

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-551)**.
Which Report was **READ** and **ACCEPTED**.
The Bill **READ ONCE**.
Committee Amendment "A" (S-551) **READ** and **ADOPTED**.
The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House As Amended

Bill "An Act to Promote Comprehensive and Consistent Statewide Environmental Policy and Regulation"

H.P. 892 L.D. 1289
(C "A" H-900)

Bill "An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing"

H.P. 1040 L.D. 1513
(C "A" H-907)

Bill "An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty"

H.P. 1263 L.D. 1832
(H "A" H-909 to C "A" H-901)

Bill "An Act to Amend the Charter of the Casco Bay Island Transit District"

H.P. 1414 L.D. 2026
(C "A" H-908)

Bill "An Act to Clarify the Subdivision Definition under Maine Land Use Regulation Commission Laws"

H.P. 1588 L.D. 2242
(H "A" H-913)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

Bill "An Act to Provide More Effective Recovery of Child Support"

H.P. 1222 L.D. 1780
(C "A" H-899)

Which was **READ A SECOND TIME**.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence.

Senate

Bill "An Act to Provide for the 1992 and 1993 Allocations of the State Ceiling on Private Activity Bonds" (Emergency)

S.P. 874 L.D. 2235

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

Senate As Amended

Bill "An Act to Establish the Maine Correctional Institution - Warren"

S.P. 518 L.D. 1396
(C "A" S-549)

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**.

Sent down for concurrence.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities

S.P. 42 L.D. 66
(S "A" S-535 to C "B" S-527)

Which was **READ A SECOND TIME**.

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "B" (S-555) **READ** and **ADOPTED**.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator **Bustin**.

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Now that I have done my duty as the Chair, I would like to rise to ask for a Division on this Bill. This is the infamous L.D. 66. It is the one that requires the mandates. If we have any mandates they go back to the municipalities that we pay for them. This has a very, very, very intrusive mechanism for State Government and I think for the State as a whole. It looks good, it's an election year, love to do it, something that would be very easy for me not to stand up here and say this is a bad Bill. This is a bad Bill. I was not on the Majority Report when it came out of Committee. I have not been with this Bill at all nor will I be with this Bill because it is bad, bad, government. You should take a good look at it and look at what it is going to do to your municipalities, your counties, and your State. It may look like what you are doing is helping your municipalities. That's ok. I am one that advocates for at least 95% of school funding from the State. I advocate the State should take care of the solid waste. I advocate the State should pay for the jails. I advocate for all that. That is something you can budget for. That is something I think we should pay for and it is something we can tax for.

If you take a good look at the Bill, you will know we are currently sending on average at least 53% back to the towns just for education. If, in a Bill, we want to change something as a mandate to education and I pick that because that is the biggest piece of change, it has an effect of creating a dollar amount in the municipality. You will have to send more

money back with that even though you might, in fact, not created any additional monies there. It may have been absorbed, it may do all those things. I know the State & Local Government also put on another mandate Bill that said the Fiscal Program Review had to comment what it would cost on different things we did. Fiscal & Program Review said we don't have time to do this. That is exactly what it is going to be, you are going to literally stop government. That is what this Bill is really designed to do. I want to face my responsibilities to the municipalities and counties. I don't have any problem with that. I don't think this is the right way to do it. We are going to be in a very, very, big pickle if we do this. I would urge you to vote against it. Thank you.

Senator **BUSTIN** of Kennebec requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I also am opposed, reluctantly, to this Bill. As I said before I don't think it is soup yet. I don't think it is correct for us to take a Law that has been on the Books only a year and apply the principle of that Law to our Constitution. Because of the vagueness of mandates and we are finding this vagueness out almost daily as we deal with laws this Session, we need the time to work out what a mandate is and what does it mean when we say we are going to pay for it? People can't answer the questions as we bring them up in our Committee. We brought questions up yesterday and several times since we began deliberating this budget. Is this a mandate or isn't it, people can't answer that. How can we put something such as that in the Constitution. It will pass because we won't be able to answer the peoples questions and it sounds good and is very attractive to say that never again will there be a mandate provided. I don't know who is going to answer the questions but I have a series of questions, long and somewhat difficult, technical questions that need to be asked. If they have been asked already then the answers will come readily. If not they will take some time for the people to answer them. I can begin and people who want to answer can. I would request they do so. They may need to have more time to look at this because these are questions prepared by our staff.

Are mandates only those actions that actually require a local government to establish, what is says is we will pay for anything that is established, expanded, or modified it's activities? Is this only when we require it? Could actions that do not necessarily require a special local change, but may result in addition local expenditures, are those also State mandates? Does necessary addition expenditures mean that any portion of a Bill that necessitates additional expenditures represents a State mandate even if other portions of a proposal have offsetting savings? If a Bill cost money to a municipality but saves money elsewhere is that a mandate we must fund? I can be stopped anytime if anyone would like to take these on a different approach. I apologize I did not know we were debating this tonight.

L.D. 66 requires appropriate sufficient funds to pay for at least 90% of the cost of fully implementing state mandates. We have to pay 90% of that. Does this require the State to fund 90% of the total expected expenditure over the life of the mandate? If so do future expenditures get discounted

the present value? I know this is sticky but I think this is why we need to work on the law first and not put it in the Constitution because we can tinker with the law. In this case it is so ambivalent, we need to tinker with it. Do we pay for it with present day dollars or ten years from now do we pay for 90% in the dollars it would cost ten years from now? How are the payments to be made? Are they to be made on an annual basis or must the total estimated cost be paid up front? The other question deals with the 00.001%. The routine obligations, as long as the combined costs of all such mandates in any calendar year is less than .001% of the total amount of property taxes collected during the previous year, that is how it is going to be figured. How do we handle that practically here in this body as we face the table? Are calendar year property taxes easy to determine, since most of municipalities use a June 30th Fiscal Year in this State? This exemption would appear to require that we table all mandates until the end of the Legislative Session to determine the total value or cost of all mandates to be enacted. Even Bills with the smallest local costs would have to be considered as part of the total cost of all mandates. It seemed that some small ones would not be a problem but we have to do an aggregate. If we do an aggregate how do we hold those and how do we decide what ones we pay for? Should all potential mandate Bills be held until the end of the Session? Is the combined cost of mandates in any calendar year the cumulative effect of all prior mandates enacted in which the Constitutional Amendment might apply? How is the Legislature to determine which additional or incremental mandate breaks the property tax exemption limit? Those first introduced or some other method? What ones do we have to pay for in those small ones? We do have small ones, we are wrestling with this right now, those of us who are working on a possible Bond Package.

If we require an election of any kind, do we have to pay for that election for every municipality in the State? We ran into this the other day. There are certain retirement issues that are being questioned about whether a city should be taking care of some of their own retirement issues dealing with teachers, for example. Can we require the towns to take any part of their retirement responsibility in the future? Not at this passing, we would have to pay for them. Is this exemption to apply to the annual cost of the mandate or the total cost of all municipal expenditures over the life of the mandate either the sum of the future value of all expenditures or the discounted present value of the estimated expenditures? What constitutes a municipal request? If a municipal requests something then that is exempted. Could a Bill submitted by a Minority of a municipal governing body or by a single municipal office be considered a municipal request? Again, I don't want to beat this to death but I think we have the opportunity to stay with the Law we have in the books now which is more difficult than this Constitutional Amendment. Let's work it out. Let us hammer away at it. Indict us if we abuse it but let's answer these questions through the mechanism of the law. I have a couple of others but I think I have sufficiently made my point. Thank you.

THE PRESIDENT: The Senator from Cumberland, Senator Brannigan has posed a serial of questions through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Dutremble.

Senator **DUTREMBLE**: Thank you Mr. President. Ladies and Gentlemen of the Senate. I can't answer the whole series of questions that the good Senator from Cumberland, Senator Brannigan has posed to us but it is because of those questions I voted for this Bill. It seemed that in the past whenever we passed Legislation that dealt with money we never asked those questions about how much it was going to cost the municipalities. I think by those questions and statements you see exactly how much of an effect it had on the cost to the municipalities. What this Bill is going to do is going to make us look real deep at what we really do when we pass a Bill because now we are going to have to pay for it. All of us who have always talked about property tax relief for municipalities, this is the best property tax relief Bill that ever came down the pike as far as I am concerned. This is going to prevent us from ever shifting over the burden of anything in a municipality unless we pay for it or passing any Legislation mandating anything unless we pay for it. We may not like that loss of power but let me tell you one power I believe in and that is the power of the vote. This is not a decision we are going to making, it is a decision the people of the State of Maine are going to making. I give the people of this State a little more knowledge that when they vote on a Bill they know exactly what they are doing and not just because it is cute. I have all the faith in the world that when this comes up for the voters they will do what they feel is right. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE**: Thank you Mr. President. Ladies and Gentlemen of the Senate. First of all I am going to ask for a Roll Call and then I am going to take umbrage with what the Senator from Kennebec, Senator Bustin said. It is not an infamous Bill. It is a Bill that was worked on as best as we could. I realize the Senator is so tied up with her many other duties, committees, and jobs that she misses, unfortunately, and we really miss her knowledge and contribution to the Committee. If she had been there and heard all the good points we heard in favor of this Bill, she would not have said this is indeed an infamous Bill. It is not an intrusive Bill. What is intrusive about saying that if we are going to mandate any piece of Legislation or Law upon the municipalities back home, what is intrusive about saying we will pay for it up front? Who are we to say we know better than the people back home or in the municipalities of our State what is good for them or best for them? If we think we know better than they do what they need, then heavens let's put the money up front. Like the old saying "Don't pass the Bill unless you put money in the till." It seems to me that would be fair. The Senator from York, Senator Dutremble is quite right, this is indeed a property tax relief Bill. I'll give you just one minor example and I am sure in all of your towns and cities back home you have a million other examples. A mandate that was given to my own community of Lewiston was supposedly going to cost a million dollars, it is over twenty one million now. Yet, our property taxes are picking up that tab but we knew better here than the people back in Lewiston. We pass these mandates and we don't have the courage to say we will put the money with it.

Unfortunately, I feel that this has been debated, the definition of mandate was given item for item

last year, sometimes the feelings of certain people and I exclude members of this Body, will look for any crutch or excuse to take away this great power we have of mandating our own beliefs on others back home. At any rate, I respect the questions of the Senator from Cumberland, Senator Brannigan. I would ask for a Roll Call and I hope you will all have the courage to vote for what you think is right deep down now what others say. Just remember if we think strongly enough, if we are that convinced it is good, than let's fund it. One more thing, if I may before I sit down, it is true we do have a Law but as you well know Laws can be changed from one Session to another and this would say in our Constitution that this can no longer be accepted. You have heard that the people of the State will, overwhelmingly, approve of this. Maybe that is what we are afraid of. I ask you to please vote with the motion of Passage to Be Engrossed as Amended. Thank you.

On motion by Senator **BERUBE** of Androscoggin supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON**: Thank you Mr. President. Ladies and Gentlemen of the Senate. What is a mandate is an important question. The good Senator from Androscoggin, Senator Berube said it was defined last year. I don't think that it was defined last year. The question is what is a mandate? If that question is not answered I don't think you can vote for the Bill until we have answered that question. The good Senator from Androscoggin, Senator Berube said what is wrong with paying for it up front? I don't know how you pay for mandates up front unless you know how long that mandate is going to last. If it is going to last for five years, ten years, twenty five years, or fifty years, you would not know how to pay for it up front. Let me give you an example, one that has come to my mind dramatically in the last few weeks. Everybody in State Government was asked to cut some money. Some of those cuts would affect municipalities in a very direct and sometimes in an indirect way which leads to the question of what is a mandate. The town of Lincoln where I represent is being called upon to close its Court. If that is successful and I hope it is not, people in Lincoln will have to go to Millinocket or Bangor. We assume it would be Millinocket. I then write my Town Manager in Lincoln and say to him, "If we have to go to Millinocket, what is the expense to the Town of Lincoln?" He writes back and says "We have added police time, we have gas, and we think that the expense is going to be an addition \$7,000-\$9,000 a year." I didn't have to write to the Manager in Hartland, she screeched at me over the phone and said it is going to cost her more money because it is even further. If we close the court we are mandating that those traffic and civil offenses must go to another Court and that is in Millinocket. Who pays for that? I would define that as a mandate on the town. You have to pick up this additional expense. If this Constitutional Amendment was passed, the State would pay for that. How much would it be? I don't know, how long is the Court going to be closed? What is the cost of gasoline going to be next year or the year after that. If you think that is stretching it it is not stretching it. Those are the kind of questions and we do ask those questions in Appropriations, about how it does affect

municipalities whether you believe it or not, about what it is going to cost on the municipalities. You just can't put a handle on it under the situation that we are being asked.

We are not talking about just another Bill, we are talking about a Constitutional Amendment, my friends. A Constitutional Amendment that is so foggy and hazy that you can't anticipate what is going to happen. Especially this year with the economy falling off and State Government having to retrench. In an attempt to look at savings we are going to affect municipalities. In my Court House in Lincoln, we service probation and pro which isn't going to be there. We service Driver's Examiners, Unemployment and all the rest of those things. They have to have a place to go. They will now probably have to go to Millinocket. The question is not that clear. I wish it were and it was a matter of saying you have to do "A" and the State will pick up 90% of it and that is the end of it. It is not that simple. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As the prime sponsor of this infamous Bill L.D. 66, I listened with interest at a series of carefully crafted queries that were shared with us this late afternoon. I wonder why, at this time as we face Engrossment of a Bill that was debated at length in the previous Session and had an extensive and expansive public hearing and that had the dedicated work of enumerable Legislatures from all sides of the aisle and learned members of the Bar to analyze its contents, would we be faced with these complex queries at this stage? I do not question the sincerity of the people who have expressed and articulated the questions and shared with us their concerns. I also compliment them for their consistency. They have been consistently reserved and opposed to the progress of L.D. 66 through this Legislative process. I continue to respect their positions and submit, most respectfully and sincerely, that these questions can be addressed in enabling Legislation that would become effective upon approval of this proposed Constitutional Amendment.

Constitutional Amendments generally do have subsequent explanatory Legislation. In fact, it might be even more appropriately addressed in that manner because I submit that the responses to these queries need to be written and compiled in Statutory Law so there will be a source to which reference might be directed when answers to similarly constructed questions arrive in years when we aren't here. I hope, in those years ahead, that this Legislation L.D. 66 will be part of Maine's Constitution. While I do not question the sincerity of the queries, I also share with you the sincerity of the supporters of this Legislation also remain consistent and stable and supportive. I would urge that Members of this Body support the pending motion. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Those of you who have dealt with the staff in the Office of Finance know they laboriously work at not being partisan or involved in any way in discussion here. I guess the reason they haven't ever come is because no one ever asked them. I never asked them, what they thought about this, until this afternoon. I hope you believe

me that I didn't know this was up today. This has been here for a long time. As I was sitting here with this I said I must share this with the Senator from Cumberland, Senator Clark and the two Senators from Androscoggin, Senator Cleveland and Senator Berube. I just did not know it was coming up today. They have never been asked by me before and I want to defend them. It was not something that was laid a trap. I have had questions about it and they didn't even voluntarily give them to me. I just asked this afternoon that they be given to me and they were. I hope that people will understand that the people from the Office of Finance are very guarded in their thinking when it comes to controversial issues. I am glad to know about enabling Legislation. I did not know you could have Legislation that would clarify and not contradict a Constitutional Amendment. I am glad to know about that. I still think it would be much more responsible to do it the way I suggested with the Law we have. However, I do appreciate knowing about that kind of opportunity. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As so many of us have said so movingly during the course of our careers, I had not expected to speak tonight on this Bill. I truly had not expected to speak to you tonight about this Bill. I did support this Bill on First Reader and I am going to vote for this Bill tonight as Second Reader. I must confess that I am somewhat disquieted by the tenor of the discussion and the debate this evening. It is hard to put into words but there is something odd about the way this Bill has gone through the Legislature. I don't mean the political configuration of those supporting the Bill. From what I am told by the staff of the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes, the language which is used in the whole method of presenting this Bill is questioned. It is extraordinary, unusual, unique, and one might even say odd. That is important because the problem as I see it, is not the underlying policy issue. I believe the State ought not to thrust onto a lower level of government. I believe that we should, in fact, put our money where our mouth is. I rise tonight not on a policy issue. I rise tonight on the process issue and the colloquy which occurred between the Senators from Cumberland, Senator Clark and Brannigan which was instructive. The Senator from Cumberland, Senator Brannigan raised a host of questions on what would actually happen if the voters do accede to the opposed Constitutional question. The Senator from Cumberland, Senator Clark promptly responded that a lot of the policy issues would be resolved in enabling Legislation. I still have concerns with the vagueness of some of the terms. I think we should provide some clear direction, some clear policy statement on what is meant by a mandate. For example, would the reimbursement modality be required in terms of present value or in terms of the actual protracted expenditure throughout the life of the mandate if that can be determined. I expect it can't be determined because how do we know what the succeeding Legislature will do. I think it is important, perhaps on the record, to evince a clear Legislative intent. Let me tell you why I think that.

I recall vividly when I first arrived in Augusta in the Legislature back in 1982. I was the fresh

green Legislator, December 1982 and we were being asked to actually disturb, modify, even overturn an act of the people dealing with income tax indexes. It had been quite an interesting issue, kind of a political issue I think. The preceding Gubernatorial election, I believe one Charles Kragen had authored the question on whether our income tax structure should be indexed. It was an intriguing question. As I recall Mr. Kragen was unsuccessful in his effort to garner the requisite number of signatures to put that question on the ballot in 1981. It came to pass that the issue was joined for the next election. That put the State in a bind because the question was if we actually read the literal words of the amendment, we would have been required to go back to the preceding year. It would have cost thirty, forty, or fifty million dollars, whatever the figure was to the State Treasury. It struck me, at that time, that it was not what Mr. Kragen had intended. It wasn't very clear and we had a very difficult time in actually overturning a vote of the people. That is direct Democracy and we should proceed with extreme caution if we are to disturb the vote of the people. It seems to me we have a responsibility to frame the question appropriately and to provide as much guidance as we can to address and hopefully resolve future questions. It may well be there will be questions on amended Legislation. There may be litigation and that is appropriate. That is why we have a court system. We can't possibly answer every question to be raised. It is impractical. We do have a responsibility to provide as much guidance and be as specific as we can be so we can appropriately frame the question. We can, therefore, provide guidance to the voters of our State when they vote on this issue and to our courts if they are later on called upon to resolve ambiguities or questions which arrive at a later date. I believe the questions raised by the Senator from Cumberland, Senator Brannigan were, in fact, addressed in that vein. I respect the spirit in which the questions were asked. I intend to vote for this measure at the Second Reader tonight but I must state that I have a certain degree of disquiet, as I mentioned earlier. I would be willing to join with others in an effort to properly frame and resolve all the issues to provide the appropriate guidance to our voters come fall and then to our courts if questions arise later on. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise to respond to the good Senator from Androscoggin, Senator Berube and thank her for appreciating my expertise and although she didn't say it my years in Government. Only I can say how many years I have been here and it not be taken badly. I have been here and worked in Government for a fair number of years. I appreciate the fact that I am missed on the Committee. I will do my level best to be there as much as I can. I do note, however, that most of the Committees are complaining about the same thing. The second Senator on my Audit Committee who has a great deal of expertise in Government, I rarely see. I still value his participation when he is up there. I am not sure that is an issue for this issue. I just had a sticker you could put on your lapel last year and it was given to me by one of the lobbyist this year again and it says L.D. 66 on it and last week I took

it out of my purse and threw it in one of the bottom drawers of my desk. I am not unaware of the issue, I am not uninformed of the issue, and I have discussed the issue. I do know the issue, I do know what I am talking about, and I am very concerned that this goes out for a Constitutional Amendment.

When I first came to this Senate, I was distressed because so many things went out to the voters. I thought, in my own naive, unpolitical mind at that time, that perhaps people we elect ought to take care of the problems themselves and not keep sending them out to us. Thoughts and feelings change but I still feel in those places where we can manage our own problems we ought to manage them because that is what we are paid for, that is what we are elected for, and that is what we should be doing. I appreciate the good Senator from Androscoggin, Senator Gauvreau offering to help in crafting a Bill that would address those very issues. I am one of the people, as Senate Chair of the Corrections Committee, who constantly is haranguing the Judiciary Committee to look at the impact that Bills that they passed passing criminal laws will have on the Corrections System itself. It has a very grave fiscal impact. We did get a Corrections impact Bill tacked on so they do have to get a response from the Commissioner of Corrections for that. I am not against looking at mandates and how you pay for them. I think that is a very legitimate, and yes even a duty, that we must address. We aren't addressing it in this Bill. We aren't addressing it in a Bill that looks very, very attractive but in fact has many things that would cause so many problems. You would find yourself here managing so much that if you did the management at the beginning rather than after all the problems then you will have advanced very far. You would have helped your municipalities and you would have helped your State. Quite frankly I would like to be able to vote for this because it would move us faster toward a State Income Tax to fund Government rather than a property tax. In that sense it is very attractive to me just not this way. We need to defeat this Bill and get on with the business of how we manage the problem. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I have supported L.D. 66 in the past and I don't believe I am going to be able to vote for it if it comes to a vote tonight. In discussions with the Appropriations Committee and in Aging & Retirement Committee the questions that the good Senator from Cumberland, Senator Brannigan brought up are to huge for us to let this kind of Bill be enacted into Law without knowing exactly what it is going to do. It pains me to vote not against this Bill because I feel, just on the Taxation issues alone, I believe strongly that this State needs to take on its responsibilities. Just to echo one of the questions the good Senator from Cumberland, Senator brought up. The public policy question that has been before the Education Committee, has been before the Retirement Committee, and is now before the Appropriations Committee which is how much of teacher retirement should be paid by local communities? How much should be paid by the State? That public policy question and the discussion we are inevitably going to get into a discussion on that Public Policy since it is such a

huge part of educational funding. Seven solutions to that discussion will be closed off by this Bill. I say that being a person who believes in the State taking the complete share of educational funding. I believe that we have to decide, in this case we have dueling public policy measures. We have on the one hand, the problem of local municipalities being able to raise salaries and benefits that another entity that does not get to control them has to pay for. That is another public policy question that we need to make a good decision on. I am afraid if L.D. 66, at this point, were passed, making a quality decision would be hampered. It pains me that I am going to have to vote against this Bill until we know the answers to the questions that the Senator from Cumberland, Senator Brannigan posed. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise to urge you to vote for L.D. 66 tonight. I do so because I have worked long with the Bill and I have wrestled with many questions the good Senator from Cumberland, Senator Brannigan has raised. There are reasonable answers to those questions and I will speak to those in a moment. I would ask you to vote for it because this in the stage of the Second Reader. We have been presented with these questions only this evening due to the rush of business here. Therefore, we don't have complete time to respond to them which we will do before the final vote on engrossment. What I would ask the Senate to do, since we have in large numbers supported this Bill in the past, is support it again this evening on the Second Reader and to reserve for yourselves the right to change your mind for final enactment if the questions are not answered to your satisfaction. I feel that is not unreasonable given the late time we have been asked to respond to these questions and I would ask your indulgence in continuing the process to do that. Though it is fair to ask the questions, it is also fair to provide appropriate opportunity to respond.

I also would be glad that Senator Gauvreau from Androscoggin and others who we have worked long and hard with, is once again sit and work with this. We want the best Constitutional Amendment we can have. We are on the verge, I think we are there and we can make some clarifications if it is helpful. I will stand and work with all of those who would like to review it before engrossment comes along. Let me speak briefly again to the comments that have been made. The comments that have been made that I have understood have not been that the concept of policies outlined here are ones that we support. The concern is not with the policy, the concern is with some of the questions of implementation. I would again remind you the Bill has been crafted in such a way to address some of the concerns raised in the past to minimize the language in the Constitution and to allow accompanying and enabling Legislation separate in Statute that can be changed by these Bodies should future circumstances suggest that there needs to be modification in any of the definitions or applications. It is not so rigid that there isn't a process that we have already seen that allows this Institution with larger than majority votes to adapt and grow in the future but give some protection in the Constitution. All of us have worked here long enough to know those famous words, "not withstanding." We can make a long list of examples

that have occurred in the past. Regardless of our best efforts the "not withstanding" language is inserted to circumvent previous statutory language including the Statutory language on mandates that currently exist and already have been circumvented.

Let me speak, just a moment if I might, to some of the questions that have been raised. I speak to them not as the definitive source since I am neither a Constitutional Attorney or an expert in Constitutional Law but an individual who has had some experience in municipal government. One of the questions that was raised is concerning the calendar years. On the first page is the questions posed: Are calendar year property tax collects easily determined, since most municipality use a June 1st fiscal year as well as the State?. The answer to the question, I believe, is yes. If you take a look at the Legislation it says previous calendar year. Each municipality records what its tax assessments are the previous year. That is a figure that can be calculated, as a matter of fact it is recorded regularly in the Maine Municipal Associations Townsman Report. That is a mathematical exercise that can be done, there is no major problem in accounting or determining what those are. Does this exemption which would appear to require the tabling of all mandates until the end of the Legislative Session determine the total value of cost of the mandates to be enacted? Even a Bill with the smallest local costs would have to be considered as part of the total cost of all mandates. Should all potential mandates be held till the end of the Session? That is a procedural question. Since it will not be a major problem to know what the total tax assessed value was the previous year, our Session start in earnest in January each year, that number can be kept calculated. It is a fairly large insignificant number and that number can be available to the Appropriations Committee or any other Committee as they begin to look at Bills to know what the ceiling limit is. The Committee can make a decision. If they have a Bill before it which is below that limit and they believe is appropriate and wish to proceed with it they could choose to do that. There is nothing that limits them from doing that. If this Legislature or the Appropriations Committee should choose to wait until they accumulate them, they may choose to do that or a portion of them. All they need to do is be mindful there is a cumulative limit and if they make the decision to pass some out there are going to lower the amount of leeway they have.

Most Bills we work with here are not Emergency Bills within this language and therefore can wait some time in the Session before their implementation. I don't see where that is a major problem. How are the payments to be made? Can the payments be made on an annual basis or must the total estimated cost be paid up front? Again I think it is a procedural question. My interpretation would be that since the cost needs to be determined on an annual basis and if there are long term mandates that this Legislature should wish to impose, clearly we don't know the exact cost for the years. If this Legislature wanted to axe any piece of Legislation that it pays, it doesn't know what is obliging the future Legislature to do but it understands it will raise the money at that time to pay for those services. It would seem to me to be clear if we choose to have a mandate and it is an obligation to

this Legislature since you can't bind a future Legislature, we will require that money be set aside in those years the obligation is required to pay for it. It doesn't seem to me if it's a ten year obligation you have to pay for year ten in year one until you get there. It is an interesting question but in normal procedure in financing I think that is a actual response.

Let me try one or two more. I haven't researched this but let me try them right on my feet here and see how I do. Is the combined cost of mandates in any calendar year the cumulative effect of all prior mandates enacted to which the Constitutional Amendment might apply? It seems to me, as I recall reading the Bill it sets a date. It says a date beyond such and such. The cost of the mandate is beginning after that date. We have not intended to be retroactive, therefore, the cumulative effect would not apply. If there are out year expenditures, as I have just responded in the earlier question and we have chosen to mandate it, yes we will have to budget for it in future years just as we budget for our own expenditures in future years of State obligations. I think this is another procedural question. It's not cumulative at the date in which it begins and it doesn't look retrospectively behind. It looks at the future. Let me try another one. How does the Legislature determine which additional or incremental mandate directs the property tax exemption limit? We wish not to bind the Legislature. It is the Legislatures responsibility as I responded to that question earlier. If it chooses and it is within that limit and they think it is a worthwhile Bill and they wish to fund it, the Legislature is free to proceed to do that within those limits. The Legislature can choose, at any point on which within those limits, to take the first one or the last one. It makes no determination. It is up to the Legislature to decide as it appropriately should be. We should not be dictating whether it should come by first in first out or last in first fired. That is not the concept here. The concept is to provide a rational, thoughtful approach that the Legislative Body of this Sovereign State to make determinations on services that are important and decisions on which ones they wish to fund. The method they wish to choose is free and open to us to decide. Let me try another one. Is the exemption to apply to annual cost of the mandate or to the total cost of all expenditures over the life of the mandate either the sum of the value of future expenditures or the discounted present value of the estimated expenditure? That sounds like it has been written in Fiscal Management language. Let me respond the way I would understand it. Since we are talking about the exemption, I assume we are talking about the .001 calculation. If it is a multiple year expenditure we are talking about whether we should accumulate that over several years. It may come under the annual limit but it may be a kind of incidental mandate and may go on for more than one fiscal year in a municipality. So should we count more than one fiscal year or should we count it on present value? All very interesting questions. I think there is a simple answer to these questions. The concept was to take a look at the value of the taxes for the previous year and do the multiplication. If it comes down within that then it is exempted. If it is a multiple year, I would expect it would be assumed, that it passed exemption

the first year and there may be minor implications. The concept was again not to bind the Legislature for routine and ordinary kinds of policies that would pose major impositions on municipalities. The concept wasn't to do some long cost analysis for multi years with present value deductions to go on. The concept was simply to say add it up to this year, if it meets that then it goes on. If it happens to be incidental because it goes for more than one fiscal year I would interpret that to mean in common language that it is exempted. Give us an opportunity to come back to see whether others with more expertise have a similar answer or perhaps a different one.

Let me try one more because this is getting kind of fun. Municipal request exemption; What constitutes a municipal request? Could a Bill submitted by a Minority of a municipal governing body or by a single municipal office be considered a municipal request? In my response we act as a unit and a Body here not as an individual. We as individual Senators don't submit one piece of Legislation and that is considered to be the voice of this Legislature. If you are a municipal governing body one person doesn't constitute the governing authority. It is always the majority that constitutes the governing authority. If a request would be required from the constituting body not the individual members we would not have to consider those that are random or minority requests. They would have to have the force of authority from a local entity. To do so they would have to comply with the majority rules for passage. That doesn't seem that complicated to me. Let's wait to see if there is a similar response from the legal experts. The terms of other exemptions promote equal justice and ensure due process may be interpreted quite bodily by the courts. What types of situations are these terms intending to include? Are they broad? Yes. Are they the kinds of terms that are in the Constitution already? Yes they are. They are intended to apply to situations that apply in the Court so individuals can access equal judgement so the Legislature is not bound by saying that all individuals must be treated in some equal manner. If there is a due process involved, some litigation in the Courts might have some expense. Anti discrimination in hiring, might there be a due process cost so money might challenge in the court? Certainly. The general intent is that those kinds of things would be exempted enabling Legislation and if needs to be clarified it can be done in that. To make it more narrow would be to exclude legitimate areas in which we want to protect individuals in this State from access to equal justice and fairness in this society. We wish to support that. Again, I think it is not a major problem. I may not have answered every one of these perfectly. I am not a scholar, I have just given you my understanding of common law and municipal functions. Though there would be those who would like to defeat a measure by raising all kinds of red flags that is good, and the questions raised have some merit, but I think what we need to do is to understand there are answers to these. These answers are not beyond the capability and intellectual grasp of this Body. If you will vote for this tonight we will come back with more scholarly answers for you. If you are not satisfied we have protected the rights of this State, then you should vote against it. I think you will find you will be satisfied. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I, for one, am not trying to defeat this measure by raising a series of red flags just because I want to defeat the measure. I am the co-sponsor of the Statute that is on the books right now that requires a mandate be paid for. I believed in the concept enough so that I was the only member of my party who was on that particular Bill at that time. I understand it and I support it. These are not simply red flags. These are legitimate questions and I am not a Constitutional Attorney either. I am not a person who is a scholar in constitutional laws. I really believe before something like this is passed that somebody who is a Constitutional Lawyer or somebody who is a scholar dealing with constitutional laws should look at. I would submit to you that requests of the gentlemen of Androscoggin is not unreasonable. We need a chance for these questions to be answered by somebody who is familiar with that. I would suggest to you that it would be, in my opinion, more proper to table it and get those answers than it would be to call for a Roll Call on a situation that is ambiguous to say the least. I am going to add another question and this isn't recreation on my part. I have another question I am interested in posing to somebody who might be able to answer it who is a Constitutional Lawyer. If we say one Legislature can't bind another and we accept that, and then we pass a Constitutional Amendment that does bind a Legislature in the future, don't you have a situation where the two articles in the Constitution are able to position with one another? I don't know the answer to that. I would like to have that added to the list. I also have another local question. For the last several years the tribe I represent, have been in the process of buying land around the State. Some of that land has been put into trust land which becomes part of a reservation. Half of the town of Argyle, which is a town I represent, is trust land. Taxes are not appropriated to that town anymore. This is a continuing operation. They are continuing to buy more land. Let's say they buy land in Lakeville, put it in trust land, do we pay Lakeville for what they lost in property tax revenue forever with this proposal? The questions go on and on. I really think it would be much nicer if these questions were answered before we proceeded instead of taking a Roll Call. Thank you.

THE PRESIDENT: The Senator from Penobscot, Senator Pearson has posed questions through the Chair to any Senator who may wish to respond. The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I believe the questions that have been asked have been asked sincerely and I don't mean to imply that those that have been asked this evening are meant in any other way than sincerely. I hope my remarks weren't interpreted that way. The question that was posed regarding the purchase of land and then provided it in some trust to a community which in some way would affect the property tax in that community. Again, it would seem my interpretation that what you have done here is not provide a mandate, what you have done is provide a piece of land to a community. Does it affect their property values in some way? It

certainly does but it is not a mandate. The assessment within the community changes because other buildings come in, industries come in and value goes up. If an Institution of the State was to be located within any municipal boundary and since the State is exempt from paying property tax, is that a mandate? It doesn't seem so to me. We are providing a service that already exists that the State of Maine can not be taxed by local municipalities. That exists in the Constitution as it is. The concept here is the requirement of local units to provide services that are at the request and demand of the State. It seems to me not to affect local property taxes in the purchase of land or an Institution of a Government being located there. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I think that neither I nor my colleague from Cumberland Senator Conley would consider ourselves as Constitutional Attorneys nor would I think you view us as experts in Constitutional Law. I will attempt to respond to one of the questions posed by the Senator from Penobscot, Senator Pearson when he asked whether since we all know that a Legislature can not bind a successor Legislature, I believe his question was could we by Constitutional act bind a subsequent Legislature? My understanding is that what is unique in the American scheme of Constitutional Governments is the theorem that power in authority arises from the people and that heretofore power and authority was reposed in the Sovereign. The authority went down in the American polity and to the converse actually authority comes from the people. According to that that theory the Constitution, in fact, does invest in the three branches of Government certain Judicial power, Executive, and Legislative power. The people also have a right to take back power which they have reposed to those branches of Government. It seems to me, at first blush, the people by enacting a Constitutional Amendment, could take back power which they have reposed in a Legislative Branch of Government. They could, in fact, prohibit us and any Legislative Body in the future, from passing unfunded mandates to local Governments. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I enjoyed that answer. I always enjoy a person who has a fine mind and certainly the Senator from Androscoggin, Senator Gauvreau possess one. It makes absolute total sense to me. I do want to ask one last thing and I won't rise anymore. In the Republic of Ireland within the last decade they did away with property taxes altogether for anyone who owned property under the value of \$1000,000 and the State assumed all the burden of the cost of property taxes. Obviously the Government that instituted that was very popular. They made up the tax by imposing road taxes, gas taxes, income taxes, and they are relatively high. If we were to elect to do the same thing and assume all the property taxes of the State and at some time a future Legislature decided that we couldn't do that anymore, would we then find ourselves in a Catch 22 situation where we will have to pay for the property taxes no matter what? Thank you.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED.**

A vote of Yes will be in favor of **PASSAGE TO BE**

ENGIROSSED AS AMENDED.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **ESTES** of York who would have voted **NAY** requested and received Leave of the Senate to pair his vote with Senator **BOST** of Penobscot who would have voted **YEA**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BERUBE**, **BRAWN**, **CAHILL**, **CARPENTER**, **CLARK**, **CLEVELAND**, **COLLINS**, **DUTREMBLE**, **EMERSON**, **ESTY**, **FOSTER**, **GAUVREAU**, **GILL**, **GOULD**, **HOLLOWAY**, **KANY**, **LUDWIG**, **RICH**, **SUMMERS**, **THERIAULT**, **TITCOMB**, **TWITCHELL**, **VOSE**, **WEBSTER**, **THE PRESIDENT** - **CHARLES P. PRAY**

NAYS: Senators **BRANNIGAN**, **BUSTIN**, **CONLEY**, **MCCORMICK**, **PEARSON**

PAIRED: Senators **ESTES**, **BOST**

ABSENT: Senators **BALDACCI**, **MATTHEWS**, **MILLS**

25 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 2 Senators having paired their votes and 3 Senators being absent, the Bill was **PASSED TO BE ENGIROSSED AS AMENDED**.

Sent down for concurrence.

ENACTORS

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

Emergency

An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights

S.P. 590 L.D. 1562
(C "A" S-532)

This being an Emergency Measure and having received the affirmative vote of 31 Members of the Senate, with No Senators having voted in the negative, and 31 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Extend the Reporting Date of the Commission to Study the Retirement Benefits Provided by the State

S.P. 807 L.D. 2006
(C "A" S-531)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors

H.P. 1492 L.D. 2104
(H "A" H-880)

This being an Emergency Measure and having

received the affirmative vote of 30 Members of the Senate, with No Senators having voted in the negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Amend and Improve the Laws Relating to Education"

S.P. 469 L.D. 1252

Tabled - February 18, 1992 by Senator **CLARK** of Cumberland.

Pending - FURTHER CONSIDERATION

(In House, July 10, 1991, Bill and Accompanying Papers **INDEFINITELY POSTPONED**, in concurrence.)

(**RECALLED** from the Legislative Files pursuant to Joint Order H.P. 1647, in concurrence.)

(In House, February 13, 1992, **PASSED TO BE ENGIROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-918)** in **NON-CONCURRENCE**.)

On motion by Senator **ESTES** of York, the Senate **RECEDED** from **INDEFINITE POSTPONEMENT**.

On further motion by same Senator, the Senate **RECEDED** from **PASSAGE TO BE ENGIROSSED, AS AMENDED**.

On further motion by same Senator, the Senate **RECEDED** from **ADOPTION** of Committee Amendment "A" (S-153).

On further motion by same Senator, Committee Amendment "A" (S-153) **INDEFINITELY POSTPONED**, in concurrence.

House Amendment "B" (H-918) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **ESTES** of York, Senate Amendment "A" (S-552) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. Ladies and Gentlemen of the Senate. To put away any fears that there may be something funny about this Bill. This was a Bill that we lost at the very end of the Session last year that we hadn't recalled from the Legislative files. There was one section of the Committee Amendment that caused a problem because it would have allowed the Department of Education to carry forward any unexpended balances in the unorganized territory of educational accounts. This was actually taken to help balance the budget and we have deleted that provision. This is the Departments Errors and Omissions Bill which makes several technical changes to correct some cross references and other obsolete terms in the Revised Statutes Title 20 A. It also authorizes electing Directors of School Boards in School Administrative Districts to take the required oath of office for a Notary Public rather than Dedimus Justice. There is also some cross reference here with the Superintendent's responsibilities in issuing student work permits under Title 26 that have been agreed to by the Labor Committee. It also has a removal of the requirement that Maine studies be taught as a separate course in High School. Maine studies must now be taught once in Grades 6-8 and the concepts have to be integrated into high school classes. This also puts an emergency clause on it. The Senate Amendment I added simply allows the Maine Maritime Academy to increase