

MAINE STATE LEGISLATURE

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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

I guess I will sit down and just say to you that I am going to cast a vote to indefinitely postpone this bill. I was going to cast my vote to vote against it, I will subsequently vote against reducing the size of the legislature and I will stand up to anybody today and in November. If it should be the reason I don't return in January, so be it, but I just could not stay here and sit and not say anything and let you know that this Representative does not agree with it for any of the reasons that have been expressed to you.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Lewiston, Representative Boutilier, that House Amendment "B" (H-1175) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 383

YEA - Aikman, Ault, Barth, Boutilier, Butland, Cahill, M.; Constantine, Crowley, Daggett, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Goodridge, Greenlaw, Gwadosky, Hanley, Hastings, Hichens, Jalbert, Kutasi, Lawrence, Libby, Look, MacBride, Marsano, Merrill, Mitchell, E.; Murphy, Norton, O'Gara, Pendexter, Pines, Powers, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Small, Stevenson, Tamaro, Tupper, Whitcomb.

NAY - Adams, Aliberti, Anderson, Anthony, Bailey, H.; Bailey, R.; Bell, Bennett, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Cote, DiPietro, Duffy, Erwin, Farnsworth, Gean, Gould, R. A.; Graham, Gray, Hale, Handy, Heeschen, Heino, Hepburn, Hichborn, Hoglund, Holt, Hussey, Jacques, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lebowitz, Lemke, Lord, Luther, Mahany, Manning, Marsh, Martin, H.; Mayo, McHenry, McKeen, Melendy, Michael, Michaud, Mitchell, J.; Morrison, Nadeau, Nash, Nutting, O'Dea, Oliver, Ott, Paradis, J.; Paradis, P.; Parent, Paul, Pendleton, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Rand, Richardson, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Skoglund, Spear, Stevens, A.; Stevens, P.; Strout, Swazey, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth.

ABSENT - Bowers, Donnelly, Dore, Gurney, Lipman, Macomber, Simpson, The Speaker.

Yes, 46; No, 97; Absent, 8; Paired, 0; Excused, 0.

46 having voted in the affirmative and 97 in the negative with 8 being absent, the motion to indefinitely postpone did not prevail.

Subsequently, House Amendment "B" (H-1175) was adopted.

The bill was passed to be engrossed as amended by Committee Amendment "A" (H-1173) and House Amendment "B" (H-1175) in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following item appearing on Supplement No. 6 was taken up out of order by unanimous consent:

SENATE PAPER

The following Joint Order: (S.P. 968)

ORDERED, the House concurring, that Bill, "An Act Concerning Reasonable Standards and Procedures for Contracting Services by the State," H.P. 1669, L.D. 2345, and all its accompanying papers, be recalled from Engrossing to the Senate.

Came from the Senate, read and passed.

Was read and passed in concurrence.

The following item was taken up out of order by unanimous consent:

MATTER PENDING RULING

SENATE DIVIDED REPORT - Majority (9) "Ought to Pass" as amended by Committee Amendment "B" (S-527) - Minority (4) "Ought Not to Pass" - Committee on State and Local Government on 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) - In Senate, Majority "Ought to Pass" as amended Report read and accepted and the Resolution passed to be engrossed as amended by Committee Amendment "B" (S-527) as amended by Senate Amendment "A" (S-535) thereto and Senate Amendment "B" (S-555) TABLED - March 4, 1992 by Speaker MARTIN of Eagle Lake. PENDING - Ruling of the Chair.

The SPEAKER: The Chair will rule that the bill is improperly before the body. The Chair will also rule that amendments have been prepared which will bring it into compliance with the rules.

The pending question now before the body is the motion of the Representative from Waterville, Representative Joseph, that the House accept the Minority "Ought Not to Pass" Report.

The Chair recognizes that Representative.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: You will have an opportunity today to vote for the infamous L.D. 66. I believe that before we start our discussion and debate on this issue we need to understand and I do believe that there is not one member in this House that does not believe that the state should fund any directive so-called mandates to the municipalities of this state. All of us understand our responsibility towards our towns and our cities, all of us understand our responsibility to our constituents and all of us, I believe, adhere to this standard with the utmost of our ability. We are here because of those constituents, those individuals whose government this is and all of us I believe here in the Maine House of Representatives want to do the right thing. Sixty-five or seventy members of this body, ten months ago, said to several of us that they were opposed to L.D. 66. I hope you remember who you are because there has been no lobbying effort on this bill as far as I am concerned. However, there has been a special interest group out in the hall and, unfortunately, they have chosen this as their primary issue. They have chosen this over other issues that in fact could reduce the property taxes for the men

and women, the poor, the elderly and those who are property owners in your city but they have chosen this issue as the primary issue.

You ask perhaps why, what issues did they ignore? I didn't see little round, green stickers on any of that sort of thing when we were talking about a risk pool so the schools could purchase insurance from that risk pool. I didn't see any movement when in fact there was a piece of legislation before this body so the cities and towns could borrow money from the Maine Municipal Bond Bank called the Investment Pool so they could get a better return for the dollars and yes, in competition with your local banks. I didn't see the special interest groups that the Waterville pays \$13,000 to for dues annually. I didn't see those people outside when there was a piece of legislation going through this body saying that there would be phase-in or phase-out of county jails and county corrections into the state system with the Department of Corrections.

I believe by selecting an issue to focus on that is truly misrepresentative of what is happening here lends itself to demagoguery and overblown rhetoric. It ignores the significant proposals that we have proposed in this body to reduce property taxes for the taxpayers in our towns.

Those of us who are opposed to L.D. 66 do so, not because we believe that we were willy-nilly passing legislation and passing those costs on to the municipalities and taxpayers of our cities but we do so because we are talking about something that is a very serious issue to me and perhaps to others, the inflexibility of a constitutional amendment. A constitutional amendment is a very serious issue and once you have amended the constitution for all time, you may not have the opportunity to change it again. When you do so, you should do so thoughtfully. Each of us here took an oath of office to swear to uphold the Constitution of the United States and of this state and I don't believe that there is single member of this body or the other body who takes that lightly. When the seriousness of the Constitutional amendment is before us and when in fact there are people in this state who will then decide whether or not it would be a change in our constitution don't have the information that you and I have, then I consider that extremely serious.

This reminds me of a conversation I had with a very learned man, a gentle man, an attorney, a former legislator, a mayor of the city of Waterville and father of the current mayor and he said, the people in this room, and there were 400 or 500, have no idea of the amount of information that each of you have about all of the issues that come before you, maybe over 2,000. Because of that, I have to ask you to adopt the "Ought Not to Pass" Report.

Let's be honest with ourselves, "most mandates" are not passed by the Maine Legislature at all. "Most mandates" are created by a process that other legislators have created and that is the rulemaking process of the departments and agencies of this state. It also comes as a surprise to many of us after we come back from the breaks between legislative sessions and we discover that certain things are being required of the citizens of this state, of the businesses of the state, of the individuals of this state, and that is that a rule has the same force as the law. Mandate, yes it is quite an issue. L.D. 66, we can all talk about it but I believe in the legislative process and I

believe that each of us represents our districts and I believe that each of us communicate with our municipal officials and I believe that this legislature in the past 10 months has responded to the people of Maine in a way that you could not respond if this was written in the Constitution of the State of the Maine. I don't know about a great deal about Energy and Natural Resources so I will select that from what I hear as a lay person, as a citizen of the State of Maine and a person who is concerned about the complaints that I hear about how difficult it is to do business in the State of Maine. I will say, that from where I sit and listen to those issues that that committee through the legislative process has responded to the people of the State of Maine, has responded to the businesses of the State of Maine, has protected the environment for all time for future generations of the State of Maine because the legislative process works. When a person said that we cannot adhere to the rules from the departments and agencies or we cannot adhere to the legislation passed by this legislature or past legislatures, then in fact the process allowed of a weakening, if you will, of those laws or actually delaying the process written in those laws.

Men and women of the House, we cannot fool with the constitution, it is not a responsible act. I will give you two simple little examples of what has occurred in the past few weeks here in the Maine House of Representatives. The Washington County budget was passed and there was a mandate and language had to be written so this body could adopt the Washington County budget.

We have had a long process here and I smile because I think of the people who have learned about this process, about when Long Island in Casco Bay wanted to separate from the city of Portland, there was language that had to be written to allow Long Island to secede from the city of Portland because there was a mandate. There was a motor vehicle law that was passed and language had to be written to allow that law to go forward.

My question to you men and women of the House is, are we wise enough, are we prophets, are we wise enough to anticipate the needs of the future generations of Mainers? I am not sure we are but I am sure that we have a very strong law on the books that is in the process of being amended that deals with mandates that will have the flexibility that this legislature or future legislatures can actually amend and change to the needs of those days and those times. For that reason Mr. Speaker, I move indefinite postponement of L.D. 66 and all its accompanying papers.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Ladies and Gentlemen of the House: I would certainly hope that you would oppose the current motion to indefinitely postpone this bill. There are amendments that will be forthcoming and I regret that at this time that it is not proper to discuss those in detail but I think it is very important to defeat this motion and then go on and accept the Majority "Ought to Pass" Report so those amendments can be presented. I think many of the questions raised by the good Representative from Waterville have in fact been answered by the creation of this particular amendment.

When there is discussion about fooling with the

constitution, I do not believe that by supporting L.D. 66 that I am fooling with the constitution. I believe that what we are doing is using the constitution in a very responsible way, to create parameters from which we are to work. When we talk about inflexibility of constitutional amendments — in fact there is some inflexibility but that inflexibility, again, creates the parameters in which we work and that I think is a positive thing.

When we have heard that there have been concerns about bills, whether it is the Long Island bill or the Washington County budget, that it created some level of concern about mandates and the concern about the funding of those mandates. I think one of the most healthy aspects of that is that that information is finally before us and that information had not been before us in the past. If the Long Island bill had been presented five years ago, we would not even had the discussion about the fact that we were in fact imposing a mandate upon the city of Portland. That discussion is a healthy discussion because I believe that the more information that this legislature has on which to base its decisions, the better those decisions are going to be. If we are to sit here with a fiscal note of municipal impact statements and know what it is that we are imposing upon a municipality, we will be making a better decision, whether we make the decision to go along with that, to go ahead and impose on the municipalities or not, the point is that we will have more information with which to work and that is very positive.

I would urge you to vote against indefinitely postponing this bill so that we can go on and look at the further amendments that address many of the issues that have been raised and discuss this issue fully.

Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: L.D. 66 has been a top priority for the City Council in Presque Isle and for a good portion of its residents. Last year they wrote me a letter expressing their opinion and I carried that letter all session and folded it and unfolded it and finally disposed of it at the end of the session when we did not consider the bill. This year they have written me another letter and they phone me and say, "How are things going with L.D. 66?" So, it is a top priority of theirs.

Today I would like to read into the Record a letter from them that expresses their concerns, their opinions and why they are so strongly supporting L.D. 66. "Dear Representative MacBride: I am writing to convey the strong support of the City Council of Presque Isle for L.D. 66, a Resolution calling for an amendment to the Constitution of Maine to provide funding of future state mandates. Our reasons for supporting the passage of L.D. 66 are as follows: No. 1, unfunded state mandates force increases in municipal property taxes that, in these economic times, are already stretched to the limit. Last year, we identified over \$900,000 in direct costs to the city for mandates. No. 2, unfunded state mandates are an infringement on municipal home rule. It is only fair that those who create and control programs be responsible for funding them. The amendment will not only be an incentive for the

legislature to establish program and spending priorities, it will free us to set our own governmental priorities and allows us to use our local taxes to pay for them. No. 3, while Maine has a statute that prohibits unfunded mandates passed after July 1, 1991, the people of Maine need the protection that the Constitution would provide. Other states which have had only a statutory ban have found it necessary to amend their Constitution to make their laws effective. For these reasons, we urge you to vote for L.D. 66 when it is brought for a vote before you."

I strongly urge you to support L.D. 66.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Men and Women of the House: I hope today that you will vote against the pending motion and I will tell you that over the last 8 to 12 months that we have dealt with this issue. Unbeknownst to Maine Municipal officials or maybe some of the leaders in the Maine Municipal Association, I had some of the concerns with that bill a year ago, I believe that maybe the Speaker also did. Even though I was actively working for the passage of this L.D., there was a concern that I have had for some time dealing with what would happen with emergencies here if we didn't have the flexibility to take care of some of those concerns. I do believe in recent days that there will be an amendment offered later if we can get it to that position that will take care of my concerns and the concerns of a lot of people.

In regard to some of the issues that the good lady from Waterville brought up on why municipal officials or the directors of state and federal regulations haven't been here at times to lobby certain bills, I think I have to say to you that, in the past year, that Maine Municipal has gone through some trying times also. They were faced a year ago with a chance in their director of state and federal regulations. They also were faced with the assistant director of state and federal regulations getting done and there have been some new people come on board who have been outside of these halls working on some of the issues.

I also have to say to you that municipal officials coming down here and lobbying for passage of certain L.D.'s are limited to a time they can spend here. Yes, in fact L.D. 66 is one of their prime issues. Another issue that they were concerned about, and I think they did a pretty good job back in December, was Maine Revenue Sharing and I believe they were here and did their part. I don't think that they have neglected the legislative process in the last year or so but I do believe that we ought to get this bill in a position where the changes can be offered that I believe is best for the municipalities and the state.

The SPEAKER: The Chair recognizes the Representative from Norway, Representative Bennett.

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I am glad that this legislation is finally before us in the House. Representative Joseph I think in her presentation makes several points which I have to take strong disagreement with. I believe that she ignores the fact that we are putting this question to the people, that is coming through the legislature, will have to get out of here with a two-thirds vote and then it has to go to the people for a final decision. I

think this question, friends and colleagues, is worthy to go to the people in public referendum. This issue will not be finally decided by us here today but rather by those people. I can tell you that when I ran for the Maine House two years ago, property taxation and the cost escalating, ever spring upward costs of property taxation is one of two issues that the people in Oxford County were telling me they wanted me to do something about it. I asked them, "What exactly do you want me to do about property taxation?" Almost unanimously they would say, "Give us no more unfunded mandates."

This sentiment experienced nearly two years ago is still powerful and strong among my constituents.

As a legislature, we have complained about federal mandates and about the problems that the Congress and the President of the United States pass along to us when they pass along federal mandates without any funding and it has caused by many, many problems with our budgeting. Likewise, state mandates have caused the same kind of problems with our municipalities. I guess it just depends sometimes on who was getting the wrong end of the stick.

I tell you that I plan to vote against this pending motion so I can vote for the "Ought to Pass" Report although the Majority Report was watered down some and doesn't meet all of my expectations with this very important bill but I believe that there will be an opportunity to amend on the floor and I will be supporting several of those amendments. But, to suggest that this question is not worthy of full debate on this floor, which includes the amendment process and then to go to the people, I think does a disservice to this very important issue and to the people of Maine.

I encourage you to vote no.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Larrivee.

Representative LARRIVEE: Mr. Speaker, Ladies and Gentlemen of the House: I will be supporting the indefinite postponement of this L.D.. This is an item which has been before our committee and about which I have given a tremendous amount of time and consideration. There probably in this House is no stronger supporter of municipalities and municipal issues than myself having served in local government. One of the reasons that I ran to come up here was because of mandates imposed from the state to the municipalities so I am not insensitive to needs. However, it is not my opinion that a constitutional amendment is the way to fix this problem.

I believe when we talk about a constitutional amendment in the same sentence with the word flexible that we are doing a disservice to the Constitution. If an amendment has to be phrased so that it has significant flexibility in it, then I am not confident that it belongs in the Constitution. I think we should think very carefully about that issue.

Representative MacBride presented a letter which fairly represented the feelings of communities. However, there is nothing in that letter which cannot be done by this body if we have the will to do it and I believe we do. I believe the way that we help towns and communities is in our committee process. Each and every bill that comes before us, it is our responsibility to know what that impact is. We don't need the Attorney General's Office to making rulings about whether it is unconstitutional to pass this law

or that law, it is our responsibility to find out what it is going to cost our towns and vote our consciences based on that. I believe there are ways we can protect our towns, I will continue to do so, I do not support the constitutional amendment and I urge you to vote in support of the current motion.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: During the 114th Legislature, there was a group of us, and it was bipartisan led by Representative Neil Rolde of York, to try to come up with a property tax relief bill. There are so many here who served on that committee. Anyone who wanted to join us was more than welcome. We met several times, we looked into how we could fund education so it would come off property tax and still fund it fairly. We never did come out with anything that helped property tax. Ladies and gentlemen, I firmly believe that L.D. 66 is probably the best property tax relief piece of legislation that we could pass and send out to the voters back home that we have done in this legislature in many years.

L.D. 66 says that the legislature must pay the cost of any mandate that is sent back to the municipalities within reason. Also we have some amendments coming up, which I am sure is going to take care of any problems which we might run into.

Some of the things out there being said about L.D. 66 is that it is unconstitutional — well, if we pass this here today and send it on to the people, there is nothing unconstitutional about their vote.

L.D. 66 is a constitutional amendment — once it is enacted, it cannot be changed. That's not true either. While no one should take amendment to the Constitution lightly, the Maine Constitution can be amended and is readily. If down the road, the legislature thinks provisions should be amended, it can ask the voters to do so.

Another one, L.D. 66 prevents the legislature from defining what a mandate is — if there are questions or disputes, only the courts can decide. The fact is that L.D. 66 defines mandates as it commonly has been in a number of states. It also has a number of exclusions. If there is a dispute over a law, people always have the right to take it to court but, frankly, the legislature will be able to decide whether a proposal constitutes a mandate through the fiscal note process. Further, Maine could do what other states have done, establish a review panel of legislators and others to decide such questions, if any arise. Will L.D. 66 tie the hands of the legislature? Certainly not. L.D. 66 merely says that if the legislature decides to pass a mandate, then the state must provide the money to pay for it, rather than shift the cost onto local property taxpayers.

If L.D. 66 becomes a part of the Maine Constitution, lawmakers will continue to be able to pass as many laws as they feel are necessary, the difference is that they will be paid for with broadbased state taxes rather than local property tax which we have been told here many times is a regressive tax. L.D. 66 will require the legislature to appropriate money, something no other constitutional provision requires — not true. L.D. 66 merely says that if the legislature decides to pass a mandate that requires added expenditures, then they must fund it.

Also other amendments to the Constitution do require the legislature to appropriate money. For instance, the Constitution requires the legislature to reimburse municipalities for 50 percent of any new property tax exemptions such as veterans and so forth.

L.D. 66 will require the legislature to fund mandates if the courts establish new ones through decisions they make that will affect local government — not true. Although court decisions sometimes interpret current law in a way that creates new requirements to be in place on both state and local governments, L.D. 66 has been amended to exempt court decisions.

Another myth, state agencies can promulgate rules that establish new mandates and the legislature will be forced to pay for them — L.D. 66 does cover rules but the law also says that a mandate is not effective until the legislature provides the necessary funding. L.D. 66 will force the state to pay for all mandates, even laws or rules which only incidentally affect local government — not true. L.D. 66 excludes routine obligations from being considered mandates which must be funded by the state.

L.D. 66 would prevent the legislature from ever cutting aid to local units such as aid to Education or revenue sharing. That is not true either. L.D. 66 specifically states that the state can cut any local aid program when the state is making overall cuts to state government.

L.D. 66 will force the legislature to fund mandates and local aid programs as top priorities before it can appropriate funds from any other state program. This is absolutely not true. There is nothing in L.D. 66 that says state mandates are priority items that must be funded before any other state programs are paid for.

L.D. 66 will prevent the legislature from passing laws to protect the environment. L.D. 66 will not prevent the legislature from passing laws to protect the environment. L.D. 66 merely says that if the legislature passes an environmental law that the municipalities are required to implement, the state should pay for its share of the cost, not property tax. This is a basic public policy issue.

L.D. 66 will provide long-term property tax relief. Municipalities rely on property taxes for 99 percent of their revenues as opposed to the national average which is 74 percent. Furthermore, property taxes comprise the biggest piece of Maine's tax pie. Forty-three percent compared to 31 percent for income taxes and 25 percent for the sales tax.

L.D. 66 will provide fiscal accountability by requiring state government to fund the laws it enacts rather than shifting the cost to local property taxpayers. Between 1985 and 1990, property taxes in Maine rose 76 percent, my own tripled in that length of time. Between 1989 and 1990 alone, property taxes rose 13 percent due to cuts to local governments as proposed in the state budget. Property taxes are expected to increase even more dramatically. The property tax is consistently rated as the worst tax by the citizens. When considering people's tax burden, it is important to remember that the property tax is a tax on one of life's essentials, people's shelter. More than 75 percent of county government is paid for with property tax. The cost of county government has risen from \$14.4 million in 1980 to more than \$43 million in 1990. If you remember, it was this legislature who voted to take 85 or 90 percent of our income from the counties and that is

why we had to put it back on the property tax. I remember when we did it, not that it wasn't for a good cause, I believe it was, its target was for housing, but nevertheless, it should not have come out of the county tax.

Despite education reform and the increased share that the state pays for education, the actual state and local share remains at approximately 50/50. One thing that committee found out that we did with property tax — when this formula was set up, by this time, everybody would have received or should have received 65 percent or better and that would have been every municipality in the state. The formula did not work that way. Why? I cannot actually tell you. In 1984, the total cost of education was about \$500 million. In 1990, the state and local districts paid about \$500 million each.

Between 1984 and 1989, the cost of solid waste disposal to Maine communities has more than doubled. Ours went from \$30,000 to \$453,000. Neither the state nor the municipalities pay for government, people do. Therefore, the taxes should be as fair as possible to pay for services the citizens need.

I am asking you not to support the indefinite postponement of L.D. 66 so that we can get this into position to get our amendments on it so that it will be truly fair and that everyone can feel safe. And, that the legislature will have the right to legislate as we always have and that the fear tactics will be taken out of this L.D. and, hopefully, you will not support the indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, I would like to pose a question through the Chair.

Earlier in the year, we talked about education reform, the formula that we talked about, everybody got up and said that the formula would be most likely changed. Knowing that the budget is pretty tight right now and most likely will be tight next year, if the education formula comes back from the Board of Education and it is changed, some towns get more than they are getting now and some towns will have to get less because there is no money — is that going to be a mandate that we won't be able to deal with? Therefore, what we are hoping will be a change in the education formula and that it just won't happen? I want to know really what was the last time we had a mandate that we can really spell out? When is the last time somebody can remember of a mandate?

The SPEAKER: The Representative from Portland, Representative Manning, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: In my opinion, any time that a municipality must pay for actions of the legislature, that would be a mandate. However, within the last several weeks, I have had a conversation with a very much respect Assistant Attorney General, a long-term person who understands the issues, and he described this piece of legislation as the most litigious legislation that he has ever seen in his career. He describes that because of what you asked, Representative Manning, what is a mandate? He feels that municipalities will say that the state must pay for whatever is being required because it is a mandate. He also feels that the state may say that,

no, we don't consider this a mandate and he feels that every attorney that represents the towns and municipalities of this state will be a full-time person to defend those towns. He also feels that he will be a very busy person because the question does not seem to be able to be defined.

While I am on my feet, I feel it essential that I respond to Representative Bennett from Norway. I don't believe that I am ignoring the facts and I very much understand the process and I alluded to a gentle man that I respected very highly that that person does say that you and I have more information than the average citizen about the complex issues such as this but more than that, my question would be for Representative Bennett of Norway — did he tell his concerned citizens about a bill that exists on the statute today in Title 30-A, subsection 5684, a new piece of legislation whose effective date was July 1, 1991 that forbids this legislature by statute to pass any of those costs on to the municipalities and towns and the people of this state? Did he tell his constituents that currently this legislature is looking at a piece of legislation that I assume will be passed, it was a unanimous committee report, that will enhance that definition with all of the exceptions and I believe that with 151 of us have been elected as leaders to provide information to people in this state when in fact they do not have all of that information.

To Representative Strout of Corinth, a person that I consider a good friend and colleague — please forgive me, if in any way you felt that I was slighting municipal officials. I have the utmost respect for anybody who serves in public office because as we all know, as we spend 12, 14 or more hours a day doing the people's business, as we take money out of our own pocket to be here as we earn \$7,125 this particular legislative session, to provide that public service, that these people are doing the best job they can. But, I do believe that persons who are hired as lobbyists to represent the towns and cities of this state are driving a wedge between the good relations that we have as legislators of representatives of the people and those very same city councilors, mayors, select people. I believe, at least it is so in our city, that we have communications with our city council people, I believe my major is in the building today talking about another issue that concerns very much the city council and other people in the city of Waterville, and I believe that by the city of Waterville paying \$13,000 a year to belong to an organization and yet they have to take time out of their law practices, their teaching assignments, and all of the other occupations that they have in order to come down here because they are not being represented as they see fit, that those lobbyists in fact are driving that wedge. So, I have no complaint about any city officials but I am very concerned when in fact our city officials, municipal officials, are not getting the whole story.

The SPEAKER: The Chair recognizes the Representative from Sedgwick, Representative Gray.

Representative GRAY: Mr. Speaker, Men and Women of the House: I heard several things here today that I would like to try to explain. First to Representative Manning, the county budget for Hancock County was the last mandate bill that I saw before my committee. There is a problem with that and I think it will be clearly addressed in House Amendment "B"

when it is presented to the floor, if it is presented.

I support this and I did within the committee because there is a long-standing problem out there with regard to property tax. You still have the ability to tax with income tax, this isn't going to take anything away from you, it is going to stabilize the property tax and I hope you will vote against indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch.

Representative HEESCHEN: Mr. Speaker, Members of the House: There is no question in my mind that the politically popular and the political easy thing to do would be to support this piece of legislation. I know that my selectmen would be very happy. In my mind also, there is no question that this is the wrong thing to do. No amendment or proposal that I have seen addresses the underlying concerns surrounding the concept of putting this legislation in the Constitution.

We are here representing the citizens of the state, not just as citizens of individual towns, but as citizens of the state. I think when you look at the question of local self-rule, you also have to look at self-responsibility, taking responsibility for one's own actions. I think one thing that supporters of L.D. 66 are doing is ignoring the other half of the equation. I don't know how many of you have seen the video that was prepared by the Maine Municipal Association for the purpose of selling this bill to the public and whoever. I have seen it and I think it emphasizes, it constantly refers to "the state's environment" as if local government had not stake in that environment, as if they have neither benefit nor responsibility to that environment. I think we have to really ask whether that is true. I think what we will with this kind of legislation is a shifting of responsibility and cost from not just towns to the state because remember, the state is everybody so what is going to happen is a shift of responsibility and cost from towns that choose, for whatever reason not to do something that probably they should do by virtue of being responsible citizens within the state, to the rest of the towns who may have already done the right thing.

Last Fall when the proposal to cut revenue sharing came through, the proposal was, well, the supporters of that were trying to sweeten it by saying, we will suspend or eliminate all the mandates that you have to do. The immediate response to that from the municipal side was, well, there was no way that suspending those mandates is going to compensate for the loss of the revenue sharing. Now that tells me a couple of things, one is the dollar amounts we are talking about is relatively small and two, I think that we could be setting ourselves up for a bad trade. I supported revenue sharing at every opportunity last Fall and I will continue to support it but I think that going ahead and trying to tie state support to specific programs will, in time, lead to the possibility of state assumption of the program or the decision that, well, we will only fund things on a specific nature, we will no longer do general unspecified funding. Not only that, I think it may also lead to greater demands for reciprocity on this and just with respect to reciprocity, I think you have to start asking questions about how you factor in state expenditures which benefit towns are in way related to mandates such as the state doing a whole lot of economic development activity, business

promotion, and transportation issues. The state could say, well, we will leave it up to each town to decide if it wants to do this on its own. If it wants to do it, it can do it; if it doesn't, it doesn't have to.

Another question is, what about what someone might construe as a reverse mandate, a situation where a town by its actions or its inaction results in more costs to the state? An example of that is a town that has no zoning or planning could allow uncontrolled growth on a state-funded highway. It could be a brand new highway that the state has just put millions of dollars into and the town continues to allow growth on that highway and eventually will demand the state go in and spend another five or ten million dollars so they could have a four-lane highway and put in lights and so forth.

Also you have a question of when you have pollution. When you have a locality by action or inaction causes pollution costs, who is responsible? According to the MMA video, it is the state because it is the state's environment. I also might mention that they imply that we should pay just about everything in terms of law enforcement because, after all, it is the state's laws that are being enforced so, therefore, we should support that as if the localities do not benefit whatsoever from having local enforcement and having those laws in place.

What are the downstream effects of this kind of thing? How many of these so-called mandates are actually measured which will reduce locality exposure to future risk or liability of cost down the road? I think that is something we have to look at. For instance, the question of pollution — if a town spends money or the state spends money on pollution control now, you will save a bundle on trying to clean that up later. There is no way of accounting for these savings down the road. There is really no way for the state to share in these savings that they may have underwritten. Another example, our energy efficiency standards for buildings or vehicles — are those construed as state mandates? If they are and the state pays for mandated energy efficiency standards in construction, would the state also share in the operating cost savings for the life of that building? We like to think about that.

Getting down a little more practical matter, our committee, as Representative Larrivee noted, spent considerable time on this issue. We researched it, we looked at prior reports — one thing I don't think we have adequately discussed is the information base. We still lack an adequate information base to carry out this legislation. In 1987, the Maine Municipal Association promised that there was going to be a municipal government fiscal data base available within six months or that was what they were projecting in the report at that time but the information is still not available. In testimony that we had from MMA on L.D. 66 last year, they noted that in fact this data base was still five, six or seven years away. The State Planning Office notes that the state does not have a data base that would be required to do the mandate reimbursement analysis. There are steps in the right direction — the University of Southern Maine, I understand, is working on a data base but we don't have it.

No one has brought up the cost, the fiscal note of this yet, there were estimates considering legislation only, not rules, the State Auditor had estimated that it would cost \$200,000 to \$600,000

with a best-guess of around \$400,000 including the salary of 12 or 14 new positions to do this kind of analysis. The Department of Finance estimated \$480,000 start-up and about \$400,000 per year. The Office of Fiscal and Program Review, which at one time was thought as the place to develop this but felt it was prohibited by law from administering this kind of program.

The summary is that there are so many unknowns that we are going to lock in with a constitutional amendment. I think we all try to do the right thing by our towns, by the citizens of the state and I think we should continue to do that. We certainly are aware of the concerns but the underlying problem which spurred these bills isn't going to be addressed by the passage of this legislation. That's our over-reliance on property tax for town and county government. That is not going to be addressed. The problem has been dramatically compounded by withdrawal of federal support for state and local governments over the last 10 or 12 years, this legislation is going to do nothing to solve these real problems. Where I started, it may be politically popular, it may be politically easy, it may be expedient, but it is not appropriate.

I urge you to support the pending motion of indefinite postponement.

On motion of Representative Martin of Eagle Lake, tabled pending the motion of Representative Joseph of Waterville that L.D. 66 and all accompanying papers be indefinitely postponed and later today assigned. (Roll Call requested)

(At Ease)

The House was called to order by the Speaker.

The following items appearing on Supplement No. 3 were taken up out of order by unanimous consent:

PASSED TO BE ENACTED

Emergency Measure

An Act to Amend the Charter of the Rangeley Water District (S.P. 964) (L.D. 2437) (S. "A" S-678)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 101 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

ENACTOR

Emergency Measure

Later Today Assigned