

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

let's have a hole in the budget because last year we had a \$10 million hole in the budget and it was admitted by the Department of Mental Health, \$5 million overtime and \$5 million for Workers' Comp and the Appropriations Committee left a hole in the budget. Now, if this is such a great program that you are proposing, then I suggest putting a \$2 million hole in the budget and coming back in the Fall or next January and take a look at that. But, let's have some of these answers first, whether or not it is capable of going under a Medicaid program, whether or not we are going to be educating those kids or whether or not each and every single community that sends a kid there is now going to educate those kids. Who is going to arrest those kids?

I would like to hand this out because I think most of you would be shocked to see that these questions are not answered. The Department of Corrections, as of Friday afternoon, could not answer these questions.

I have heard us talk about kids around here the last couple of days — well, these are the most serious, disturbed children in the state and I think we ought to wait to have these questions answered before these most serious kids in the state are running all over the state. They said at the Maine Youth Center the other day, for the first time in their lives, because they have been to these residential places, they have been to the Homestead's of the world, they have been to the Spurwink's of the world, they have been to the Sweetser's of the world, they have been out-of-state, but for the first time in their lives, these kids have heard the word "no, you can't do this." If we are going to ruin that — we are already overcrowded at Thomaston, we are already overcrowded at the correctional center, and if you want to pump more of these individuals into these systems, then go ahead and vote for this stuff. If you are so concerned about the Point 3, then maybe we ought to be concerned. Let's have a \$2 million hole in this budget and let's come back in January and try to find out how to solve that problem because we had a \$10 million hole in the biennial budget and the Appropriations Committee knew it. But, this is a proposal that I can't believe any one of your school boards or your town selectmen would ever vote on without knowing what they are going to be voting on. I hope you take a hard look at this.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion to reconsider House Amendment "D" (H-1206) to Committee Amendment "A" (H-1192). Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

58 having voted in the affirmative and 71 in the negative, the motion to reconsider did not prevail.

Subsequently, Committee Amendment "A" (H-1192) as amended by House Amendments "D" (H-1206), "L" (H-1216), "N" (H-1219), "Q" (H-1222), "T" (H-1228), "FF" (H-1252), "U" (H-1230) and "00" (H-1275) thereto was adopted.

The SPEAKER: The Chair will order a vote. The pending question before the House is passage to be engrossed as amended by House Amendments "D" (H-1206), "L" (H-1216), "N" (H-1219), "Q" (H-1222), "T" (H-1228), "FF" (H-1252), "U" (H-1230) and "00" (H-1275) thereto. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken .

20 having voted in the affirmative and 107 in the negative, the motion did not prevail.

On motion of Representative Gwadosky of Fairfield, the House reconsidered its action whereby L.D. 2185 failed of passage to be engrossed as amended.

On further motion of the same Representative, tabled pending passage to be engrossed as amended and later today assigned.

The Chair laid before the House the following matter: 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) which was tabled earlier in the day and later today assigned pending the motion of Representative Joseph of Waterville that L.D. 66 and all accompanying papers be indefinitely postponed. (Roll Call requested)

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Joseph of Waterville that L.D. 66 and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 389

YEA - Adams, Cahill, M.; Cashman, Farnsworth, Goodridge, Handy, Heeschen, Hoglund, Holt, Jacques, Joseph, Ketover, Larrivee, Michaud, Oliver, Pineau, Rand, Richardson, Skoglund, Stevens, P.; Treat, Wentworth.

NAY - Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Butland, Carleton, Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hale, Hanley, Hastings, Heino, Hepburn, Hichborn, Hussey, Kerr, Ketterer, Kilkelly, Kontos, Kutasi, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, Luther, MacBride, Macomber, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, McHenry, McKeen, Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Ott, Paradis, J.; Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Rydell,

Saint Onge, Salisbury, Savage, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Tupper, Vigue, Waterman, Whitcomb, The Speaker.

ABSENT - Aikman, Bowers, Gurney, Hichens, Jalbert, Parent, Paul, Powers, Sheltra.

Yes, 22; No, 120; Absent, 9; Paired, 0; Excused, 0.

22 having voted in the affirmative and 120 in the negative with 9 absent, the motion to indefinitely postpone did not prevail.

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Joseph, that the House accept the Minority "Ought Not to Pass" Report, a roll call having been requested.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

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

Representative HEESCHEN: Mr. Speaker, Members of the House: When I started to talk to people about this bill last year, a curious fact came to mind and that was many people said to me, you know this is a terrible bill, you have got to make sure it fails, but I have got to vote for it. I hadn't even been trying to sell any position on this bill when I would ask people what they thought about it.

A while back, I came across something in the Legislative Record from January 12, 1955. The Speaker was Representative Clifford McLaughlin of Portland and among the comments that he made at that time were, "Have the courage to vote according to your convictions. Believe it or not, I have had several men, in my experience, tell me that they thought I was exactly right but they did not dare to vote with me. I say that a man or woman that doesn't have the courage to vote according to his or her convictions is weak indeed and has no place in this legislature." Then he went on to say, "Make your own decisions, don't try to pass the buck back to the people who sent you here and don't let politicians or lobbyists tell you what to do, you be the master of your own decisions."

I would ask you all to think very carefully about your vote here and the implications of putting a constitutional amendment in place and what it would do this state and the people in this state.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: Thank you for your indulgence. If we sent this question out to the citizenry, it would be like asking them if they love their country. Of course the majority will say, "vote yes." I would have voted yes too before I became a member of this Legislature where I am learning more and more each session about the complexities of state government. It is those complexities, I believe, that have led to the flurry of amendments which we have seen to this bill and about which we have heard hints. If these many amendments have been spawned as afterthoughts, perhaps this is not a bill solid enough to penetrate

the rock of our constitution. Will future state legislatures have to open up the Constitution to insert more amendments as it is discovered we have found another important piece that doesn't fit?

This past year, I asked the local officials in the district I represent to tell me which mandates are most burdensome for them. They had no answers for me except for one official, the cemetery superintendent in Bath who said he agreed with me, we should place a moratorium on mandates while we look at the issue more closely and intelligently than we had done. That was the conclusion I arrived at after reading "Mandates", cases in state and local relations put out in September, 1990 by the Advisory Commission on Intergovernmental Relations which has been lying in our Law Library waiting for us to come educate ourselves on this subject. It concludes by saying this, "Mandates themselves are not the issue and a new level of leadership and commitment is needed to address the bigger problem, the bigger problem of properly sorting out state and local service responsibility. The twin irritants of less federal aid and intense mandate friction has stimulated a major examination of programs, funding and service delivery that, if done correctly, will result in more cost-effective government. The result is too important to be obscured by the non-issue of mandates."

I believe we can explain this to sensible people. I cannot vote for L.D. 66. I spent a lot of time last summer reading this as I knew we were going to be facing this again. I voted for it and against it when we started the debate on the law we have already on the books but my opponent used it against me anyway just before the election last time. I am not going to be pushed around that way.

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

Representative KILKELLY: Mr. Speaker, Men and Women of the House: It is always very difficult to be on the opposite side of issues with people you care about and respect a great deal. I am finding it very difficult in this situation. However, I must take exception with — well, maybe actually what I am doing is agreeing with Representative Heesch. I do think that it is very important that everyone in this body vote their conscience, vote what they believe in, and vote what they think is proper for this state.

I happen to be supporting L.D. 66. I am doing that because I happen to believe in that. I am not doing it because I am concerned about what somebody is going to say or concerned about the letters I have gotten from the town managers or the selectmen in my district. I am doing it because I believe it is the responsible thing to do. I believe that each level of government must take responsibility, not only for making decisions, but actually for looking at how those decisions are going to be funded. We have been very critical in this body of county government, even to the point of saying that we need to review county budgets because we are concerned about the impact on local property taxes. We are concerned about what is going to be happening because the counties don't have to take responsibility for raising the property taxes so the counties don't understand what the problem is. What is the difference between that and imposing upon a community a mandate that we are not funding? There is no difference.

I see this bill as an opportunity to have the

information before us that we need to make decisions. If we can get to the point of having put in amendments that I think are very important in clarifying this issue, there will be more that can be said about what the opportunities are. I would urge, please, that we do not accept the "Ought Not to Pass" Report and get on with this bill.

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

Representative LARRIVEE: Mr. Speaker, Men and Women of the House: I have here a 1987 state mandate report done by the Maine State Legislature which was one of the guides that I used in committee. I would like to tell you a couple of pieces of information that were in there.

One of the processes that they used was to look at other states which had both mandate bills and had some type of constitutional amendment. This comes from review of cost estimating of reimbursement programs from the General Accounting Office. A witness with the Office of Municipal Affairs in Rhode Island estimated that only two states have a true reimbursement program. The reason offered for the discrepancy between the number of states which have programs of this sort and actual functioning are these things — it had been their finding that the legislature waive the requirement when it sees fit, that the legislature doesn't fund the reimbursement, that funds for reimbursement come from monies which would have gone to local governments under a different guise. There is no net increase. Local governments fail to submit requests for reimbursement and the reimbursement is filled through indirect reimbursement. They go on to say that many states, which have chosen to restrict mandating through Constitutional Amendment, report routine circumvention of the intent of the amendment. There are other pieces of information but I think that that just lets you know that there are still problems with this. Our best bet is still for us to have the will not to pass these mandates along and to do the work piece by piece in our committees. A Constitutional Amendment is not the right direction. I urge you to accept the "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: When I hear that each level of government should be responsible for funding all of the activities and functions of that government, I wonder if we are suggesting that the legislature has or is acting irresponsibly. I said this morning and I am saying this evening that I believe that there is no member in this House that does not believe that every piece of legislation that leaves this body should have a fiscal note and that we should have actually looked at how that would be funded. I do not believe that we should put this measure into the Constitution of the State of Maine. That is the issue here before us, not whether or not funding of mandates is right or funding of mandates is wrong. In fact, we have a statute on the books, effective July 1, 1991 — this government has so little money that that particular law requires two positions in the Office of Fiscal and Program Review, those positions have not been filled. In fact, that office has lost one additional position. We are interested in finding out what the fiscal impact is to any community, to any group and to any individual in this state. We are a very conscientious body and I don't

believe that we are acting irresponsibly.

I need to say to you all tonight that, when we had the public hearing last year on this piece of legislation, at least (and I am being conservative) 80 municipalities appeared before our committee, one by one by one. In each case, the questions that the committee asked and that I asked as Chair of that committee is, in your opinion, what is a mandate? In no cases did we hear the same definition of mandate. It is a matter of interpretation by those communities who are experiencing the same hardships that this state government is experiencing. But more than that, it is groups of municipal officials up against the same kinds of problems — can we cut state government? We have tried. Can we save money? Can we restructure? We are trying. Can we say no to those people who need the services that state government delivers to them, the needy, the poor, the children, the poor children? Our municipal officials are up against the same kind of battle we are and they are having a difficult time saying no as well. They are also looking very hard to find answers. But, amending the Constitution isn't the answer.

Representative Holt said it right, do you love your country? Of course I love my country. We know that if we send this out, the people of the State of Maine will vote for it. This will paralyze state government. This will bankrupt state government, if it isn't already.

I urge you to not frivolously tamper with the document that is the Constitution of the State of Maine that you have sworn to uphold, that future legislators will swear to uphold because the Constitution is not a flexible document.

I urge you to vote for the "Ought Not to Pass" Report.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Minority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 390

YEA - Adams, Cahill, M.; Clark, M.; Coles, Dore, Erwin, Farnsworth, Gean, Goodridge, Handy, Heeschen, Hoglund, Holt, Joseph, Ketover, Larrivee, Michaud, Oliver, Pfeiffer, Pineau, Rand, Richardson, Rydell, Saint Onge, Skoglund, Stevens, P.; Treat, Wentworth.

NAY - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Butland, Carleton, Carroll, D.; Carroll, J.; Cathcart, Chonko, Clark, H.; Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Duffy, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gould, R. A.; Graham, Gray, Greenlaw, Gwadnosky, Hale, Hanley, Hastings, Heino, Hepburn, Hichborn, Hussey, Jacques, Kerr, Ketterer, Kilkelly, Kontos, Kutasi, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, Luther, MacBride, Macomber, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, McHenry, McKeen, Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Ott, Paradis, J.; Paradis, P.; Paul, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Salisbury, Savage, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tamaro, Tardy, Townsend,