

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

NAY — Albert, Bagley, Berry, G. W.; Birt, Bowie, Byers, Carey, Carter, Churchill, Connors, Cote, Curran, R.; DeVane, Dudley, Durgin, Fenlason, Fraser, Garsoe, Gould, Hennessey, Hunter, Hutchings, Joyce, Kauffman, Laffin, Lunt, Lynch, MacEachern, MacLeod, Mahany, Maxwell, McBreairty, Mills, Miskavage, Morin, Peterson, P.; Rideout, Rolde, Saunders, Shute, Theriault, Torrey, Tozier, Usher, Walker, Winship.

ABSENT Bennett, Blodgett, Dow, Farley, Gray, Hall, Hinds, Hobbins, Jacques, Jalbert, LeBlanc, Lewin, Lewis, Lizotte, Mackel, Martin, R.; Strout, Tyndale, Webber.

Yes, 84; No, 47; Absent, 19.

The SPEAKER: Eighty-four having voted in the affirmative and forty-seven in the negative, with nineteen being absent, the motion does prevail.

Non-Concurrent Matter

Bill "An Act Relating to Sales Tax Interest and Penalties" (H. P. 1550) (L. D. 1867) which was passed to be engrossed in the House on April 29.

Came from the Senate indefinitely postponed in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Susi.

Mr. SUSI: Mr. Speaker, Ladies and Gentlemen of the House: I move that we insist and ask for a committee of conference and would speak to my motion.

The SPEAKER: The gentleman from Pittsfield, Mr. Susi, moves that the House insist and ask for a Committee of Conference.

The Chair recognizes the same gentleman.

Mr. SUSI: Mr. Speaker, Ladies and Gentlemen of the House: This bill was put into the legislature on behalf of the Taxation Division. It has had problems collecting certain sales tax accounts around the state and it has been many years since we have changed the interest rate and the penalties that are provided under the law so that in effect they have lost their effectiveness as a tool for collecting overdue sales taxes and considerable amounts are standing due. For instance, the interest rate provided for is a rate of one half percent per month, which is six percent a year and six percent these days, people just leave money lay in a situation like that rather than pay up.

I feel the bill is an extremely moderate approach. The half percent has gone to one percent, which is 12 percent interest on overdue accounts, which I think is a very moderate approach. I could give you some more of the details, but I hope that we can go into a committee of conference and save this so that the Taxation Division will have something better to work with to collect these accounts.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Peterson.

Mr. PETERSON: Mr. Speaker and Members of the House: I would request that the Clerk read the committee report.

Thereupon, the Report was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Peterson.

Mr. PETERSON: Mr. Speaker, Men and Women of the House: As you can see, it was a lopsided report. I support the motion of the gentleman from Pittsfield, Mr. Susi.

I know I am not supposed to make references to the other body and I will not, but I noticed in reading this morning's newspaper that the movement to kill this bill was led by shopkeepers so I wonder if there is a conflict of interest somewhere in either one of these Houses on this particular piece of legislation. I do think it is a moderate proposal and fair to the people of Maine, and I would hope that we could keep our special private interests out of concern when we are dealing with an important matter such as this.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Dam.

Mr. DAM: Mr. Speaker, Ladies and Gentlemen of the House: I don't rise because I have any interest, because I don't have any business, I am one of those unemployed legislators and have been since I have been down here in 1968, so I don't have any problem. I do want to correct the statement that the good gentleman from Pittsfield made, Mr. Susi, when he said it is 12 percent — it is not 12 percent, it is 16 percent interest, because we have 10 percent, 5 percent and a 1 percent clause and to me that adds up to 16 percent and it doesn't add up to 12 percent. The reason for signing the report the way I did was because I think that 16 percent is just a little bit too much penalty to put on some of these small businesses. I don't think it is right. I do believe, and I have no reason to doubt it, because they came before the committee and the Bureau of Taxation said they have got a problem. But I don't think that if any state agency has a problem that the answer to that problem is putting a burden on the people that run stores or run businesses. I think the problem with the agency should be straightened out by the agency. If they can't do their collecting in any better method than this, why maybe the next time around we will be wanting to put 32 percent interest on the shopkeepers and the businessmen of the state.

That was my reasons for signing it and if there is any conflict of anybody on this bill, I wish somebody would make me aware of it, because if it is a conflict that was pointed at me, being unemployed and having been unemployed for the last nine years, I enjoy my conflict.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I must rise to comment on the remarks of my good friend from the Taxation Committee, Mr. Dam. We frequently disagree on matters like this. He is giving one of the arguments that was given against the bill when we were discussing it, and this was, why couldn't the Taxation Department go out and get this money, why do we need a penalty? Well, the only way any department of government can go out and collect money is if they have a penalty supporting them. If there is no penalty when people do not pay them, the only thing they could do would be go out and collect it by brute force, which would be illegal unless authorized. So, I say that we need this penalty to assist the Taxation Department in making these collections.

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Susi.

Mr. SUSI: Mr. Speaker, Ladies and Gentlemen of the House: There has been an inference here that I made an intentional misrepresentation to you, and I would like to read the section that I looked up before I made the statement. "Any

person who shall fail to pay tax," and I am reading from the bill that is before us. "imposed by Chapters 211, 225 on or before the day when the same shall be required to be paid shall pay interest on said tax at the rate of" — and it was one half percent, and it has been struck out and it is one percent under the bill — "each month or fraction thereof that the same remains unpaid to be calculated from the date the tax was required to be paid." According to my arithmetic that is 12 percent a year.

Thereupon the House voted to insist and ask for a Committee of Conference.

The following paper was taken up out of order by unanimous consent.

The following Communication:

ANSWER OF THE JUSTICES

To the Honorable House of Representatives of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit our answer to the question propounded on April 24, 1975.

QUESTION: Would the "excess assessment" provisions of Legislative Document 1452 (Exhibit A), if enacted into law, violate the provision of Article IX, Section 8, of the Maine Constitution, which requires that all taxes upon real and personal estate, assessed by authority of the State, be apportioned and assessed equally, according to the just value thereof?

ANSWER: We answer in the affirmative.

The question requires us to examine not only the purposes of the proposed legislation but also the means provided for fulfillment of the purposes.

Examination of L. D. 1452 makes it apparent the proposed bill is intended to effect changes in the present law which may be briefly summarized as follows:

1. It proposes to have the amount to be raised for education based upon actual past expenditures rather than upon future projections.

2. The "school tax" is renamed the "uniform school tax" and is redefined.

3. The impact minimization mechanism is redefined and named "excess assessment."

20 M.R.S.A. Section 3713 (3) (E) (7) contains an impact minimization feature by providing that the maximum school tax which is imposed upon any taxing unit cannot exceed an amount which requires a tax rate increase in excess of 2½ mills higher than that previously required to produce sufficient revenue to discharge the school tax obligation.

L. D. 1452 proposes to change the impact feature by use of a technique which is described therein as an "excess assessment."

The result intended to be obtained by the "excess assessment" feature is the avoidance of precipitous increases in local property tax rate. It is the "excess assessment" provisions, however, which require us to conclude that, if enacted, L. D. 1452 would violate Article IX, Section 8 of the Constitution of Maine.

The controlling reason that the "excess assessment" provisions of the proposed bill must be held to contravene said Article IX, Section 8 derives from the internal structure within which the bill has chosen to operate. It is calculated to provide the 50%

"property tax share ("of the total cost of

education for state appropriations") through a uniform school tax rate applied to all administrative units alike." (emphasis supplied) L. D. 1452, §13

Within precisely this framework, however, the proposed bill provides for an amount of "excess assessment" which, on the one hand, is excluded as "part of the uniform school tax levied under (proposed) section 451", but, on the other hand, is included (by Section 451) within the Commissioner's certification of the "total education costs" utilized to calculate the so-called "uniform school tax rate." Moreover, although thus labelled and utilized as an "education cost" affecting all the municipalities, the amount of "excess assessment" is in reality, by virtue of the provisions of proposed Section 453, an amount which is (1) not relevant to all of the municipalities of the State but only as

1 Said Section 451 directs that the Commissioner "... include twice such estimated total state-wide 'excess assessment' in his certification of total education costs. . . ."

to some of them, and (2) as to those municipalities to which the "excess assessment" amount has relevance, the amount defrays at least part of the non-school "necessary expenses of local government."

By virtue of this exposition of the underlying structure within which the proposed bill has seen fit to be operative, it becomes plain that, regardless of the labels affixed, in its true substance the end-result of the tax rate computational process is a "school tax rate" effectively higher in some municipalities than in others.

This point becomes patently clear if — by adherence to strict logic and the consistency of identification requisite for the accuracy of arithmetical procedures — we identify the end-result of the arithmetical computation by language correctly reflecting the substance of the use of the "excess assessment" as an element in the arithmetical process.

Since the "excess assessment" in reality represents a non-educational cost amount² and relates only to some municipalities, this true feature of its use in the tax rate computation process should be reflected in the identification of the bottom-line resulting from the arithmetical procedure. When this appropriate nomenclature is applied the ostensible single "uniform school tax rate" upon the property of all municipalities is shown in its true character as: (1) one school tax rate for all those municipalities to which the amount of the excess assessment is inapplicable, and (2) a separate rate of school tax for those municipalities having an amount of excess assessment, this latter rate being effectively lower insofar as the amount of "excess assessment" available to those municipalities is to be utilized

2 That the "excess assessment" is the amount by which the current year's "uniform school tax" exceeds a 20% increase over the municipality's previous year's "uniform school tax", does not, because of the references to the "school tax", make the "excess assessment" amount a true educational cost.

for non-school municipal expenses.³

Thus, however well-intentioned, the "excess assessment" provisions of the proposed bill are a device which obscures the basic reality that the property tax rate

purporting to be a "uniform school tax rate" for all municipalities is effectively a higher rate in those municipalities which do not have the benefit of the amount of "excess assessment" for use in defraying the non-school "necessary expenses" of such municipalities.

Since the essential framework of the proposed bill has thus made its "excess assessment" provisions so integral a part of the tax assessment process and the calculation of the ultimate school tax rate, the "excess assessment" provisions cannot reasonably or fairly be looked upon as a legislative scheme for the "distribution" of tax revenues collected by the State which, under the authority of *Sawyer v. Gilmore*, 109 Me. 169, 83 A. 673 (1912), lies outside the scope of Article IX, Section 8 of the Constitution of Maine and is permitted to be unequal. Because the "excess assessment" is utilized as an element in the formula by which the school tax rate is computed, the tax assessment process is so directly affected that the requirements of Article IX, Section 8 of the Constitution of Maine become applicable.

The property tax rate resulting from the method in which the "excess assessment" is utilized in the calculation process effectively produces a "school tax rate" for particular municipalities higher than a "school tax rate" for other municipalities. In sum, the effect of the "excess assessment" provision is that a different rate of taxation for the purpose

3 This results from the provisions of proposed Section 453 that in a particular municipality which has the benefit of an "excess assessment" amount the Treasurer of said municipality shall apply such amount for non-school "necessary expenses of local government as determined or appropriated by the legislative body of such municipality. . . ."

of raising money for public school education results in two classes of municipalities i.e., those which have, and those which have not, an "excess assessment." Such effective difference in the rate of tax assessed on the "full value" of property is constitutionally impermissible under the provisions of Article IX, Section 8 of the Constitution of Maine which expressly mandates that "(a)ll taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof; . . ."

Dated at Portland, Maine, this first day of May, 1975.

Respectfully submitted:

Signed:

ARMAND A. DUFRESNE, JR.
RANDOLPH A. WEATHERBEE
CHARLES A. POMEROY
SIDNEY W. WERNICK
JAMES F. ARCHIBALD
THOMAS E. DELAHANTY

The Communication was read and ordered placed on file.

Petitions, Bills and Resolves Requiring Reference

The following Bills were received and, upon recommendation of a majority of the Committee on Reference of Bills for introduction on the House Calendar, were referred to the following Committees:

Education

Bill "An Act Relating to the Borrowing Capacity of East Range II Community School District" (Emergency) (H. P. 1560) (Presented by Mr. Fenlason of Danforth) (Ordered Printed)

Sent up for concurrence.

Local and County Government

Bill "An Act to Authorize the Commissioners of York County to Make Certain Payments from the Contingent Account" (H. P. 1561) (Presented by Mr. Farley of Biddeford) (Ordered Printed) Sent up for concurrence.

Liquor Control

Bill "An Act to Authorize the Town of St. George to Hold a Special Town Meeting in May, 1975, to Vote on Certain Local Option Questions Concerning the Sale of Liquor" (Emergency) (H. P. 1564) (Presented by Mrs. Post of Owls Head) (Ordered Printed) Sent up for concurrence.

Orders

On Motion of Mr. Albert of Limestone, it was

ORDERED, that Frederick B. Lunt of Presque Isle be excused May 9th, and the week of May 12th for Personal reasons.

Mrs. Clark of Freeport presented the following Joint Order and moved its passage: (H. P. 1558)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of Maurice Hilton of Pownal Recipient of the Leather Industries of America 15th Annual American Shoe Designers Award

We the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

Order and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence.

Mrs. Clark of Freeport presented the following Joint Order and moved its passage: (H. P. 1559) (Cosponsor: Mr. Kennedy of Gray)

WHEREAS, The Legislature has learned of the Outstanding Achievement and Exceptional Accomplishment of David Zobel of Gray Winner of the 1975 Cumberland County Spelling Bee

We the Members of the House of Representatives and Senate do hereby Order that our congratulations and acknowledgement be extended; and further

Order and direct, while duly assembled in session at the Capitol in Augusta, under the Constitution and Laws of the State of Maine, that this official expression of pride be sent forthwith on behalf of the Legislature and the people of the State of Maine.

The Order was read and passed and sent up for concurrence.

House Reports of Committees Ought Not to Pass

Mr. Gray from the Committee on Local and County Government on Bill "An Act to Increase Salaries of County Officers of York County" (H. P. 1185) (L. D. 1483) reporting "Ought Not to Pass"

Mr. Twitchell from the Committee on Taxation on Bill "An Act Concerning Abatement of the Property Tax on Certain