

MAINE STATE LEGISLATURE

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

Senator **TURNER:** Thank you, Madame President. In response to the good Senator from Aroostook, Senator Martin, if the trustees feel that this is an appropriate matter for them to weigh in on they are perfectly capable of doing so. I don't know that they need our help, at this time, given the magnitude of the issues facing the University System; whether it's their strategic plan or the tuition increases that they are passing along to our students because of the lack of growth of funding that has come from this body and the other chamber. I don't think this is an appropriate course of action for us to engage in at this time and would ask that you defeat the pending motion. Thank you, Madame President.

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

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I'll be very, very brief. I'm going to be supporting the pending motion. As a big fan of cross-country skiing, I'm very frustrated that national powers, Dartmouth and Vermont, regularly stock their 1A cross-country skiing college programs with cross-country skiers from Maine. We put millions into building stadiums for football teams and yet cross-country skiing is not offered as a collegiate sport in our system. At the high school level, the State of Maine, when it goes to the national championships, always compete very, very well. Yet all of those skiers must, if they want to continue skiing, go to school in another state. I'm going to be supporting this. I know there are no guarantees, but I think it will just force them to, hopefully, look at this particular cross-country skiing issue and how the lack of a team is forcing our top students to go out-of-state.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Senator **MITCHELL** of Kennebec to Accept the Minority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#203)

YEAS: Senators: BARTLETT, BRENNAN, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, RAYE, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, BROMLEY, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, MILLS, NASS, PLOWMAN, ROSEN, ROTUNDO, SAVAGE,

SNOWE-MELLO, TURNER, WESTON, WOODCOCK

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **MITCHELL** of Kennebec to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-273) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-273)**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Regarding the Wells-Ogunquit Community School District"

S.P. 486 L.D. 1397

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought To Pass as Amended by Committee Amendment "A" (S-272)** (6 members)

Tabled - May 31, 2005, by Senator **MITCHELL** of Kennebec

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, May 31, 2005, Reports **READ**.)

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. The good Senator from Kennebec, Senator Mitchell, and myself do not have a dog in this fight, but it is a fight nonetheless. There has been a long history of acrimony with respect to the local funding of education in the Wells-Ogunquit school district. These two communities have been before the Education Committee many, many times and long-term veterans of this institution perhaps recall some of those discussions. Originally, Ogunquit brought a bill before us asking to modify the private and special agreement that exists between the two towns. I think the committee was unanimous in not desiring to support Ogunquit's request. The slight minority of us decided we should try to bring closure to this long-standing dispute between Ogunquit and Wells. If you defeat the pending motion, the majority Ought Not to Pass report, we can move on to the minority report, which would ask that the two communities mediate their differences, and failing to reach an agreement on mediation, they move to binding arbitration to decide what their private and special agreement should be. I think that is the best

way for us to approach it. I don't think the committee has the wisdom to make the decision and we would like to stay out of it. I believe the best course of action is to let the two communities deal with the matter but do it in a binding and final way with binding arbitration. The last time these two communities tried to work together there was a committee made up of citizens from both Wells and Ogunquit. That committee reached an agreement. The selectmen of Ogunquit agreed to the proposition that the bi-town committee had developed. Wells refused to deal with it at the selectmen level and the agreement fell apart. Without binding arbitration in the mix, it is my belief that there is no incentive on the part of the Wells community to enter into a final resolution on this matter. In fact, the chairman of their board of selectmen indicated exactly that to me in a phone conversation. I would ask that you defeat the pending motion and we can move on to the minority Ought to Pass report. Thank you, Madame President.

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

Senator **MITCHELL:** Thank you, Madame President and colleagues of the Senate. It is true that the Senator from Cumberland, Senator Turner, and I are not directly impacted by this particular bill. You have two distinguished Senators, however, in this chamber who are and they will be able to share with you the local perspective. I thought it was very important that you get a little bit of history though because for these two Senators there is no right answer because what had happened years ago, and I believe it was 1979, the Town of Ogunquit petitioned to secede from Wells. In exchange for that, an agreement was struck between the communities that they would share the cost of schools. Over time other arrangements were made. I think in 1999 it wasn't just valuation but rather they put in the number of pupils.

You just dealt with this on supplement 27 today, some cost sharing items that are taking place right now in schools around the state because of the new school funding formula. There are districts that were impacted and we've tried to give them, through legislation, opportunities to work through their cost sharing differences. Frye Island, for example, in the Senator from Cumberland, Senator Diamond's district, was one of those school districts that were affected. Frye Island has no students but has a great deal of property valuation. The decision that we are making with them, and they agreed to, was sharing the sense of community and being responsible for those students. The same thing happened in the good Senator from Oxford, Senator Bryant's district with Sunday River. Again, it is a very property wealthy district with no students. Under the new school funding formula they would have gotten a tremendous tax break, but in the cost sharing thing worked out for them, there was a sense of community. You are responsible for the children of this state.

I can understand why the citizens of Ogunquit think that they should not be forced to continue the former agreement they had because it is costing them more money. I think it's very important for you to know, those of you who are struggling to pay school bills, that at 4.32 mills Ogunquit already has one of the lowest tax rates in Maine for education. It's not that we're helping a community that is struggling to pay for education, it's a community who feels that it is paying too much for education. I think that most of the committee voted against this bill because it would change that cost sharing to give a greater tax break to the citizens

of Ogunquit because they are saying they don't have enough students to justify the cost that they are paying. However, that was not their issue when they sought permission to secede and have their own district. I would suggest to you that this boasts ill for a lot of communities in this state. If you have a wealthy part of your town along the coast, Biddeford Pool in Biddeford for example, there would be a great desire to withdraw from a school unit or a school area to just cut your property tax bills. I think this is bigger than Wells and Ogunquit. I think that is why I took such a strong interest in it. To me it speaks to our sense of community. It speaks to our responsibility as towns in this state. They are all our children. This arrangement was made to share those costs and I believe that Wells and Ogunquit must work this out themselves.

You need to also understand why it's here before us in this form. They were created by private and special legislation, so they have to come here. They were created by the private and special legislation that allowed them to secede in the first place. That is why they are treated differently under the school funding formula. It is my belief, and many members of the committee's belief, that things should be left to stand and that we should defeat this bill and let the communities continue to work on how they intend to share costs. The thought I will leave you with is that both Wells and Ogunquit share a school and they are responsible for the students. It is not a matter of being unable to pay, 2/3 of these residents, and I believe someone will correct me if I am wrong, are seasonal and out-of-staters. It is important that people carry their fair share of paying for the student's education. I hope you will join me in supporting the Ought Not to Pass report.

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

Senator **ANDREWS:** Thank you, Madame President and fellow Senators. I have the distinction of being the Senator to represent Ogunquit. I am here to speak on behalf of the minority report. As has previously been stated, this has a rather long and stormy history. It is true, in 1979 Ogunquit, by wishing to withdraw from Wells, did agree to a cost sharing agreement in order to withdraw. At that time they had roughly about 140 students. Since that time several things have changed. In 1999, when I served on the Education Committee, they came back in front of us, asking to withdraw from the school district. Because it was created by a private and special law, they cannot withdraw without an act of the legislature. You need to know that. At that time we held the bill over and we had a fact finding committee that came back the next year and recommended that the current cost sharing formula be temporary. They reduced it from 100% of property valuation to 67% of property valuation, I believe, and 33% pupil count. They also recommended that they continue to do further mediation in order to perhaps bring it down even more.

You need to know that since that time the town of Ogunquit has gone down to 50 students and perhaps is looking to drop even more. The town of York is only 4 square miles while Ogunquit has 58. The town cannot develop more buildings in order to increase the tax base. We talked about the mil rate for education and the amount that the good Senator quoted is correct. That percentage involves \$71,000 per student that the town of Ogunquit is contributing to the cost of education. With this small ratio of students and with the fact that the tax rate is high for those year-around residents that do live there, the prospect looms very large for a further decrease in students.

You need to also understand that it is weighted in favor of Wells. In other words, any decision that is made at the school board level, although there may be two school board members from Wells and two from Ogunquit, those two board members from Wells have a heavier weighted measure. In other words, it would count for five or six votes. A year ago there was a proposal in front of the school committee to close down the Ogunquit Village School where Ogunquit sent their children in the lower grades. Because of the weighted system, the school board voted to close that school. Ogunquit really had no recourse. As we all know, there is a saying that a school is part of a village. It takes a school to make a village. With the loss of that school, Ogunquit is feeling that they are losing a lot of their identity and that they really now have less control over the education of their students. Ogunquit, as it stands now, will pay about 25% of the total school costs with less than 4% of the school enrollment. This cost sharing agreement, as it stand now, goes against essential programs and services, which is based on the cost to educate a child.

Someone said that we should kill this and have an end to it. Without the passing of the minority report, I can guarantee that there will be no end. There was an attempt as the good Senator from Cumberland, Senator Turner, mentioned for mediation this past year. The committee that was comprised from citizens from both communities agreed on an amount. The Ogunquit selectmen approved it and was going to put it on the ballot. It was turned down by Wells. Mediation alone will not solve the problem. You can send the two towns back to mediation, but the same thing will happen that happened this past year. With the threat of binding arbitration, I think it forces both towns to come together in a more forceful way to attempt to solve this problem once and for all. I would ask you to vote against the majority report and go on to support the minority report. Thank you.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. I can't tell you how much I've anticipated this discussion. I've been waiting for weeks and months to do this.

Madame President, I know we have all had this experience, we get a phone call from a constituent, the ones I most anticipate have to do with child custody or child support, and they go on and on. I will tell you, I'm not going to try to counter the detail here because your head will be spinning by the time it's done. This has been an interesting issue. Those of us who have been here for a few years have, I hope, appreciated the learning curve that is going on here. In my case, I'm going to recommend to you that the end of the learning curve is don't try to fix this problem. It's not fixable. This ought to be done by our local communities in this case, one of which I happen to represent, Wells. This is not fixable. Ogunquit would not be a town if they didn't agree to this agreement in 1979. They agreed to pay their fair share of the education costs. Since then they have been trying to get out of it. That's what it boils down to. That's why we shouldn't be involved in trying to fix this.

I'm going to try really hard to avoid the rest of the problems. I just want to share a couple of the facts with you. First of all, this is not just about Wells and Ogunquit any more, as the good chair of the Education Committee pointed out. Be careful of this one. Almost every community in this state has the potential for the

same thing to happen to them. If it was just Wells and Ogunquit then you could dismiss this argument, but recently we've seen the same thing happen to the town of Standish and the new town of Frye Island. I think I voted for it when I was down in the other body at that point. The town of Frye Island went through the process and separated, became a separate town. As was stated before, no body lives there year around. There are no kids. Couldn't be any more stark than that. They agreed, as part of the agreement, to pay their fair share of the education costs. This is a substantial amount of money here. There's a lot of waterfront property on Frye Island. Standish agreed. They even have a representative on the SAD 6 school board. He represents no students, but he's a representative of Frye Island. The very next year, Madame President, they were in here, the town of Frye Island, with a bill asking to change that formula. Thankfully, collectively we decided it was too close. There wasn't any time in between and it was not the right thing to do. What I caution you about is the same potential scenario. Almost every town, many towns in the state, have a more wealthy part of town and I will almost guarantee you that those people feel they are paying more than their fair share, whether they express it or not. We are now showing them a process that they can go through to effect that change. I don't think we ought to be encouraging that to happen. The way it is, Madame President, is you apply to separate. You agree to pay your fair share. Then you come back to the legislature and try to change it. That's the formula. It really is pretty basic. Do we, essentially, want to encourage a system where everybody pays their fair share based on property value? If you don't believe in that system, then you have a lot of problems. If you are still there, which where our constitution says we are, then you should not be in favor of allowing this bill to pass.

It's been referred that everybody on the committee was in support of the solution and the amendment, but the minority report calls for binding arbitration. Binding arbitration, Madame President, implies that both parties agree. Wells does not agree to binding arbitration. The minority report would force them into that position. Madame President, I would urge that we accept the Ought Not to Pass report and move on. Thank you.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. This debate is taking almost as much time as it did in our own caucus an hour ago. Hopefully we won't break that record. I just want to point out a few things to you.

First of all, the good Senator from York, Senator Nass, is wrong. He claims it's not fixable. Indeed it is fixable, but only by one mechanism, and that is binding arbitration because we have shown that mediation by itself is not going to do the deal. Ultimately, the mechanism for binding arbitration, I think, ensures fairness because both parties will be at the table and they will be bound by the conclusion of the arbitrary, if they are not able to mediate their terms before arbitration. The minority report, should you move on to that, specifically requires that mediation, as well as binding arbitration, be accompanied by policy experts from the Department of Education to make sure that the interests of the children of both communities are kept at the forefront of whatever negotiations do proceed.

I do think it's peculiar to Wells and Ogunquit. The slippery slope that the Senator from York, Senator Nass, alluded to in his

discussions with you I don't think is appropriate in this case. This is specific to two communities. Interestingly enough, they have a long history of working together on many, many things. It does happen that education and how you seek to fund education for your children is not one of them. If you look at the property bills of the average person from Wells and the average person from Ogunquit, they are pretty much analogous. They run \$2,400 to \$2,500 on average per residential piece of property. The difference has come down to the number of children. Where there is a huge number of children in Wells and a very small number in Ogunquit. I think Wells, perhaps, runs countercurrent to the approach that L.D. 1 takes, which drives more to per student funding. They are currently operating under a 2/3 - 1/3 mechanism. I'm not certain that is appropriate, but I do think rather than try to have the legislature's Education Committee continue to wrestle with this in future years, we should allow it to go to binding arbitration and finality. Thank you very much, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Arrostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. I'm sure some of you may think it strange that I would come up and debate this issue at this particular time. I just want to point out that I was here when the original agreement was made between Wells and Ogunquit. It was an agreement that was agreed to and thought to be followed. Today I will actually be supporting the Senator from York, Senator Nass.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Mitchell to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#204)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COURTNEY, COWGER, DAMON, DAVIS, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NASS, NUTTING, PERRY, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, PLOWMAN, RAYE, SAVAGE, SNOWE-MELLO, TURNER

28 Senators having voted in the affirmative and 7 Senators having voted in the negative, the motion by Senator **MITCHELL** of Kennebec to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

All matters thus acted upon, with exception of those matters being held, were ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Acts

An Act To Limit the Political Activity of the Members of the Commission on Governmental Ethics and Election Practices
S.P. 247 L.D. 749
(C "A" S-223)

An Act To Strengthen the Penalties for Furnishing Alcohol to or Allowing Consumption of Alcohol by Minors
S.P. 311 L.D. 903
(C "A" S-237)

PASSED TO BE ENACTED and having been signed by the President were presented by the Secretary to the Governor for his approval.

An Act To Repeal Tax and Match
S.P. 236 L.D. 699
(C "A" S-193)

On motion by Senator **ROTUNDO** of Androscoggin, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act To Improve Sentencing for Serious Offenders
H.P. 680 L.D. 970
(C "A" H-474)

On motion by Senator **ROTUNDO** of Androscoggin, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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