

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

INDEX

Senate Confirmation Session

June 14, 1978

INDEX

First Special Session

September 6, 1978 — September 15, 1978

INDEX

Second Special Session

October 18, 1978

INDEX

Third Special Session

December 6, 1978

INDEX

APPENDIX

SENATE

February 10, 1978

Senate called to Order by the President.

Prayer by the Honorable Michael E. Carpenter of Houlton.

Mr. CARPENTER: Let us bow our heads. Our Heavenly Father, we ask Your blessing and guidance as we pause this afternoon as part of the beginning of our deliberations. In the light of recent developments allow us to keep hold of our passions and our prejudices and make in Your wisdom for us to make sound judgements for the people of the State of Maine.

As we leave here this afternoon to go to our homes for the weekend, please protect us as we travel the highways of this great state. We ask this in Your name.
Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

Papers from the House
Non-concurrent Matter

Bill, "An Act to Provide for the Payment of Costs for Relocating Utility Facilities in an Urban Renewal Area." (Emergency) (H. P. 2072) (L. D. 2131)

In the House, February 3, 1978, Passed to be Engrossed.

In the Senate, February 8, 1978, Passed to be Engrossed as amended by Senate Amendment "A" (S-459) in non-concurrence.

Comes from the House, that Body having Adhered.

On Motion of Mr. Collins of Aroostook, the Senate voted to Recede and Concur.

Non-concurrent Matter

Bill, "An Act to Permit Persons Other Than Arborists to Take Down Trees by Topping or Sections." (Emergency) (H. P. 1858) (L. D. 1925)

In the Senate, February 8, 1978, Bill and Papers Indefinitely Postponed, in non-concurrence.

Comes from the House, Passed to be Engrossed as amended by Committee Amendment "A" as amended by House Amendment "B" (H-1020) thereto, in non-concurrence.

On Motion of Mr. Speers of Kennebec, Tabled for Two Legislative Days.

Pending consideration.

Non-concurrent Matter

Bill, "An Act to Amend the Crime of Assault on a Law Enforcement Officer." (S. P. 661) (L. D. 2032)

In the Senate, the Ought to Pass as amended by Committee Amendment "A" (S-444) Report from the Committee on Legal Affairs accepted. Subsequently the Bill and accompanying papers referred to the Committee on Judiciary.

Comes from the House, Passed to be Engrossed as amended by Committee Amendment "A" (S-444) as amended by House Amendment "A" (H-1021) thereto, in non-concurrence.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I move that the Senate Adhere.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate Adhere.

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: Mr. President, I move that the Senate Recede.

The PRESIDENT: The Senator from Aroostook, Senator Carpenter, now moves that the Senate Recede. Is it the pleasure of the Senate? It is a vote.

The Chair recognizes the same Senator.

Mr. CARPENTER: Mr. President, I move that the Senate Recede whereby it accepted

Committee Amendment "A".

The PRESIDENT: The Senator from Aroostook, Senator Carpenter, now moves that the Senate Recede from its action whereby it adopted Committee Amendment "A". Is it the pleasure of the Senate? It is a vote.

House Amendment "A" Read.

On Motion of Mr. Carpenter of Aroostook, House Amendment "A" indefinitely postponed in non-concurrence. Committee Amendment "A" Adopted. This Bill, as amended, passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Joint Resolutions

Joint Resolutions in Memoriam:

WHEREAS, the Legislature has learned with deep regret of the death of G. Emilio Ouellette, a beloved civic leader of Lewiston who was, for 30 years, host of the radio program "La Revue Francaise;" (H. P. 2089)

WHEREAS, the Legislature has learned with deep regret of the death of Mrs. Eleanor Cross McGlaufflin of Brewer, a beloved civic leader, (H. P. 2088)

Come from the House, Read and Adopted. Which were Read and Adopted, in concurrence.

State of Maine

In the Year of Our Lord One Thousand Nine Hundred and Seventy-Eight

Joint Resolution Declaring
Opposition to the Proposed Production of a
Film Contrary to the Spirit of
Religious Toleration

WHEREAS, it has come to the attention of the Legislature that a British filmmaker is planning to make a film on the life of Jesus which has been characterized by many as "blasphemous" and "sacrilegious" and

WHEREAS, it has further come to the attention of the Legislature that production of this film has been halted in Denmark, Sweden, France and Italy in response to an immense public outcry in those countries; and

WHEREAS, it now appears that this filmmaker intends to produce this film in the United States and that he claims to have financial backing in this country for doing so; now, therefore, be it

RESOLVED: That we the members of the 108th Legislature assembled in the Second Regular Session, do hereby, on behalf of the citizens of Maine, declare that we are opposed to the making of any film in this country which defames the religious tenets or beliefs of any religious group; and be it further;

RESOLVED: That we declare that films of this type are contrary to the spirit of peaceful exercise of religion and of religious toleration which have characterized our country since its inception; and be it further

RESOLVED: That, upon passage in concurrence, the Secretary of State shall make available to the public suitable copies of this resolution. (H. P. 2086)

Comes from the House, Read and Adopted.

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President, I move the indefinite postponement of this Resolution and would like to speak to my Motion.

The PRESIDENT: The Senator from Cumberland, Senator Hewes now moves that the Senate indefinitely postpone this Resolution.

The Senator has the floor.

Mr. HEWES: Mr. President and Members of the Senate: I respectfully urge the postponement of this Resolution for three I think sound reasons.

First, it is none of our business. Secondly, the freedom of speech issue, and third, that publicity such as this Resolution only brings me publicity to the issue then if nothing was said whatsoever.

First off, as to whether or not it is none of our business. As I understand it, this movie is not being produced in the State of Maine, except for the fact that it ultimately, may be shown in Maine and is not an issue that relates directly to Maine at this time, and our passing Resolution will have no effect on the production of this particular film. It is just a piece of paper that can be filed in the waste paper basket by the producer. So for that reason, there is no need to pass a useless Resolution.

Secondly, freedom of speech. And our Constitution of the State of Maine sets forth certain basic rights. I would like to call your attention to the Declaration of Rights, Article 1, Section 4, which states in part, "Every citizen may freely speak, write, and publish his sentiments on any subject." And then a bit further, "No law shall be passed regulating or restraining the freedom of the press."

And of course, our federal Constitution, the very first Amendment to the U.S. Constitution proved that, "Congress shall make no law respecting an establishment of religion or living a free exercise error or of bridging the freedom of speech or of press." And I submit that it would be, it is improper even though we may not approve of the particular movie concern, it would be improper for us to try to pass Resolution inhibiting the production of this particular movie. Some of you may argue this is a separation of church and State matter. So that we do not get into Article 1, Section 3 of the State Constitution about separating church from the Government. But I do feel that we have no right, no power to inhibit the production of this particular movie.

Then the third point of the publicity. The ban in Boston use to be a statement that I think writers, producers, publishers, wanted for their work, because there was a society in Boston I think it was called the Watch and Ward Society the point to regulate the morals of Bostonians and when a book was, a publication was banned in Boston, it seemed to be on the best seller list. And I think this same applies here. Despite the good intentions of the sponsor and those in favor of the Resolution on the issue of whether or not this movie is a good movie or not, I feel that a Resolution such as this, the State Legislature of Maine tries to criticize this movie, I think that we are only bringing in more publicity and creating more interest for the film, and hence putting money in the pockets of the producers.

In short, I would like to follow the lead of the great Frenchman of a century or two ago, "Although I highly disapprove of what you say, I will defend you to death the right to say it." I sincerely, hope that you will vote to indefinitely postpone this Bill.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, I ask for a Division on that Motion.

I am betwixted and between on this Resolution and I go along with some of the remarks made by the good Senator from Cumberland. But I feel that it is time that we expressed our opinions on some of these things that are happening around our country.

Last night it was my privilege to attend the Ronald Reagan reception in Portland, and I heard a question asked of Governor Reagan as to what we could do to show the young people that the United States of America was a decent place in which to live.

I think this is one way we could show the young people of the State of Maine and the young people of our nation, that we are concerned with what is being brought before them. We are to blame for things that are happening in the United States today which are facing our young people. Not altogether young people. We allow these things to happen and as the good Senator said about the bans in Boston a few years ago, maybe they did publicize but the things in Boston weren't nearly as bad as when

I lived in Massachusetts as they are in this day and age and which are acceptable practices.

Today's paper we read where a judge in New Mexico ruled that a teacher having sex with one of her students was perfectly legal because she was giving him an education.

I think that when we allow things like this to be produced in the State of Maine, I mean in the United States, and I hope will never try to be produced in the State of Maine, although I do not know what location they will have, that we allow these things to keep going on and further demoralize our morals of our young people in our country.

So I would ask for a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Motion to indefinitely postpone this Joint Resolution please rise in their places to be counted.

Will all those opposed please rise in their places to be counted.

21 Senators having voted in the affirmative and 7 Senators in the negative, the Motion to indefinitely postpone does prevail. Sent down for concurrence.

State of Maine

In the Year of Our Lord One Thousand Nine Hundred and Seventy-Eight

Joint Resolution in Honor of the University of Maine at Portland — Gorham On the Occasion of its Centennial Year

WHEREAS, it has been said "there are few earthly things more splendid than a university;" and

WHEREAS, "it is a place where those who hate ignorance may strive to know, where those who perceive truth may strive to make others see;" and

WHEREAS, "it is a place where seekers and learners alike banded together in search for knowledge, will honor thought in all its finer ways, and will uphold ever the dignity of thought and learning and will exact standards in these things;" and

WHEREAS, one place fitting of this description was established by act of the Maine Legislature on February 19, 1978 and appropriately titled Western-Normal-School; and

WHEREAS, through the years its name has changed to Gorham Normal School, Gorham State Teachers College, Gorham State College, Gorham State College of the University of Maine, University of Maine at Gorham, and more recently to University of Maine at Portland — Gorham; but its purpose has endured, making it one of the State's leading institutions of higher learning; and

WHEREAS, the University in all its splendor has not only inspired those in attendance with the desire to fit themselves more thoroughly for the profession of teaching and other fields, but has supplied the means of gratifying that end; and

WHEREAS, now, on the eve of this, the centennial anniversary of its founding, the University of Maine at Portland — Gorham possesses even greater potential for providing increased service to citizens of the region and the State; now, therefore, be it

RESOLVED: That we, the members of the Senate and House of Representatives of the One Hundred and Eighth Legislature of the State of Maine, now assembled, being mindful of the paramount importance of education in our society, on this the 100th anniversary of the establishment of the University of Maine at Portland — Gorham, take this opportunity to publicly recognize the immeasurable contribution of that institution during the past century, to pay tribute to all those associated with it since its founding and to offer and extend the University of Maine Portland — Gorham our best wishes and encouragement for many more

years of continued service and progress in the future; and be it further

RESOLVED: That as a token of tribute and of our support and encouragement that a duly authenticated copy of this Joint Resolution, signed by the Speaker of the House and the President of the Senate be prepared and presented to the Chancellor and the President to commemorate this memorable occasion. (H. P. 2091)

Comes from the House, Read and Adopted. Which was Read and Adopted in concurrence.

Communications

Committee on Veterans and Retirement
The Honorable Joseph Sewall
President of the Senate
State House

Augusta, Maine 04333

Dear President Sewall:

The Committee on Veterans and Retirement is pleased to report that it has completed all business placed before it by the Second Regular Session of the 108th Maine Legislature.

Total Bills Received	6
Unanimous Reports	3
Leave to Withdraw	2
Ought to Pass as Amended	1
Divided Reports	3
Total Number of Amendments	2

Respectfully,

Signed:

SAMUEL W. COLLINS JR.
Senate Chairman

Which was Read and Ordered Placed on File.

Committee on Natural Resources

The Honorable Joseph Sewall
President of the Senate of Maine
State House

Augusta, Maine 04333

Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 37 of the 108th Maine Legislature, the Joint Standing Committee on Natural Resources has had under consideration the nomination of James H. Tweedie, Sr., to the position of member of the Board of Environmental Protection.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the 108th Maine Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Assistant called the roll with the following result:

YEAS: Senators	3
Representatives	6
NAYS: Senators	0
Representatives	0
ABSENT:	3

Nine members of the Committee having voted in the affirmative and none in the negative with three being absent, it was the vote of the committee that the nomination of James H. Tweedie Jr., to the position of member of the Board of Environmental Protection be confirmed.

Sincerely

Signed:

HOWARD M. TROTZKY
Senate Chairman

Signed:

WILLIAM B. BLODGETT
House Chairman

Which was Read and Ordered Placed on File.

The PRESIDENT: The Joint Standing Committee on Natural Resources has recommended that the nomination of James H. Tweedie, Sr. be confirmed

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: Just briefly. Jim Tweedie is a constituent and friend of mine. He has farmed in Aroostook County

for 28 years and knows a great deal about the land and about how we have to protect the land or it will no longer take care of us. I find him to be an outstanding candidate for the Board of Environmental Protection and I think from looking at the unanimous nine to nothing vote, the Committee on yesterday, the Committee agreed with me. Jim perhaps does lack in technical environmental experience what some members of the environmental community would like to see as far as the members of the Board of Environmental Protection. I think that Jim makes it up in common sense, hard work, tremendous dedication to any issue or position that he may take and a willingness to learn, and I hope that today that the Senate will give him a unanimous vote of confidence. Thank you.

The PRESIDENT: The pending question before the Senate is: Shall the recommendation of the Committee on Natural Resources be overridden? In accordance with 3 M. R. S. A., Chapter 6, section 151, and with Joint Rule 37 of the 108th Legislature, the vote will be taken by the yeas and nays.

A vote of yes will be in favor of overriding the recommendation of the Committee.

A vote of no will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

NAYS — Carpenter, Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Farley, Greeley, Hewes, Hichens, Huber, Katz, Levine, Lovell, Mangan, Martin, McNally, Merrill, Morrell, O'Leary, Pierce, Pray, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall.

ABSENT — Danton, Jackson, Minkowsky. No Senators having voted in the affirmative and 30 Senators in the negative with 3 Senators being absent, and None being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of James H. Tweedie, Sr. is confirmed.

Committee on Natural Resources

The Honorable Joseph Sewall
President of the Senate of Maine
State House

Augusta, Maine 04333

Dear President Sewall:

In accordance with 3 M. R. S. A., Chapter 6, section 151, and with Joint Rule 37 of the 108th Maine Legislature, the Joint Standing Committee on Natural Resources has had under consideration the nomination of Paul E. Burbank to the position of member of the Board of Environmental Protection.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the 108th Maine Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Assistant called the roll with the following result:

YEAS:	
Senators	3
Representatives	8
NAYS:	
Senators	0
Representatives	0
ABSENT:	1

Eleven members of the Committee having voted in the affirmative and none in the negative with one being absent, it was the vote of the Committee that the nomination of Paul E. Burbank to the position of member of the Board of Environmental Protection be confirmed.

Sincerely

Signed:

HOWARD M. TROTZKY
Senate Chairman

Signed:

WILLIAM B. BLODGETT
House Chairman

Which was Read and Ordered Placed on File.

Mr. PRESIDENT: The Joint Standing Committee on Natural Resources has recommended that the nomination of Paul E. Burbanks be confirmed.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: Mr. President, I know Paul Burbank. He presently serves on the Board of Environmental Protection. He is a man of character and ability. He has been involved in our area with many things that are worthwhile. I think that he is a man who does his homework carefully, and thoughtfully and I support his appointment wholeheartedly.

The PRESIDENT: The pending question before the Senate is: Shall the recommendation of the Committee on Natural Resources be overridden? In accordance with 3 M. R. S. A., Chapter 6, section 151, and with Joint Rule 37 of the 108th Legislature, the vote will be taken by the yeas and nays.

A vote of yes will be in favor of overriding the recommendation of the Committee.

A vote of no will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

NAYS — Carpenter, Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Farley, Greeley, Hewes, Hichens, Huber, Katz, Levine, Lovell, Mangan, Martin, McNally, Merrill, Morrell, O'Leary, Pierce, Pray, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall.

ABSENT — Danton, Jackson, Minkowsky.

No Senators having voted in the affirmative and 30 Senators in the negative with 3 Senators being absent, and None being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of Natural Resources is confirmed.

**Committee Reports
House****Ought to Pass — As Amended**

The Committee on Transportation on, Bill, "An Act Appropriating Funds to Construct an Access Road to the Phase 2 Housing Project on the Penobscot Tribal Reservation." (H. P. 1916) (L. D. 1977)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1018)

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A".

Which Report was Read and Accepted in concurrence, and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Taxation on, Bill "An Act to Require Certain Out-of-State Sellers to Register Under the Maine Sales and Use Tax Law." (H. P. 1883) (L. D. 1937)

Reported that the same Ought to Pass in New Draft under same title. (H. P. 2084) (L. D. 2134)

Signed:

Senators:

WYMAN of Washington
MARTIN of Aroostook
JACKSON of Cumberland

Representatives:

MAXWELL of Jay
CARTER of Bangor
POST of Owls Head
CHONKO of Topsham
COX of BrewerTEAGUE of Fairfield
IMMONEN of West Paris
TWITCHELL of Norway
CAREY of Waterville

The Majority of the same Committee on the same subject matter Reported that the same Ought Not to Pass.

Signed:

Representative:

MACKEL of Wells

Comes from the House, the Bill Passed to be Engrossed.

Which Reports were Read.

On Motion of Mr. Speers of Kennebec,

Tabled for One Legislative Day Pending acceptance of either Committee Report.

Senate

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 20 of the Joint Rules:

Bill, "An Act to Exempt an Electrician, who Fails to Renew his License, from Reexamination for a Period of 5 Years." (S. P. 639) (L. D. 1998)

Ought to Pass in New Draft

Mr. Curtis for the Committee on Judiciary on, Bill, "An Act to Revise the Statute on Operating a Motor Vehicle While under the influence of Intoxicating Liquor or Drugs." (Emergency) (S. P. 614) (L. D. 1902)

Reported that the same Ought to Pass in New Draft under same title. (S. P. 696) (L. D. 2138)

Which Report was Read and Accepted and the Bill in New Draft, Read Once and Tomorrow Assigned for Second Reading.

Second Readers

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

House — As Amended

Bill, "An Act Relating to the Inspection of Dams." (H. P. 2007) (L. D. 2084)

Which was Read a Second Time.

On Motion of Mrs. Cummings of Penobscot, Tabled for One Legislative Day pending Passage to be Engrossed.

Bill, "An Act to Establish and Apply Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies." (H. P. 2031) (L. D. 2111)

Which was Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

Senate

Bill, "An Act to Extend until July 1, 1979, the Date for the Newport Water District to Purchase the Property of the Maine Water Company." (Emergency) (S. P. 686) (L. D. 2114)

Bill, "An Act providing Allocations from the Unappropriated Highway Fund Surplus for Fiscal Year Ending June 30, 1979." (Emergency) (S. P. 694) (L. D. 2135)

Which were Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Enactors

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

"An Act to Increase Retirement Benefits for Teachers who Taught Prior to July 1, 1942." (H. P. 1888) (L. D. 1945)

On Motion of Mr. Huber of Cumberland, placed on the Special Appropriations Table.

"An Act Concerning Substitution of Generic Drugs by Pharmacists." (H. P. 1914) (L. D. 1975)

"An Act to Change the Name of the Industrial Accident Commission to Workers' Compensation Commission." (S. P. 641) (L. D. 2008)

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

"An Act Amending the Law Relating to Hab-

itual Truants and School Dropouts." (H. P. 1893) (L. D. 1950)

This being an emergency measure and having received the affirmative votes of 26 Members of the Senate, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The President laid before the Senate:

Bill, "An Act to Clarify and Limit the Authority of Municipalities to Establish Shellfish Conservation Programs and to License and Regulate the Taking Shellfish." (H. P. 715) (L. D. 851)

Tabled — February 9, 1978 by Senator Speers of Kennebec

Pending — Consideration

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: I move that we Adhere to our previous action.

I talked with the backers of the original Bill, and they say that they will in no way go along with the new draft, which I understand may be offered. The original Bill has been defeated in this Body by a 12 to 6 vote, so I hope that we will adhere to our previous position.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President, and Members of the Senate: I refer to a draft of this Bill in my remarks the other day which I said that I could support and that found generally acceptable to the towns along the coast, particularly those in my area. Rather than turn away from addressing the issue of conservation, that the clam resource has, I feel that we should address this other draft which is — a small but important step forward.

Therefore, Mr. President, I would like to offer the draft at this time, and I would move that the Senate Recede from its previous action whereby it indefinitely postponed this Bill and its accompanying papers.

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, moves that the Senate recede from its action whereby it indefinitely postponed this Bill. Is it the pleasure of the Senate?

The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, speaking only as a Legislator who believes that taking of our assets be controlled so that they are not completely depleted and will furnish assistance for people to make a living from year to year, I ask for a Division and that you will vote against this proposal already covered throughly by the present laws on the books today.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: Mr. President, I was very much opposed to the so called Shellfish Conservation Bill before us a few days ago. I do, however, support the position taken by Senator Chapman this morning and I would hope that we would get ourselves in a position where we might discuss and consider a more rational and reasonable approach to the subject. So I hope that you will support the Senator Chapman today.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Motion to Recede please rise in their places to be counted.

Will all those opposed please rise in their places to be counted.

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll

Call, it must be the expressed desire of one-fifth of those Senators present and voting.

Will all those Senators in favor of a Roll Call please rise in their places to be counted.

Obviously more than one-fifth having arisen, a Roll Call is ordered.

The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President and Members of the Senate: I submit that some kind of conservation measure here is in the best interest of the long-range clam diggers. That if they are allowed to deplete the clam flats are depleted of clams, there will not be clams for them to dig in the future. If this conservation program Bill that is discussed by the good Senator from Sagadahoc, seems logical to me and I think in the long run, the people of Maine will thank you all if you do vote to go along with the Senator from Sagadahoc.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE: Mr. President, I am glad to hear the good Senator from Cumberland, Senator Hewes, mirroring the comments that I made last year on one of the Committee Reports on this Bill, which as you know was referred back to Committee again. I would just mirror Senator Hewes' comments at that time, back to that good gentlemen, I do not think that this is going to clear up the problem. I think that it may create more problems then it clears up, so perhaps we would be better to do nothing at all and let this Bill die a graceful death.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Members of the Senate: I think we are far from creating a worse situation by attending to this particular version of the Bill.

This Bill, this Amendment, which I would like to offer encourages attention to the issue of conservation. Which the present law does not attend to. It does not have the mandation or the State teeth in it that the first Amendment had. It does not have the expensive compliance in aspects upon the towns, that they would have had to spend, monies they would have to spend to comply with the first draft which we indefinitely postponed.

This particular draft that I wish to offer allows a large degree of municipal freedom. It is a version that is supported by the Department of Marine Resources. It gives these towns freedom to adopt ordinances and hold them to their needs and their desires, but it clearly provides that there should be an emphasis in these ordinances on conservation.

The Amendment would provide that any municipality may, by a vote of their Legislative Body, raise and appropriate monies. They do not have to, they may, that is similar to the present statute. It further provides that by vote of the Legislative Body, they can amend or repeal or change their programs. This is the same. That is may. It does establish in this particular version, that there shall be a three person, at least, municipal shellfish conservation commission. I think this commission is a reasonable requirement if you are going to ask for an ordinance that attends to the subject of conservation should have a body that is concerned with, that is working with, and is trying to look after those needs of the conservation that are appropriate in that municipality. A great many of the present ordinances do have these conservation commissions intact.

It further provides, and this is a new provision, it was contained in the other Bill, it is still contained in this version that I want to offer. That there shall be a conservation program in writing and that that program shall include provisions for the assessment of municipal shellfish stocks, provisions for the enforcement and provisions for the Conservation. The program is designed to protect and preserve the potential of a sustained yield of shellfish from

the municipal intertidal zone or to restore the shellfish population in the depleted areas.

It seems to me that these are just plain good measures to have set forth for local ordinances to comply with. Many of these ordinances already to comply with them. But a number of ordinances do not and that is where we have some problems.

This version would provide that a shellfish ordinance based on conservation would give the towns several areas of discretion and I would like to read them.

"Within any area in the intertidal zone in the municipality, the ordinance may regulate or prohibit the taking of shellfish may fix the times shellfish may be taken, may limit the size of shellfish, may fix the qualifications for a license, including municipal residency, and may fix license fees."

To mend this latitude there for local decision as to how they want to carry on their program.

There is a provision included in this proposal that is very similar to the recreational digging provision in the previous Bill that we indefinitely postponed and that is that, it provides that a municipality cannot exclude non-residence from digging in a recreational manner, at least up to one peck a day, unless they eliminate anyone from digging recreationally.

It does further provide as it did in the other one, that if a municipality shows that it is necessary to prevent undue depletion or damage to the shellfish stocks during periods of potentially high recreational digging. If they can prove that it is necessary they can then restrict non-residence from digging in that municipality for a period of not in excess of three months. That is a similar provision in the previous Bill, but it does give non-residence the opportunity to dig clams for their families and themselves which is not a provision made available or assured to be available at the present time.

The Bill requires that fees shall be reasonable. I think that is a perfectly proper provision income cases, there are question as to whether fees are reasonable. You can make it available to non-residence to dig, but you can provide a fee so high that they cannot comply with it or certainly cuts down their desire to. Fees shall be reasonable and shall reflect the actual costs of the program. Provide that a Commissioner of Marine Resources may approve a shellfish conservation program if he finds that it complies with the restrictions, and that they are valid appropriate and reasonable conservation methods.

Something in here that is not in the present statute stipulates that the Commissioner of Marine Resources shall provide technical assistance to municipalities in the development and implementation of their programs and ordinances. Not that the Department is not doing that now, but there is no requirement that they do so. There are needs that the towns will have and feel that it is only right that it should be stipulated that the commissioner shall assist these towns. As far as enforcement of the ordinances as it states now, the local municipalities are required to enforce their own ordinances. It is their responsibility. It further stipulates here however, that the Commissioner may enforce their ordinances and assist in the municipalities in their enforcement programs.

This Amendment again makes a major thrust that is not within the present law, and that is emphasis that the programs shall be based on conservation purposes and needs. The Amendment also provides that towns that get together for joint programs, they may work together two or three or four towns to get together as a group to adopt ordinances and statutes, and I think that this should be encouraged.

There is an appropriation on this Bill of \$48,900.00 to get the Department the ability to have three more biologists. If we are going to ask the Department of Marine Resources to effectively assist towns in the needs that are nec-

essary to approach the handling of clams and the conservation point of view, they need to have available biologist that know the flats, and know how to help in the assessment of the problems. This does take money, and it is one of the reasons why the Department is unable to help very much now. There is an appropriation on here to enable the Department to get the necessary personnel to assist the towns.

It is interesting that we see those who are opposed to this Bill that I wish to offer because they say it does not do anything from the present law and yet we see those who are opposed to the one we offered previously say that it did so much, they claim that this present Amendment I wish to offer is nothing more the restatement of the one we indefinitely postponed. This version is considerably more mild, allows for considerably more local discretion and local control. I think we would be responsible in addressing this Bill possibly from a conservation point of view. And I would urge that you enable me to offer this Amendment for consideration.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Lovell.

Mr. LOVELL: Mr. President, I would like to ask a question of the good Senator from Sagadahoc, and that is I like clams very much and I would like to see them conserved. Now how do clams reproduce in a year? Or if we have a three months period for the clams to reproduce, how many one inch clams can a one inch clams reproduce and how long does it take a one inch clam to grow to a two inch clam?

The PRESIDENT: The Senator from York, Senator Lovell, has posed a question through the Chair.

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Members of the Senate: I wish I could really give a scientific answer. I am sorry that I cannot. There is no question that the bigger the clam, I guess the better reproductive powers he would have or she would have or whatever it is.

The Committee on Marine Resources is intending to bring before this Body in another Bill it has before it, the question of a state wide two inch clam size as minimum size. That State did have such a law in effect until a few years back. It was appealed, and since then, I guess it can be clearly brought out that the size of the clams that are being dug, that are available for us to buy are considerably smaller. This is an issue that has fairly wide support. It also has opposition, but it is one that will be before us. It is not the sole answer to conservation. You cannot just by setting a minimum size expect the whole problems in the towns concerning clams will solve themselves. Basically this is saying that there should be a conservation commission attending to these needs in the various communities which are different from one community to the next and that they can manage the flats. They can see that they are reseeded, they are developed and so on. There is a need in my view for this as well as for the consideration of the two inch minimum clam size which will be before us.

The PRESIDENT: A Roll Call has been ordered.

Is the Senate ready for the question?

The pending question before the Senate is the Motion by the Senator from Sagadahoc, Senator Chapman that the Senate recede from its former action whereby it indefinitely postponed this Bill.

A vote of yes will be in favor of the Motion to recede.

A vote of nay will be opposed.
The Doorkeepers will secure the Chamber.
The Secretary will call the Roll.

ROLL CALL

YEAS — Chapman, Collins, D.; Conley, Cummings, Curtis, Hewes, Merrill, Morrell, O'Leary, Speers.

NAYS — Carpenter, Collins, S.; Greeley,

Huber, Katz, Levine, Lovell, Mangan, Martin, McNally, Pierce, Pray, Redmond, Snowe, Trozky, Usher, Wyman.

ABSENT — Danton, Farley, Hichens, Jackson, Minkowsky.

10 Senators having voted in the affirmative and 17 Senators in the negative, with 4 Senators being absent, the Motion to recede does not prevail.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I now move that the Senate Recede and Concur.

The PRESIDENT: The Chair would advise the Senator that his Motion is out of order and the only Motion at this point is the Motion to Insist and Ask for a Committee of Conference or to Adhere. We have already defeated the Motion to recede.

The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, I move to adhere.

The PRESIDENT: The Senator from Washington, Senator Wyman, now moves that the Senate adhere.

The Chair will order a Division.

Will all those Senators in favor of the motion to adhere please rise in their places to be counted.

17 Senators having voted in the affirmative, and 10 Senators in the negative, the Motion to adhere does prevail.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President, having voted on the prevailing side, I move reconsideration and trust everybody will vote against the Motion.

The PRESIDENT: The Senator from Washington, Senator Wyman, now moves that the Senate reconsider its action whereby it voted to adhere.

Will all those in favor of reconsideration please say yes.

Will all those opposed please say no.

A viva voce vote being had, the Motion to reconsider does not prevail.

Mr. Collins of Knox was granted unanimous consent to address the Senate on the record.

Mr. COLLINS: Mr. President, earlier in the Session, the Legislative Leadership created an informal special committee on Indian Land Claims. This Committee included Representative John L. Martin, Representative James E. Tierney, Representative William Garsoe, Senator Gerald Conley, Senator Richard Morrell and myself.

The Legislative Liaison Committee created by an agreement of the Legislative Council has just spent the past two days being briefed by members of the Presidential Task Force on the proposed Indian Land Claims settlement, an issue of great complexity and immeasurable implications for the State of Maine.

The Governor, the Legislature and the Attorney General have not been a party to or involved in the process of arriving at the proposal we have before us and we feel that as responsible elected officials it is incumbent upon us to study the proposal and its ramifications before taking a position. The next 60 days are a critical period of decision making in the history of this State and the magnitude of the problem leaves no room for errors of judgment created in haste.

For the sake of the people of Maine whatever direction is eventually pursued must be based upon an exhaustive investigation into the merits of the case. We simply cannot afford to be wrong. The people of Maine must be aware of the potential liability should the courts go against us.

We need the next few weeks for calm and reasonable deliberation. We need a cooperative atmosphere in which to examine all the possibilities which range from outright acceptance

to outright rejection but might also include the possibility of reaching alternatives somewhere between these two extremes.

From our perspective this is the only reasonable approach and the people of Maine expect no less from their duly elected officials. The Governor, the Legislature and the Attorney General intend to set any differences aside to concentrate upon finding the best possible solution to this problem for the State and its people. We are sure that the people of Maine will exhibit the calm, patience and fortitude that they have always shown in times of stress. For their elected leadership to do any less would invite history to judge us harshly.

The President laid before the Senate:

Bill, "An Act Relating to the Application of the State Valuation to State and Town Cost-Sharing Activities Including Highway, Bridges and Winter Maintenance." (S. P. 657) (L. D. 2034) Emergency

Tabled — February 9, 1978 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Greeley.

Mr. GREELEY: Mr. President and Members of the Senate: To the increase in evaluations on many of the towns and duties in the State of Maine, I sponsored this Legislation to protect the small towns on the reimbursement. I now find that these towns are protected not only this winter but the winter for the 1978-79. So therefore, I see no need for the Bill and move that the Bill be indefinitely postponed.

On Motion of Mr. Greeley of Waldo, this Bill and all its accompanying papers indefinitely postponed.

Sent down for concurrence

Mr. Speers of Kennebec, was granted unanimous consent to address the Senate on the record.

Mr. SPEERS: Mr. President and Members of the Senate: I would like to point out that this Sunday is the anniversary of the birth of the gentleman whose portrait graces these Halls and I think that in the times that we meet in this Chamber and deal with the very grave problems that we do face on a day to day basis in making our decisions, it may very well help us in making those decisions to recognize and to remember the extreme cravity of the problems that Mr. Lincoln faced a little over a hundred years ago. And the gravity of those problems were expressed very eloquently on December 1, 1862, when Mr. Lincoln presented in his second annual message to the Congress of the United States when he stated,

"Fellow citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down in honor or dishonor to the last generation. We say we are for the Union. The world will not forget that we say this. We know how to save the Union. The world knows we do know how to save it. We, even we here, hold the power and bear the responsibility. In giving freedom to the slave, we assure freedom to the free — honorable alike in what we give and what we preserve. We shall nobly save or meanly lose the last, best hope of earth. Other means may succeed; this could not fail. The way is plain, peaceful, generous, just — a way which if followed the world will forever applaud and God must forever bless."

Mr. President and Members of the Senate: We owe a great debt to the gentleman whose anniversary we will honor this weekend. Thank you.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland,

Adjourned until 11:00 in the morning, Monday, February 13, 1978.