

# 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

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**Senate Confirmation Session**

June 14, 1978

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September 6, 1978 — September 15, 1978

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APPENDIX

## SENATE

February 16, 1978

Senate called to Order by the President.

Prayer by Father George Adams, St. Mary's Church, Biddeford.

Father ADAMS: In the silence of this assembly we pause to recognize and to welcome among us the presence of the unseen God.

God of all people and author of peace and unity, release among us the power of our common oneness and the power of your transforming spirit. Increase within us the awareness in you, we work, we live, move and have our being. Enlighten our minds to the conviction that we are to work together to reveal your kingdom of justice and equality among all your beloved people. God our Father bring success to the work of our hands. Amen.

Reading of the Journal of yesterday.

The PRESIDENT: The Chair notes the presence in the rear of the Chamber of a very distinguished Representative of this State in Washington, former Governor, candidate for Vice-President of the United States, presently the Senior Senator from the State of Maine, the Honorable Edmund S. Muskie.

I would ask the Sergeant-at-Arms to escort the Senator to the Rostrum.

(Applause)

The PRESIDENT: The Chair would ask the Senator to address the Senate with any words he may care to give us.

Mr. MUSKIE: Thank you very much Joe. Members of the Senate. I notice a few faces in this Body that I find familiar from the old days when I was in the other Body. And it is a pleasure to be back. Joe met me in the hall after I left the House and suggested that it might be useful for me to repeat at least some of what I had said in there in here. I note that several of you at least were there, so I am not sure that I am doing you a particular service to repeat it; but at Joe's invitation I would be glad to outline more briefly and maybe emphasize a couple of points I made in the House that you might find worth considering.

Number one, I want to repeat this; that I am not here to perform an act of salesmanship. I am not trying here to sell a particular proposal. At some future time I might. But I think that it is terribly important in these few days following the presentation of the White House Work Group Report to understand what that report is. The options that it presents to the stakes are involved. I am just concerned that too many people in Maine have taken a rather casual view of this problem since it was precipitated by the filing of suit in 1972 by the Indian Tribes. A suit that was finally decided by Judge Gianoux whom you all know by reputation, in favor of the Tribes. A decision that was subsequently affirmed by the U.S. Circuit Court of Appeals in December of 1975. Now that decision was not appealed to the Supreme Court of the United States. But that decision held was that the Non-Intercourse Act of 1790 does apply to Maine and the other original States. That it does impose upon the Federal Government the responsibilities of a trustee for the Indian Tribes to represent them in pressing their claims and that the Federal Government in addition has the responsibility to deal with the State Tribes that they have been called heretofore, the same way that the Federal Government has performed for the Western Tribes for the last 200 years. Now whether or not the Non-Intercourse Act being applicable, it was in fact violated by the treaties entered into between Massachusetts and the Tribes in 1794 and subsequently, is a question to be decided by further litigation or resolved by a settlement of some kind.

The Justice Department has been under a constant order from the Circuit Court to file its

intentions with respect to the actions it proposes to take in behalf of the Indian Tribes. And it was under such an order as of January 30, I think it was, a year ago as President Carter took office. There was wide spread concern that suit would begin at that point subjecting all 12½ million acres which the Tribes claim to a cloud which would generate economic instability in the area; jeopardize investment in the area; jeopardize home mortgages in the area and so on.

In the response to that concern about a possible crisis of that nature, the new President even before he took office, undertook to accept the responsibility of taking some action as yet undefined to try to avoid that result. And the Court continued the case for sufficient time for the President to get his ducks lined up and ultimately The President appointed a special representative in the person of Justice Gunther, who had recently retired from the Georgia Supreme Court to develop recommendations, for him. The Court gave the parties sufficient time for Judge Gunther to do that. I think he continued the case for six months. The Judge got this report to the President, was submitted last June, it was in effect rejected by all parties. Nobody supported it. Without that kind of support the President was not about to adopt it as his recommendations. The congressional delegation was not about to adopt it as their recommendations. And the situation sort of drifted into a period of inaction.

Now what the White House Group has been undertaking to do and The President appointed it in June and July in another effort to resolve this matter in some way short of litigation. The purpose of the White House Group was to try to nail down the claim that the Tribes thought would be a reasonable settlement. The State having indicated that it was not interested in a settlement or in negotiations. The Attorney General believes he has an impregnable case, I do not know that he has used that word; but he says in his judgment the Tribes case has no merit and it ought to be decided in the Courts. Well the President felt he had an obligation to try to do more than just drive the parties back to the Court which all seemed to avoid in January before he took office.

And so the report of the White House Group represents proposals for consideration by the State, by the large landowners, and by all of us. They can be accepted, they can be rejected, we can offer counter proposals; but they are an attempt to trigger a settlement outside of the courtroom.

Now the first one is not difficult, or is not as difficult by any means as the other two. The first one is this; and that is that the President, if all else fails, the President would recommend to Congress the payment of \$25 million in order to clear the title of 9.2 million acres in the affected area which includes the small home owners and small businessmen and municipalities, counties and holders of private land up to 50 thousand acres. That last would include about 700,000 acres of the principal landowners paper companies and so on of which there are 14. The state would not have to pay a nickle towards that. Landowners would not have to pay a nickle or contribute a square inch of land to that part of the proposal. The Federal Government would pay \$25 million. That is a lot of money here, not so much in Washington. So that is the first proposal and that is relatively easy to make a judgement about. And the White House is committed to that and the Tribes are committed to that.

Now with respect to the remainder, some 3 million acres of land. Between 3 and 3½ million. About 350,000 in the State Lands, State Public Lands in the affected area. The remainder are owned by 14 major landholders. With respect to the State, the offer of the Tribes relieves the State of any suggestion that public lands be contributed to the settlement. But rather that the State continue its present level

of payments to the Tribes for services and that level is 1.7 million today. In the next 15 years at the end of which time those payments would end. If it had not been for the case, those payments would have continued indefinitely, because the Tribes would still have been considered State Tribes. And that is the extent of the Tribes proposal involving the State. It totals \$25 million, roughly. The most controversial part of the proposal up to now has been the third. That is the proposal to the private landowners that they contribute ten percent of their holdings amounting to 300,000 acres to a settlement upon receipt of a million and a half dollars from the Federal Government. In addition, the Tribes asked for options for another 200,000 acres of land for which they would pay, out of the payments made available to them under the other agreements, the fair market value whatever that was at the time of the transfer. Now that is a proposal to the landowners. The representative of the White House Task Group makes it clear that those offers of settlement are transmitted by the task force without endorsement. The Body of the agreement makes it clear that the task force is acting as an intermediary in presenting these proposals to the State and to the landowners.

It is for the State to decide whether to accept the Tribes proposal, to reject it, or offer something else. It is for the landowners to decide whether to accept, reject or counteroffer. That process has to end within sixty days if both the Tribes and the White House are to be held to their agreement. And if no settlement is made either on the terms proposed or other terms to which the parties could agree; then the President will simply submit the first proposal of 25 million request to the Congress, clearing the 9.2 million acres of land and leave the remainder to be settled in the courts where the matter lies. Bear in mind the Justice Department under orders of the court has been preparing to bring suit against the landowners large and small, public and private, and it is under orders to do so and when it is clear that attempts at settlement are not going to work that process will resume, parties will be served with appropriate papers, and they will be in court. Now at that point everyone must consider two questions. The very questions that lead to the Presidents involvement in the first place. The very questions that prompted the Governor to come down to Washington for the last two days of the Session in the fall of '76 to ask for emergency Legislative Action to avoid the consequences of these two questions. They have been cooled in the mean time by the President's action. But if we go back to the courts the question is whether they would arise again.

Third question. Is there a chance that the State and the landowners could lose the case? Well it has been a long time since I have practiced law. But my recollection is still sharp enough for me to recall that I never had a case that I believed was 100 percent winable. I never had a case that I that I would not have been willing to compromise on some terms. Depending upon what I thought were the risks of losing. Remember this; that the two courts have already rendered decisions. Unfavorable to the State. Both decisions being a complete surprise, to all of us. The Attorney General, of course, believes and his belief is founded on long hard analysis of history the merits of this case. Believes he has a strong if not impregnable case. But there is still the risk, in my judgment, of losing. How big that is and how much that risk is worth avoiding is the first question, the second question is the economic impact, there is no doubt in my mind that the litigation if it comes to that, it will be long drawn out. If you would like to know what that can do to the economy of any area, you just have to visit the town of Mashper, Massachusetts where progress has been brought to a screeching halt for several years, because of the cloud on the title, by the existence of such a

claim and the tendency of such litigation creates. And once the President is no longer involved because the parties have said that they rather go to court, the question is: Will the threat of economic instability arise again? I do not have any assurance that I can give you on that score. And I do not know of any quick fix that Congress could provide to avoid it. If the parties themselves decide that the courts are the place that they want to go. And believe me, the Courts are a perfectly appropriate place to settle the matter. If that is what the parties decide. I would not want my position misunderstood in that connection whatsoever. Perfectly appropriate. Whether it is the most appropriate way to settle the matter involves the two questions which I have raised.

I think it is terribly important now and as a matter of fact I think that we should have taken this more open more public way of discussing the issues long ago. I think that it is very appropriate that it is now in the public arena and I am delighted that the Legislature is involving itself in the matter. Because I think we need as a State, one million people to make some important decisions, and they may be the most important decisions the State has had to make in the 25 years that I have been in Public Life.

So I am going to do my best to insure that my judgment is right to my perception of the problem. I am sure that you will also. We can talk about specific proposals, counter proposals, and ultimate settlement in this process. All I am trying to do now is to lay out the options make it clear what this White House Task Force paper is, because that has been widely misunderstood, in my judgment. I have reason to understand what was meant by it but it is some proposals and there they are. And on both sides that are some pretty good bargains, the large landowners have demonstrated over the history of this State that they know how to strike a good bargain in their interest. The leading political figures of this State have demonstrated that they know how to strike a pretty good bargain as they perceive it. And the people of this State have pretty good common sense about such things.

So there it is. I hope that we produce the right solution. I would like to see this problem settled while I am still in public life so that people cannot say that I ran away from it.

In any case, thank you very much for this chance to talk about it and if you want to talk to me again about it I will come back to Augusta. I find this a livelier place right now than Washington. Thank you all very much. Thank you Joe for inviting me.

(Applause)

(Off Record Remarks)

#### Papers from the House Non-Concurrent Matter

Bill, "An Act to Revise the Statute on Operating a Motor Vehicle While under the Influence of Intoxicating Liquor or Drugs." (S. P. 696) (L. D. 2138)

In the Senate, February 14, 1978, Passed to be Engrossed.

Comes from the House, Passed to be Engrossed as amended by House Amendment "A" (H-1039), in non-concurrence.

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

Mr. LEVINE: I move that the Senate Recede and Concur.

The PRESIDENT: The Senator from Kennebec, Senator Levine, now moves that the Senate Recede and Concur with the House.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would ask the Senate to vote against this motion. This Bill is the result of an attempt to reconcile conflicting provisions in our laws relating to driving under the influence of intoxicating liquor or

drugs.

Last spring we had three majors in this area before the legislature and one of them came from the Committee on Transportation and two of them from the Committee on Judiciary. And when everything was over and we had adjourned we found that there were a couple of conflicts between the Bills that were passed. So I introduced a Bill to correct these conflicts. When we had heard the Bill and discussed it in Committee we decided that it would really be helpful if we rewrote the entire statute to reconcile these points and make them appear in a more orderly way, and we did this. We gave our draft to those people in the Secretary of State's office that have the responsibility for handling drivers licenses and the hearings on suspension and the like and we gave copies of our draft to the State Police and others in enforcement. We put out a unanimous report supporting our Bill.

The thing that has happened in discussion in other parts of the building is that the question has been raised about what happens on the third, fourth or subsequent offenses of driving under the influence. What this legislature established last year that was new was what we call a short sentence for second offense. The Judge is compelled to order the offender to spend one or two days in jail unless the Judge writes a statement of some very urgent reasons why that sentence should be suspended. The minimum cash fine, which is in addition to the jail provision, was boosted to \$250.00.

Now the other part of the statute that we did not address last time has been more carefully addressed in the Committee's version of the Bill. The Committee as a whole has been opposed to the concept of mandatory sentences. Every case has particular aspects and it is our judgment that the Legislature cannot very well sit here and sentence criminals not knowing all the facts. We have judges to apply judgment, and if we tie their hands and say that they cannot suspend the sentence in any way, we are really doing a disservice to our system of criminal justice.

So this departure from no mandatory sentence to what we call a presumptive mandatory sentence was a sort of compromise departure trying to get a message across of our concern over the seriousness of these offenses, particularly when they happen more than once. Well for subsequent offenses, we put in this new draft, a provision that when the suspension that automatically occurs takes place that the operator cannot get his license back, ever, unless he undertakes a treatment program. Now it is important to distinguish between the education program now administered through the Department Human Services which is a ten hour film and reading and lecture program designed to acquaint people with what alcohol does to the system and so on, and a treatment program. Now the treatment program is likely to be a six month program. The State of Maine through the Department of Human Services sponsors certain programs. We have talked about them before. It was our view that when it gets to be a third or fourth, or subsequent offense of driving under the influence of liquor that the court surely recognizes the seriousness of it and if a jail sentence is appropriate will apply it. If the offender does not take a treatment program that is approved by the State then he never does get back on the road again, because he cannot get his license back. There was a question mark as to whether we really meant that when we passed last year's action, but we have made it clear in the Committee draft that that is what we mean.

So that it is our view that it is more important that the court have some discretion and judgment to use the jail sentence if it is appropriate or if it is not appropriate to use, for example; a jail sentence with a suspension on the condition that, the offender take a particular course of treatment. We think that this course

of treatment route with discretion in the court, it is a better way to go.

Now the particular amendment that comes before us and is placed before us by virtue of this recede and concur motion is one that says that on third offense or more, you simply increase the length of the short sentence. You move it up to 72 hours; for example.

In our judgement this progression of mandatory sentences is not the answer. We think that our judges are intelligent enough and concerned enough that they have exhibited in the past, sufficient judgement that when they get a third offense or more person before them, that they are going to do something pretty drastic about it. We should not be trying to tell them exactly what to do. Because if we get into that posture that the Legislature is going to sit here and tell the court how to sentence criminals, we are likely to find that they will use the short sentence of 72 hours, well that is the end of it. That is all the Legislature is asking us to do, and we think that the full input of the program that we have laid out so carefully here ought to be what gets across to the judiciary for the enforcement of this problem.

So I would urge that the Senate vote against the motion to recede and concur. If that does happen I would then move that the amendment that has been placed on, well I guess the procedural motion would be that the Senate adhere. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, as a member of the Judiciary Committee I also worked on this piece of Legislation and I share most of the views that were just expressed by the Chairman of our Committee. However, one thing that concerns me that has come up just recently that I did not realize had been a problem and that is that this is fairly new legislation. This concept of shock treatment, has been in existence for six months or so.

What has happened is that we have now established the length of time for the first offense to be six years and if you have an offense as I mentioned on the floor of the Senate a few days ago. Of a greater length of time than six years, then it is wiped out and it seems that there is a difficulty that is developed in terms of the person who has already had two offenses within the past six years, but not prior to the effective date of this shock treatment law, is as I understand it, and in some courts able to avoid the concept of the Shock Treatment Law, that the Legislature intended last year by being sentenced to a fine with no imprisonment at all although he has three sentences for violation of an OUI. I guess that because of the concern on my part and because I am not sure of the significance of a rather lengthy provisions that are under Part "C" much longer than the original Bill. Under part "C" of the amendment.

I would ask if somebody would be willing to table this matter one legislative day so that I could have an opportunity to look at this House Amendment in a little greater detail.

On Motion of Mr. Carpenter of Aroostook Tabled for One Legislative Day, pending Motion of the Senator from Kennebec, Senator Levine, that the Senate Recede and Concur.

#### Joint Order

An Expression of Legislative Sentiment recognizing that: the Legislature has learned of the outstanding achievement and exceptional accomplishment of Robert J. Coakley of Augusta who retires from the Department of Environmental Protection on February 28, 1978, after forty-three years of outstanding state service, (H. P. 2109)

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

Committee Reports  
House  
Leave to Withdraw

The Committee on Education on, Bill, "An Act to Provide Funding to Public Schools for Educating Residents of State Operated Institutions." (H. P. 1966) (L. D. 2047)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted, in concurrence.

#### Ought to Pass — As Amended

The Committee on Judiciary on, Bill, "An Act to Simplify the Procedure for Submission of Certain Small Claims Against the State." (H. P. 1931) (L. D. 2002)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1033)

The Ought to Pass, as amended, Report of the Committee Read and Accepted. The Bill Read Once. Committee Amendment "A" Read.

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

Mr. HEWES: Mr. President and Members of the Senate: I would just ask as to this Committee Amendment that we are now discussing, does the claim have to be submitted to the Claims Board or may the agency itself, the State Agency itself, handle the claim without the matter being referred to the Claims Board?

The PRESIDENT: The Senator from Cumberland, Senator Hewes, has posed a question through the Chair.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, in answer to the question. This act provides for claims up to \$2,000 that are outside the Tort Claims Act. The agency itself may pass upon the claim. Now if the agency does not pass upon the claim within 90 days or if it declines to hear the matter and there are a few other circumstances, then the matter may be brought before the Small Claims Board. This particular statute is a revision of the one that we passed a couple of years ago in which we were trying to avoid having the multitude of Bills come to the Legislature concerning damage by animals, damage to homes by foster children when the State of Maine is acting as the legal parents of the children and the child does some damage to the home in which he is placed. Actions where the inmates of institutions do some damage to for example, workman. They steal his tools or ruin his tools or something like that.

So it is our view that we examined all the claims that were presented to the Small Claims Board in the year 1977. That Board approved a pay out of a little over \$3,000.00. There were close to a hundred claims as I recall, and it seemed to us that most of the claims were under \$300.00 when you counted the people who had to come, the lawyers, and the whole thing. So we think that this is a much more economical and sensible way to handle a small claim. Committee Amendment "A" Adopted.

The Bill, as amended, Tomorrow Assigned for Second Reading.

The Committee on Local and County Government on, Bill, "An Act to Revise the Salaries of Certain County Officers." (H. P. 1942) (L. D. 2108)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1030).

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

The Committee on Local and County Government on, RESOLVE, Authorizing Cumberland County to Pay Deficits from Unappropriated Surplus. (Emergency) (H. P. 1947) (L. D. 2026)

Reports that the same Ought to Pass as amended by Committee Amendment "A" (H-1029).

Comes from the House, the Resolve Passed

to be Engrossed as amended by Committee Amendment "A".

Which Reports were Read and Accepted, in concurrence, and the Bills and Resolve Read Once. Committee Amendments: "A" were Read and Adopted, in concurrence, and the Bills and Resolve, as amended, Tomorrow Assigned for Second Reading.

#### (Off Record Remarks)

#### Senate

##### Leave to Withdraw

Mrs. Cummings for the Committee on Public Utilities on, Bill, "An Act Relating to the Responsibilities of the Chairman of the Public Utilities Commission." (S. P. 640) (L. D. 2007)

Reported that the same be granted Leave to Withdraw.

Which Report was Read and Accepted. Sent down for concurrence.

##### Divided Report

The Majority of the Committee on Education on, Bill, "An Act to Provide a \$250,000 Grant to the New England College of Osteopathic Medicine." (S. P. 667) (L. D. 2055)

Reported that the same Ought to Pass.

Signed:

Senators:

KATZ of Kennebec  
PIERCE of Kennebec  
USHER of Cumberland

Representatives:

BEAULIEU of Portland  
FENLASON of Danforth  
LEWIS of Auburn  
PLOURDE of Fort Kent  
BAGLEY of Winthrop  
CONNOLLY of Portland  
MITCHELL of Vassalboro  
BIRT of E. Millinocket

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

Signed:

Representatives:

WYMAN of Pittsfield  
LYNCH of Livermore Falls

Which Reports were read.

The Majority Ought to Pass Report Accepted. The Bill Read Once. Tomorrow Assigned for Second Reading.

##### Second Readers

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

##### House — As Amended

Bill, "An Act to Appropriate Funds for the York County Community College. (H. P. 1978) (L. D. 2073)

Bill, "An Act to Regulate Hazardous Materials and Wastes and to Provide for a Uniform Response System to Hazardous Materials Emergencies. (H. P. 1958) (L. D. 2040)

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

##### Senate — As Amended

Bill, "An Act Concerning Pilot Projects for More Effective and Efficient Delivery of Services to Preschool Handicapped Children. (Emergency) (S. P. 684) (L. D. 2106)

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

Sent down for concurrence.

##### Enactors

The Committee on Engrossed Bills reported the following:

An Act to Clarify the Law Concerning the Posting of Bonds by Electric Companies with the Department of Environmental Protection for Certain Licenses or Permits. (H. P. 1925) (L. D. 1986)

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: I move that the Senate sus-

pend its rules for the purpose of reconsideration.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, now moves that the Senate suspend its rules in order to reconsider this Bill. Is it the pleasure of the Senate? It is a vote.

Mr. TROTZKY: Mr. President, I move that the Senate reconsider its action whereby L. D. 1986 was Passed to be Engrossed.

The PRESIDENT: The Senator of Penobscot, Senator Trotzky, now moves that the Senate reconsider its action whereby L. D. 1986 was Passed to be Engrossed. Is it the pleasure of the Senate? It is a vote.

Mr. TROTZKY: Mr. President, I move that the Senate reconsider the adoption of Committee Amendment "A" as amended by Senate Amendment "A".

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, now moves that the Senate reconsider its actions whereby it adopted Committee Amendment "A" as amended. Is it the pleasure of the Senate? It is a vote.

Mr. TROTZKY: Mr. President, I further move that the Senate reconsider its adoption of Senate Amendment "A" to Committee Amendment "A".

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

Mr. TROTZKY: Mr. President, I move that the Senate indefinitely postpone Senate Amendment "A" to Committee Amendment "A".

The PRESIDENT: The Senator from Penobscot Senator Trotzky now moves Indefinite Postponement of Senate Amendment "A" to Committee Amendment "A". Is it the pleasure of the Senate?

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I wonder if the Senator from Penobscot might explain the report of Senate Amendment "A" to Committee Amendment "A" and the reasons he desires to indefinitely postpone it.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question to the Senator from Penobscot, Senator Trotzky. He may answer if he so desires.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, this amendment that I am going to introduce, Senate Amendment "B", is not a substitutive change. It just switches the order of sentences around here just to make sure that any public utility if it does not post a bond will have to reimburse the Department for its work. If it does not receive a certificate of public convenience and a necessity for the PUC. It is no substitutive change in what I am doing, it is just switching the language around here.

The PRESIDENT: Is it now the pleasure of the Senate that Senate Amendment "A" be indefinitely postponed? It is a vote.

The PRESIDENT: The Chair recognizes the same Senator.

Mr. TROTZKY: Mr. President, I present Senate Amendment "B" to Committee Amendment "A" and move its adoption.

The PRESIDENT: The Senator from Penobscot Senator Trotzky now offers Senate Amendment "B" to Committee Amendment "A" and moves its adoption.

Senate Amendment "B" (S-466) Read and Adopted. Committee Amendment "A", as amended, Adopted. This Bill, as amended Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

##### Emergency

An Act to Exempt the Industrial Accident

Commission from the Administrative Procedure Act. (S. P. 644) (L. D. 2011)

#### Emergency

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

These being emergency measures and having received the affirmative votes of 27 members of the Senate, were Passed to be Enacted, and having been signed by the President, were by the Secretary presented to the Governor for his approval.

#### Orders of the Day

The President laid before the Senate:

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

Tabled — February 14, 1978 by Senator Speers of Kennebec

Pending — Consideration

On Motion of Mr. Speers of Kennebec, Retabled for One Legislative Day.

The President laid before the Senate:

Bill, "An Act to Provide for Alternative Election Procedures for School Budgets on a Local Basis." (H. P. 1909) (L. D. 1970)

Tabled — February 15, 1978 by Senator Katz of Kennebec

Pending — Consideration

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

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

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate Adhere.

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

Mr. O'LEARY: Mr. President, I would ask for a Roll Call on that Motion.

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 has been ordered.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I would hate to see this Motion just to be voted on without any discussion relative to the Bill itself.

I have some concern about the number of S.A.D. Districts involved in the Bill and I much prefer to see it reduced to three rather than established to five, and I think that this Bill should be kept alive and that we should not become firm in our position. I think again it is a question in a lot of minds of people of the State throughout these S.A.D.'s as to whether or not they have a voice within the local control of the school budget.

All this does is establish a pilot project, and it would seem to me that at least reducing it from five S.A.D.'s to three S.A.D.'s and have a report come back to the next Legislature might make some sense. If the project turns out to be dismal, then it seems to me that there are some citizens within this state who would like to see some type of a program like this to try to get more input from local citizens. So, I would ask the Senate not to vote to Adhere this morning.

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

Mr. O'LEARY: Mr. President, would a Motion to Insist and Ask a Committee of Conference be in order:

The PRESIDENT: The Chair would answer in the affirmative.

Mr. O'LEARY: Mr. President, I would so move.

The PRESIDENT: The Senator from Oxford,

Senator O'Leary, now moves that the Senate Insist and Ask for a Committee of Conference with the House.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested on the Motion to Insist and Ask for a Committee of Conference.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: 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 pending question before the Senate is the Motion by the Senator from Oxford, Senator O'Leary, that the Senate Insist and Ask for a Committee of Conference with the House.

A vote of yes will be in favor of the Motion. A vote of no will be opposed.

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

#### ROLL CALL

YEA — Carpenter, Chapman, Conley, Cummings, Danton, Farley, Greeley, Hichens, Jackson, Levine, Lovell, Mangan, Martin, McNally, Merrill, Minkowsky, Morrell, O'Leary, Pray, Redmond, Wyman.

NAY — Collins, D.; Collins, S.; Curtis, Hewes, Huber, Katz, Pierce, Snowe, Speers, Trotzky, Usher.

ABSENT — None.

21 Senators having voted in the affirmative, and 11 Senators in the negative, the Motion to Insist and Ask for a Committee of Conference with the House does prevail.

The President laid before the Senate:

Bill, "An Act Clarifying the Statutes Relating to Municipalities." (Emergency) (H. P. 1921) (L. D. 1982)

Tabled — February 15, 1978 by Senator Conley of Cumberland

Pending — Motion of Senator Hichens of York to Indefinitely Postpone House Amendment "A" (H-1026) to Committee Amendment "A" (H-1019)

On Motion of Mr. Speers of Kennebec, Retabled for One Legislative Day.

Out of order and under suspension of the rules, the Senate voted to consider the following:

#### Communication

Office of the Governor

Honorable Joseph Sewall, President of the Senate

and

Honorable John Martin, Speaker of the House

Dear Joe and John:

I am today nominating Paul D. Emery of Auburn and Edward H. Keith of Bangor to serve as members of the Maine Relations Board. I am also nominating Mr. Keith to serve as Chairman of the Board.

Mr. Emery will be replacing Robert Curley who recently resigned from the Board and Mr. Keith will be replacing Walter Corey whose term on the Board recently expired.

Pursuant to M.R.S.A. Title 26, Section 968 these nominations will require confirmation by the Joint Standing Committee on Labor and confirmation by the Senate.

Thank you for your assistance.

Sincerely,

Signed:

JAMES B. LONGLEY  
Governor  
(S. P. 699)

Out of order and under suspension of the

rules, the Senate voted to consider the following:

#### Paper from the House

##### House Paper

Bill, "An Act to Except Certain Procedures from the Maine Administrative Procedure Act." (Emergency) (H. P. 2114)

Comes from the House, referred to the Committee on State Government and Ordered Printed.

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

Mr. KATZ: Mr. President, I notice that the Bill is coming in rather late in the proceedings pertaining to the Maine Administrative Procedure Act. Just a little earlier today an item 8-2 we enacted an exception to the Administrative Procedure Act, and might I inquire perhaps from the Chairman of the State Government Committee as to whether or not we need a new vehicle at this time to accomplish whatever the purposes of this new Bill are.

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair.

The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, the State Government is addressing the exceptions in a giant Bill that has about 422 pages and inadvertently, this little gem was left out and will be incorporated. We do need this vehicle.

Which was referred to the Committee on State Government and Ordered Printed in concurrence.

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

Mr. O'LEARY: Mr. President, having voted on the prevailing side of L.D. 1970, I move that we reconsider and hope that this Body will vote against me.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, now moves that the Senate reconsider its action whereby it voted to Insist and Ask for a Committee of Conference with the House in reference to L.D. 1970.

Will all those Senators in favor of the Motion to reconsider please say yes.

All those opposed please say no.

A Viva Voce Vote being had, the Motion to reconsider does not prevail.

#### (Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Adjourned until 12:00 noon, Friday, February 17, 1978.