

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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APPENDIX

SENATE

Friday, September 8, 1978

Senate called to Order by the President.

Prayer by Rord, we are thankful today that we can trust a living savior. We thank you heavenly Father that Thou has not left us alone. We think of the words of the Lord, Jesus when he did talk to his heavenly Father and say, thank you heavenly Father, thou has not left me alone. But thou has been with me.

Now Lord we are all very practical minded and Father we just go by the things that are before us each and every day. But Lord we recognize there is a kind of help that can only come from above. We ask for these men, we ask Lord for their leadership, we ask Lord that thy presence might be with them. Father we recognize again that Thou art Sovereign, Thou a holy and a wonderful God. But Father thou art a God that does care for each one of us. And thou does know when even a sparrow does fall to the ground. Even the very hairs of head are numbered - Lord, thou does care. Thou has come, thou has been here, and Lord we thank you that thou did go all the way to Calvary in all our places. Father, we are thankful that thou can send the Holy Spirit to be our teacher and to be our Leader and out Guide. Just have your way Lord in our wonderful State and Nation, and Lord, again, we just ask now thy presence and thy guidance in all things for we ask in the Savior's precious name. Amen.

Reading of Journal of yesterday.

(Off Record Remarks)

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

Paper from the House
Joint Order

ORDERED, the Senate concurring, that when the Senate and House adjourn, they adjourn to Tuesday, September 12, 1978, at 10 o'clock in the morning. (H. P. 2347)

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

(Off Records Remarks)

On Motion of Mr. Huber of Cumberland, Recessed until three o'clock this afternoon.

Recess

After Recess

Senate called to order by the President.

On Motion of Mr. Speers of Kennebec, the Senate voted to take from the Table:

RESOLUTION, Proposing an Amendment to the Constitution to Limit the Amount of Government Spending and Taxes which may be made without Voter Approval. (S. P. 772) (L. D. 2209)

Tabled - September 7, 1978 by Senator Speers of Kennebec

Pending - Passage to be Engrossed.

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

Mr. DANTON: Mr. President, I offer the Senate Amendment "G" to L. D. 2209.

The PRESIDENT: The Senator from York, Senator Danton offers Senate Amendment "G" to L. D. 2209 and moves its adoption. The Secretary will read Senate Amendment G.

Senate Amendment G Read.

Mr. DANTON: Mr. President and Members of the Senate, as you all know, since we have come here we have been trying to get something before the Legislature to be voted on - some form of tax relief for the citizens of Maine. The President of the Senate, Senator Sewall, and myself are the co-sponsors of this amendment.

We have taken all the objections that we felt people had with the Constitutional Amendment. We have tried to come out with a piece of legislation that perhaps will be acceptable to this Body and to the other Body. I would hope that today we would approve this amendment and try to move this bill along, get it in into the other body, and see if we can't complete our work and go home.

As you watch television you see that all over the state there is nothing but tax revolutions going on. I know there is objections to this being a Constitutional Amendment, but either trying to do some of the Constitution or the way things are going, we may have a revolution.

I know that this is an election year and alot of people seem to think that this a ploy on Senator Danton's part to get reelected. Let me tell the members of this Body and the other people in this Chamber, Senator Danton has enjoyed four wonderful terms in this body - rather he is returned here or not, he has benefited by serving the people of Maine. I co-sponsored this legislation because I believe in it. I can see that the Legislature alone cannot grapple with cutting waste in Government, we have to do something to slow down the bureaucracy? Our turnover here in the Maine Legislature is too great, there are too many special interest groups and I have supported them. Democrats and Republicans, as I have said before, I have supported all groups. The time has come, we have to stop. maybe this is a good way. Maybe it isn't. I don't know, but I feel comfortable with this bill. And I would hope that today we would adopt this amendment and move it on its way.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill:

Mr. MERRILL: Is Senate Amendment "G" before the Body?

The PRESIDENT: Senate Amendment "G" is before the Body.

Mr. MERRILL: Mr. President, at this time I would like to offer Senate Amendment "A" to Senate Amendment "G" (S-625) and speak very briefly for its adoption.

The PRESIDENT: The Senator from Cumberland, Senator Merrill, now offers Senate Amendment "A" to Senate Amendment "G" and moves its adoption. The Secretary will read Senate Amendment "A" to Senate Amendment "G".

Senate Amendment "A" to Senate Amendment "G" read.

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

Mr. MERRILL: Mr. President, I would like to inform the Senate at this time that the purpose of this Amendment, the main affect of this Amendment, is to make limitation on spending a statutory limitation which would go to the people for approval and not a constitutional one.

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

Mr. CONLEY: I wish to raise a point of order. The point of order is to the germaneness of the amendment.

Mr. PRESIDENT: The Senate will be at ease.

(At Ease)

Mr. PRESIDENT: In response to the Senator from Cumberland, Senator Conley's question on the germaneness of Senate Amendment "A" to Senate Amendment "G", the Chair will rule that it is germane.

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

Mr. KATZ: Mr. President, as we now deal with this Amendment which in effect takes the constitutional proposal and turns it into statute, perhaps is might be well to review why we are here today. A citizens group has been working for some months on a proposal to limit government spending at all levels. Some time during the latter part of the summer, when it

was presumed that we would not be dealing with this issue until next January. Representative Palmer requested of the Governor that he consider calling a Special Session and the Governor subsequently did indeed in his judgment feel that a Special Session was warranted to deal with the single question of a Constitutional Amendment limiting government spending.

It's very, very hard to read the mind of a Chief Executive under any circumstances, but I doubt that the Special Session in any event would have been called to deal with a proposal for a statute, and I think it is not appropriate for this Legislature in Special Session to deal with a question of a statute. If, subsequently, a Legislature wants to further control spending by statute, I am confident that they will. But the issue is difficult enough here to deal with without confronting choices of stature, choices of tax limitation, choices of homestead exemptions and I would hope that the Senate would join with today in killing the proposal for a statute as represented by this amendment and then however you vote, let's deal with the issue at hand. Should the people of Maine have the opportunity to vote on the Constitutional Amendment - Yes or No? that deals with the limitation of government spending, and I think that is the issue. I request a Division.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate, I have been looking at this Legislative Document 2209. Item #1 we are talking about the first line - notwithstanding any other provisions of the Constitution. We are considering fiscal limitations on the entire Constitution. We are concerned about a possibility of violating homerule under Article 8 of the Constitution, by limiting the municipalities and towns. We are concerned about a ratification and a re-ratification four years hence of a Constitutional Amendment and I have never seen that happen before. We are talking about a cost of living provision in the Constitution that depends on an outside source for determination. We are talking about tree growth taxes and a reform of the State tax laws. We are talking about just like the wet and dry issue - we are talking about each town deciding whether they're going to accept Constitutional Amendment or not accept a Constitutional Amendment on their own spending. We are talking about a gamit of provisions that we are going to throw into the Constitution of the State of Maine, and with such a hodge podge and such a potential mess I think it would be easier to deal with situation as a statute during the regular session of the 109th, 10th, 11th and 12th then to box ourselves in and lock ourselves into a Constitutional Amendment to be ratified by the people and then possibly get ourselves out of in five years.

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

Mr. MERRILL: Mr. President and Members of the Senate: First of all I would like to make an explanation and an apology - or an apology and an explanation. I cannot speak with absolute certainty that this Amendment is perfect drafted and I will tell you why. I had very little time after Senate Amendment "G" was made available to us to prepare an Amendment, and I inquired of the President of the Senate who was at that time in the company of the Majority Leader as to whether or not it would be possible to offer an Amendment to the original bill and he was gracious enough to inform me that probably the Senate Amendment "G" would be offer first and the most prudent course to pursue would be to amend this amendment which I had for a very brief period of time. All of this goes to explain to you in case this debate becomes protracted, although I do not intend to make it so on the individual sections of this bill as to why I am not as versed as I would normally be and normally would want to be to stand before you members of the Senate with a pro-

posal that I was offered.

Let me say to the general issue that is raised by this Amendment, however, that I discussed this to some length when we voted some days ago now on 2209 when it first came to the Senate, and I ask not once, or twice, but three times on that occasion for an explanation of why our legislative approach having been sent to the people with the history of legislative deference to that sort of an expression of will that we had before us, and which I reminded the Senators of, why such an approach wouldn't be just a tamper proof and in fact gives us the added benefit of being able to deal with unforeseen difficulties and problems. Problems that are hard to anticipate. Especially in the hasty sort of drafting that we have seen here in the last few days and I think I can demonstrate beyond any reasonable doubt in this Senate as soon as we get to discussing this bill itself. Maybe not, but we'll leave that to a few moments from now and let the people of Maine and the Press decide as well as you Members of the Senate.

After asking that question three times there was no answer. I understood that full well because the question may not have been thought of in that context before. It was reported very briefly in the Press that I favored a Legislative approach, it was not reported in the Press, I guess out of deference to the Senate, that no answer was given to my question. However, several days now have passed and Members of the Senate who favor a constitutional approach have had an opportunity to reflect on that in solemn deliberation as I am sure each one has and the answer which has been given by the person who I feel is most eloquent, articulate and certainly the most intelligent member of this Senate, the Senator from Kennebec, Senator Katz, was to the best of his judgment his ability to read the mind of the Chief Executive. Well, that answer is not persuasive to me and I suggest that unless we redefine what the obligations of the separate branch of government are, it should not be persuasive to any member here. I think that it might be useful if any member of the Senate would really like to deal with this question that I have now raise four times to explore it at least a little bit in that regard. I will not ask for a roll call on this and delay this session if anyone wants to, I am certainly glad to have one, but I will just go along with the division motion. My purpose here isn't to delay, but think it is a serious question that I pose and I don't think that it's received the answer that it deserves.

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

Mr. HEWES: Mr. President and Members of the Senate. The other evening I had spoken twice before the Senator from Cumberland, Senator Merrill posed that question as to why not a statutory change. It was about 5:30 in the evening and we debated the issue for more than an hour, but the Constitutional change requires a 2/3's votes of each body of the Legislature whereas a statutory change could only require only a majority vote of each body of the legislature in order to change it. In other words, if a statutory - if this particular subject is to consider with a statutory change it could be change in 6 months or the next Legislature here by only a majority vote of each of the bodies of the Legislature. Whereas if a Constitutional Amendment takes place then it would vote on this subsequently. So it seems to me that in order to have a measure that has strength and will last at least another few months, at least through the beginning of the next Legislative session, that the Constitutional Amendment is the better way to go rather than the statutory amendment. I hope you will vote against the pending motion.

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

Mr. MERRILL: Mr. President and Members of the Senate. I thank the Senator from Cum-

berland, Senator Hewes for sharing with me his reasoning, however, with all due respect, I think that it omits the great deal of reasoning that I put forth here and believe very sincerely. His explanation of the mechanics of the modifying the Constitution as opposed to changing the law are indeed accurate, but I at some length, yesterday — Excuse me, some days ago — pointed out the history of this Maine Legislature's deference to items that had been enacted into law by the people. I have never been a supporter of the State Lottery for example - was not in Legislature when it was considered had I been, would have voted against it. I voted against it as a private citizen, however, I have never attempted to change that law out of deference to the fact that the majority of people put into effect. I think that there is a good place for public power so voted as a private citizen. However, I have never attempted before this Legislature to change that. Recognizing that the people have spoken. The bottle bill went into effect. When it first went into effect, I think it was very unpopular with alot of people and there was certainly a well funded, very highly motivated group was to see it change and yet, no legislator put in a bill and I think the reason for that is because the people had spoken. UPT last time. This Legislature had spoken time and time again in favor of the Uniform Tax and principles which pushed that into law and yet when the people spoke, the very man who would work the hardest in the Uniform Property Tax, the Senator from Kennebec, Senator Katz, worked to reflect that will and we passed legislation that did it. There's not any question in my mind, and I honestly doubt if there is any question in any one of your minds, that when the people speak that through the process of ratifying a law, that Legislators pay deference to that. If so then, if you accept that why do I prefer this approach, because they are going to be unforeseen technical sorts of difficulties as there were in the UPT repealer and we are going to be stuck with those and to have to deal with those and it isn't the 2/3's requirement that bothers me because if these really are just technical difficulties you certainly could get 2/3's of a vote. But it is the time problem of sending it to the people and I might add the situation that it could put the Legislature in if three or four years we are having to send out time and time again the corrections in the Constitution to deal with this problem. I just think this is the more prudent approach and once we have had experience with the Legislative — with some years and felt comfortable with it, then I would feel more comfortable with putting it in the constitution but it's that history. That history of what the Legislature has done when people have put laws into effect that I point here today. - I would be the first to admit that we if we just put this into effect and then sent it to the people that wouldn't be enough to satisfy any reasonable person that had the concerns that prompted this here. But I think if you sent it to the people it will and I have no question that this next Legislature, without knowing whose going to be in it and without knowing what party going to run, and the Legislature after that and the Legislature after that will do its best to reflect the will of the people and those unique and happy instances when it's clear.

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

Mr. CONLEY: Mr. President and Members of the Senate: The other afternoon when we first debated the Constitutional Amendment before us, I perhaps got carried away somewhat in my resentment in the manner that this amendment has been presented to us and I know that the spending tax limitation committee has worked extremely diligent on this amendment and I would not want to in any way try to insult them by saying that its a crummy amendment, although I perhaps quote one member of this body who said in earlier days

that there was no need to put all this "Crap" into the Constitution.

But with all their endeavors and all their hard work, it was just brought to our attention that there was another error found within their amendment, perhaps we needed another draft and that was dealing primarily with the inventory tax that goes back to the communities throughout the state. Because of the fact that you could make no shift of monies that we presently have on statutes to bill that sort of fades out the reimbursement on the inventory tax that if this amendment went before the people untouched that the communities would be receiving from now until domes day or until another Constitutional Amendment was adopted to eradicate that eight million dollars somehow. This, as I say, is just another example of what could happen once this amendment went to the people and was ratified. I think good judgment follows the dictates of my good friend and colleague, from Portland, Senator Merrill because I think it makes far more sense for us to pass a statute, send it to the people, and have them ratify it and have it on the books, and in the event of something like the inventory tax reimbursement comes about, the legislature would, after I am sure giving it very strong consideration, attempt to amend that statute. As I stated the other day, if in a period of 2 years or 4 years that we found no problem, because I believe very sincerely in what the good Senator from Portland, Senator Merrill is saying, I don't believe anybody in this branch of the Legislature or the other branch would attempt to amend that statute.

It is a question that I asked at the appropriations hearing which was never responded to and that is as to whether or not there any statutes presently on the books in funding that may possibly in conflict with this particular amendment. Whether it is a school funding or any other type of funding that is presently there, and that has not been answered as to whether or not those statutes have been researched, and I think it is a question that should be answered before this amendment goes to the people.

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

Mr. KATZ: Mr. President. Those of us who will be here again in January will solely miss the Senator from Cumberland, Senator Merrill. His speech is clear, his thinking is clear, and he always causes us to sit back and consider what he says. It is true that we were very responsive to the repeal of the Uniform Property Tax. There is something very wonderful about the voice of the people that causes us on the third floor to heed their instructions but that just happened. When was the Lottery Referendum? A few years ago? Well, I've kind of had it with the Maine Lottery. I think it was improperly enacted by the Legislature and I think it was misrepresented to Maine people, and I don't know but what in January if I get back here, and I certainly shall be back here, I may ask Maine people to take another look at the Lottery. I am not very proud of it. I don't think it really represents the aspirations of the Maine people to do things in a splendid manner.

In January, Senator Greeley will not be with us. Senator Cummings will not be with us. Senator Snowe, Senator Jackson, Senator Mangan, Senator Levine, Senator Merrill, Senator Collins, Senator Hewes, Senator McNally, Senator Curtis, Senator Morrell, Senator Speers, plus one or two other players to be named later. One of the greatest hardships of depending upon statute is the enormous turnover in the Maine Legislature. I always used to chuckle when the Governor talked about professional politicians because one of the greatest hardships we labor on is that we lose so many good people. Every time! Some times more, and this is one of those occasions. The statutes reflect as much as anything the influx of new people who come into the Legislature, who haven't been burned, who haven't been through the issue, and come from

a campaign all excited about the laws they are going to pass; and perhaps you notice the newer the legislator the more laws he wants to pass. I like to ask Senator Greeley after the session - "How many laws did you sponsor this time Senator Greeley?" And I like to Senator Wyman who is not with us at the moment - "How many laws did Senator Wyman sponsor?" And the old grey fox of the Senate Presidency, Senator Sewall - Senator Sewall was always smart enough not to sponsor much legislation - even a first time up.

But there is a real difference between statute and Constitution and you know it. And you know you have changed in the time you have been a member of this body. The Senator from Portland, the Minority Leader was a younger garcon when he first came up here and was going to change the world. And he probably introduced as much rotten legislation as I did. Mandatory seat belts indeed. So this is a palliate answer to the Senator from Cumberland, Senator Merrill. I wish I could be more vocal and as capable as he at expressing things very clearly.

But the issue facing us is, should this be a Constitutional Amendment and I am not going to tell you for the Constitutional Amendment or against the constitutional amendment - it's a hard decision. But, I am asking let's face the Constitutional Amendment and not statute and perhaps that basic to my feeling, my good friend from Cumberland.

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

Mr. MERRILL: Mr. President having spoken three times, I request permission to speak the fourth.

The PRESIDENT: The Senator from Cumberland, Senator Merrill now requests leave of the Senate to speak a fourth time. Is there objection? The Chair hears none, the Senator may proceed.

Mr. MERRILL: Mr. President, I would just like to say that as an observation at the beginning that possibly the reason that such veterans as Senator Wyman offer no legislation any more is that they've already gotten what they want many, many years ago.

But before we have the opportunity to go home and have some of Mom's blueberry pie, let me say that I listened, with interest to the remarks of the Senator from Kennebec and I think that when he points to the passage of an extended period of time and it would be more extended depending on how solemn the vote was. I think we have all agreed that probably the reflection of public opinion in the lottery vote wouldn't be seen as an onus of reflection of public opinion on say the Uniform Property Tax vote or something like that. With the great passage of time certainly there becomes more and more of a feeling that it can be amended, and I have suggested and I believe firmly that if there is still interest in this in two and four years and I can't imagine if the ground swells is like it is out there that there wouldn't be that then it can be put into the Constitution. I have no problem with that. I very sincerely have no desire or motivation at all to defeat the basic purposes of this amendment but there are going to be major problems and they are not going to be able to be dealt with while the session is going on and the time passage concern that was raised here by Senator Katz that was raised in a private conversation I had with the Senator from Cumberland, Senator Morrell, and I conceded to him at that time that there is certainly an argument with that his prime projects out six or seven years. That is a consideration and it could be locked into the constitution and it would be relatively easy merit I would think because the only issue would be are we going to lock this up and give it the added protection of the constitution because we would have the language effected. So I recognize that with the passage of time there might be some validity there but none the less

that this is the only course I think that prudence dictates in this case and I think will provide ample protection or as ample protection as this method can provide whether it is constitutional or legislative and this would be the course, I think, that we should pursue.

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

Mrs. CUMMINGS: It has been widely circulated a statement whose author I can't remember in the 19th century that, "no man's life, liberty, or property was safe when the legislature was in session."

I think that the citizens as a whole will know perfectly well of the power that we have once we are in session. It is an awesome responsibility, but because of that and because of the powers we do have when we are in session I think that the citizens would feel much more at ease and much more confident that their will was going to be acted upon if this were in the constitution and not something that could be handled by a future legislature.

The PRESIDENT: Is the Senate ready for the question? The pending question is the adoption of Senate Amendment "A" to Senate Amendment "G". A Division has been requested.

Will all those Senators in favor of the adoption of Senate Amendment "A" to Senate Amendment "G" please rise in their places to be counted.

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

10 Senators having voted in the affirmative and 22 Senators in the negative, Senate Amendment "A" to Senate Amendment "G" failed of adoption.

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

Mr. PRAY: Mr. President, I offer Senate Amendment "C" to Senate Amendment "G" and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Pray, now offers Senate Amendment "C" to Senate Amendment "G" and moves its adoption. The Secretary will read Senate Amendment "C".

Senate Amendment C Read.

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

Mr. PRAY: Mr. President and Members of the Senate: The purpose of this amendment is very clear and the statement of fact is very brief. It is to remove the re-ratification provision and the purpose of myself offering this amendment is to first of all that I think it is unprecedented move to put anything that we feel goes into the Constitution out to the people with a re-ratification clause. There is a small book, a blue book here that you can get entitled, "The Constitution of the State of Maine," put out by the Secretary of State's office and the back of it has the amendments since it has been printed, and I have gone over this book trying to find if we have ever anything that has either been repealed or that has been put in like that. I have done a little bit of research running around to see if this has ever been done before and it hasn't that I can find. I think it is a poor precedent to set for us to start putting things into the Constitution and putting out on a re-ratification clause. I believe, that we feel that it should go out to the people and the people ratify it than that it must be that we feel that it belongs in there and the people feel that it belongs in there and it should stay there unless the people themselves decide to change it later on. I can just imagine if we put the Bill of Rights out for re-ratification every few years as to what may happen to that or any other article in the constitution. So I would hope that the colleagues in this Chamber would support this amendment.

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

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: I rise to support the amendment as offered by the Sen-

ator from Penobscot, Senator Pray, perhaps for slightly different reasons.

I had initially thought that a sunset provision or a sunrise provision or whatever in this amendment would make it more palatable for me, but I think the comments raised by the Senator from Penobscot, Senator Pray are very valid. I don't think—I partially at least agree with the remarks of the Senator from Kennebec, Senator Katz about votes — ratification votes of various statutes that have been establishing a very dangerous precedent by doing this, as Senator Pray just mentioned, but another point that bothers me a little bit is that are we not perhaps questioning the perfection of this statute by saying "well we are going to take another look at it in a few years." I think perhaps we are admitting to the people of Maine that we are not totally sure that this is a perfect document. We are not totally sure that there aren't some basic flaws that we haven't been able to find in all the drafts, and there have been quite a few drafts and there have been quite a few changes. I think those two arguments, the admitted imperfections or implied imperfections and the dangerous precedent should be enough to convince me, they have been enough to convince me, and perhaps should be enough to convince many of you that it might not be a bad idea to attach this amendment to the thing.

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

Mr. MERRILL: Mr. President, I'm going to have a few more questions then I might usually have today because I haven't had a chance to become as expert on this as others may be so I'm going to have to get some clarification.

I would like to ask under the re-ratification clause in the proposed Senate Amendment "G", is my understanding correct that this would not require another two-thirds votes of both bodies to go back for re-ratification? It isn't particularly clear on that point but if that is the case, what would the affect be in the Legislature that met immediately prior to the proposed re-ratification date made by two-thirds vote of both bodies a proposed amendment of this proposed Constitutional Amendment which would have the purpose of making the major changes in it and sending it out to the voters at that time for ratification. Am I not correct in reading this that at that time there would have to be questions on the ballot ratification and re-ratification?

The PRESIDENT: The Senator from Cumberland, Senator Merrill has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, in response to the question by the Senator from Cumberland, I too entertained that question in my own mind when I studied this section and I think the answer is yes, there would need to be two questions and if the voters should vote no on re-ratification of course, the other question would be nullified. If they voted yes on both questions, then the amendment would stand as amended by the second question.

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

Mr. MERRILL: I would thank the Senator from Knox, Senator Collins for pointing that out. So that it would be necessary then, if I understand it correctly, if prior to that session or prior to that time the legislature had modified this constitutional amendment that we are considering here today but it had in no way modified the re-ratification clause that the people would be voting to re-ratify this resolution as it is presently worded and therefore, if nothing else was done by any preceding legislature the Constitutional amendment would return to its present form by virtue of the re-ratification vote?

The PRESIDENT: The Chair recognizes the

Senator from Knox, Senator Collins.

Mr. COLLINS: I think the dilemma that the Senator from Cumberland, is suggesting is certainly possible, but I would hope that future drafters of changes in this amendment that might possibly come to the ballot at the same time as re-ratification would put in language that cross referenced the two in such a manner that there would be such conflict as the Senator feels.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is adoption of Senate Amendment "C" to Senate Amendment "G." The Chair will order a Division.

Will all those Senators in favor of the adoption of Senate Amendment "C" please rise in their places to be counted.

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

6 Senators having voted in the affirmative and 26 in the negative, Senate Amendment "C" fails of adoption.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, is the floor open to debate now on the proposed Senate Amendment "G" itself?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. MERRILL: Mr. President and Members of the Senate. With your forbearance I would like to raise some questions — because they deal with different questions and I think it would be more helpful in possibly clarifying some of these points than if I tried to raise them all at one time so if you will bear with me I would appreciate it.

Under the proposed Senate Amendment G on page — well I'm using the white handout, on page three, subsection ten, it's been some time since I taught English and certainly even longer since I studied Latin, but it seems to me as I read this subsection ten that we have a subject which in this case is Expenditures of Dedicated Revenue Account, modified by a prepositional phrase to wit for the programs and services and that prepositional phrase itself is modified by another prepositional phrase to wit in effect — on the effective of this amendment. If my English grammar serves me correctly and the rules of construction of laws and Constitutions have not changed since I went to law school, it would seem to me that a strong case could be made that the subject of this sentence is not modified by the second prepositional phrase in effect on the effective date of this amendment. If that interpretation were to be accepted by the court, the affect of that would be that if I or I should say someone who were going to be here next time, were to dedicate the sales tax to a program or service which is in effect at the present time, for example education, then it would be possible to extend the amount raised by the sales tax extra without running up against the ceiling. That would only be prevented if in fact a second prepositional phrase in fact modified the subject of the sentence which if my reading of English grammar is correct, it does not and I would inquire a more sharp legal or grammatical minds in the Senate as to whether there is a flaw in my reasoning in that regard.

The PRESIDENT: The Senator from Cumberland, Senator Merrill has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, to move on, and I thank the Senators for their explanations. I would like to, if I could, now deal with a hypothetical case that I think probably can be more readily — I might add in regards to that previous section that there was some disagreement among the lawyers who drafted this section as to what it meant and to when last sought seeing two of them they were going in the direction of

preparing another amendment to this amendment.

I might say also that I have a question that I just want to try to get a better feeling in my own mind as to how programs and services would be defined. I've tried to get from the Attorney General some explanations in some areas in this regard and he's found it very difficult and yet the words are very important as I'm sure every Senator here is acutely aware having studied 2209. Would an example, now this is a previous example, but let's say that the court had not yet struck down the doctrine of sovereign immunity and the court did strike that down removing a protection that the state courts had previously extended to the municipalities forcing the municipalities then to insure themselves, would that insurance be a program or service within the definition of the language here. This is a point that I haven't been able to get really clarified from the Attorney General, I wonder if there is someone here, someone advocate to this legislation that could at least clear that up.

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

Mr. KATZ: Being an English major, I feel particularly well qualified to answer the first questions based upon the placement of the comma. But I think what the Senator is doing here is trying to anticipate the action of courts over the next 30 years. We are still trying to figure out what the 15th amendment to the United States Constitution means almost on an annual basis and the very interesting questions being raised are going to probably offer great employment to the Senator and all other lawyers within the state, but that is to be expected, isn't it.

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

Mr. HEWES: Mr. President, in response to the first question that the Senator posed. As I interpret paragraph ten, which is the Expenditures of Dedicated Revenues, I feel that means those existing dedicated revenues and to create a new dedication based on the sales tax, income tax, or some other form of tax would not apply. I think that the intent of legislature here and the people in favor of this resolution would indicate that the expenditures of existing dedicated revenue accounts apply and not future dedication.

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

Mr. MERRILL: Mr. President, returning to the first question but not forgetting the second, it must have been some time since Senator Katz was an English major or he has a comma in his that I don't have in mine. When we use to diagram sentences, I don't think they still do that in post old fashion schools, but when we use to diagram sentences, we use to draw up a line for the first prepositional phrase. I can still remember my sixth grade teacher now — if we forgot that line she said, "you know you have to be very careful when you write things" But we use to draw up a line and then when we had the second prepositional phrase we'd draw up a second line and what that told us there in the sixth grade is that the second prepositional phrase only modified the prepositional phrase that preceded. Otherwise, you see, we wouldn't have drawn the second line up from the first prepositional phrase. We'd have drawn it down from the subject. Isn't that different to you Senator Katz, when you were an English major?

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

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I said a moment ago that I was going to miss Senator Merrill, I would like to reconsider that for the moment.

The PRESIDENT: The pending question before the Senate is the adoption of Senate Amendment C to LD 2209.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, having spoken three times, I request permission to speak a fourth.

The PRESIDENT: The Senator from Cumberland, Senator Merrill, now request leave of the Senate to speak a fourth time, is there any objection? The Chair hears none, the Senator may proceed.

Mr. MERRILL: I could address all these questions at once, but I do think that it would be more confusing to do so but if it is the Senate's wish that I am not up and down alot, I'd be glad to but I have a question in regards to — I still haven't forgotten the second question — that poses a particular sort of problem for me as to how broad we would interpret that because that is going to be a very big question. We all know the relationship between the state and the community are so confused and varied now that would be up for interpretation in a million different ways many, many different times. I wonder what position it puts the court in when a judicial decision would have to have a financial note attached to it and could then ouster his office help with that, I wonder.

But going to nine on the same page on the white one — I guess the same — nine on page three of the regularly drafted amendment, this, as I understand it, deals with tree growth and as I understand this amendment and I'm honestly not sure but as I understand this amendment, it would allow us to increase the amount of money that we paid the municipalities because of the losses encumbent from the tree growth tax special treatment but no where, as I understand it, is there any exclusion which would allow future extra income from a readjustment of the tree growth tax formula so to more accurately reflect the information that we presently have about the value of timber land which is reflected by recent sale prices is above the average \$38 price which the tree growth formula presently reflects. No where would that increase be exempted from the ceiling and we would be precluded, if I am not mistaken, from using that sort of increase to pay this extra aid to the municipalities. Now this is not just a hypothetical question because this is something — this is a problem that is very, very dearly felt in some of the smaller rural municipalities where most of the property in terms of acres is under tree growth tax and as we have moved them up in assessment but to move say from 10 percent to 100 percent but, of course, the assessed value of the tree growth hasn't gone up because that is under the formula we have in affect worked a shift form time of 90, 100 or 200 percent from the tree growth land to the other taxpayers. Now that is very, very stongly felt need and if I am correct is a very influential lady from Piscataquis County who has heard this drum beat and so this is something that is really going to be before us I think in the future and am I correct in the fact that we couldn't reflect this new information without it coming under the ceiling.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, I have basically one question divided into three parts on Senate Amendment G. On page four, section 3, states that the cost of living and it goes down the average percentage changed. The last line is as measured by any reasonable method in accordance with law.

Question one on part one, must this be a separate statute to determine what is a reasonable method of measuring the cost of living.

Question two on that same thing is under section four says that the Maine personal income change means average percentage change in Maine and it ends up as measured by any reasonable method in accordance with law. Does

this Constitutional Amendment require the passage of an appendage law to explain what Maine personal income change shall be understood as being in affect at the time it is being read.

And the next question of section three of that question under question six stating the legislature shall by statute determine the requirements as to who shall have standing to bring action in the courts of this state. Does this mean that the legislature is going to have to pass a third law to explain the Constitutional Amendment that we are putting here. So do we then have under this same page three separate laws to explain what is understood by the Constitutional Amendment in the Constitution?

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

Mr. KATZ: Mr. President, I look upon that as a rhetorical series of questions. Anyone who has dealt with constitution knows that to implement the provision of Constitutional requirements require statute. I took the liberty of speaking to one of the proponents of this Constitutional Amendment and asked the intention with respect to how quickly over, what span of time do you imagine we are going to be faced with statutory drafting to implement the requirements to the Constitution and I came away with a very, very clear feeling that the Legislature when it meets in January is going to be faced with some statutory language dealing with the provisions that are raised here. What kind of reasonable—there is one section here that talks in terms of the number of citizens. How many citizens would be involved to request a — I can't recall what section of the amendment it was suggest 100 citizens. Somebody suggested 200 citizens. But that is a determination as statuted and I'm confident the 190th can deal with that very, very easily as to whatever consensus they arrive at.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill who request to address the Senate for a fifth time, is this the pleasure of the Senate to grant his leave? The Senator may proceed.

Mr. MERRILL: Mr. President, first of all, I would like to say that I agree with Senator Katz remarks. You will recall when we passed the Constitutional Amendment dealing away with the Executive Council we left a great deal of legislation. The State Government Committee worked while we were out and did an excellent job and there were absolutely no problems even though we had to ratify that by a 2/3's vote. So I certainly agree with him that wouldn't be a hard problem to overcome.

I would like to say that I think I understand this is not a question — I think I understand Section four on Page three of this amendment and it seems to me that the last line of that "program of Services shall not include reimbursement to local units for any personal property tax exemption," — I think the reason for that is to exclude the effect the constitutional amendment that we are going to pass having the effect of 2209 would have of freezing the inventory reimbursement level at the \$8½ million we are presently at instead of phasing it out as this Legislature voted to do over my strenuous objections during previous regular sessions. So, I think, the reason that the drafters put that in there was just to deal with that one problem. But I might say that personal property tax or other kinds of other personal property tax that could be exempted — there's allot of machinery out there still isn't subject to property tax. There are allot of other types of personal property tax — personal being non-realty and that are now subject to tax and I think, you know, that we ought reimburse. As a matter of fact, there is a Constitutional Amendment presently in place to be before the people at the same time this one would be that commits us to 50 percent reimbursement scale. And as I recall, I don't like to say anything 100 percent sure without having a look at it within

the last month because my mind isn't hold on to things as quickly as some others. As I recall, we included reality and personality. But in any case it seems to violate the spirit of that amendment. It wouldn't cause a problem, I guess, because this amendment would supersede having been passed or having not been passed — having the resolve been passed subsequent to the other resolve having been passed, both of them going into affect simultaneously assuming a positive vote. I don't think that will cause a problem for the court. But still its seems to run counter to what we have been trying to do and I think it is a loophole much bigger than the drafters intended when they put this language in to exclude inventory taxation. I like the drafters to tell whether they meant to make exclusion, beyond inventory or whether this is just a drafting error.

The PRESIDENT: The pending question before the Senate is the adoption of Senate Amendment "G" to L. D. 2209. The Chair will order a Division.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: I request that when the vote is taken it be taken by the yeas and nays.

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 adoption of Senate Amendment "G" to L. D. 2209.

A yes vote will be in favor of adoption of Senate Amendment "G" and a nay vote will be opposed.

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

YEAS—Chapman, Collins, D.; Collins S.; Cummings, Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Katz, Levine, Lovell, McNally, Minkowsky, Morrell, O'Leary, Pierce, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall

NAYS—Carpenter, Conley, Mangan, Martin, Merrill, Pray

27 Senators having voted in the affirmative and 6 Senators in the negative, Senate Amendment "G" is adopted.

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

Mr. MERRILL: Mr. President, are we debating L. D. 2209 as amended by Senate Amendment "G"?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. MERRILL: Mr. President and Members of the Senate: I'd like to thank the Senate for their forbearance with my questions — I had many more but I sort of judged the Senate's patience was running out but I see that they are raised for public discussion of this issue and I am confident that although they weren't answered here today that they will be raised by the vigilant press who sees their duty and to let the people know what is being done and I would hope that before this thing is finally enacted just in case someone doesn't bail the chestnuts out of the fire, some people would give some serious thoughts although there was some levity here this afternoon, and I think there always a place for levity even in very serious times and very serious issues. The questions that I raised are not facious ones they are real ones. The problems that I pointed to are real — there is no justification — there is no emergency before us so dire — there is no personal career so important as to justify putting this with the problems — just a few of which I pointed out here today — into the Constitution of this State and I submit that most of the people here know it. Now I doubt if we will get a chance to reflect on this again — I guess if the

next legislative day this wouldn't be subject to amendment without 2/3's rule. Even with all the work that has been done by the well intentioned very able people that drafted this amendment, even with the few things that I been able to trip over in the hour that I had this amendment — half of which was used up by a caucus, there are allot more things I haven't thought of, I'm sure and this thing is in no way in no manner, is everyone present in this chamber today for this debate knows in a fit state to be sent out to the people as a Constitutional Amendment. One of my political heroes is a person I agree with very seldom, as a matter of fact, worked to defeat but it was Senator Margaret Chase Smith and the reason she was a political hero is because she had the courage to stand up to the members of her own party — stand up to a peron who was making great political hay in their own party out of an issue and make a statement of conscience. Now I have gone against members of my party and people, a philosophical vein in here on a few occasions myself — once we tried to deal with the powers of the Consumers' Affairs Office, once when we dealt with the lobby disclosure bill and I know that this is no vehemence so deep that any of us feel as we in good conscience feel that we have to go against those people who are generally on our side or are of our political party. But usually when there are problems to be solved, there are all sorts of people who come forward and that tradition is here in the Maine Senate and although I am disappointed not to see it today, I am still confident that ultimately it will show itself.

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

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate, I spoke to my floor leader shortly after the first debate on this bill and I said that I was extremely uncomfortable with my vote because of problems that I had in my own mind with the fact of the Constitutional Amendment. I have now reconciled my conscience and I have realized and accepted the fact that I am one of those Senators who falls in the category described by the Senator from York, Senator Lowell, last week as having no opposition. I would like to think I would feel exactly the same way had I if I did have opposition. I hope that nothing I say this afternoon will offend anybody — I just looked at the roll call and I looked at people who for two years and in some cases, four years I have heard, urge caution on minuscule—minor matters and these same people seem willing as has been eluded to by the Senator from Cumberland with whom I very seldom agree seem very comfortable with throwing caution to the wind for political purposes, political reasons be there own or others, I can honestly stand here and say and look anyone in this Chamber in the in the eye and say for the first time in four years I feel ashamed to be a Member of the Maine Legislature, because I don't think this body, and that's all I am referring to, I don't think this body has issued the declaration of conscience mentioned previously, for which the lady Senator from Maine was so famous. I don't feel that we have been honest with ourselves, honest with the people of the State of Maine. Perhaps the only reason I will be back here next week is a feeling of responsibility on my part and also a sense of trust, if your will in the Legislative process no matter how difficult it may seem along the way the ultimately, to steal a quote — "the chestnuts will be pulled out the fire," before we make a mistake which could hurt our people in this State and hurt our State greatly. I feel very strongly in the power of the people to elect us and to un-elect us and to do things and, I wonder where the power of the people will be to change this thing we have in front of us, if it, in fact does go to the people and become part of our Constitution. I wonder where there power will be then. As I said at the

outset, I hope I haven't offended anybody. This is a personal feeling. I talked to a good friend of mine whose on the Tax Limitation Committee serving at a great expense to himself I am sure and all he said to me today was over and over again — it's so simple — I agree that the intent of Maine Tax Limitation Committee, of which they are members of this Chamber is extremely simple extremely good — extremely direct — extremely non-partisan and in my opinion — extremely good. Unfortunately, we will not be putting intent into the Maine Constitution we are putting black and white imperfect words drafted by imperfect people and I sincerely hope that next week, the members of this body, the members of the Maine Legislature will heed the words and at least answer the questions — the serious questions that were asked over and over again by a Senator who has nothing to gain and nothing to lose because he is not going to be anyway and he asked questions and either there was no one in this Chamber who could answer them or would answer them. I think that is terrible. Thank you.

The PRESIDENT: The pending question before the Senate is shall this Resolution be Passed to be Engrossed? The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: I request that when the vote is taken, it is taken by the yeas and nays.

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 PRESIDENT: The pending question before the Senate is the Engrossment of L. D. 2209 as amended.

A Yes vote will be in favor of Passage to be Engrossed.

A nay vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

YEAS—Chapman, Collins, S.; Cummings, Curtis, Danton, Farley, Greeley, Hewes, Hichens, Huber, Jackson, Katz, Levine, Lovell, McNally, Minkowsky, Morrell, O'Leary, Pierce, Redmond, Snowe, Speers, Trotzky, Usher, Wyman, Sewall

NAYS—Carpenter, Conley, Mangan, Martin, Merrill, Pray

ABSENT—Collins, D.

26 Senators having voted in the affirmative and 6 Senators in the negative, with 1 Senator being absent, L. D. 2209 is Passed to be Engrossed.

The Chair recognizes the Senator from Cumberland, Senator Usher.

Mr. USHER: Mr. President, having voted on the prevailing side, I now move reconsideration.

The PRESIDENT: The Senator from Cumberland, Senator Usher now moves that the Senate reconsider its action whereby it Passed this resolution to be engrossed.

On Motion of Mr. Speers of Kennebec, Tabled for One Legislative day, pending the Motion to Reconsider.

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

Senator Merrill of Cumberland was granted unanimous consent to address the Senate on the Record.

Mr. MERRILL: Mr. President, motions to table are debatable, but I would just to say that I had extreme hope that I could at least go home tonight thinking that this bill may get to the other body. I was certain that it would be in front of the other body next week. I'm generally not a very patient person but my patience has about reached its extreme in this regard. I believe we have dragged this on quite a while.

(Off Record Remarks)

Senator Levine of Kennebec was granted unanimous consent to address the Senate on the Record.

Mr. LEVINE: Mr. President, I have been sitting here and thinking and thinking and voting and perhaps voting mistakenly. I am trying to recall my grammar lessons and I'm trying to visualize a great big blackboard and an English teacher and I am having great difficulty with it. I assure you that grammar was not my forte in school.

I was about to rise and request that having voted on the prevailing side I was going to request that we reconsider this in order that someone might table it and I might be able to get in touch with someone who might be more expert than I am in grammar.

Even as I voted thinking that I was in the right there is still a question in my mind to the fact that Senator Merrill who may in fact be much more expert at grammar than I am may be right on the first question that he asked today, and I'm glad now that we have some time in which to study this and arrive at a decision.

On Motion of Mr. Huber of Cumberland, Adjourned until ten o'clock in the morning, Tuesday, September 12, 1978.