

# 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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**First Special Session**

September 6, 1978 — September 15, 1978

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**Third Special Session**

December 6, 1978

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APPENDIX

## SENATE

Tuesday, September 12, 1978

Senate called to Order by the President.

Prayer by Reverend George C. Bland, Jr., South Parish Congregational Church, Augusta.

Reverend BLAND: Let us pray together. It is given to us O Lord that we are each of us selves divided. We occupy a world with both the furious shrewdness of a Solzhenitsyn and the bland invitingness of a Carter, and these things tell us that our world is now whole.

We who busy ourselves with that middle sector of administration return thanks this morning that the wholeness of our community is our quest and our destiny. We return thanks for the money questions, for the rigor which they impose as we pursue that dream of wholeness. As we pursue that dream, let us never let it go, let us never shut it down, let us make it measure up. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Recessed until the sound of the bell.

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 8, 1978 by Senator Speers of Kennebec

Pending — the Motion of Senator Usher of Cumberland to Reconsider. (In the Senate — Passed to be Engrossed as amended by Senate Amendment "G" (S-624).)

The PRESIDENT: The pending question before the Senate is the motion of the Senator from Cumberland, Senator Usher, that the Senate reconsider its action whereby this bill was passed to be engrossed. The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, when the vote is taken, I move that 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 motion to reconsider the Senate's action whereby L. D. 2209 was passed to be Engrossed.

A Yes vote will be in favor of reconsideration a Nay vote will be opposed.

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

ROLL CALL

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

NAYS — None

ABSENT — Chapman

32 Senators having voted in the affirmative and no Senators in the negative, with 1 Senator being absent, the Motion to reconsider does prevail.

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

Mr. SPEERS: I now move the Senate reconsider its action whereby it adopted Senate Amendment "G".

The PRESIDENT: The Senator from Kennebec, Senator Speers now moves the Senate reconsider its action whereby it adopted Senate Amendment "G" to L. D. 2209. Is it the pleasure of the Senate? It is a vote.

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

Mr. COLLINS: Mr. President, I offer Senate Amendment "E" to Senate Amendment "G" (S-629), and move its adoption.

The PRESIDENT: The Senator from Aroostook, Senator Collins, now offers Senate Amendment "E" to Senate Amendment "G" and moves its adoption. The Secretary will read the Senate Amendment "E".

Senate Amendment "E" Read.

The PRESIDENT: The Senator from Aroostook, Senator Collins has the floor.

Mr. COLLINS: Mr. President and Members of the Senate: The purpose of my amendment today is essentially to exclude the highway fund from the spending limitation. As you may recall in the amendment we passed Friday, we generally excluded dedicated funds, Fish and Game and the Commodity Taxes, such as blueberries, potatoes, etc., were excluded from the limitation. This amendment today seeks to further that by making the gasoline tax which is dedicated to highway funds also excluded from any spending tax. I think that most of you are aware that the highway fund is in a difficult position — we are faced with a rather flat revenue of gas tax and an increasing expenditure for the cost of constructing highways and bridges and maintaining them. The only other thing that the amendment does is makes some language changes. Hopefully it makes it a little clearer that the exclusion applies to existing dedicated revenues accounts and hopefully it clears up the problem of identification with so-called product taxes and identifies them as dedicated revenue. Thank you, Mr. President.

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

Mr. MERRILL: Mr. President and Members of the Senate: In reviewing "E" — I think that it does raise — does settle at least one of the problems that Senate Amendment "G" had that was discussed at some length last week. Last week when I reviewed this amendment for only a half an hour, I did raise a question as to whether the way it was worded before would allow us to create new dedicated revenue accounts for programs that were existing at the time of the amendment and thus circumvent the whole effect of the constitutional amendment. I wasn't certain at that time — I was certain that was uncertainty but I wasn't certain of my position absolutely but I did spend, I think, honestly, about 10 hours researching it this weekend both from a legal and grammatical point of view and there is no doubt in my mind had that amendment gone through as it was originally drafted, it would have had that exception in it.

Let me say now that the treatment for the problem — has this one problem has been offered, then I am not sure that this is the best way to satisfy my objection. I have been, as well as studying the what that first draft meant I have given considerable thought to the concern and one of the things that troubles me about this presently is that as I understand it, now we are going to keep ourselves from ever creating any other dedicated revenue account that won't come under this, because they have to be existing. I don't know quite what affect that would have, maybe it's taken up by the fact that we create some treatment for these products and resources taxes that aren't general. But the problem that comes to my mind is if we wanted to create a carrot seed board or something of that kind or in other

words some sort of promotion we laugh now, someone suggested we cut out the potato seed board here, we wouldn't laugh because that is an existing thing and we know how important it is some — at least some of the constituency represented here, and I don't know if the best way to solve this problem is to keep the Legislature from ever doing something like that again without it coming underneath all this procedure. I think that is another drafting way to do it and I just point that out because may be I can convince some people with a little more appropriate approach elsewhere in the Legislative process. I can point to that at some later day.

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

Mr. MERRILL: Mr. President, I assume from the cadence of the President that there aren't going to be any other amendments offered at the present time. I might say then as a preface to my remarks that I think that the problem that the amendment in our books, Senate Amendment "D" would have dealt with remains one of great concern to me. This is the personal property tax exclusion which, I think, was originally drafted into Senate Amendment "G" simply to provide for us to continue with our planned phase out of inventory tax reimbursement — something that I might add really, I find really troubling and I think something starting a lot of tax revolts out there if you trace the source of tax revolt in South Portland, I think you find the cause of it right here in this Legislature and us renegeing on our commitment to reimburse for inventory — that community is very heavy on inventory having the Maine Mall within it.

So I find some problems with even what this amendment was intended to do and if this amendment isn't offered — Senate Amendment "D" — I think that it makes a very serious problem in this whole constitutional amendment. As a matter of fact, since the last session of the Senate, I had a chance to research the other constitutional amendment which we will be offering to the people this November as a result of our action in the first regular session of the 108th Legislature, and I think that now this constitutional amendment, maybe I am not anticipating something, but its my feeling, unless someone can correct me, that the constitutional amendment now would pretty much negate that whole amendment because in the real property area we find ourselves where we would have to be in the 100 percent reimbursement schedule and the personal property, which is probably the most susceptible to further exemptions, we are going to exempt from the constitutional need to make reimbursement for, and I think recognize how big this personal property tax is in the problem that some of these communities presently have it just raises some question in my mind as to why we should not at least take care other personal property future exemptions at this time, or somehow try to restore what we had with this pre-constitutional amendment out there now that I think will probably moot when the voters get it in November.

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

Mr. HEWES: Mr. President and Members of the Senate: I gave great thought to the comments of the good Senator from Cumberland, Senator Merrill, and my seatmate here over the weekend and I wonder why I was so in favor of this ceiling here as proposed, and I realize that I over the years as leader back very meritorious worthy programs and they all add up individually. I was thinking of a bill that increases ADC benefits by 30 percent, another one for state employes that limited the length of time they could retire from 30 years to 25 years, and elderly tax relief and for students, L. D. 1994 which I backed when it was popular and we passed the special education bills. You know you can't oppose each of these bills indi-

vidually with — you can't oppose motherhood really, and I think that as these bills all passed and added to the rolls of cost the bottom line figure increased substantially. We didn't scrutinize priorities and eliminate other bills — services that we should have. I remember when I was in leadership that they eliminated all saddle back racing in the state and we had a commission that dealt with that type of racing. Not the harness racing but that flat racing and we were not able to eliminate that commission although there was no work to perform during the regulation regular session during the 106th. It took the special session to eliminate that. I recall we closed — we voted to close the sanatorium up in Fairfield, the old sailors home in Bath how the two very articulate representatives from Bath managed to keep that open despite wishes of the authority that it not remain open.

So, I think this ceiling is going to encourage a fairer scrutiny of the services and programs and possibly improve the programs in the future. I don't think that this ceiling is going to terminate all future programs. It's not — it isn't a wake. I think that this is a good bill and I hope that you'll vote for the present amendment and ultimately the Bill.

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

Mr. MERRILL: Mr. President and Members of the Senate: With all due respect to the Senator from Cumberland, Senator Hewes, he's argued against a position which I do not have. It is not my feeling that there should be nothing done as far as some attempt at spending limitation. As a matter of fact I have offered approaches that I felt were meaningful in the past and just because I have other approaches that I like hasn't put me in a position in this legislature or even in public discussions or private where I oppose doing this, and I have so indicated on the floor of the Senate here.

I have raised some problems with putting all this language in the constitution. Problems which I think as we consider now what is a guess for this amendment and that is in its tenth draft of this amendment I think become more and more apparent. We've dealt with one of the problems here that I raised the other day and I'm sure that there are some that we won't even be able to anticipate. There are some others that I do want to discuss to some extent here today though because I think that at least it would be helpful if the chance of this draft being the final one to speak to the Supreme Court in our deliberations here about what we are intending to do, and it's those sort of specific concerns that bother me and not the idea of trying to put some limitation on spending, I agree. Those legislatures particularly that the Senator from Cumberland, Senator Hewes was in and I was not very responsible the way they spent money.

I would like to raise a question first of all, for the draft as we would now be enacting it, as to what the term fiscal year means as it's used in the amendment, and it's used throughout the whole thing, the whole concept is spun around this idea of fiscal year and I'll tell you very frankly my concern and my concern is that in our statutes we use the term fiscal year to describe what we are on which is from June — from the beginning of July to the end of June. We use the phrase municipal year to describe what the communities do which varies in different places in the state and as Senator Hewes will recall prior to my coming, two legislatures prior to my coming, there was an attempt to make a uniform fiscal year in the State of Maine and then one term prior to my coming up was washed away very quickly as we heard from the communities how they felt about that concept, and I'm afraid unless somebody can assure me from some stand point of scholastic research into this question that recognizing that we use two different terms in our statutes and recognizing the Court and probably think

we took notice of that and we use the term fiscal year here that in essence what we would be talking about for every as they interpreted the statutes would be the fiscal year as it is as that term is now used in the Maine Law and I think even though that wouldn't in itself force the communities to go to uniform fiscal years, I think when you think of the mechanics of this trying to work it and when in fact it represented two budget years — half and half for the communities it would be almost impossible for the communities to deal with and I think the practical effect when these small communities sit down with counsel would be that they would have to have a uniform fiscal year. Can somebody assure me that that would not be the effect here.

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 Huber.

Mr. HUBER: Mr. President and Members of the Senate: I think the good Senator from Cumberland, Senator Merrill has posed a valid question. The intent of this amendment certainly is not to change the municipal fiscal years. I believe the effect of this would be this effect on the municipal level on the first complete fiscal year after its effective date. Were I writing this I certainly would include the word fiscal year instead of the word prior year, I would state prior fiscal year to make clear that we are not confusing this with the calendar year. In this amendment this maybe my point which should be cleared up. The intent clearly is not to change the municipal fiscal year and I think the practical effect of this is that it would be effective on those municipalities for the calendar year fiscal years that it be effective on the first complete calendar year for those municipalities.

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

Mr. MERRILL: Mr. President, I thank the Senator from Cumberland, Senator Huber, to try and state what the intent is and I hope that the Court will take notice of that and find that sufficient to overcome the fact that he used fiscal year in a very much different sense elsewhere in Maine State Law. I would prefer, if I were drafting it, to make it clear through using the same sort of terminology that we use in our statutes that we are talking about fiscal year for the state and the municipal year for the communities. I still think even in light of that legislative history, that the legislative history became confused and maybe by representation made elsewhere in time, I think the Court might look to the way those terms are used in the statutes and recognize cognizance on the part of the legislature on that distinction elsewhere in our statutes.

If we accept it — if we leave that problem behind us for a minute, I'm not comfortable with it, there is a small problem I think, maybe somebody can give me some guidance on this but the communities are going to meet in March of 79, most of the small communities in town meetings. Does the people that are putting this forward really believe that we can enact all the legislative background and material and have the indexes figures our by March for all these communities so that this can be done? I mean it may be possible but it looks to me like if I can make a guess if we leave this present schedule in effect it is going to be very difficult for communities when they meet in March to deal with something that I think is probably going to be — maybe a legislature we'll have acted on it but all the subsequent calculations that have to be done especially in these small communities that don't have the benefit of some of these sophisticated accounting and computer techniques it involves. It would be very difficult.

I would like to raise another question and it's

a very important one and one that I raised in the debate to some degree the other day and that is the definition of programs and service. This becomes a very important phrase as we described the relationship set out to ascribe a new limit for the relationship between the municipalities.

One of the most difficult things to do even for a single program and I'm afraid of this phrase in the fact that it is not given any definition at all. I have some questions. For example, what about new regulatory provisions. For example if we pass a new regulation, let's assume that nothing has been done that effected the disposal of solid waste at all just to put this into a hypothetical context. If we passed a new regulation that said that no town could have just an old burning dump would we be forced to compensate the towns at the rate of 100 percent for the cost of running the dump programs? If the answer to that is yes as you think it. I'm not sure that I'm satisfied with that with what the proper results should be but take one step further what if in fact what we did is to pass new air standards that had to be met and the practical result of that was that most communities that had burning dumps could, would have to by virtue of the state law leave the open burning dump approach and have solid land fill. Under that slightly more indirect effect would that be a program and service under this definition? How would it work if the federal government told us certain standards that we had to meet? And in meeting those we passed a regulation saying no more open burning dumps. That is a one problem I raised as to what a service—new or expanded service might be—program for service. I raise the issue of a possibility they have a tort and the tort claims approach the other day. Does that come in under the definition of programs and services. What if the state ended the ferry service that it now provides for some of the off-shore islands, not those off Cumberland county because eventually we don't have the political muscle of our neighbors Downeast but in those areas fortunate enough to be serviced—now obviously the members—those people who live on those islands in those communities are not going to give up any ferry service whatsoever. They may feel it necessary to subsidize private carrier or undertake that concern. Is that a program of service under the meaning of this law that we would be forced to make some conversation for? I think it's important for us to have an answer in our own minds and to try I would prefer, very frankly, to have a definition somewhere but at least to get a good solid feeling of all that you are comfortable with and express that on the record because—well there is no doubt in my mind anywhere this is the lawyer relief act of 1979. This will make millions of dollars as this goes down the road just so as to limit the lawyers work a little we ought to give them some guide post. I think it would be helpful—a phrase that is so important for operating trying to circumscribe this whole relationship between the communities and state that somebody would have thought this through and explain why there is not a definition where and what is meant in two of those specific areas that I raised. Specifically are those programs or services and if not or if so why and why not and how do you distinguish those from other sorts of consideration.

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

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I find that the questions being raised by the Senator from Cumberland, Senator Merrill are very, very helpful in causing us all to think as where we should. Actually there are no answers really to the questions he is raising at this time. Take a look at Article 8 of the Constitution. Let's make

that Article 9 of the Constitution, Section 8. "All taxes upon real and personal estate, assessed by the authority of the state, shall be apportioned and assessed equally, according to the just value thereof."

On the day that the legislature raised that particular article and considered enactment of it, what was meant by just value? Are those who proceeded us have a clear notion of what just value was? Just value is a state of interpretation even today and most people in the state who really don't support the question of just value meaning market value. Today if I asked members of the Senate whether or not the amount you get when you sell your home is that the just value? Or should the just value of your home be modified by the just value of that which your neighbor next door sold his home for.

Take a look at Section 12 of the same Article. The legislature may by law by authorization—the dividing of towns into voting districts for all state and national elections. Does that mean that the districts must be exactly the same for state and national elections or does the state have—the Legislature have the authority to have national voting districts and local voting districts? Take a look at provision of the constitution that I can't find which says that no municipality may borrow more than 7½ percent of the total value of the community. And I think that is pretty clear until you find that we are not clear of whether it means local evaluations or just value of state evaluation of the community and ask yourself whether at that time the legislator was clear in its own mind whether that meant that a town created—term in school district a coat term in a school district is when the boundaries of which exactly coincide with the perimeter of the town itself. But by creating a whole new political entity they are able to borrow more than 7½ percent of the local value. What was the attitude of the legislature, what was the response of the legislature at that time? Did the legislature have the answer?

I think that the exercise that we are going through here is fascinating but it is not possible. It is absolutely not possible to interpret just what the effect of the exact words are going to be as courts get them later on down the road. If a constitution is a living document, it is going to live and just value forty years ago, I think is quite different from just value today. But I welcome the questions and certainly the Senator from Cumberland is raising some intriguing questions that all of us have to deal with.

**THE PRESIDENT:** The Senator from Cumberland, Senator Merrill, having spoken three times now request leave of the Senate to speak a fourth. Is it the pleasure of the Senate to grant this leave? It is a vote.

**MR. MERRILL:** Mr. President, I would like to start out by responding to the arguments of the Senator from Kennebec, Senator Katz.

In many ways I think it is the same argument that we heard the Chief Executive make over the weekend put in much more sophisticated and intelligent fashion as we would expect from the Senator from Kennebec, Senator Katz, but the argument, I think, remains the same.

Now there is a kernel of the argument with which I don't argue but I think it is taken to an extreme that I find totally unacceptable in the posture that he wants us to accept. Now he says what does just value mean and what did it mean when the legislature enacted it. Well, I don't know off the top of my head what the date is of that constitutional amendment's enactment. I would say to the Senator from Kennebec, Senator Katz, that first of all the term just value has been a term of art legally for some time, and I would venture a guess without being absolutely certain because I like to research those things before I present things of certainties, but I would venture to guess that the term just value is a fairly well developed term of art at least in American jurisprudence

if not in Maine before it is put into the constitution. So at least the lawyers who are trying to catch what a future court might interpret it mean there are some guidepost, and that brings up the distinction between what I think is a valid point that is raised as far as concerned and the implication of the Senator from Kennebec, Senator Katz point which I think is carried to an invalid conclusion. We can never be sure what a future court can do with any language that we write. The fact that this amendment seeks to be so ambitious and control so many events outside state government as well as should force us, I would think, to try to be as careful and as prudent as possible. More maybe than we would be on an amendment whose effect was much smaller in terms of its overall impact. Even if this was a smaller amendment, I would want to have something more, very frankly, in our constitution than a phrase programs and services as far as I know are not terms of art that have been interpreted in our constitution and statutes in anyway that would give us any guidance here, and when the question is raised to try to give the court at least some future guidance nobody has an idea. I assume, that when the constitution was amended to include the value section that Senator Katz talked about, somebody had an idea what they meant. Now maybe they were different ideas. I haven't read the record, maybe we go back and people are saying slightly different things at that time about what it meant. I assume that—I assume if somebody stood up on the floor of the Senate and said what do you mean by just value, somebody had something in mind that they meant by it and if somebody raised the question, do you mean this, at least somebody has at least one opinion as to whether or not they did mean it that they didn't just stand up and say I don't know what it means but there is a lot of other stuff in there that probably nobody knew what it meant either.

Now that's the explanation I hear being offered in a very sophisticated form by the Senator from Kennebec, Senator Katz here today and in a less sophisticated form by the Chief Executive of the state, who as I understood his remarks over last weekend endorsed the thing as it was drafted before he amended it today which included a loophole which was big enough to drive the whole state, spending through.

Now nobody here wants to perpetuate a hoax on the people of Maine, I'm convinced of that. I'll say that unequivocally so what happened last week was unintentional and it's been endorsed by the Senate in their action here today and I assume will subsequently be endorsed by the Governor, at least under the draft. But when we are seeking to control the actions of our government which provides some needed service, we can all admit that when we are not talking to our most conservative friends, but there are some things that we can do if we stop doing will make some problems for people and when we're trying to deal with a very complicated relationship between the municipalities and the state, I think that it behooves us to have thought these things through and have some opinions on them and not just send this up to the court, we don't know what we meant, an election was coming up, we had to do something, and you figure out what it means.

Now maybe that is some peoples idea of how you draft a constitution. Where I grew up—I as just a little kid and I've always been interested in government and thought that it was a noble exercise and when I use to read about the constitutional convention that took place in Philadelphia and about constitutional convention that took place in Maine—The deliberations and the balances that people sought. That seemed to me like the way that a community should go about trying to set out the guidelines for future activities and frankly this doesn't resemble it. I am not saying that those people

were perfect—I'm not that naive. I think I'm a good historian to know that there are all sorts of special interest and everything. Everyone of them had their own little acts of crime you know Alexander Hamilton had some little economic activities in New York and what people did effect it and I am Thomas Jefferson—I think they were sayings, but at least we had a meaningful give and take from the specifics. Jefferson, Hamilton and Franklin wouldn't stand up and say (inaudible). This is so complicated we don't know what any pro would do we haven't even creted court yet. That is the attitude of this Senate. Now I think that it behooves us to figure out at least what we are doing. Recognizing that we might make mistakes and when we are in an area as big as this one, I think we ought to be darn careful about making mistakes. Anybody that has been in this Legislature is long as the previous speaker or the other person who spoke to this whole question today, the Senator from Cumberland, Senator Hewes, knows darn well the Legislature can make big mistakes. The bigger they bite now the bigger the mistake they can make. The error and inconsistencies bill allowance here grows every year and your and I know that last year that I think we went through the alphabet in the error and inconsistencies bill so we can make mistakes as men—it just behooves us to be a little more careful when dealing with the constitution.

I've heard Senator Katz speak about the need—the Senator from Kennebec, Senator Katz, excuse me, speak about the need for being careful—lots of times. I remember the Senator from Kennebec, Senator Katz and would like to refresh your memory on this subject if I could—when we had a constitutional amendment posed in this body that would have created a requirement—it was offered by my very good friend from the other end of the hall Representative Jalbert and that would have dealt with the subject of forcing the State in the future to put money into the Retirement Fund. You all recall that. And I recall the eloquence of the Senator from Kennebec, Senator Katz on that one when he was sending it down and we have seen him send so many down to defeat so skillfully, in which he talked about the idea of putting into our constitution an affirmative obligation to spend money and how he didn't like that idea. You know there are all of us whatever position we had on the issue were moved by that concept. What if some future thing came along we might not want to spend the money there. Now, in this constitutional amendment when we talked about the definition of programs and services we are talking about \$240 million affirmative obligation. Depending on how we interpret these phrases—it could grow. What we talked about before when Senator Katz was so careful to warn the Senate about tying our hands to spend the money on that—Chicken feed! Fourteen, twenty million dollars—we are talking about two hundred and forty million dollars this year here now and a very, very similar circumstance as the example he was talking about when he killed that one.

So I suggest that this standard of scrutiny—this undue standard of scrutiny that I am trying to impose upon this legislature is not one that is any different then the standard scrutiny that many other members of the Senate has imposed on, much, much less important bill. And I suppose I feel somewhat intimidated to continue to raise these concerns and don't intend to raise them all. My friends at the other end of the hall made me promise not to raise them all so they can have some.

But I would like to raise a question with Subsection 5, under Section C of this amendment. For there it deals with the whole subject of the local units and the fact that if we cut state aid to a local unit—their ceiling is adjusted up and there is no attempt really to define in any specific terms state financing there. State financ-

ing, as far as I can see, is about as broad a term as you can describe the program and I have done a little bit of research and not exhausted into this and I think that what this means is that if you had a community to get an extraordinary amount of money this year, such as South Portland because they are constructing a sewage treatment plant. When they get about a million dollars more in state aid this year which represents a significant percent of their budget. And that categorical and for that specific purpose was cut out next year. This because you know, they have built the sewage treatment plant but what I think this means, unless somebody has another interpretation, is that South Portland's ceiling will be moved up a million bucks and I assume that would be enough to keep South Portland one of the real communities in which we are hearing all of this out of any real ceiling regulations from sometime to come. In other words, they would not only get the 5 percent but they would always have the extra million kicker which wasn't really a continuing expense but it was a state financing and it was cut out. I don't think that was intended, I think it was just bad drafting. Maybe it was intended, but it is going to put some communities in effect of having much less discipline as a result of this amendment than others. I wonder if somebody could set me straight or maybe speak to the record on that point.

**The PRESIDENT:** The Senator from Cumberland, Senator Merrill, has posed an additional question through the Chair to any Senator who may care to answer. The Chair recognizes the Senator from Cumberland, Senator Huber.

**Mr. HUBER:** Mr. President and Members of the Senate: I like to respond first to a question raised by the Senator from Cumberland, Senator Merrill concerning the timely establishment of indices, cost of living, and personal income indices by the Legislature in order for timely action by the municipalities.

There obviously are many, many possible indices, cost of living, State personal income. Various people have suggested a flat percentage; some suggested no growth, some suggested economic models of the State which is, as far as I know, doesn't exist, etc. etc. etc. The fact is that no index is going to be right all sense of perfectly plausible future circumstances. I see the concept of limitation of government, really as a yardstick rubberness as has been referred to in the Press as a cap. This is a yardstick beyond which the Legislature must explain its action as far as the Legislature is concerned in this bill. It must explain and justify to the people its reasons for, for example, recommending the growth of 10 percent in the face perhaps of popular conception inflation of 5 percent.

The fact is that the Legislature should explain its action and has been willfully poor at doing so in the past. The fact is poor in explaining the collective decisions of the Legislature is in part the reason that we are where we are today. I see the effective implementation of the concept presented in this bill and this bill as amended, as a valuable tool for the Legislature to help regain its credibility that it has lost or may have lost. If the index chosen is seen as the yardstick beyond which the Legislature must explain to the satisfaction of the voters its action, the index chosen again becomes less vital and I am sure the Legislature can establish such indices in a primarily fashion for action by the municipalities.

In more general terms, because they haven't been discussed yet and perhaps to obviate Senator Merrill's suggestion that he was leaving some for the other party, I would like to go some of the major decisions that must be made before the Legislature comes to a final action on this concept. The first is of the should there be a limitation or should not be limitation. I firmly feel there should be limitation partially for the reasons I have stated earlier.

Should limitations be on expenditures or on taxation. I feel it should be on expenditures - these are really two aspects two ends of the same rope if you would. Expenditures is in fact what most levels of government deal with on the most direct basis. Taxation is the escape vowel of the bailout procedure whatever. But the decisions are made bit by bit on expenditures and I feel rightly this bill addresses the expenditure end of this question.

Should this be constitutional or statutory. I personally feel it should be constitutional. Partially because of the credibility already lost by the Legislature in not explaining its actions. I feel that the people want a firm statement that the Legislature will limit itself in this way and will explain again to the satisfaction of the voters its action about the limit. Should such a limitation limit the state - or should the State limit its own actions or should it limit also other levels of government. These are all questions being heard in this bill. If the State should limit state expenditures, should it limit all state expenditures or only undedicated money, namely; the general fund, which is what is dealt with by the Legislature on day to day basis. My feeling is that the dedicated funds, if in a practical matter, do control themselves because they have a serious legislature hurdle to increase their revenues or fees. Within dedicated revenues there is a question of highway and other dedicated revenues. The choice of an index I have already discussed. There is one aspect to this bill, however, which has not come up as yet which is in Senate Amendment G as amended and in fact in L. D. 2209 this would require that if the State mandates a program to the municipalities they would provide full funding. Another version of this would be they would provide reasonable funding which would allow for the assumption of a local share in funding the program.

There are many cases where - let's say we have perhaps have a non-existing item - the universally acceptable program which might be - Thou Shall not - dump raw sewage in trout streams and let's say everybody agrees that is a viable state infest into the waters of the State or a statewide infest. It probably makes no sense to administer this from the State via the State bureaucracy and local administration is probably appropriate. Therefore, we have a program which the State might mandate which, using my assumption is universally acceptable, is administered locally and there is often good reason to include a local share to make sure the cost of administration are kept within reason without the local share, without local dollars, there is not local concern of how these dollars are spent, nor local control. Very rightly, municipalities could say we don't really care how the program is administered, how expensively, because, in fact, the State will fully fund this and even worse, if we don't spend it, somebody will, and that is probably a fact.

This bill includes a procedure for emergency declaration in which as written in this amendment both total dollars and the source of these dollars are specific in the Governor's request that the Legislature declare an emergency. There have been questions raised as to whether the funding in the emergency has to comply with the specifics of the Governor's request and I think it is a valid question. I would prefer to see this language that the Governor can specify the overall amount for example in saying if there is a ten million dollar emergency or his impression there is a ten million dollar emergency based on the Legislature and let's leave it to the Legislature and the Governor and his approval of what the Legislature does to determine how the emergency might be funded.

There could be questions raised on the total amount of the emergency as requested by the Governor. Let's say the Governor said there is a ten million dollar emergency and the Legis-

lature firmly felt that there was a fifty million dollar emergency. It seems to me that the Legislature has the recourse in this case to refuse to honor the Governor's request to declare the emergency until the Governor adjust the overall amount to what they mutually can agree to as an appropriate figure to meet the emergency. So I think the Legislature has recourse in this case.

There is a question in that the Governor initiates the emergency declaration procedure. This is true interrelated so that either the Governor or the Legislature could initiate the declaration procedure. It is quite cumbersome and again, in fact, the Legislature has the recourse by joint resolution to request that the Governor commence the emergency declaration procedure which would put the existence of the emergency before the public and presumably would air this subject and get action, if action was, in fact, necessary.

There are other problems which will come up but I think one problem which is very visible in L. D. 2209, as now amended, which is the question of understandability. I have had distributed the bill as it would, in fact, be amended which is better than the amendment as presented which is extremely difficult to follow but even so I feel that this is cumbersome, it has avoided many of the I feel, unnecessary problems, excess verbage that I referred to by a off quoted unfortunate statement of mine early in this whole process. In fact, as it is before us, it is considerably simpler than L. D. 2209 but I think this is still extremely complex for understanding even within the Legislature and certainly by the general public. I think it is some what unfair to pose a simple, if perhaps universally attractive statement - do you want to limit government spending in taxes - the answer I think would certainly be yes. The more thoughtful answer might be yes, but...

When you go from the popular generality to the specifics, that is where the trouble starts. I think it is important that the voters be aware what, in fact, they are voting on and my personal opinion is that what is before is overly complex. I have try to simplify it in as amendment which I hope will be considered in part at least as this process proceeds. I hope these elements and other elements which are inherent in this simple concept with complex implementation will be thoroughly discussed and I do hope that the Legislature will pass an effective constitutional amendment which, in fact, limits spending of government. I am sure that this Legislature can and will through the parliamentary process, the Legislative process come up with something that is acceptable and practical.

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

**Mr. KATZ:** Mr. President. Before the session began various people ask me what my attitude was going to be toward the session. My attitude is that this is the most difficult, important single question I faced in all the time I have been in the Legislature. When the Governor called for a one day session I became confused, I wasn't quite certain what we could be expected to do in one day.

So far we have moved this bill right up to the point of engrossment. As I sit and look at the Senator from Cumberland and listen to his concerns, I take a look along the row. Among those voting yes yesterday or before we broke for the weekend, the Senator from Aroostook. Senator Martin voted yes - sitting next to him, the Senator from Cumberland, Senator Usher voted yes, - sitting next to him the Senator from Kennebec, Senator Levine voted yes, and trusting my memory so did the Senator from Androscoggin Senator Minkowsky voted yes. Very thoughtful Legislators who share one thing in common - they are trying to do the right thing. And I think they all understand the legislative process. If I were to ask these gentlemen - "Does your vote that you made last week

mean that you are going to vote for the final enactment of a constitutional amendment, no matter what?" ... They would all have the same answer - "No way"

I think what we have been attempting to do is to get all our concerns out in the open and to move through the parliamentary procedure of trying as imperfect men and women to try to bring this thing up to a point where there is reasonable unanimity that we should deal with enactment. At that time if there is anybody here who feels that I am going to vote for enactor, that I am not calm in my mind about it, the answer is no way. And that is true of all of us here. So I think with all due respect to my friend from Cumberland, Senator Merrill, it is not a time to bring out the heavy artillery, to over-react, to indicate that the Senate is going to be moving to a posture that is irresponsible. There are all of votes between now and enactment. Anybody who knows right now, including the very experienced Minority Leader how he is going to vote in final enactment he is smarter than the rest of us. So let's keep it calm, let's get the bill out of here because as I take a look at the blue pages in my book, I have a feeling that we are going to be in non-concurrence. I have a feeling that there are going to be all of other questions raised, and I don't know if we are going to be able to answer them. But let's not raise any questions as to responsibility or irresponsibility this early in the game and let the legislative process push us along and just maybe, just maybe we can answer enough of the concerns so that the Senator from Cumberland, and my concerns that we may be in the posture of enactment sometime this week.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill who have spoken four times request leave of the Senate to speak a fifth. Is it the pleasure of the Senate to grant this leave. It is a vote.

Mr. MERRILL: Mr. President, I would like to first of all speak to the most recent argument made by the Senator from Kennebec, Senator Katz. As I understand the legislative process, I think. As I understand the legislative process when we pass a bill to be engrossed, one body, what we are suppose to be saying to the world is that this represents the best consensus of opinion, the best work that this body can do among its membership. Not something that is good enough until later hoping that the other body doesn't agree because that's the reason we are prohibited from taking about the other body in debate. We are not suppose to be sitting down here playing off. I mean we all do from time to time but speaking about what the legislative process is suppose to be as I understand it, this is the amendment stage, this is where we get it the way we want it. Then we send it down and maybe we're ready to vote to adhere. Maybe something new will come up and we are certainly reasonable men and open minded and if new arguments come up we would reconsider that probably in our own minds. We are not supposed to, I don't think, just sort of see the passage to engrossed process of the constitutional amendment is just a stage, sort of the initial vote on accepting the committee report where you are receive the argument or off hear the argument - well, this is just to get it into amendable stage. Well, the reason for voting the passage of this bill to be engrossed is just to get it out of an amendable stage, as far as this body is concerned. Not subject to an amendment on enactment. For us to cast our vote on the presumption that it will be in non-concurrence I think it sort of violates the spirit of the legislative process.

Now I am not going to get up all of more times but I want to raise a couple of things just briefly - so it we are going to think about this in hopes that we have a chance at this in the future and I certainly guess the House has been invited not to recede and concur with our actions if I understand the remarks of the Senator

from Kennebec, Senator Katz correctly. But there are some problems that I like to see some more thought be given to. There is a section in the bill that is amended that raises the whole question of standing. It says that the Legislature is going to be able to give out to decide who has standing to enforce this law. What that means is that the standards common law standing doctrines worked out by the Courts are probably not going to be used and certainly, I guess, suggest that some other standards or standing may be used because otherwise it would be necessary to say anything on the subject. It looks to me like what's being said there and I may be wrong. Maybe somebody is privy to the thought of this more than I am, but that what we are talking about is creating the ability to taxpayers suits of one time or another not the taxpayers thing - I don't want to pay my tax because it was raised in a manner that violates the State Constitution but saying you stop that program because I say that it violates the Constitution of the State of Maine. That to me as I read that and try to put myself in the mind of drafters, knowing full well that they understand there is presently in common law doctrine of standing and for some reason they contemplate the possibility of something different. That, to me, looks like people are saying. And now if you want as reasonable men to have a frightening thought, imagine giving that power out.

Now, this whole question of the local share and whether or not there would be ability to share cost, I have read this amendment - protection of local government section. Senator Huber and myself served together on a committee that rewrote the education law one time and he eluded to the idea of maybe the shared cost type of approach as was taken by the committee - as I read the amendment - there is very little to hang your hat on if you are going to argue in the future that is possible to create a new program or do a 90/10 or 80/20 funding. There's not much here to hang your hat on. The remarks by the Senator from Cumberland, Senator Huber, I think would be the only thing that any lawyer could hang his hat on in face of the language which seems to be pretty clear, that isn't the possibility. I think what we have got to do is to create some sort of a dynamic living tension and at the point if we can look down the road at the future when we get serious about specifics - if I may suggest an approach to the Senate at that point - that is the point that Senator Katz's point about not having everything being rigidly defined. That's the point in which you should try with a clear idea of what you are leaving open to definition try to create a living tension that the courts could deal with some guidelines as to whether or not the legislature is just trying to push back onto the property tax or whether they are in essence trying to drape some sort of shared responsibility for other purposes. I think there is an area, if we can get some good drafting, and this isn't it where we shouldn't try to lock it up firm but should create some living tensions - so I agree with Senator Huber but this draft just doesn't do it.

I want to raise one other thing. I want all of you to think about the small towns for a moment. Most of you represent small towns, at least among your district. I grew up in one, I don't represent one now. There is a problem, first of all when we think about this and this is just through exclusion. As I read this draft, it could certainly be a lot clearer on the issue on whether or not once a community votes to let itself out from under this once for three years, that it could do it again. That isn't the way it's worded - it certainly would have a strong case in court saying that is what it is meant logically. But I would feel more comfortable if it said what we think it means - what we mean it to say, I don't think anybody here means it to say that they could only vote from under it only once, but we could certainly make that clearer that only they could vote out from under it for

periods up to three years, or as many times as they wanted to. But leaving that question aside.

Consider two affects on this, as I understand this and I may be corrected. The town meeting gets together and they are working their way through the warrant and there is usually somebody there in an unofficial capacity and often usual somebody in an official capacity keeping track of what that means to the tax bills. Farmers used to watch it pretty close for the town I came from - they had quite a bit of land - they sharpened pencils and shiny heads and they figure it out every step of the way - how much you were taking from them. And they would get down to the point where we ave extended the ceiling - now there is some difference of opinion, I think, from experts as to what has happened at this point. Does the meeting have to adjourn pending a referendum or can the meeting go ahead and tentatively over spend. I wish that question was answered more specifically but let us assume that it is answered in the most flexible way, something I am not willing to assume when I vote for final enactment but for the sake of this argument. They go on and spend the extra money they think they have to spend - they still got a fire engine and something else here in that town budget, fixing up the safety vehicle or something. They vote that extra. Then it goes out to referendum. I want to tell you here and now, that philosophically I don't like that idea. I do not like the idea of telling people that you do not have to go the town meetings any more because if they are going to up your taxes you'll get a chance to override what the town meeting did. I don't like the idea - its a lazy man's democracy - that runs counter to what I think government is all about and I don't want to give any body any reason not to go to town meetings. I don't like the trend that is taking place in this society - people showing less and less interest in government and I think probably part of the reason we got this amendment here today is a result of it. This is a lazy man's attempt to control a very important problem. This specific thing points it out. Telling people that they don't have to go to town meetings because the people their dealing with specifics go over the amount you will be taxed more then you will have a chance to vote on it. You don't have to go out there and spend your whole day. Well that to me isn't what government is all about. Somebody gets a guarantee that doesn't have to participate in public affairs anymore. The only guarantee that our founding fathers provided is we will give you an equal shot if you get in there and fight and that's the only guarantee I am about to give anybody. And this to me points up a philosophical problem and I don't like it. It's their concern, let them go to the town meeting.

Now there is another small problem and it is the whole problem of emergencies. Sometimes, not to often, we get big snow storms in December. Town meeting towns - selectmen in those towns can incur indebtedness if they're not given the authority to. Town meeting towns spend up to its limitations that year has a big snow storm in December, what are they suppose to do? Have a referendum? Do they plow their roads before they have a referendum and then present a fait accompli? How do they occur - how do they get the money to do it? They are not allowed to spend it - they allowed to incur a debt? Now somebody joked to me the other day we were talking about this and raising it as a serious concern and somebody said what do you think a small town would do? We talked about it for a minute and what would be the reaction of a Mainer be to that problem? So we said maybe you should ask Senator McNally when the debate comes up - he is a Mainer if there ever was one. I said well I have a feeling if he thought about what somebody down in Hancock County would do about it - he would probably tell me well they probably go out and plow the snow and be damned with the constitu-

tion. And I've got a feeling that is exactly what they would do. But it doesn't give me a darn good feeling about passing the constitutional amendment knowing exactly that is what we are inviting them to do because we aren't even dealing with the problem once we have seen it.

The PRESIDENT: The pending question before the Senate is the adoption of Senate Amendment "G", as amended to L.D. 2209.

The Chair will order a Division.

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

16 Senators having voted in the affirmative and 8 Senators in the negative, Senate Amendment "G", as amended, is adopted.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I'm happy to take note that we are discussing an amendment to the Constitution of the State of Maine but I was a little bit or I am a little bit dismayed that during the debate of these very serious questions that have been raised by my friend and colleague from Portland, Senator Merrill, that one-third of the Senate decided that it was time to take a coffee break.

It is strange to me, but if we were debating a bill dealing with prostitutes on the corner of High and Congress Street we would have probably 25 members of the Senate engaged in the debate of that subject. Or if we were dealing with euthanasia of dogs and cats we would probably have all 33 members of the Senate engaged. I think the good Senator from Cumberland, Senator Merrill has raised some very interesting points and I don't think they have been responded to very well.

With reference to the blue pages in our book before us it obviously indicates that at least some people are doing some thinking and have some concerns about amending our Constitution and how it will be amended.

I personally will not vote for the engrossment of this amendment and I certainly would not vote for the enactment of this amendment if it comes back in the same form that it is presently before us. I concur very seriously with the good Senator from Kennebec, Senator Katz, that this is one of the most serious questions ever to come before the Maine Legislature, but it is inconceivable for me to believe that it is being taken with such an ease and a lack of what I consider to be deep seriousness considering the amendment. We have before us, it was distributed this morning, several pages of questions to be concerned by such groups as the Maine Municipal Association, by advocates for Social Service programs, by the Pine Tree Legal Association with respect to some of the language that is in the bill, and I think that these items should be addressed. I recognize the Chief Executive when he called us into session ask that we be here but one day. It is obvious that he probably did not get a comprehensive understanding of what or how the draft was before us and certainly by today he must be aware of the fact that there are some people in the Maine Legislature who are deeply concerned not only with the amendment before us but any amendment that may go out to the people.

So perhaps following the words and wisdom of the good Senator from Kennebec, perhaps we will have another bite at the apple, but if this bill leaves us now in its present form, and it does become or it does come back to us in enactment stage, I think it is a very serious hoax placed before the people of this State.

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

Mr. MERRILL: Mr. President, I would just like to speak briefly on the whole question not on specifics but where we have proceeded and the whole question on where we go from here.

First of all I'm a little troubled, as a Member of the Appropriations Committee because I

read in the press over the weekend the criticism — description of this amendment by the spokesmen for the Maine Tax Limitation Committee not this amendment that was offered today but the amendment that was offered previously, Friday, and it said it was just taking care of some concerns of the Legislature and some with the Appropriations Committee could have done if they had taken the time to do it. Well, I don't have a real philosophical attitude about having people claim me for a foul probably because should get use to it but you know when we were urged, me being myself and the democrats and others to get this bill out of committee, it wasn't our wish but two real reasons to advance. One was so the Legislature could start working its will, its process has sort of been retarded and the other one was so the people would have a chance to vote on this 2209, people, I mean legislatures as it was and you will recall in the Portland papers the day after we voted to send it out of committee, the other spokesmen for the Maine Tax Limitation Committee said, and was quoted in the press, that they thought they had a perfect amendment and they just wanted to be voted up and down. So one point last week we — to that wish over the better judgment of a lot of us and frankly the major concern of my power is just not looking like an instructionist that is the reason that acquiesce, having my party look and that very day, the very day following that, we are praised by the Maine Tax Limitation Committee at least indirectly because they wanted a chance, they thought they had a perfect amendment — you will recall the Senator from Cumberland, Senator Huber wasn't expressing those same wishes at least as he was quoted in the papers, but they thought they had a perfect amendment and they wanted a chance to run up and down. Then once they put this amendment on, once they drafted this beauty and it was put on on Friday, then they say well we really are doing just what the Appropriations Committee should have done. Well may be some of them are new in dealing with the legislative process, but that is not the way that you do it my friends.

Secondly, I would like to quote from the Portland Press Herald Editorial today dealing with the subject of drafting, and it says, "It is not easy to accept Governor Longley's belief that a constitutional amendment which contains flaws would be better than no amendment at all." If this were a statutory measure, "interesting notion," that theory might be more acceptable. A flawed statute can be remedied simply. A flawed constitutional amendment once approved by the people can be corrected only through a re-enactment of a long procedure in the legislature and the polls."

Not a rare occasion but not always I agree with the press but I think they are right on point with this one and I think it medicates against passing this bill to be engrossed.

The PRESIDENT: The pending question before the Senate is the passage of L. D. 2209 to be engrossed. The Chair will order a Division.

Will all those Senators in favor of the passage of this bill to be engrossed please rise in their places to be counted.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: I request 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 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.

#### ROLL CALL

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

NAYS—Carpenter, Conley, Mangan, Martin, Merrill, Minkowsky, O'Leary, Pray, Usher.

ABSENT—Chapman, Redmond

22 Senators having voted in the affirmative and 9 Senators in the negative, with 2 Senators being absent, this Resolution is Passed to be Engrossed, as amended.

Which was sent forthwith for concurrence.

On Motion of Mr. Huber of Cumberland, Recessed until 2:30 in the afternoon.

#### Recess

#### After Recess

Senate called to order by the President.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Adjourned until ten o'clock in the morning, September 13, 1978.