

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 1, 1982 to May 13, 1983

STATE OF MAINE
One Hundred and Eleventh Legislature
First Regular Session
JOURNAL OF THE SENATE
Augusta, Maine
January 12, 1983
Senate called to order by the President.

Prayer by Father Rene Mathieu of St. Augustine's Church of Augusta.

FATHER MATHIEU: Let us pray. Lord, You have shared with us the task of building a home on this earth where we may live in liberty and justice.

We pray to You: who are the source of all wisdom, who's statutes are good and merciful, and who's law is truth, that by just and prudent laws, our State Senators may promote the well-being of all our people. Amen.

Reading of the Journal of yesterday.

**Papers From the House
Non-concurrent Matter**

BILL, "An Act Concerning the Provision of Services to Families with Runaway Juveniles." (S. P. 40) (L. D. 98)

In the Senate January 10, 1983, Referred to the Committee on Health and Institutional Services and Ordered Printed.

Comes from the House, Referred to the Committee on Appropriations and Financial Affairs and Ordered Printed, in non-concurrence.

On motion by Senator Pray of Penobscot, the Senate voted to Recede.

On motion by Senator Pray of Penobscot, referred to the Committee on Judiciary, in non-concurrence.

Sent down for concurrence.

BILL, "An Act to Require Notification to Abutting Landowners upon Correction or Alteration of a Prior Survey." (S. P. 42) (L. D. 100)

In the Senate, January 10, 1983, Referred to the Committee on Energy and Natural Resources and Ordered Printed.

Comes from the House, Referred to the Committee on Business Legislation and Ordered Printed, in non-concurrence.

On motion by Senator Pray of Penobscot, the Senate voted to Recede.

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

Senator PRAY: Mr. President, I move that L.D. 100 be referred to the Committee on Legal Affairs, in non-concurrence.

The PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Sewall.

Senator SEWALL: I move that we Recede and Concur.

The PRESIDENT: The Senator from Lincoln, Senator Sewall moves that the Senate Recede and Concur with the House.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion to Recede and Concur, please rise in their places to be counted.

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

4 Senators having voted in the affirmative, and 20 Senators having voted in the negative, the motion does not prevail.

On motion by Senator Pray of Penobscot, referred to the Committee on Legal Affairs, in non-concurrence.

Sent down for concurrence.

Communication

The Following Communication: (S. P. 66)

**The Senate of Maine
Augusta**

January 11, 1983

Honorable Paul Violette
Honorable Dan Gwadlosky
Chairs
Joint Standing Committee on State Government
State House
Augusta, ME 04333
Dear Chair Violette and Gwadlosky:

Please be advised that Governor Joseph E. Brennan is nominating Leo M. Loiselle of East Holden for appointment to the Maine Guarantee Authority.

Pursuant to Title 10 M.R.S.A., Section 751, this nomination will require review by the Joint Standing Committee on State Government and confirmation by the Senate.

Sincerely,
S/GERARD P. CONLEY
President of the Senate
S/JOHN L. MARTIN
Speaker of the House

Which was Read and referred to the Committee on State Government.
Sent down for concurrence.

Senate Papers

BILL, "An Act to Prohibit the Trapping of Bear with the Leg Hold Steel Jaw Bear Trap." (S. P. 55) presented by Senator USHER of Cumberland.

Which was referred to the Committee on Fisheries and Wildlife and Ordered Printed.

Sent down for concurrence.

BILL, "An Act to Include Interpreters for the Hearing Impaired Within the Evidentiary Communications Privilege." (S. P. 60), presented by Senator HICHENS of York (Cosponsors: Representative KETOVER of Portland, Representative JOSEPH of Waterville and Senator KANY of Kennebec.)

Which was referred to the Committee on Judiciary and Ordered Printed.

Sent down for concurrence.

BILL, "An Act to Prohibit Harassment of Hunters, Trappers and Fishermen." (S. P. 63) presented by Senator USHER of Cumberland (Cosponsors: Senator DOW of Kennebec, Representative CONNERS of Franklin and Representative CLARK of Millinocket.)

Reference to the Committee on Judiciary suggested.

On motion by Senator Pray of Penobscot, referred to the Committee on Fisheries and Wildlife and Ordered Printed.

Sent down for concurrence.

BILL, "An Act Relating to Common Recreational Facilities for the Residents of Frye Island." (S. P. 56) presented by Senator USHER of Cumberland (Cosponsor: Representative GREENLAW of Standish.)

BILL, "An Act Relating to a Fund for Ferry Replacement at Frye Island." (S. P. 57) presented by Senator USHER of Cumberland. (Cosponsor: Representative GREENLAW of Standish.)

BILL, "An Act Relating to Minimum Payment to Frye Island Municipal Services Corporation." (S. P. 58) presented by Senator USHER of Cumberland (Cosponsor: Representative GREENLAW of Standish.)

BILL, "An Act to Set Off Part of Township A, Range 7 W.E.L.S. and Township 1, Range 7 W.E.L.S. in the County of Penobscot, and Annex the Same to the Town of Millinocket." (Emergency) (S. P. 59), presented by Senator PRAY of Penobscot. (Cosponsor: Representative CLARK of Millinocket.)

BILL, "An Act to Prohibit Residency Requirements for Municipal Employees." (S. P. 61), presented by Senator PEARSON of Penobscot.

Which were referred to the Committee on Local and County Government and Ordered Printed.

Sent down for concurrence.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide that Senators shall Serve Four-year Terms Commencing in 1986. (S. P. 62), presented by Senator DOW of Kennebec (Cosponsor: Senator TWITCHELL of Oxford.)

BILL, "An Act to Defray the Costs of Law Enforcement and Corrections Officer Training." (S. P. 64), presented by Senator KANY of Kennebec (Cosponsors: Senator DIAMOND of Cumberland, Representative KETOVER of Portland and Senator TRAFTON of Androscoggin.)

BILL, "An Act Regarding Training Requirements for Law Enforcement Officers." (S. P. 65), presented by Senator KANY of Kennebec (Cosponsors: Senator DIAMOND of Cumberland, Representative KETOVER of Portland and Senator TRAFTON of Androscoggin.)

BILL, "An Act Granting State Employees Full Political Rights." (S. P. 67), presented by Senator CLARK of Cumberland (Cosponsors: Representative TUTTLE of Sanford, Representative NADEAU of Lewiston and Representative MASTERMAN of Milo.)

Which were referred to the Committee on State Government and Ordered Printed.

Sent down for concurrence.

Orders of the Day

The President laid before the Senate the Tabled and specially assigned matter:

BILL, "An Act to Change the Number of Trustees on the Caribou Utilities District Board from 3 Members to 5 Members." (H. P. 102) (L. D. 109)

Tabled—January 11, 1983 by Senator PEARSON of Penobscot.

Pending—Reference.

(In the House—Referred to Committee on Public Utilities, and Ordered Printed.)

On motion by Senator Carpenter of Aroostook, Retabled until later in today's session.

(Senate at Ease)

The Senate called to order by the President.

There being no objection all items previously acted upon were sent forthwith.

Senator Pray of Penobscot was granted unanimous consent to address the Senate, Off the Record.

Senator Gill of Cumberland was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Carpenter of Aroostook, Recessed until 2 o'clock this afternoon.

Recess

After Recess

The Senate called to order by the President.

Out of Order and Under Suspension of the Rules the Senate voted to consider the following:

Senate Paper

BILL, "An Act to Amend the Maine Guarantee Authority Act to Allow for More Expansive Development in the State." (Emergency) (S. P. 72), presented by Senator TRAFTON of Androscoggin. (Cosponsors: Representative MICHAEL of Auburn, Representative GWADOSKY of Fairfield and Senator PERKINS of Hancock.)

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

Sent down for concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

**Paper From the House
Non-concurrent Matter**

BILL, "An Act to Increase the Tax on Fire Insurance Premiums." (Emergency) (H. P. 117) (L. D. 102)

In the Senate January 6, 1983 Read Twice and under Suspension of the rules Passed to be Engrossed without reference to a committee.

Comes from the House, the bill and papers committed to the Committee on Business Legislation in non-concurrence.

On motion by Senator Pray of Penobscot, the Senate voted to Recede and Concur with the House.

**Committee Reports
House**

The following Leave to Withdraw report shall be placed in the legislative files without further action pursuant to Rule 15 of the Joint Rules:

BILL, "An Act Concerning Retroactive Application of the Income Tax Indexing Law." (Emergency) (H. P. 83) (L. D. 92)

Divided Report

The Majority of the Committee on Taxation on, BILL, "An Act to Provide for Tax Credits for Refunds Due in Tax Years 1981 and 1982 under Tax Indexing." (Emergency) (H. P. 107) (L. D. 114)

Reported that the same Ought Not to Pass.

Signed:

Senators:

WOOD of York
TWITCHELL of Oxford
TEAGUE of Somerset

Representatives:

HIGGINS of Portland
CASHMAN of Old Town
MASTERMAN of Milo
DAY of Westbrook
ANDREWS of Portland
KILCOYNE of Gardiner
INGRAHAM of Houlton
BROWN of Bethel
KANE of South Portland

The Minority of the Same Committee on the same subject matter Reported that the same Ought to Pass.

Signed:

Representative:

McCOLLISTER of Canton

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

On motion by Senator Wood of York, the Majority Ought Not to Pass Report of the Committee was Accepted, in concurrence.

Divided Report

The Majority of the Committee on Taxation on, BILL, "An Act to Address Deficits Imposed by Tax Indexing" (Emergency) (H. P. 133) (L. D. 124)

Reported that the same Ought Not to Pass.

Signed:

Senators:

WOOD of York
TWITCHELL of Oxford
TEAGUE of Somerset

Representatives:

McCOLLISTER of Canton
CASHMAN of Old Town
MASTERMAN of Milo
DAY of Westbrook
KILCOYNE of Gardiner
BROWN of Bethel
INGRAHAM of Houlton
KANE of South Portland
HIGGINS of Portland

The Minority of the Same Committee on the same subject matter Reported that the same Ought to Pass.

Signed:

Representative:

ANDREWS of Portland

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

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

Senator PEARSON: Mr. President, I move the Minority Ought to Pass Report, and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator PEARSON: Mr. President, Men and Women of the Senate, this particular Bill probably can be understood a little easier if you look at the handout that is on your desk, it's not blue in your case, but it contains a number of figures.

What this attempts to do, I think, is to put fairness into the situation that we find ourselves in right now. It seems to me that every member of the Senate, every member of this Legislature, probably has reached the conclusion that we cannot afford the thirty-two million dollars that we are faced with doing away with. It would cause the loss of too many jobs, too many services, that we vitally need in this State. This is an attempt to try to address that particular problem, while taking into account, the vote that was held in last November's election.

I don't know how the rest of the members of this Senate experienced their election, but I can tell you how I experienced mine.

I went in hundreds and hundreds and hundreds of homes, and I talked to a lot of people. Occasionally, the issue of the Indexing would come up, but even when it didn't come up, a lot of people said to me, a lot of positive things, a lot of nice things, everybody hears those. But in those rare instances where people were negative, they usually said to me, "why should I talk to you, you politicians are all the same?" And that hurt! We have all experienced that at one time or another. A lot of people said to me, those people who chose to be negative, "why should I talk to you, because you go to Augusta and do just as you please anyway?" And that hurts! And I don't want to be guilty of either one of those things.

I never favored this particular Indexing Bill in the first place. I never favored retroactivity, but the voters did, in my particular Senate District by 55.9 percent in almost every one of the thirty some odd towns that I have in Southern Aroostook and Penobscot Counties. So, it causes me to think about that and, I think, it should cause everybody to think about that. Those of us who had opposition in the election, I'm sure, from time to time, heard comments about that, because we had to get out and hustle around to get elected.

What this Bill attempts to do is to keep the retroactivity portion of the Bill, and at the same time not cause any loss of jobs, or State services, or educational funding for the local communities which we all have heard from our school boards about.

This chart will indicate to you that those people who make thirty-five thousand dollars or more will be paying and those people who make thirty-five thousand dollars or more in this State would be receiving a check, a rebate, from the State. Those people who make less than thirty-five thousand dollars in this State, I am told, constitute about 95 percent of this State's population.

It is a Progressive Income Tax, type of way of addressing the problem that we have before us. There is absolutely nothing wrong with a Progressive Income Tax. It is, in my opinion, the fairest tax that we have in the State today, much fairer than the Sales Tax, certainly much fairer than the Property Tax, and so consequently, I find this Bill that you have before you to be an admirable one, and one that will address both the problems of keeping faith with the voters who voted in November, and providing the essential State's services that, I think, we all think we need.

Thank you, Mr. President.

(Off Record Remarks)

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

Senator BUSTIN: Mr. President, I would like to speak to the Bill. Mr. President, and Members of the Senate, I want to speak today on behalf of LD 124. A bill which would impose an Income Tax surcharge to pay for the cost of retroactive Income Tax Indexing.

When all is said and done, we have only got four choices before us. One, make massive cuts in current programs, and layoff hundreds of employees. Something unacceptable to any one of us.

Two, repeal retroactivity, and move the effective date forward to the present. Unacceptable to me and maybe to some others in this Body.

Three, put the problem off until sometime in the future.

or Four, pass a tax increase to replace the monies lost.

By the retroactive portion of the Indexing Law, I reject the first choice, massive cuts. I reject it categorically. I reject it in the name of the people who voted to put me here, in the name of human compassion, and in the name of my own personal values.

Those of us who have served on the committees know this State government and know that its work is not the bulk of our lives, but the essence of what makes us a society. Our police, jobs, hospitals for the sick and the handicapped, and more.

I am truly encouraged that this alternative seems unacceptable to almost every member of this legislature and almost every member of the public with whom I have spoken within the last few weeks.

The second alternative is repeal. This alternative has strong support both in the halls and in my district. It has the support of the leaders of my party and it has the support of the MSEA, whose members have worked hundreds of hours to reelect this particular Senator.

Their concerns are my concerns. If I can't walk away from this job, at the end of this session, and know that I have improved the lot of those who do the work of our State government, and those who benefit from its services, then I will not feel that I have done a good job.

I have a problem with repeal. I don't like the precedent that it could set. I don't like this or any legislature saying to the voters, we'll change what you enacted. I am not one who believes that we are here to protect the voters from themselves.

The third alternative is to put the problem off until the future. Let me outline my views on that. Every problem I have ever put off has gotten more and more difficult to deal with.

Call it what you will, this is a form of deficit financing, prohibited by our State Constitution, and I reject it.

Finally, number four, a tax surcharge to raise the cost of a retroactive tax indexing. This is the approach that I favor. I favor it for the following simple reasons. First, it is honest. I am saying that if supporters of tax indexing wanted me to, yes given a choice I will vote to tax before I allow the high cuts in programs. Second, its simple, its just a percentage added onto the 1982 taxes. Third, it keeps faith with the voters, it honors the intent of the referendum.

Let me end my remarks with a plea to you. Consider the alternatives. Think about it! Support it! I have been asked, by many of you, how I will vote when and if the only choices are repeal or cuts. Frankly, I will probably be unsure of that until and if that happens and my name is called.

But we do not have to be limited to those choices. This issue no longer belongs to the press and the editorial writes. It is no longer the exclusive province of anyone to decide what we

will decide. The issue is now in the Maine Senate: let's work our will, let's make our own alternatives, let's be flexible, let's work together to find the best solution.

I support this Bill in this spirit and hope you, my colleagues, will do the same. Thank you.

(Off Record Remarks)

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

Senator WOOD: Mr. President, Members of the Senate, it is with a certain amount of regret that I rise to oppose my two good friends, who have spoken before me on this important issue, and I would hasten to point out that the argument is not one of motives. The debate should not be a partisan one, the debate is not one of the caring versus the uncaring. We both have similar goals, it is simply a case of different approaches.

As the Chairman of Taxation, the Committee that has wrestled with this issue since, (it seems like months ago), since just a few days ago, I had to come up with some criteria to judge the various proposals and reach a decision.

All of the proposals tamper with the will of the people. None of them leave intact what the voters allegedly voted on last November. So the argument about precedent, the argument about the will of the people is really an argument of degrees and nothing else.

There is ample precedent in law, in this State, that shows that repeatedly the initiatives and the referendums voted on by the people have been changed in many substantial ways.

I would point back to the year 1937 when there had been a referendum that would outlaw changes within the tax structure to finance the highways. There was a crisis in that very year and the governor called upon the Legislature to make a drastic change in that proposal. The Legislature facing a crisis rose to the occasion and changed the will of the people.

So we are simply talking about degrees today and nothing else.

What are the criteria that we need to use to judge the various proposals? One, I think that we have to do something that is straightforward and understandable by the voters. Two, I think, something that is clean and quick. There is a great deal of anxiety in the State. I do not want to see that anxiety turn into anything more than anxiety. I think that we have to be quick and responsive. Finally, we have to do something that removes clouds. Clouds over future tax liabilities brought on by the compounding. Clouds over our bond rating, and clouds over any future cuts.

Those are the criteria that we should be using, and when you stack that criteria up against the bills that we have before us today, the only position that meets all of those criteria is the repeal effort. The other bills simply don't make that effort, and it is for that reason that I can't support the proposal before us.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the motion by Senator Pearson of Penobscot, that the Senate Accept the Minority Ought to Pass Report, please rise in their places to be counted.

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

3 Senators having voted in the affirmative, and 25 Senators having voted in the negative, the motion to Accept the Minority Ought to Pass Report does not prevail.

The Majority Ought Not to Pass Report was Accepted, in concurrence.

Divided Report

The Majority of the Committee on Taxation on BILL, "An Act to Adjust the Effective Date of

Income Tax Indexing." (Emergency) (H. P. 134) (L. D. 125)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

WOOD of York
TWITCHELL of Oxford
TEAGUE of Somerset

Representatives:

HIGGINS of Portland
CASHMAN of Old Town
MASTERMAN of Milo
DAY of Westbrook
KILCOYNE of Gardiner
KANE of South Portland
INGRAHAM of Houlton
BROWN of Bethel
ANDREWS of Portland

The Minority of the Same Committee on the same subject matter Reported that the Same Ought to Pass.

Signed:

Representative:

McCOLLISTER of Canton

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

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

Senator DIAMOND: Mr. President, I move that the Senate Accept the Minority Ought To Pass Report.

The PRESIDENT: The Senator from Cumberland, Senator Diamond moves that the Senate Accept the Minority Ought to Pass Report.

The Chair recognizes the Senator from York, Senator Wood.

Senator WOOD: Mr. President, Members of the Senate, I think that my remarks that I have made previously, I do not need to repeat them, it is for the same reasons that I outlined on the other bill that I would be voting against this, and I would urge the Senate not to accept this measure.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the motion by Senator Diamond of Cumberland, that the Senate Accept the Minority Ought to Pass Report, please rise in their places to be counted.

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

3 Senators having voted in the affirmative, and 26 Senators having voted in the negative, the motion to Accept the Minority Ought to Pass Report does not prevail.

The Majority Ought Not to Pass Report of the Committee was Accepted, in concurrence.

Divided Report

The Majority of the Committee on Taxation on BILL, "An Act to Delay the Implementation of Income Tax Indexing and Compensate Municipalities for Revenue Losses Resulting from Indexing." (Emergency) (H. P. 137) (L. D. 126)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

WOOD of York
TWITCHELL of Oxford

Representatives:

HIGGINS of Portland
McCOLLISTER of Canton
CASHMAN of Old Town
ANDREWS of Portland
KILCOYNE of Gardiner
KANE of South Portland
INGRAHAM of Houlton

The Minority of the same Committee on the same subject matter Reported that the same Ought to Pass.

Signed:

Sensor:

TEAGUE of Somerset

Representatives:

MASTERMAN of Milo
DAY of Westbrook

BROWN of Bethel

Comes from the House, the Majority Report Read and Accepted.

Which Reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Teague.

Senator TEAGUE: Mr. President, I move that we accept the Minority Ought to Pass Report, and would speak briefly.

The PRESIDENT: The Senator from Somerset, Senator Teague, moves that the Senate Accept the Minority Ought to Pass Report.

The Senator has the floor.

Senator TEAGUE: I hope that you will accept the Minority Ought to Pass Report, at this time. I have in front of you an amendment with filing number of S-5, I would hope that it would go to its Second Reading and I could present this compromise.

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

Senator WOOD: Thank you, Mr. President. Members of the Senate, again, I would only say that the remarks that I made earlier, also, pertain to this Bill. Although we should not be discussing the amendment, I still have the same doubts and concerns about that amendment, so I would urge you not to accept this report.

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

Senator GILL: Mr. President, I would ask members of this Chamber to accept the report for the time being and allow an amendment to be brought forth.

We have all work, members of leadership, and members of the Taxation Committee have heard the Bills, we have all tried to work in a spirit of cooperation, and trying to arrive at a posture where we could sell to a hundred members of the House and twenty-three members of this Body, the necessary number we need to pass emergency legislation.

All of us are aware of the cuts that have been proposed and none of us want to see those cuts take place. We don't want to be left in the posture of having nothing before us or one bill that might be unpalatable before us.

I would ask you to allow this to go through. Hear the Amendment and then take a vote on it. You can kill it then if you wish, but I think we ought to have the chance to look at it and hear it.

Mr. President, I would, also, ask for a Roll Call when the vote is taken.

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

Senator WOOD: Mr. President, Members of the Senate, the Bill that we are discussing now has been heard by the Committee. The so-called, 'compromise position' is one that the Committee grappled with this morning. There was not a great deal of sentiment, from either party, in the Committee process in that compromise position.

I am afraid that it is flawed like many of the other bills are flawed. It seems to me that this is not a compromise position, it is simply putting off the inevitable, putting off the responsibility that the people elected us to carry out, and also, putting into place a funding mechanism at this point in which there is no funds to fund it.

I think that it would be the height of irresponsibility to try to fund something or tell the taxpayers we are going to fund credit without having the money up front to fund it.

The package is simply unworkable.

The PRESIDENT: A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

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

The pending question before the Senate is

the motion by the Senator from Somerset, Senator Teague, that the Senate Accept the Minority Ought to Pass Report of the Committee.

A Yes vote will be in favor of Accepting the Minority Ought to Pass Report.

A No vote will be opposed.

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

ROLL CALL

YEA—Clark, Emerson, Gill, McBreairty, Redmond, Sewall, Shute, Teague.

NAY—Brown, Bustin, Carpenter, Charette, Danton, Diamond, Dow, Dutremble, Erwin, Hayes, Kany, Minkowsky, Pearson, Pray, Traf-ton, Twitchell, Usher, Violette, Wood, The President, Gerard P. Conley.

ABSENT—Baldacci, Collins, Hichens, Najarian, Perkins.

A Roll Call was had.

8 Senators having voted in the affirmative, and 20 Senators in the negative, with 5 Senators being absent, the motion to Accept the Minority Ought to Pass Report does not prevail.

The Majority Ought Not to Pass Report Accepted, in concurrence.

Senate Divided Report

The Majority of the Committee on Taxation on BILL, "An Act to Remove the Retroactive Provisions of the Income Tax Indexing Law." (Emergency) (S. P. 34) (L. D. 96)

Reported that the same Ought to Pass

Signed:

Senators:

WOOD of York

TWITCHELL of Oxford

Representatives:

HIGGINS of Portland

MCCOLLISTER of Canton

KILCOYNE of Gardiner

KANE of South Portland

INGRAHAM of Houlton

ANDREWS of Portland

CASHMAN of Old Town

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

Signed:

Senator:

TEAGUE of Somerset

Representatives:

MASTERMAN of Milo

DAY of Westbrook

BROWN of Bethel

Which Reports were Read.

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

Senator WOOD: Mr. President, I move the Senate Accept the Majority Ought to Pass Report.

The PRESIDENT: The Senator from York, Senator Wood, moves that the Senate Accept the Majority Ought to Pass Report of the Committee.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President and Members of the Senate, before we Accept the Majority Ought to Pass Report on this particular Bill, I feel it incumbent upon me to express some of the views expressed by constituency in my particular District.

There has been several phone calls, and I guess, I feel just as apprehensive here this afternoon, talking about this particular Bill, as I did back in 1969 when we had the Income Tax issue before us, in then, a Republican-controlled Legislature.

The statement has been made many times that the people of Maine did not fully comprehend the ramifications of the Indexing Bill or the Retroactivity Clause. But regardless of their comprehension of the Retroactivity Clause, the majority of the people in the State of Maine spoke in favor of it; just like they spoke on the Maine Yankee Issue, or the Maine Milk Commission Issue. We accepted the will of the

people of the State of Maine.

It is very difficult to stand here this afternoon to talk on this particular value, which these people placed upon their right to expression in solving what they felt was a dilemma.

When you think about why they voted for this particular issue, Indexing, was it predicated because of the rebate? In most cases, I find, that it was not based upon the rebate itself, because they had received two previous rebates during the Longley Administration. It was based upon the fact of accountability on the part of the Legislature. We want you people to stand up front and be counted, as to how you are expending our money. And during the campaign, they were speaking very clearly of an austerity program: you people got to get hold of the reins of State Government and make clear-cut determinations exactly how you are spending our money, because there has been a serious curtailment of funds at the Federal level, and there shall be more.

People, also, are very confused with the various newspaper articles that portray that we had anywhere from a thirty-seven million dollar surplus, down to a seventeen million dollar surplus. They felt, if you have this kind of money of over collections, then it is about time you returned it to us, seeing as you don't need it.

There have been many different arguments advanced. There has been arguments advanced when the issue was being discussed about; what about this over collection? What about the amount of money collected because of bracket creep? What about: what has inflation done? Are you taking more out of our weekly paychecks? And my concern was predicated primarily upon those people who work for weekly salaries in the State of Maine. And these people, their jobs are subjected to change, unemployment, getting pink slips, laid-off like anybody else. So I don't think job security is really an issue, in so far as State employees, or people out in the free enterprise system. It is a matter of economics, in these very, very dangerous and trying times.

Blame was placed upon the fact that during the Carter Administration, there were serious curtailments being implemented which cut back some of the monies to the States. And they felt, at that time, the administration should have taken heed to what was going on.

When Federal Block Grants came into being, with, at least, a 20 percent curtailment during the previous administration, the general public, at least the ones who were informed, had told me that you people should have been addressing: job descriptions, the performance and productivity of the various classifications, and have these programs outlived their usefulness, because many of those people you employed were employed primarily because there was Federal monies there to take care of those particular needs. Now that the well is running dry, then you must reassess your priorities.

If we take, for example, the Department of Human Services, if my memory serves me correctly, we are going to be faced with one horrendous problem in the very, very near future. If my understanding is correct, we are talking of about twenty-two hundred people in the Department of Human Services, from an estimate that was projected to me, about twelve hundred people are State employees who are fully Federally funded. If there's further curtailment of Federal funds, what then happens to those existing State employees? Do we take them in as we did the fifty-seven or seventy-six people last year and pump them into the State budget? Is there any assurance or guarantee? There isn't.

Are we not at a particular point in time where we are talking of a major tax increase in the State of Maine? And I bring this up for one reason, the people have spoken on this particular issue, right or wrong, but I think the Administration and the Legislature should be right up

front in telling them precisely, yes, if you want to maintain the same level of services we have for those various classifications, and the outside home-maker programs, home-based care, and to prevent this matriculation down to the municipalities, which means additional tax increases at the local level. Then let's say to them, yes, we have a major tax increase coming in the very near future, with the Income Tax, coupled with the Sales Tax. But to say to them as we have in the past, yes, we have gone through four years, we have had no taxing increases, we didn't need any money.

I don't think the people in the State of Maine are that naive to believe that we are running State Government this length of time without some way of raising these particular revenues.

I think it's incumbent, that when they voted for this, they were voting for an austerity program. Ideas have been projected along the lines, how do you fulfill the wish of the people of the State of Maine, who have voted for this, without causing any serious dislocations?

One answer came up early this afternoon, and that is, this gentleman comes to me and says: "I just read the newspaper, you have a seven million dollar surplus. Now I see that the Administration is earmarking this surplus at 1.2 million dollars for Mental Health and Corrections; 1.2 million dollars for Education. Why are you not taking the surplus and addressing the retroactivity?" And I says, "well, it may be more than the seven million dollars that we would owe the taxpayers." Then he came up with the suggestion, if those people who favor getting the money back, when they file their Income Tax in April, allow them to check it off, and they shall receive their rebate. But those people who feel very strongly in maintaining the level of services in the State of Maine will, also, checkoff a different box. At which point they will say, 'I, as a taxpayer in the State of Maine, who have voted with the majority and now have Indexing, will earmark that particular part of my rebate to the Department of Mental Health and Corrections, to the Department of Education, to the Department of Human Service,' wherever you think the programs affected will be curtailed. Now this is a taxpayer speaking.

Another one suggested, you people have been floating bond issues, right and left, why not float a bond issue to take care of the retroactivity?

I spent the entire day, yesterday, with the Taxation Committee listening to all the different scenarios that were being discussed. I guess, for the length of time, of six or seven hours I was there, there were only two opponents to the entire Bill. One man made it very clear that he wanted his money back. He says, "you went through an over collection. I deserve to get that particular rebate back, but I want you people be up front about what you are doing."

Mr. President and Members of the Senate, it is not a very easy thing to change around what the majority of the people of the State of Maine have done, right or wrong, again, but I think it incumbent upon, at least, myself personally to address some of the concerns that they have raised. Chances are in the final analysis and evaluation of this whole issue, as I told every single one of them I spoke to from the time this came up, that if there is no other viable, practical, feasible, alternative, that I certainly would vote to remove the retroactive provision. But if something comes up at the last minute that will serve and fulfill what the people of the State of Maine did as a majority, then I want to be in a position to vote for what the people have done.

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

Senator McBREAIRTY: Mr. President and Honorable Members of the Senate, as you perhaps have noticed, L. D. 96 is a bipartisan Bill, 3 Republicans and 1 Democrat.

The goal of the sponsors of L. D. 96 was to encourage bipartisan support in repealing the retroactive provisions of the Tax Indexing Law. The history of L. D. 96 dates back to the first week in November, directly after the election, when I called and requested that a bill be drafted to repeal the retroactive provisions of the Tax Indexing Law, I got a copy of the working papers from the Research Office, awhile ago, and it's dated November 5, 1982. That's when I called.

My greatest reason for sponsoring L. D. 96 was, because not only I, but many of my fellow Republican candidates, and Charles Cragin, himself, in an attempt to encourage support for the Tax Indexing before the election told people statewide who were concerned with the retroactive provision that they need not worry. If the money was not available, the retroactive provisions of the Indexing Law could be repealed by the 111th Legislature.

I'm sure you have heard, and will continue to hear Legislators say, that Tax Indexing is the people's Bill. We cannot tamper with a Bill initiated and passed by the people. Our Record will show that of the five initiated bills passed by voters prior to 1982, three have been amended a total of thirty-nine times. One of the initiated bills was amended three times in the Legislative Session immediately following enactment.

If I understand correctly, the initiated Tax Indexing Bill we are debating today, will have to be amended before it is Constitutional.

We, the Legislators, represent the people. I'm sure that if a bill initiated and passed by the people, creates a problem for the people, they expect us, as their representatives to make the necessary amendments to eliminate the problems. What are the problems we are now facing because of the retroactive provisions of the Indexing Law? If the retroactive provisions of Indexing is not repealed by January 15th, Indexing will become law, retroactively to January 1, 1981. If we do not repeal the retroactive provisions, we are not only talking about a thirty-two million dollar loss of State revenue, we are talking about over one-hundred million dollars accumulated loss of State revenue by the end of the next biennium.

I'm sure there is a question in many of our minds as to just what the people thought they were voting for when they voted for Indexing on November 2, 1982. Many times when we pass legislation that is vague, we will look back at the statement of fact and the Legislative Records for an answer. Many times the sponsor of legislation will make it very clear in debate as to actually what his or her legislation is intended to do.

Let's look back at Charles Cragin's projecting Bill. The statement of fact and the record, I have a copy of project index. The statement of facts says nothing about the retroactive portion. It does say the effective date will be on or after January 1, 1981. Now that could actually fool people into thinking it could take effect any time.

Let's take a look at the ballot. There's nothing on the ballot that mentions retroactivity, nothing to inform the voter.

Let's go over the record. As I stated before, many Republican candidates while campaigning told people who were concerned with the retroactive provision of Indexing, don't worry, the Legislature can repeal the retroactive provision, if the money is not available.

What did Charles Cragin say on Tax Indexing for the record? I have a news item from the Lewiston paper, and I won't read much of it. The heading says, "Cragin says, he may curtail his tax plan." He did say, "to the extent that I can save money, I'm going to have to deal up front with the Legislature and with the people and say, we can only make it prospective. We can only make it apply in the future and not retroactively." He, also, said, "he would consider voter approval of Tax Indexing a vic-

tory, even if the retroactive provision was later dropped, and the plan implemented prospectively." Charlie Cragin was interviewed by M.M.A. on September 14th. The interview was on tape. I have listened to the tape. He was questioned, and the first question goes like this: "You mentioned Tax Indexing which is certainly your creation, in terms of bringing it before the voters, some concerns, though, have been raised on the retroactivity. That's going to take place in the last six months of this fiscal year. We would really like to know your feelings on how this is going to be handled that's a considerable amount and could affect a broad range of people and municipalities."

Charlie's answer, "it certainly could have an impact if someone were demented, demented enough to increase taxes in order to raise the money to provide a rebate. I think we have to look at the situation to see the way this historically arrived. It came about because the legislation was originally presented in 1980, because the Legislature failed to take action in two succeeding years, the legislation ultimately got to referendum.

The retroactive aspect of it is not the substantive legislation, but the result of the fact that the effective date of the Bill begins with the calendar year, tax year '81, for individuals. I believe that this money can be found assuming the continuing rate of inflation, and we're watching it as this juncture."

The second question: "For that first 6 months you feel then you can fund the thirty million or whatever the rebate is going to be through the excess that's going to be brought about because of the normal course of inflation?"

Charlie's answer: "The ultimate question has to be asked, well Charlie, what do you do if you cannot in fact find the money? And I think given that hypothetical question, and as far as I am concerned it is a hypothetical question, which I don't expect to reach, but given that hypothetical, you go in and you apply the legislation either prospectively or only partially retroactive."

The third question: "I don't understand. Do you have the choice to not implement something that was approved by the voters?"

Charlie's answer: "The referendum question is another Bill. It is a piece of legislation, it is not Constitution."

When the people repealed the Uniform Property Tax, the Legislature went right back, and pretty much reenacted the Uniform Property Tax and called it something else. I think anyone involved in municipal government or the educational sector of municipal government recognizes what took place. We are not amending the Constitution. Those who are opposed to Indexing in this State, I mean philosophically, opposed to Indexing, are attacking Indexing on the basis of the retroactivity, and a big scare tactic being used.

I think in the final analysis, the editorialist, and the proponents of Indexing will say, look folks, the Maine Legislature is not going to take the initiative to enact this, Joseph Brennan adamantly opposed to it. The only chance you are going to get is this one. I think you are going to have to rely on the judgment of some people to implement it to the greatest extent possible."

I hope the information I have presented will help to better understand the intent of the proponents and sponsor of Project Index. I hope the information I have given will help you better understand what the people were told, before voting for Indexing. I hope this 111th Legislature will deal with this Bill and the people of Maine up front, as Charlie Cragin said we could do, if we didn't have the money.

I urge passage L. D. 96. Thank you.

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

Senator WOOD: Mr. President, Members of the Senate, just to clear up a couple of statements that the good Senator from Androscoggin, Senator Minkowsky made that I think

needs some clarification. The Senator suggested that one of his constituents came up with the idea of floating a bond to pay for this thirty-two million dollars. I would only point out that in order for us to float a bond, we first have to have a two-thirds vote in each House and then that bond question has to go out to the public for referendum. A process, that in no way, could we complete in time to deal with this problem. So, I think that he should have assured that voter that is an alternative that is not workable.

Secondly, the alternative of cuts. I heard the figure seven million dollars in surplus. My reading of the figures, and with verifications from the Appropriations Committee, we are currently in a situation in which we are four point five million dollars underestimates. There is no surplus in the State, no surplus to apply towards dealing retroactivity, and I don't want the public to think otherwise. Also, in dealing with the issue of cuts, I would point out that the sponsor of this Bill, the good Senator from Aroostook, Senator McBreairey, has chaired the Performance Audit Committee. A Committee that's been charged with determining where cuts can be made, and we all know with what a sharp knife that Senator has operated with, and if he can't find those cuts, I don't think we can find those cuts at this late hour.

And finally, the issue of tampering with the will of the people, since that seems to be what is coming down to be the major issue.

This State when it adopted the initiated process and the referendum process permitted the Legislature to use its will in amending that process.

In 1976 there was a Bill submitted before the Legislature that would have disallowed legislative interference with the referendum in initiated process. That Bill was rejected by the Legislature and I would contend that that rejection was a reaffirmation of our ability to deal with initiated and referendum procedures.

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

Senator MINKOWSKY: Mr. President, Members of the Senate, I would like to inform the good Senator Wood, from York, that my constituent has been fully informed. All I was attempting to do this afternoon was to project a constituent's point-of-view or a taxpayer in the State of Maine's point-of-view as to what they felt was a solution. It was only a helpful suggestion that they thought could assist us in this particular program.

I guess what they are really getting at, is this particular situation at the present time, referred to by some as a quick-fix to allow more ample time in which to address a major tax increase.

Now if the good Senator from York can assure me, and maybe the citizens of the State of Maine, that this particular thirty-two million dollar retroactive provision, that I just referred to a few moments ago as a 'quick-fix', will answer or be the solution, that there will be nothing else down the lane as far as additional tax increases, I certainly would be very interested in getting his point-of-view at this particular stage of the game.

The PRESIDENT: Is the Senate ready for the question?

On motion by Senator Wood of York, the Majority Ought to Pass Report of the Committee was Accepted, and the Bill Read Once. Under Suspension of the Rules, the Bill Read a Second Time, and Passed to be Engrossed.

Sent down for concurrence.

On motion by Senator PRAY of Penobscot, all items previously acted upon were sent forthwith.

Orders of the Day

The President laid before the Senate: BILL, "An Act to Change the Number of Trus-

tees on the Caribou Utilities District Board from 3 Members to 5 Members. (H. P. 102) (L. D. 109)

Tabled, Earlier in Today's Session, on motion by Senator Carpenter of Aroostook, pending Reference.

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

Senator PEARSON: Mr. President, Men and Women of the Senate, I have tabled this bill for 2 days now, and the reason that I wanted to explain it briefly to the Senate, is that when I served on the Public Utilities Committee some 5, 6, or 7 years ago, we had a bill from the City of Caribou and I felt that we had already passed this legislation. Senator Donald Collins was on the Committee at that time, we have made contact with him and he thinks that it passed too, but we are not sure so instead of keeping it on the calendar, tabling and tabling it we are going to allow it to go to committee, but we are not really sure that it passed or not.

Which was referred to the Committee on Public Utilities and Ordered Printed, in concurrence.

(Senate At Ease)

The Senate called to order by the President.

Senator Gill of Cumberland was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Carpenter of Aroostook, Adjourned until 2 o'clock tomorrow afternoon.
