

# 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

January 18, 1978

Senate called to Order by the President.  
Prayer by Reverend Charles Scott Planting, United Presbyterian Church in Farmington.

Reverend Planting: The prophet Micah spoke these words to Israel. "He has showed you oh man what is good, what does the Lord require of you, but to do justice and to love kindness, and to walk with your God."

Let us pray. Oh Lord, our Judge and redeemer. Your blessing is asked upon this body of men and women who gather to make the laws governing the State of Maine. As they proceed in their tasks, grant them the gift of wisdom to see through complex questions, courage to face the pressing needs of our day, strength to persevere through debate, and peace of mind to live with decisions equitably reached. God of justice and mercy, grant that the vision of Micah might fill our hearts and minds, and what is required of each of us is to do justice and to love kindness and to walk humbly with you our God. Calling upon you in humility, acknowledging your majesty. May we learn the wisdom of restraint and the justice of charity. In the name of the Lord from whom justice flows like a mighty river, Amen.

Reading of the Journal of yesterday.

Off Record remarks

Papers from the House  
Joint Orders

Expressions of Legislative Sentiment recognizing that: David Cunningham of Freeport has been presented with the Amvet of the Year Award for 1977, (H. P. 2002)

Edward Little High School of Auburn has won the State Class A Football Championship for the 1977 academic year, (H. P. 2001)

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

Joint Order

WHEREAS, at the present time, many Maine Communities are undertaking housing and community development projects involving housing and urban development and other federal agency funding; and

WHEREAS, there are approximately 80 different state agencies in the area of housing and community development; and

WHEREAS, the lack of coordination among these agencies presents problems in providing effective and efficient state assistance in this area; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Standing Committee on State Government shall study the feasibility of establishing a State Department of Housing and Community Development to include those agencies currently involved in providing services and financial assistance in the areas of housing and community development and to study any other alternative means of reorganizing those agencies; and be it further

ORDERED, that those agencies directly affected by the study shall provide to the Joint Standing Committee on State Government staff assistance necessary to complete this study; and be it further

ORDERED, that the committee shall complete this study no later than December 1, 1978, and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to the members of the committee. (H. P. 2004)

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

On motion of Mr. Speers of Kennebec. Tabled pending passage.

Joint Resolution  
STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SEVENTYEIGHT

A Joint Resolution in Memoriam: WHEREAS: the Legislature has learned with deep regret of the death of Bernard Langlais of Cushing, fondly remembered as "Blackie", who was widely admired as one of Maine's finest sculptors. (H. P. 2003)

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

Senate Papers

Mr. Chapman of Sagadahoc presents, Bill, "An Act to Encourage the Formation of Small Business Investment Companies." (S. P. 675)

Which was referred to the Committee on Business Legislation and Ordered Printed. Sent down forthwith for concurrence.

Mr. Pray of Penobscot (Cosponsor: Mr. Pierce of Kennebec) presents, Bill, "An Act Relating to the Importation of Drugs." (S. P. 674)

Which was referred to the Committee on Judiciary and Ordered Printed. Sent down forthwith for concurrence.

Committee Reports

House

Leave to Withdraw

The Committee on Labor on, Bill "An Act Relating to Eligibility of Adult Education Instructors under the Unemployment Compensation Laws." (H. P. 1933) (L. D. 1999)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted in concurrence.

Ought to Pass — As Amended

The Committee on Local and County Government, on, Bill, "An Act Converting Beaver Cove Plantation into the Town of Beaver Cove." (H. P. 1902) (L. D. 1963)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-956).

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

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

Divided Report

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

Reported that the same Ought to Pass.

Signed:

Senators:  
WYMAN of Washington  
MARTIN of Aroostook

Representatives:  
TEAGUE of Fairfield  
MAXWELL of Jay  
IMMONEN of West Paris  
COX of Brewer  
CARTER of Bangor  
CAREY of Waterville  
CHONKO of Topsham  
TWITCHELL of Norway  
POST of Owl's Head

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

Signed:  
Representative:

MACKEL of Wells

Comes from the House, the Majority Report Read and Accepted and the Bill Passed to be Engrossed.

Which Reports were Read.

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

Mr. MARTIN: I move the Majority Ought to Pass Report of the Committee.

The PRESIDENT: The Senator from Aroostook, Senator Martin, now moves that the Senate accept the Majority Ought to Pass Report of the Committee.

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

Mr. CONLEY: Mr. President and Members of the Senate, the first I saw of this Bill was in the newspaper yesterday. At least the debate that took place on this Bill in the other Body. Sort of an interesting Bill and I wonder if some member of the Taxation Committee might explain as to how this piece of Legislation would be enforced.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair. Would any member of the Taxation Committee who may care to answer.

The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President and Ladies and Gentlemen of the Senate, before answering the Senator from Cumberland, Senator Conley's questions, I would like to offer a brief explanation of the Bill.

This Bill would simply require out of state sellers who advertise in Maine to register under the Maine Sales and Use Tax, and also it would allow the Sales Tax people to collect Sales Tax to Maine residents who purchase items from, for example New Hampshire. As to exactly how this is going to be enforced, this was brought up on the Taxation Committee and we were assured by Mr. Ray Halperin, the State Tax Assessor, that it could be and that it was quite Constitutional. As to the set up, I do not run taxation so I could not answer that.

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

Mr. LOVELL: Mr. President and Ladies and Gentlemen of the Senate, I have just received a call from radio station WSME in Sanford, and as a result I am moving indefinite postponement of this Bill and all accompanying papers.

WSME in Sanford says that the radio stations that have FM frequency and the regular frequency in the out county area get a great deal of New Hampshire advertising. It would hurt the radio stations a great deal.

WATV in Portsmouth, New Hampshire accepts Maine advertising including the Maine Lottery Bill, and consequently, the manager of WSME feels that this Bill would definitely be unfair for the border towns in Maine as well as the border towns in New Hampshire, and would cause a good deal of hard feeling between the two States. So consequently, it would be just about impossible to collect. Now when you go into the New England Shopping Mall, down there in Portsmouth, they are not going to ask you if you are from Maine, or New Hampshire or where you're from to collect the Sales Tax. Now there is not going to be anybody on the bridge there to stop you to see if you bought anything in New Hampshire, because we do not have enough police. So I think this Bill is just a waste of time and not a proper Bill. I would hope that you would go along with indefinite postponement.

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

Mr. HICHENS: Mr. President, I would support the motion by the good Senator from York, Senator Lovell.

The bill is a direct affront to Maine citizens who reside not only along the New Hampshire border, but also those living further up in the state.

Every signer of the ought to pass resides a

good distance from New Hampshire and naturally cannot enjoy the privileges of buying in New Hampshire as easily as those in southern and western Maine.

To prohibit advertising of produce sold in New Hampshire and papers distributed in Maine and Maine radio advertising is discriminatory to say the least. Clothing and household products may not be taxable in our neighboring State, but it is not the merchants of Maine border towns that are supporting this bill. It is legislators who are not handy to the border to share in nontaxable purchases.

I have seen no objection from these people who live along the New Brunswick border about Maine radios advertising over in New Brunswick, that the sales tax in Maine is only 5 percent as compared to an 8 percent tax in New Brunswick. They do not object to people from New Brunswick coming over into Calais and other areas along the border to buy their produce.

Automobiles, Snowmobiles, Farm Equipment, etc. purchases in New Hampshire are all taxable in Maine. Refrigerators, T.V.'s, Stereos, etc. delivered into the state are also taxable. So it is the lower cost merchandise that we are concerned with this morning.

Personally, I would prefer that Maine have no Sales Tax but rather pay expenses by means of Income Taxation; but just because we do have a Sales Tax, I do not believe that we should prohibit people from being advised of sales in our neighboring state. By the crowds I have seen at the Maine Mall and other areas in Maine, we are not hurting as a State because border residents read advertisements or hear of them over the radio and take advantage of such advertising.

I, therefore, hope that you will support the motion to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Mr. Martin.

Mr. MARTIN: Mr. President and Ladies and Gentlemen of the Senate, response to a comment which was previously made. This does not affect the advertising industry whatsoever. I suppose that you could consider what is fair and what isn't. I am a small businessman, for example, and I establish myself in York County, just mention in Aroostook County it may not effect matters correct, because prices in Canada, for example, are much greater. Okay, I have established a small business in York County. I sell television sets, I can't, all I have to do is go to New Hampshire get a television set pick it up myself. Obviously, I am not charged sales tax. All this Bill does, L. D. 1937, would simply allow the State Tax Assessor to collect information from businesses in New Hampshire on whom exactly purchases or receives equipment from New Hampshire.

Now if you want to vote against small business in York County or the bordering communities then vote against this Bill.

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

Mr. CONLEY: Mr. President, it seems to me that the bill does direct itself toward advertising. The first paragraph of the Bill states that, "Solicitation by advertising, every seller of tangible, personal property who solicits order for retail sales for use, storage or other consumption within the State by means of advertising whether or not published or transmitted within the State which contains a direct or indirect appeal to potential purchases in this State as opposed to the general market for advertised product."

I remember back a few years ago when we had the infamous Timothy J. Murphy and the Green Berats who use to camp on the New Hampshire border, as it is my understanding, is currently being done by the Massachusetts State militia, to try to incarcerate citizens of their State who take advantage of the free trade system within the bounds of New Hampshire. Now, we are sort of in control of our own

destiny if we impose Sales Taxes around this State, that apparently are just a little too heavy for some people who not only go to New Hampshire but there are many who go to Massachusetts. Now we have a situation of the Jordan Marsh Company over in South Portland who has another store in Boston, advertise consistently within the papers of the State. And I am sure that instead of going to South Portland, that you send your order into Boston, and say that Jordan Marsh in Boston applies for Maine Sales Tax to the purchase that you make through Boston. What is to stop Jordan Marsh from just taking Sales Tax and incorporating it as part of their net profits or gross receipts. I do not honestly see how the State is going to be able to collect that revenue. It is obvious to me, another bureaucratic Bill because its always spelled out so nicely, and if you take a look at its personal services, one individual at \$14,000 and all other capital expenditures for another \$3,000. I just think that we are getting into an area that we are not going to be able to enforce, and secondly, I look upon the Bill as sort of an infringement upon the rights of individuals who want to exercise the free trade enterprise.

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

Mr. KATZ: Mr. President, it had to happen sooner or later that the Minority Leader was not completely informed on the subject and perhaps today is the day.

Jordan Marsh is subject to a Sales Tax whether you buy it in Boston or you buy it at the Portland Mall. On the other hand, Filenes is not. Filenes does not have an outlet in the State of Maine. So if your only purpose is to save the sales tax you buy in Filenes, and not Jordan Marsh. But anybody who has an outlet in the State is required to have a certificate and collect the Sales Tax. Obviously, when you walk into Jordans in Boston and do not say your from Maine and just pay cash, you do not pay sales tax. But I suspect that the sales tax collections based upon this facet of the law, we have outlet in Maine, this is enforceable and it gives us probably significant revenue. I do not know.

The thing that bothers me about the debate this morning is the fact that, I am looking at a very overwhelming twelve to one Committee Report and I just sense that it is going down the drain. I do not know about this issue, but I hope the Senate does not over turn a twelve to one Committee Report without an awful lot more information than the past presently, and perhaps justice would indicate that it be tabled until we have that information.

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

Mr. SPEERS: Mr. President, I also have some very grave misgivings about this particular Bill. I note that we do have the members of the Taxation Committee who signed this report in the Chamber and I hope that we can have some additional debate on this particular measure and some comments from the members of that Committee.

I have some real questions also as to the enforceability of this measure. Though it may not be very widely known, but the Maine State Tax Law correct title is, The Sales and Use Tax. And for an individual to go to New Hampshire and purchase that television set and bring it back into the State of Maine and not pay a 5 percent tax on that television set, he is breaking the law. He is liable for a 5 percent use tax on the fact that he is bringing that item back into the State of Maine for his own use, on which he would have paid a 5 percent tax had he purchased it in the State of Maine. The same goes for travel to Boston or New York or wherever else anyone may be purchasing items of personal property. Obviously, that is not very widely enforced. And for the Bureau of Taxation to say that they would have no problem in enforcing this law, and presumably letting it go at that before the Committee without explaining in a little more detail as to how it would en-

force this law I think is being a little bit optimistic. The retail outlets in New Hampshire or Massachusetts are not going to be requesting of an individual who is purchasing at the counter, whether they happen to be from the State of Maine or from the State of New Hampshire or Massachusetts.

The other thing that bothers me very greatly about the Bill is that, in paragraph 8, Solicitation by Advertising, it states very clearly that every seller of tangible personal property who solicits orders for retail sales, in other words, advertises, whether or not published or transmitted within the state. Now presumably there are a great many New Hampshire advertisers who advertise in the Portsmouth television or radio station and obviously, that information is transmitted into the State of Maine. How is it to be determined that their purpose is to lure Maine residents into New Hampshire stores? That certainly would not be the only purpose and maybe not even the primary purpose.

So I have some very grave misgivings as to how this Bill would be enforced, and I think the good Senator from Cumberland, pointed out one other item in this Bill that I think bears being pointed out again and that is that it adds one additional position in the Bureau of Taxation. A cost of \$17,000 a year, and I would hope that we might be able to find something better for the bureau to be doing, than to be going after out-of-State retail outlets.

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

Mr. MARTIN: Mr. President and Ladies and Gentlemen of the Senate, Senator Speers agreed that it is illegal for an individual to go to New Hampshire for example, and purchase a television set and yet not be subject to sales taxes. Well all this Bill does, is it gives the Bureau of Taxation a tool to try to do this. If you want to try to enforce it, pass the Bill. It is quite obvious. If you do not want people to pay sales tax when they purchase items in New Hampshire vote against it.

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

Mr. JACKSON: Members of the Senate, I think you will notice on the Committee Report, the absence of my signature. I was unaware that the Bill was passed out due to the adverse weather last Tuesday when they held the hearing on the Bill. I was unable to be here in Augusta. And brought to my attention the Bill and I have had an opportunity to look at it and the suggestion that the Good Senator from Kennebec, Senator Katz, made about having possible somebody tabling the Bill would be wise I feel.

By just quickly glancing at Section 8 of the Bill, I would assume that would cover and we are discussing Maine, New Hampshire and Vermont maybe, and New York, Connecticut, and Rhode Island, but I would assume that this Bill would cover every State in the Nation, because of the publication, Field and Stream that is sold here in the State of Maine may have advertising for products, Playboy or whatever the case may be, and it would seem to me that these would all come under this Bill and I do not think that \$17,000 would be adequate enough to enforce the Bill nation wide.

So I would hope that somebody would table the Bill for at least a day so we could have an opportunity to look at it.

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

Mr. HEWES: Mr. President and Members of the Senate, rather than just table it for today, I think that the pending motion is the correct motion. I think discretion is the better part of valor. Possibly a study during the forth coming interim between now and next year would be in order.

I do know that Sears Roebuck and Company and similar mail order business firms do send sales tax receipts to the Bureau of Taxation even though the sales is from Boston or some out-of-state place. Newspapers having been

mentioned. I was recently in Alfred and I heard a Manchester radio station and, of course, we do get Wheeling, West Virginia, and stations all over the country, so I think that at this time the Bill should not be passed. I would hope that you support the indefinite postponement motion.

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

Mr. COLLINS: Mr. President, I move that this matter be tabled for one legislative day.

On motion of Mr. Collins of Knox, Tabled for One Legislative Day, pending the Motion of the Senator from York, Senator Lovell, to indefinitely postpone.

(Off Record Remarks)

#### Second Readers

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

#### House

Bill, "An Act Concerning the Discount Factor and Capitalization Rate in the Tree Growth Tax Statutes." (Emergency) (H. P. 1882) (L. D. 1936)

RESOLVE, to Appeal the Decision of the State Claims Board Regarding Property Damage Suffered by Phillip G. Rotolo of Portland Because of a Resident of the Maine Youth Center. (Emergency) (H. P. 1892) (L. D. 1949)

RESOLVE, to Amend the Apportionment of Multimember Districts of the House of Representatives into Single Member Districts. (Emergency) (H. P. 1906) (L. D. 1967)

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

#### House — As Amended

Bill "An Act Relating to Joint Committee Between George Stevens Academy and Nearby Towns." (H. P. 1890) (L. D. 1947)

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

Bill, "An Act Relating to the Taxation of Certain Property Owned and Operated by Telephone or Telegraph Companies." (Emergency) (H. P. 1878) (L. D. 1932)

Which was Read a Second Time.

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

Mr. JACKSON: Mr. President, I move that we reconsider our action where we accepted Committee Amendment A to H. P. 1878, L. D. 1932.

The PRESIDENT: The Senator from Cumberland, Senator Jackson, now moves that the Senate reconsider its action whereby it adopted Committee Amendment A to L. D. 1932. Is it the pleasure of the Senate? It is a vote.

The Chair recognizes the same Senator.

Mr. JACKSON: Mr. President, I now present Senate Amendment B to Committee Amendment A to H. P. 1878, L. D. 1932. (S-437) and move its adoption.

The PRESIDENT: The Senator from Cumberland, Senator Jackson, now offers Senate Amendment B to Committee Amendment A and moves its adoption. The Secretary will read Senate Amendment B.

Senate Amendment B (S437) Read.

Senate Amendment B to Committee Amendment A adopted, Committee Amendment A, as amended, adopted. This Bill, as amended, Passed to be Engrossed in nonconcurrency.

Sent down for concurrence.

On Motion of Mr. Huber of Cumberland, Adjourned until 10 o'clock in the morning, Thursday, January 19, 1978.