

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

INDEX

Senate Confirmation Session

June 14, 1978

INDEX

First Special Session

September 6, 1978 — September 15, 1978

INDEX

Second Special Session

October 18, 1978

INDEX

Third Special Session

December 6, 1978

INDEX

APPENDIX

SENATE

Friday, February 24, 1978

Senate called to Order by the President.
Prayer by the Honorable Matthew C. Levine
of Winslow.

Mr. LEVINE: Dear God above, look down upon us your servants today and please Lord give us the strength, the wisdom, and the perseverance to do that which is best for all of God's children here in the State of Maine. O Lord please allow all to understand as you do that if we error, it may be an error of judgement, but certainly not an error of heart. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

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

ORDER

An Expression of Legislative Sentiment recognizing that:

Senior high school girls from all over the State will be competing in the Maine Junior Miss Scholastic Pageant on February 24th and 25th at Montello Junior High School in Lewiston, concluding a week-long celebration of Maine's Junior Miss Week, (SP 117) is presented by Senator Minkowsky from Androscoggin, cosponsored by Representative LaPlante from Sabattus.

Which was Read and Passed. Sent down for concurrence.

Papers from the House
Non-concurrent Matter

Bill, An Act to Amend the Crime of Assault on a Law Enforcement Officer. (SP 661) (LD 2032)

In the House, February 16, 1978 Passed to be Enacted.

In the Senate, February 16, 1978, Committed to the Committee on Judiciary, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

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

Mr. CARPENTER: Mr. President, I would move that the Senate join in the Committee of Conference with the House and would speak very briefly to the motion.

The PRESIDENT: The Senator from Aroostook, Senator Carpenter, now moves that the Senate Insist and Join in the Committee of Conference with the House.

The Senator has the Floor.

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: As I am sure you are all very well aware of the problems that some people have perceived with this Bill. I would rather think that the problems that have been raised on the floor of this Body have been with other areas of law enforcement not with this particular Bill.

I think that I just want to briefly say one thing. I am continually concerned about two things. One being that anytime that any Member of the Maine Legislature attempts to do something with the Criminal Code we are continually thwarted. Understand that I have pride of authorship on any amendment or any Bill that I put in and we have a veto message a little bit later on whereby I had one vote to override and I have pride of authorship on that particular document, but I think that we have got to get away from this. Especially when we are dealing with Criminal Laws. We are 184 elected Legislators who are responsible and who must answer to the people for Legislation that is passed or not passed in these Bodies and I am a little bit concerned that this order was allowed to go through last year. Directing the Legal Affairs Committee to study this police

assault problem. It was allowed through by leadership, it was funded and the study was completed and now the decision has been made that really that probably was a mistake. It should go to the Judiciary. I do not particularly feel that way but rather than to scrap the whole Bill, I hope that you will join me and vote to send the Bill to a Committee of Conference and possibly something can come out of this.

I still have problems with the Criminal Code in that I did not help put it together. I am responsible for what happened as far as my district is concerned about the Laws of the State and it concerns me greatly that we continually run back to the Criminal Code Revision Committee which is made up of fine and honorable men, but they are not elected Legislators in this Body. And never have been, most of them, and I thought that when I came down here I was charged with making the Laws of the State. So I would hope that notwithstanding my comments you would join in the Committee of Conference this morning. Thank you.

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

Mr. COLLINS: Mr. President, I hardly agree with the good Senator from Aroostook, Senator Carpenter, but it seems to me that this Bill has had all the discussion that it needs. The Judiciary Committee has examined the Bill even without it being formally committed to it. There are no technical problems with the Bill as it stands now before this Body. We really see nothing to be gained by having it come back to the Judiciary Committee. Or for it to come to the Committee I should say, because it has never officially been there.

In the same way I would submit to the Senate that there really is no point in having a Committee of Conference. A Committee of Conference will just do what both bodies of the Legislature have already done. Debate it and it is the sort of thing that is really a very simple issue. And I would hope that the Senate would finally dispose of this Bill today one way or the other. I really have no great feeling about which way it should go, and in order to make it possible to do that either one way or the other, I now move that the Senate Recede and Concur with the House.

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

Mr. CARPENTER: Mr. President, I would like to pose a question through the Chair.

The PRESIDENT: The Senator may state his inquiry.

Mr. CARPENTER: Is it proper for me to request leave of the Senate to withdraw my Motion?

The PRESIDENT: It certainly is.

Mr. CARPENTER: I so do.

The PRESIDENT: The Senator from Aroostook, Senator Carpenter, now asks leave of the Senate to withdraw his Motion to Insist and Join the Committee of Conference. Is it the pleasure of the Senate to grant this leave? It is a vote. It is now the pleasure of the Senate to Recede and Concur with the House?

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

Mr. O'LEARY: If we Recede and Concur, is this Bill in fact Enacted?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. O'LEARY: Mr. President, I move the indefinite postponement of this Bill and all of its accompanying papers. And request a Division.

The PRESIDENT: The Chair would advise the Senator that his Motion is not in order since we are not in concurrence with the House at the present time. Is it now the pleasure of the Senate to Recede and Concur?

The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Would a Motion to Adhere be in order?

The PRESIDENT: The Chair would advise the Senator that the Motion with precedence

would be the Motion to Recede and Concur. This here is the weaker Motion.

The Senator has the floor.

Mr. MANGAN: Mr. President and Members of the Senate: The issue has been debated very amply in both Houses and I wish not to refer to anything other than what we have discussed here previously, which is basically that there are problems with this Bill. By Receding and Concurring with the other Body at this point is basically going to pass a piece of Legislation which does not require any medical proof, for an assault on a police officer. There is really at this point no degrees that have been set out for the injury which may be had on to a police officer. And we are actually saying if you go anywhere near a police officer and he brings you up for assault, you are facing five years in the State Penitentiary.

I realize that it is nice to be tough on Criminals, but on the other hand we should at least give them an opportunity to have a medically documented evidence that an injury has been committed. I think we should at least have some degree of criminality that has to be met by the defendant, and I would urge the Member of the Senate right now not to Recede and Concur. I can not see where this would accomplish anything. We can be as hard as we can and it gets to the point here where the rights of the defendants, the rights of the people of the State of Maine may be denied and I do not think that is what this Body wants to do. Thank you.

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

Mr. CONLEY: Mr. President and members of the Senate: I believe that it was last week that I made the motion to refer this Bill for the second time to Committee on Judiciary. And by the very narrowest of margins, I think by one vote, I was able to prevail upon that motion.

I personally have strong reservations about this type of Legislation, but I am not in a position where I am not willing to at least compromise on this matter, and I know that was my intent in the beginning of trying to get this Bill committed to the Judiciary Committee. And, therefore, I think that there is possibility having discussed with some of the strongest proponents in the other Body with respect to this Legislation, that there may be a way of compromise. And, therefore, because I appreciate the fact that Members of this Body who are willing enough to go along with the Commitment of this Bill to the Judiciary Committee at that time that I would like to see the Senate join in a Committee of Conference and see if we cannot work out a compromise.

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

Mr. HEWES: Mr. President and members of the Senate: Passage of this Bill is not going to result in mass five year sentences. As I understand the penalty for conviction of this crime as proposed of assaulting a police officer there could be a jail sentence or a fine. It does not have to be a jail sentence at all and I just do not imagine that there is going to be any land slide five year sentences. I think that in all probability there would be a fine rather than a jail sentence. And do not forget that this person is not automatically sentenced to five years or found guilty even, we have to have a trial by a Jury, of twelve people, beyond a reasonable doubt a unanimous verdict not eleven to one but twelve to nothing conviction.

The reason that this Bill is before us is because the law enforcement people in this State who are hired by the State and municipalities and the counties to defend people and their property are complaining that they are being assaulted. There has been a serious study, interviews have been made by myself, and I think by all the Members of the Committee with local law enforcement people and the law enforcement people do want something more.

I urge you to vote to recede and concur. you

have read about looting that took place in some other states after the horrible storms of a couple of weeks ago. The pendulum has swung too far against the law enforcement people and I urge you for your people and for your constituents and for your law enforcement people, to Recede and Concur on this good Bill.

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

Mr. MANGAN: Mr. President and members of the Senate: Some people tend to forget that a good deal of our assaults on police officers arise from domestic situations. A police officer is called to squelch a husband and wife fight on the third floor of some triple decker that had had some financial problem and as soon as a police officer comes in these two people are in such a heat of passion that they do not really see the third party there, and somebody just pushed aside and automatically the police officer to squelch the problem right then and there, files an assault charge and puts somebody in cuffs.

It is a good way to stop a bad situation from getting worse. So what happens, now they get brought up before a jury and as soon as the husband is sitting in the box next to the defense attorney, he has got three strikes against him and he might as well just plea and, Secondly, in the last five years, to my knowledge, only once has the court assessed a fine in a criminal matter of "C," "B," or "A" type of a crime. And all the rest of the time it has all been prison sentences. One of the reasons for that is that the People in the State of Maine are not wealthy enough to pay up to \$5,000.00 in fines. That one instance was a very wealthy individual and it was not really a very serious problem. It was a violent type of a crime. And this very wealthy individual was very happy to pay the fine instead of going to jail. But it is a very unusual situation. I do not think that anyone could really pick out one instance in the State of Maine where an assault on a police officer resulted in a fine. When the charge was Class "C" or better.

I think that these are the situations you have to consider. It could be a husband and wife situation. It could be almost any number of things. If a police officer is out to try and stop a burglary, if a police officer is out to stop a riot, a melee I might understand it at that point. But those are not the assault charges brought by police officers most of them arise from domestic situations and it is not disorderly conduct that is brought because those are kind of hard to prove, it is always the assault on a police officer. And there is a fine line in there and this fine line is the one that means five years in the penitentiary or not. And this could be just as effective of breaking up a marriage as a divorce is. And I think that we should really consider this and not get overly carried away with protecting our public servants, because public servants are not quite as pure as things as everybody would like to have them be.

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

Mr. LEVINE: Mr. President and Members of the Senate: I stated the other day that I have typically been in favor of law and order proposals and proposals to strengthen the powers of the police departments in many instances. However, I think that all the Members of the Senate should ask themselves one question in this instance. We must realize that police officers are, because of the nature of their jobs, in a very different position than most of our citizens. They are the people who are sworn to uphold the law. And would those of you seeking to Recede and Concur on this and to pass this legislation with no proof that a physical assault took place, no proof of physical injury be as quick to vote yea on a Bill that would assess a police officer in the same manner if he was found guilty of assaulting a citizen?

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

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: I promised myself two things this morning when I saw this Bill on the calendar. One, that I was not going to debate it and two, that I was not going to get angry, because if I do, I will lose the Stenographer and she will still be here next Monday trying to catch up with me.

I hope that you will read the Bill. Lets not talk about the other side of the coin at this point because that is not in the Bill. The other side of the coin is abuse of police power and that is coming along I think if you look on your calendar the next item. A study order on legal affairs, I do not care, Judiciary, but lets deal with that separately. You have got problems, individual Police Departments around the State there are problems and I will admit that. Be it in Kennebec County, Cumberland County, or wherever, but lets deal with the issue. L.D. 2032. Read the Bill. I just heard one of the strongest arguments that I have ever heard for mandatory sentencing I have supported mandatory sentencing in the other Body in the previous Session of this Legislature in a couple of instances and yet some of the biggest arguments are from the attorney world that say have faith in our judiciary system have faith in our judges. I do and that is all I am asking you to do in this Bill. There was extensive testimony over the summer, this fall, public hearing, after public hearing. We do except the fact that there are some reporting problems but that is a different issue also. Just as the police power abuse is a different issue lets deal with those separately we are talking about a specific Bill of about five lines here and if you read the Bill I do not think that it is nearly as scary as some people have made it out to be. Last week when I stood here, excuse me last week when I sat here, I heard mandatory sentencing thrown out. Five years mandatory. Read the Bill. I certainly would be standing here supporting this Bill if it were five years mandatory. I think we have got to in response to the question of that the last speaker, I think we have got to deal with police assault as a special category. I certainly if there is proof shown that there is a situation where there is widespread abuse of police power in this State then I will certainly support Legislation to correct that.

But I think that the police officer when he puts on the uniform, when he makes himself a public servant has got to deal with by this Legislature in a special category. I am saying that we should set up a police state by no means but we have got to deal with them in a little bit of a special category. So I hope this afternoon when we finally get around to voting on this Bill and I am willing to accept the Committee of Conference although it is a bit ludicrous since one Branch is saying enact it and the next Branch is saying where can we reference it to. I do not see much of a compromise position, or room to compromise in that particular area. But I wish you would look at the Bill.

Deal with this subject in response to a question that was raised about medical documentation, I will just go back to my military career. I think that there are over 90 ways to kill a man and never leave a mark on the body. I think that medical documentation is a real red herring that is thrown into this and the cost would make this Bill prohibitive. I think that if you are concerned about the number of petty or ridiculous assault cases that are presently being brought before the Court, I think you might see that problem corrected by this Bill. Now we are getting real specific, we are getting real tough and the sentencing and the punishment is real tough and you are not going to have an officer bring to court or a District Attorney bring to court a case of a shoving match in a domestic disturbance. I think that argument is completely ridiculous. you are going to have serious intentional, knowing, reckless, bodily injury. Thank you.

The PRESIDENT: The Chair recognizes the

Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President if the Senate votes to Recede and Concur with the House are they Receding and Concurring to Join in the Committee of Conference?

The PRESIDENT: The Chair would answer that the motion to Recede and Concur would mean that this Bill is enacted.

Mr. CONLEY: It is my understanding Mr. President, reading the calendar that the action of the House, the latest action of the House says Comes from the House, that body having Insisted and Asked for a Committee of Conference.

The PRESIDENT: The Chair would answer in the affirmative.

Mr. CONLEY: To recede and concur would then mean to Join in a Committee of Conference with the House?

The PRESIDENT: The Chair would answer in the negative. The Chair has been informed the Motion to Recede and Concur would apparently mean that this Bill is enacted. It has already been enacted in the House.

Mr. CONLEY: Mr. President and Members of the Senate: Then I would have to address the Bill itself. And I do not want to go into any great dialogue as I did the previous time this Bill came before the Senate. But I do believe that there are enough members of both Bodies who have grave concern as to the present drafting of this Legislation. I think that as I stated earlier, the reservations that I had and the strong reservations that many other members of the Legislature have, can be ironed out. Now the House has on the calendar this morning requested and Insisted for a Committee of Conference. I am not, I do not feel honestly that I would not participate in the killing of this particular piece of Legislation. But I do not think that there are areas of compromise. I think the House has requested a Committee of Conference and I would hope that the Senate would prevail this morning and Join in the Committee of Conference to help put some balance in this Legislation. And I personally believe that it would remove not only my own personal fears, but there are many police chiefs throughout this state who share the same reservations with the way this Bill is particularly worded. So I would ask the Senate to vote against Receding and Concurring and to Join in a Committee of Conference.

The PRESIDENT: Is the Senate ready for the question? The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I would like to pose a question through the Chair to any member of the Judiciary Committee or other Member of the Body who may care to answer. We not only have in our Criminal Code offenses against public administration under which assault against an officer is a defined Class "B" crime but we also have another section of the Code Section 208 aggravated assault. I wondered if it was the opinion of the Members of the Judiciary Committee that if an assault happened to be against a police officer that fit the description in 208, whether or not an action for aggravated assault could be brought against the individual, or whether that would be precluded because that victim was a police officer.

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 Hewes.

Mr. HEWES: Mr. President, in response to the Senator's question, it is my understanding that in that case if the police officer in the course of performance of his duties were suffered an aggravated assault then the charge could be made against the assaulter, the assaulting criminal, just as though the party has assaulted a nonlaw enforcement officer.

The PRESIDENT: The Chair recognizes the

Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I am glad that that is in the record and that is my understanding as well and I think that it is the understanding of the other Members of the Senate that have worked on this Code and worked through it, and it would seem, to me that many of the types of assaults that we are most concerned with here would be a serious assault on a police officer would fall within that aggravated assault category and that is already a Class "B" crime.

The problem here without getting into the characterization of police officer conduct is one that comes from the reality of the type of work that they have to engage in, and they are oftentimes put in a situation that there it is a difficult situation at best and they are forced to inject themselves into that situation and in the process of that involvement they come to be a series of pushing and shoving or something of that kind. And like any situation where it is heated it becomes very difficult to assess the guilt of the situation and I just think that we cause as many problems as we solve when we move this into rather than a misdemeanor what we use to refer to as the misdemeanor category and move it into a Class "C" Crime I do not think that that much is accomplished by it. Particularly recognizing that the serious type of assault we have other statutes already on the books that could be referred to which are Class "B" crimes and can be dealt with very seriously and I think that if anybody took the time to look through the Court Records and to sit in and listen in on any of these assault against police officers cases, that they would understand better why some of us are troubled by making this is Class "C" crime. This is not to point my finger or in any way blame a police officer or anything of that kind, it is just recognizing that the sort of situations in which they are engaged and the difficulty with which it is to make an assessment about you know where the person first acted a little excessively who shoved who first and whether or not it was necessary and that type of thing, and I think that there is that sort of recognition in the fact that we have left it a Class "D" crime, and I would hope that recognizing that reality that we would defeat the motion to Recede and Concur, and maybe we can Insist and Join in a Committee of Conference. Maybe something can come of this, but it is a very difficult situation and those who are close to the realities of these sorts of cases I think are more troubled by the prospect of making it a Class "C" crime than those who deal with the question in the abstract.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is a motion by the Senator from Knox, Senator Collins, that the Senate Recede and Concur with the House. The Chair will order a Division.

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.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I request a Roll Call.

Mr. PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting.

Will all those Senators in favor of a Roll Call please rise in their places to be counted.

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

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

Mr. CONLEY: Mr. President and Members of the Senate: Again I would just like to state that I believe that the Senate does vote against Receding and Concurring, that a lot of the objections that are held by what I consider to be

the vast majority, that we can iron out the problems and I plead with the Senate today to vote against Receding and Concurring and to join in a Committee of Conference.

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

Mr. LOVELL: Mr. President and Members of the Senate: I started off this debate last week and I did not think that this Bill was right. Because many people, and I hesitate to say, and I have seen a number of cases in the City of Portland a couple of times and the City of Portland did not like it. But I will mention it this time. I have seen some people where the officers really abused and beat up people in the City of Portland and one of them was in my family. A member of my family. And the only way that they could get out without charges was to sign a release that they would not sue the police officer. Now there should be something in this Bill, in my opinion, to stop the police officers and there are not too many, that to stop some of those police officers from abusing people at the time of their harassment when they are making the arrest.

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

Mr. LOVELL: Mr. President and Members of the Senate: I started off this debate last week and I did not think that this Bill was right. Because many people, and I hesitate to say, and I have seen a number of cases in the City of Portland, but in the last Session I mentioned the City of Portland a couple of times and the City of Portland did not like it. But I will mention it this time. I have seen some people where the officers really abused and beat up people in the City of Portland and one of them was in my family. A member of my family. And the only way that they could get out without charges was to sign a release that they would not sue the police officer. Now there should be something in this Bill, in my opinion, to stop the police officers and there are not too many, that to stop some of those police officers from abusing people at the time of their harassment when they are making the arrest.

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

Mr. MERRILL: Mr. President, I would just like to reiterate that if there is an aggravated assault against a police officer or anybody else, that is a Class "B" crime, and that is punishable by up to ten years in the State's prison, and I think what we are talking about here clearly is that the situation where there is not a serious bodily threat, where there is not a dangerous weapon used, where we are talking about the push, shove situation, and I think that we are dealing with a situation where it is very difficult to assess blame in that situation, and I think that very candidly a lot of police officers would recognize that. It is a difficult situation. Some police officers are much better at dealing with these situations than others because they are better as human engineers. Some police officers maybe some of the younger police officers who are not as experienced really bring on a lot of these problems to some extent themselves, and as I say, I am not trying to point blame, it is a very difficult situation, but if you look at the judicial records you will find that some police officers are involved in these situations in such a way that it does not instigate these problems. I would hope that we would get into a situation where we could at least take a closer look at this Bill. For the serious assault there is already in our statutes ample punishment up to ten years and for the situation that provides place in the prison code, already provides that it is a Class "C" offense, and that is a different sort of thing as you can imagine in this case we are dealing with people that are already incarcerated and that are in that position. We are talking about police officers going out and by the nature of what we are asking them to do and injecting themselves into a situation that already may be quite difficult. I think that we

ought to recognize that here and deal with it in that way.

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

Mr. MANGAN: Mr. President and Members of the Senate: I am obviously somewhat biased on this thing because I am a criminal lawyer, but I can tell you one thing that I have noticed over the years in a criminal law. I can take a police officer, a Ray Murphy or a Billy Joyce in the City of Lewiston and send him down to the combat zone and there might be a problem with a group of kids getting together and this Ray Murphy or this Billy Joyce, they have been police officers for 25, 30, 35 years, will go into the area and say okay boys lets go away. They all know this gentleman, they all respect him. He knows how to handle the situation and instantly, everybody disappears and everything is nice and quite. I could send two rookies in the same situation who have 15 or 20 assault charges, they will call in reinforcements from the County Sheriff's Department, they will call in Reinforcements from the City of Auburn. Exactly the same situation, but they are younger police officers, they are really untrained they do not know the people it is just a different type of situation completely. However, with the same package, you could have a pile of assaults on one and on the other everything is nice and quite in a space of ten minutes. That depends on the police officer. Police officers are different. The thing that bothers me the most is that people assume here that as soon as one puts on a badge he becomes perfect, he cannot make any mistakes, and this is what bothers me the most. I think that what you have got to understand, is that we judge each situation on its own merit, but to force a situation where one is facing five years in the state penitentiary and this is the deal whenever somebody pleads on a rule 11 before a Superior Court Judge lets them know very quickly that there are no deals, that he can give him the maximum five years in the State Penitentiary and the person says yes, they understand that situation, but you can send somebody away for five years in a Class "C" crime. There are problems with this Bill. Lets kill the Recede and Concur and lets at least go into it a little bit further to evaluate it in more detail. Thank you.

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

Mr. CONLEY: Mr. President and Members of the Senate: I somehow or another feel that this is the last opportunity we are going to have to address the seriousness of this Legislation unless we Join in a Committee of Conference.

I would just like to hold up yesterday mornings Portland Press Herald. The headline in the local section is, "Patrolmen acquitted of Excessive Force Charges."

This was a suit that was brought before the Civil Service Commission, I would like to read just one paragraph of it. It says, "Fellow patrolmen in the lockup area testified that two or three jabs the officer delivered did not knock the defendant against the wall or the floor."

If anybody was aware of this particular problem, and I think that if it is a problem that exists in too many areas of our state, the over use of power by those who are suppose to be administering the laws that brought too many serious charges and too many serious offenses to individuals.

I just plead again with the Senate to put some balance in the present Legislation. As the good Senator from Portland, my colleague, Senator Merrill, has stated, under aggravated assault today, any individual can receive up to ten years in prison for aggravated assault on a police officer. But I am concerned about the way that if this particular Bill is written, that it is one that just gives encouragement to the law enforcement officers to pay no attention whatsoever about what is expected of them by the general public. I think to pass this Bill is the Legislature saying, go ahead boys, do what you

have to do to bring anybody under detainment. And I do not think that is the kind of police that I want to see or that type of administration that I want to see. Again I plead with the Senate to vote against the Motion to Recede and Concur and to Join in a Committee of Conference.

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

Mr. KATZ: Mr. President, to use a term in jurisprudence to mind, to one mind of one person who is not emotionally involved in this issue, a very reasonable doubt has been raised. A very, very clear doubt has been raised in mind. The issue before us is enactment. I suggest to the Senate where there is so much sincere doubt in so many minds here, that enactment would be more of the arrogance of the majority than the judicials attempt to solve a very, very serious problem. I ask you not to vote to recede and concur, but rather to join the Senator from Cumberland, the Minority Floorleader and Join in a Committee of Conference.

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

Mr. HEWES: Mr. President and Members of the Senate: In response to the last Senators comments, we often have reasonable doubts I think as to some of the educational Bills that we voted for in the past.

This LD changes a very small part of the law. The key, I think, is that there must be, "bodily injury," caused to the officer, law enforcement officer, and the Maine Criminal Code, Title 17-A, Section 2, defines bodily injury as, "physical pain, physical illness, or any impairment or physical condition" So we are not talking about looking cross-eyed at someone, or even spitting at him, it is a physical bodily injury, so I hope that you will vote to recede and concur.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins, that the Senate Recede and Concur with the House.

A yes vote will be in favor.

A nay vote will be opposed.

The Doorkeeper will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Carpenter, Collins, S.; Greeley, Hewes, Hichens, Morrell, Pray, Redmond, Speers and Wyman.

NAY — Chapman, Collins, D.; Conley, Cummings, Curtis, Farley, Huber, Katz, Levine, Lovell, Mangan, McNally, Merrill, Minkowsky, O'Leary, Pierce, Snowe, Trotzky, Usher.

ABSENT — Danton, Jackson and Martin.

10 Senators having voted in the affirmative and 19 Senators in the negative, with 3 Senators being absent, the Motion to Recede and Concur does not prevail.

The Senate voted to Insist and Join in a Committee of Conference.

Joint Order

WHEREAS, there is growing concern with possible abuses by some law enforcement officers of the powers granted to them; and

WHEREAS, law enforcement officials occupy a position of trust and authority where abuse cannot be tolerated; and

WHEREAS, it is essential that a study of these possible abuses by law enforcement officials be conducted to insure that the citizens of this State receive the best possible protection; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Standing Committee on Legal Affairs shall study the present law enforcement situation in Maine to determine if law enforcement officials are abusing their powers and to determine what measures may be taken to curb that abuse; 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 period its findings and recommen-

dations, 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. 2128)

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 Seventy-Eight

Joint Resolution in Honor of the Fiftieth Anniversary of the Future Farmers of America

WHEREAS, agriculture is the lifeblood of this country and the entire world; and

WHEREAS, the Future Farmers of America is a national organization of students studying agriculture in public secondary schools; and

WHEREAS, for the past fifty years this organization has served as one of the outstanding institutions for building character in our youth and developing their practical knowledge; now, therefore, be it

RESOLVED: That we, the members of the 108th Legislature, now assembled in the Second Regular Session, hereby publicly recognize the outstanding contributions made to the State and the nation by the F.F.A. and its members in the State of Maine, and hereby extend our best wishes and congratulations to the F.F.A. on its fiftieth anniversary; and be it further

RESOLVED: That upon passage in concurrence, the Clerk of the House shall prepare suitable copies of this joint resolution for transmittal to the presiding state officers of the Future Farmers of America. (H. P. 2129)

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

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

Mr. PIERCE: Mr. President, I would offer Senate Amendment "A" (S 485) and move its adoption.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now offers Senate Amendment "A" to Joint Resolution H. P. 2192, and moves its Adoption. Senate Amendment "A" (S 485) Read.

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

Mr. CURTIS: Mr. President, I certainly have no objection to the Amendment which changes the language somewhat, but I thought the Senate might just be a little bit interested and I certainly am very proud to relate to you a great story, and that is the first charter for the Future Farmers of America was granted to Caribou High School in the Future Farmers Organization there in 1928 at the time when my dad was a teacher of Agriculture and helped apply for it. The very first president of the Future Farmers is a gentleman named Kenneth Blackstone still of Caribou and it has been an outstanding organization which has served the State and the Nation well.

Senate Amendment "A" Adopted Joint Resolution as amended, Adopted in nonconcurrence. Sent down for concurrence.

Communications

Honorable May M. Ross
Secretary of the Senate
108th Legislature
Augusta, Maine 04333
Dear Madam Secretary:

House Paper 1896, Legislative Document 1953 having been returned by the Governor together with his objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the

House proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

One voted in favor and one hundred thirty six against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Respectfully
Edwin H. Pert
Clerk of the House
Which was Read and Ordered Placed on File.
House of Representatives

Honorable May M. Ross
Secretary of the Senate
108th Legislature
Augusta, Maine 04333
Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Provide for Alternative Election Procedures for School Budgets on a Local Basis" (H. P. 1909) (L. D. 1970)

Mr. Wood of Sanford
Mrs. Post of Owls Head
Mr. Mackel of Wells

Respectfully,
Edwin H. Pert
Clerk of the House
Which was Read and Ordered Placed on File.

Orders

An expression of Legislative Sentiment recognizing that:
The Orono High School football team is the Little 10 Champion for 1977, (S. P. 710) is presented by Senator Curtis of Penobscot, Cosponsored by: Representative Davies of Orono and Representative Devoe of Orono.

Which was Read and Passed. Sent down for concurrence.

Committee Reports

The following Ought Not to Pass report shall be placed in the Legislative files without further action pursuant to Rule 20 of the Joint Rules:

Bill, "An Act to Provide for the Valuation of Industrial Property, the Value of Which Exceeds \$10,000,000 by the State Tax Assessor. (H. P. 2013) (L. D. 2088)

Ought to Pass

The Committee on Local and County Government on, RESOLVE, for Laying of County Taxes and Authorizing Expenditures of Sagadahoc County for the Year 1978. (Emergency) (H. P. 2127) (L. D. 2154)

Reported that the same Ought to Pass (pursuant to H. P. 1986).

Comes from the House, the Resolve Passed to be Engrossed.

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Somerset County for the Year 1978. (Emergency) (H. P. 2122) (L. D. 2152)

Reported that the same Ought to Pass (pursuant to H. P. 1986).

Comes from the House, the Resolve Passed to be Engrossed.

Which Reports were Read and Accepted, in concurrence, and the Resolves Read Once, and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

The Committee on State Government on, Bill, "An Act to Establish Training Requirements for Corrections Officers. (H. P. 2039) (L. D. 2104)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1057).

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

row Assigned for Second Reading.

The Committee on Health and Institutional Services on,

Bill, An Act Concerning the Catastrophic Illness and Medically Needy Programs. (H. P. 1911) (L. D. 1972)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1046).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" (H-1063) thereto.

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

Ought to Pass in New Draft

The Committee on Judiciary on,
Bill, "An Act to Prohibit Child Pornography." (H. P. 1937) (L. D. 2017)

Reported that the same Ought to Pass in New Draft under same title. (H. P. 2106) (L. D. 2141)

Comes from the House, the Bill in New Draft, Passed to be Engrossed as amended by House Amendments "D" (H-1064) and "E" (H-1076).

Which Report was Read and Accepted in concurrence, and the Bill, in New Draft, Read Once. House Amendment "D" was Read and Adopted in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Education on, Bill, An Act Relating to the Funding of Education. (Emergency) (H. P. 1943) (L.D. 2022) Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1055).

Signed:

Senators:

KATZ of Kennebec
PIERCE of Kennebec
USHER of Cumberland

Representatives:

CONNOLLY of Portland
WYMAN of Pittsfield
BEAULIEU of Portland
LEWIS of Auburn
FENLASON of Danforth
BAGLEY of Winthrop
BIRT of East Millinocket
MITCHELL of Vassalboro
PLOURDE of Fort Kent

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

Signed:

Representative:

LYNCH of Livermore Falls

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

Which Reports Were Read.

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

Mr. KATZ: Mr. President, we have before us two Committee Reports. The report signed by Mr. Lynch was signed because he is the sponsor of the Governor's Bill, in its Pristine, original condition and he felt an obligation as sponsor to report it out Ought to Pass as it came into Committee.

The Committee has made changes which more strengthen the Bill than anything else. And it is essentially the Governor's bill with some dollars added into it, particularly in local leeway. Our procedure this morning if it is

agreeable to the Senate, will be to accept a Committee Report. Hopefully the Majority Report of Committee, give the Bill its first reading and read the Committee Amendment. The Committee Amendment is the only Amendment on it, and in that respect it should be a very clean cut job for the Senate because normally we have to deal with House Amendments. A through Double L — and now we only have one. It is my understanding that there will be at least one amendment offered to the Committee Amendment and if it is agreeable to the Senate we will table the Bill after the offering of the first Amendment for further discussion, on Monday.

A few words might be in order so you will have a grasp of what we have done, and I will hold myself available after the Session if you have any specific questions that perplex you and will be available for caucus or anything else on Monday if you wish to try to deal with any concerns of your constituents.

The important factor in this Bill and the most important change that we have made is in the area of dollars. The Governor's Bill would fund out, provided that we pursue the 10 mill figure that we are talking about, at about \$168,000,000. The Committee Bill is going to cost a \$173,000,000, and the major difference is in the area of \$4.1 million for local leeway. Local Leeway, as you know are funds that may be optionally used by people exercising their local control if they wish to spend more money with State participation, and by and large, that money is used by the communities with the lowest property taxes and/or unusually large enrollment of pupils. This is local Control at its finest and many communities that have the opportunity to have access to these State dollars do not choose to use them, and that is local control. To the very, very greatest extent, the Committee has labored hard and conscientiously to reflect the will of the people in the December 5th Referendum. The Uniform Property Tax is gone and we attempted in good faith, with a clear conscience, with a assiduous attention to duty to reflect honestly and openly without any punitive implications whatsoever the will of the people, as we understood the will of the people, on the December 5th Referendum.

The Bill that you have before you is deficit proof. There is no change that there will be any State Fund deficits in this Bill. You will recall during the early days of L. D. 1994 because we were dealing with estimated figures that we turned up deficits because our estimated figures were not good. It was a new experience for us and we learned a lot and we learned it rather quickly. Now in order to protect the State against any possible deficits, we are in a position of recurring surpluses. And the recurring surpluses are a problem but fortunately a much happier problem.

As you deal with this question of a \$173,000,000, which is the Committee's posture and \$168,000,000; which is our posture and the Governor's posture and as you listen to the rhetoric floating around, as to over spending on Education, and make up your own minds as to where you are at. I want you clearly to understand that I would anticipate that there will be a surplus or unused funds in this \$173,000,000. Which could amount to as much as \$5,000,000, in which case the Committee's position by the end of the fiscal year may very well turn out to be close to the \$168,000,000, figure. I want you to understand that and those of you who support the Committee's position should know that there is unquestionably not going to be \$173,000,000, spent, of State money for the support of education.

What happened to the \$5.1 million pay in? I think that it is important that everybody knows that because I was one of the rascals who said during the campaign that the repeal of the Uniform Property Tax was going to result for most people in some increase in taxes. Well, now we get a closer notion as to where the \$5.1 million

is. It is \$5.1 million that would have gone into surplus so as the Appropriations Committee and the Taxation Committee wrestle with the question of State surplus, the repeal of the Uniform Property Tax means that they will not have that \$5.1 million to deal with and if they go into some program of tax refunds or abatement or anything else that is going to be \$5.1 million that is simply not going back to the people.

I have been asked whatever happened to the one-half of the cost of local education? Which Committee Report reflects the State picking up one-half of the local cost of education? My answer is, neither reports. Both reports, both Mr. Lynch's and the majority of the Committee, pick up 50 percent of the allocation, which is quite a different figure and we want you to know that in this one respect we did not reflect the specifics of the people's position in the referendum on December 5th. You will recall that the wording in that referendum Bill that initiated Bill sought to create the intent of the Legislature to pick up 50 percent of the cost of local education. It is hard to say what the difference in money is but it would probably cost from \$15,000,000, to \$20,000,000, to reflect that which the people said.

Our job has been made easier because all those who supported repeal say that they really did not mean that and although I feel very, very uneasy it is a very, very, — from a fiscal point of view — it puts us in a little better position. I want you to know too, that as you deal with the cost of education you might be interested to know that we have been lapsing about \$5.3 million of unspent state share of the cost of education in a year. \$5.3 million. This is after the fact. It is \$5.3 million that we appropriated. The \$5.3 million that did not get spent. And where is the money? It is part of surplus. The thing that disturbs me in the handling of this \$5.3 million is the fact that as we established last year the level of State's participation, we included that \$5.3 million as a cost and forced local communities to raise Uniform Property Tax to meet half of that cost. So what you might say is that local communities were forced to raise half of that \$5.3 million but the other half lapsed into the General Fund and the State, more or less, took care of its problems and we, in a very real respect, over-collected money based upon the actions of the local communities, and further eroded the opportunity of the State to share in a bonafide extent of 50/50. I think as preliminary remarks, this covers exactly what I wanted to say to you this morning. And let me make a couple of personal comments.

I have a feeling of personal satisfaction that a Legislature filled with nothing but politicians, and some pretty good ones, can be responsive to the people. Most Members of the Senate did not agree with the repeal of the Uniform Property Tax, but we are giving the people a Bill which accurately reflects what they wanted. There was a lot of talk at the beginning of the Session of passing the Governor's Bill out in a bare-bones way, and let the blood flow where it might. We have not done that. We have conscientiously and maybe I ought to go into that just briefly here.

When we sat down in Committee and it was a great Committee I said before I never had two Senators on any committee like Senator Usher and Senator Pierce who apparently did not realize that Senators are not supposed to be so conscientious reporting to their second Committees. And they were with us and participated all the way. We approached this thing with an awful lot of emotional readjustment necessary. But rather than deal with a specifics of the Bill. One, two, three, or four; we just sat around for days, and identified issues. Policy questions, What kind of policy decisions would we have to make? We identified sixteen of them, and then a couple of more came along afterwards. And we did not deal with the bill at all. We dealt with issues. We did not deal with

printouts at all. We dealt with issues. We dealt with issues such as when do you reimburse categorical programs? What do you do about private school transportation?

Incidentally, when it came to private school transportation, which was an issue down at the other end of the corridor, we combined the issue with the issue raised by the Senator from Kennebec, Senator Pierce's bill for Parochial textbooks and the Gentleman from Lewiston, Mr. Jalbert's Bill on the same subject. And our responses to private school kids is very much intertwined. It is our presumption that the textbook Bill will be enacted, and signed into law. Our support of this segment of school finance was based upon our concern that the other Bill be enacted and signed into Law. We dealt with the policy of the State's role or the State Boards role and the Commissioners recommendations. We dealt with local leeway as a policy question, we dealt with adjustments and per pupil rates above or below state average. And we went through about 18 individual issues. It was an exciting experience because the door was open and all kinds of people dropped in. And we gave access to every single person who came into the room with an issue that he wanted to raise. And we consciously dealt with every issue that everyone who came in the room raised. We found it extremely helpful. We saw a lot of superintendents and you can call them special interested groups all you want. You can call them the educational establishment all you want, and you can talk about the State Department of Education as a vested interest if you want, but these are the people who have to administer a law. And insofar as the mechanics of the law was concerned it was invaluable to us to have perceptions and more than one time a little old superintendent would come in and raise a point and we would sit and look at one another dumbfounded, we had not even considered it. But in the length of time that we had I think that we have a Bill which is honest, which is above board and which reflects the will of the people on December the 5th.

Now there is in this Legislature some deep concern, that it is about time for us to take a hard look not at the establishment of state evaluation and the fairness of state evaluation, but lets take a look at the application of state evaluation. And everything we hear from Washington indicates that we are going to have continued inflation, I must confess a deep disappointment in the Democratic Administration that they have not cured this problem overnight. And if we are going to have continued inflation and continued inflation of the value of property we had better find out through a certain inquiry using whatever national resources we can find whether there is another foundation on which to build school funding in the State of Maine. I do not know the answer but I do know that we will be asking you to support yet another finance commission, that will have a very specific assignment. And will involve a lot of people from around the State who have specialized knowledge. We are concerned, too, about the problems of the S.A.D.'s. The S.A.D.'s are under attack, the repeal of the Uniform Property Taxes has created some dislocation and some tensions within communities, the questions of S.A.D.'s is going to have to be looked at very, very carefully. The Attorney General has raised a Constitutional question as to whether S.A.D.'s which have established a cost sharing based upon anything other than State Evaluation whether or not these are Constitutional agreements. We will be looking at that or the Commissioner will be looking at that.

I would urge all of you to rise to great height, of statemanship next week. Again and again I have voted against my constituents best interested on isolated items in this Bill, and there are some handy, dandy amendments that I can think of which if enacted, would help my con-

stituents significantly from a dollar and cents point of view, but I have resisted that impulse and I ask all of you to.

There is no question that if you look at specifics of the Bill, you could change to benefit your communities but it is the bottom line that counts. And I guess that I am going to have to ask you to face up to the bottom line when you vote on this next week.

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

Mr. MERRILL: Mr. President, I would just like to pose two questions to the Chairman of the Education Committee or anybody else just because I think they ought to be addressed maybe at this point.

First of all, it has been the passing mention made of the issue, but I would like the Chairman of the Education Committee, if he could, to respond to the issue of what either of these Bills does or does not do to the power of the State Board of Education and the role that they play. I think it would be helpful to us to have that on the record.

And Secondly, I wonder if the Chairman of the Committee, or some other spokesman, could just tell us in very brief terms on the record, what the effect will be if a community does not appropriate the 10 mills one subsidy index in terms of the future help or financial help that they will receive for the State, under the Bill that the Committee has reported out with almost a unanimous report?

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

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, the Senate might have noticed I was so busy getting thoughts over to you that I neglected to move acceptance of the Majority Report and I do so now.

The role of the State Board in policy has not been changed. In the Governor's Bill there was a change, which diminished the State Board's role. The Committee has reestablished the State Board's role. I would urge those who are concerned about the State Board, and our subsequent Legislature to see what they can do to further strengthen the Board. The Board needs staff, the board needs more independence than it has now.

The second question, as I understand it, what happens to the State's allocation to a community next year which does not raise its 10 mills this year? The allocation depends upon the actual per pupil expenditures of the community. So if a community chooses, because of local control, to raise less dollars this year it can influence the allocation of State dollars next year. And I think that is probably the direction you wanted me to respond.

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

Mr. MERRILL: I thank the Senator from Kennebec, Senator Katz, for his response, and I certainly intend to support the Committee Report but it seems to me that maybe we ought to be cognizant of the fact, if I understand what I have read and if I understand the response to the second question correctly, that we are going to be in a situation where if a community goes through the local control on its School Board's wishes, a period of cutting cost in the area of education and then through the process of local control the School Board is changed and a different philosophy is pursued that it would seem to me if I am not mistaken with the remarks of the Senator from Kennebec, that it would take sometime for the community or some hardship over a period of one year for that community to get themselves back into a situation where they would be more equal. In other words, looking down the road the effect of this four or five years from now might be to encourage some inequities that the community might change their mind about. Now I recognize that maybe there is not anything that we

can do in the present context to address that but it just seems to me and maybe my fears can be allayed that at some future date, we are going to have to look at this whole thing again because it will be enforcing some of the inequities that some of us were so concerned about and tried to remove in the first instance.

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

Mr. KATZ: As I understood it, this was the issue raised by Mary Adams at the public hearing. And this was one of the policy questions we dealt with again and again and again. We gave it every bit of attention we gave anything else. And, we rejected it. Presently if your community spends below state average for education, when it comes time for your allocation you get reimbursed for what you spent two years ago adjusted for what you are spending probably would be in the prior year and then the state will give you one-third of the difference, between that figure and state average. So there is an upward movement and the State tries to pull you up, without expansion of program activities or inflation in a textbook sense, we are going to equalize. But in the real world we do not equalize. If your community spends above average we take that figure we arrive at and pay you one-half of the difference between what your figure is and above state average, unless you happen to be a community that was frozen at the 73-74 level which means almost everybody. So we have addressed the question.

It should be no secret that I feel that the system we had was more equitable than this system that we are offering today. The system today backs away from equity, and steps forward to local control.

I am going to take the Senate's time just briefly to tell you about a public hearing that we had this year, which pretty much exemplifies the kind of frustrations I feel.

A small community came in. It wanted a change in its local government structure. Two people spoke, one was a Selectman and he came in and I could have almost written chapter and verse all the frustrations and venom he felt against the state, and the Legislature, and Augusta — telling him what to do, ordering him to do this, and do that, and he sat down.

And then another gentleman stood up, and all of a sudden my day became bright, He said that his community was in a wooded area down by the coast with a lake not far from the high school but not far from the school. And how the community was planning to gear its instruction in the physical sciences to the fact that there was a lake right there. And there is a wooded area right there, and by the time he got done talking he had shown me a picture of the separations of one little community which through exercising the controls they have, the controls they have always had, to build an exciting educational experience for the kids.

That is where the action is. I tuned out the first guy, because he was just plain "bitching" about things that he could have controlled. And the second citizen was leaning more in the direction of responsibility and every community in the State with the vision to control its own destiny and the motivation to change education into an exciting experience has it. Irrespective of how you vote on 2022, The local control and the local decision making has always been there but it is unused. And I guess until we can convince people to walk away from the television sets and stop talking about responsibility, and a little less about rights the children of this State will never get the quality education that they really deserve.

The Majority Ought to Pass, as amended Report Accepted.

The Bill Read Once.

Committee Amendment "A" Read.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I present Senate Amendment "A" to Committee Amend-

ment "A" (S-483).

The PRESIDENT: The Senator from Knox, Senator Collins, now offers Senate Amendment "A" to Committee Amendment "A" and moves its adoption.

Senate Amendment "A" (S-483) Read.

On Motion of Mr. Katz of Kennebec, Tabled until Monday, pending Adoption of Senate Amendment "A" to Committee Amendment "A".

(Off Record Remarks)

Divided Report

The Majority of the Committee on Human Resources on, Bill, "An Act to Revise the Effective Date of the Act which Prohibits the Practice of Mandatory Retirement Age." (Emergency) (H. P. 1985) (L. D. 2068)

Reported that the same Ought to Pass in New draft under new title, "RESOLVE, Authorizing Certain Employees of the State of Maine to Request an Extension of Employment After Their Mandatory Retirement Age, Years of Service Requirement or Age and Years of Service Requirement" (H. P. 2101) (L. D. 2140)

Signed:

Senators:

LOVELL of York
MANGAN of Androscoggin

Representatives:

HUTCHINGS of Lincolnville
MARSHALL of Millinocket
DAVIES of Orono
CUNNINGHAM of New Gloucester
LaPLANTE of Sabattus

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

Signed:

Senator:

HICHENS of York

Representatives:

GREEN of Auburn
PETERSON of Caribou
KANY of Waterville
BURNS of Anson
TALBOT of Portland

Comes from the House, the Resolve, Passed to be Engrossed as amended by House Amendment "B" (H-1067) as amended by House Amendment "A" (H-1077) thereto.

Which Reports were Read.

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

Mr. LOVELL: Mr. President and Ladies and Gentlemen of the Senate: I guess as I get older, I get more soft hearted. Which is probably understandable. In fact when this Bill came before the Committee on Human Resources, we did not want to interfere with the Mandatory Retirement Bill, but a Legislative Assistant pops up and says, I can write a Resolve that will cover this and will not effect the mandatory Retirement Bill whatsoever. And now this Bill, this Resolve, was brought in by a friend of mine from the other Body, so consequently, I said well alright, write the Resolve up, I figure it is an emergency and would have no chance of passing by two-thirds in both Bodies, so consequently, the Resolve was written up and this friend of mine came to me. I was against it. This friend of mine came to me and he said would you please sign it out Ought to Pass so I can get one signer so I can debate the Bill in the other Body. So I signed the Bill Ought to Pass. Now I see the Bill come out as a Majority Report. Now I do not know whether the gentleman in the other Body said the same thing to other people, or else I have an awful lot of influence with the Committee on Human Resources. I am not sure which, it was, but I do not think that I have got the influence on the Committee on Human Resources. So consequently, this is only to benefit one person, and this one person is not very popular with the Fish and Game Department as I understand it. So consequently, I am not going to make a

motion, but a good friend of mine is going to stand up and make a motion on this Bill.

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

Mr. HEWES: Mr. President, I move the indefinite postponement of this Bill and all its accompanying papers.

The PRESIDENT: The Senator from Cumberland, Senator Hewes, now moves that this Bill and all its accompanying papers be indefinitely postponed. Is it the pleasure of the Senate?

The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate: I also signed the Majority Report on this matter, and we are basically discussing the very serious issue as to whether this one specific individual will have the chance to continue working for another year so he can get another thousand dollars a year, another thousand dollars a month in his retirement. The big issue here, the heavy concentrated issue is whether we are going to allow the people who retired between January 1, '78 and July 1, '78 when the mandatory retirement thing takes effect, whether we will allow them to elect to work that additional period of time, and I think if you search your consciences, and decide whether you feel it is going to open up Pandora's Box or whether this one individual who has worked at least 38 years or 39 years and needs a matter of 8 months more should be allowed to continue to work and apparently the resolution is just not going to basically effect the law itself, but it is just basically to permit this specific individual and, probably anybody else who retired between January 1 and July 1, to elect to work a little bit longer providing that everybody in his office agrees to it. I understand that this individual was very unpopular as far as the Department was concerned. I believe that he worked as a game warden, but I understand that he has a great deal of respect and admiration in the area that he did work, which was Aroostook County and apparently he was quite a life saver and a tremendous game warden, probably he was too individual, and individualistic acting for the Department itself.

So if you wish to search your consciences, if that is the issue, are you going to bring it back to January 1 so that anybody who retires between January 1 and effective date of the act can actually extend their period of time. If you are in favor of it, vote for the Majority Report. If you are opposed to touching the law at all, to grandfather sort of speak those who retire after January 1st, then vote the Ought Not to Pass.

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

Mr. CURTIS: Mr. President, in addition to this being the wrong way to try to enact a piece of Legislation, I would suggest that we do not know whether or not this Resolve if passed would effect only one State Employee or more than one State Employee, because the amended, corrected copy of the Amendment, (H-1067) described as the purpose of this Amendment is to clarify the intent of the Resolve, states that and State Employee who is retired subsequent to January 1, 1978 and prior to enactment of this Resolve may request an extension of services provided in this Resolve.

I read it through. I am not clear, for example, Mr. President, as to whether or not this would effect the University Employees, whether or not it would effect Maine Maritime Academy Employees and I would suggest finally, that if one person has a problem with the existing statutes, that there is an opportunity under the present State Law for him to appeal on a year to year basis be extended if the authorities so approve continuation of his service that exist in the State Law and always has.

The PRESIDENT: The pending question before the Senate is the Motion by the Senator

from Cumberland, Senator Hewes, that the Senate indefinitely postpone this Bill and all its accompanying papers.

Is it the pleasure of the Senate? It is a vote.

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

The PRESIDENT: The Senator from Kennebec, Senator Katz, moves that the Senate reconsider its action whereby it voted to indefinitely postpone this Bill. Is it the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Hewes.

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

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of reconsideration 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 21 Senators in the negative, the Motion to reconsider does not prevail.

Second Readers

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

House

Bill, "An Act to Authorize the Supreme Judicial Court to Establish by Rule a Committee on Judicial Responsibility and Disability." (H. P. 1900) (L. D. 1957)

Which was Read a Second Time.

On Motion of Mr. Speers of Kennebec, Tabled until Tuesday next, pending Passage to be Engrossed.

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Waldo County for the Year 1978. (Emergency) (H. P. 2120) (L. D. 2148)

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Knox County for the Year 1978. (Emergency) (H. P. 2121) (L. D. 2149)

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

Bill, "An Act to Amend the Statutes Relating to Airmobiles." (H. P. 2126) (L. D. 2153)

Which was Read a Second Time and Passed to be Engrossed, in non-concurrence, without reference to a Committee.

Sent down for concurrence.

House — As Amended

Bill, "An Act to Provide for Programs to Aid School Administrative Units to Identify and Provide Special Educational Programs for Gifted and Talented Children." (H. P. 1934) (L. D. 2005)

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

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

Emergency

"An Act Providing Allocations from the Unappropriated Highway Fund Surplus for Fiscal Year Ending June 30, 1979." (S. P. 694) (L. D. 2135)

On Motion of Mr. Greeley of Waldo, placed on the Special Highway Appropriations Table.

Orders of the Day

The President laid before the Senate:

JOINT RESOLUTION Requesting the Members of the Maine Delegation to the Congress of the United States to Urge the President of the United States to Approve the Application of Governor Longley for a Presidential Declaration that a Disaster Exists in Maine Because of Severe Winter Storms Suffered in January and February, 1978. (H. P. 2123)

Tabled — February 22, 1978 by Senator Huber of Cumberland

Pending — Adoption

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

Mr. SPEERS: Mr. President, it would appear that the need for this Resolution is no longer before us, and I, therefore, move the indefinite postponement.

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

Mr. CONLEY: Mr. President, I would just add that it was apparent that there was no need for this Joint Resolution the other day when it was tabled.

The PRESIDENT: Is it now the pleasure of the Senate that this Joint Resolution be indefinitely postponed? It is a vote.

Sent down for concurrence.

The President laid before the Senate:

Bill, "An Act to Extend the School Budget Adoption Date." (Emergency) (H. P. 2125) (L. D. 2151)

Tabled — February 23, 1978 by Senator Pierce of Kennebec

Pending — Passage to be Engrossed without Reference to Committee

Which was Passed to be Engrossed, without reference to a Committee in non-concurrence. (See action later today.)

The President laid before the Senate:

RESOLUTION, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court the Power to Remove a Judicial Officer from Office. (H. P. 1886) (L. D. 1943)

Tabled — February 23, 1978 by Senator Collins of Knox

Pending — Motion of Senator Conley of Cumberland to Reconsider Passage to be Engrossed

On Motion of Mr. Speers of Kennebec, Retabled until Tuesday next.

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

Mr. SPEERS: Mr. President, I move that the Senate reconsider its action in regard to Bill, "An Act to Extend the School Budget Adoption Date." (Emergency) (H. P. 2125) (L. D. 2151) whereby this Bill was Passed to be Engrossed.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate reconsider its action whereby (L. D. 2151) was Passed to be Engrossed. Is it the pleasure of the Senate? It is a vote.

On Motion of Mr. Katz of Kennebec, Tabled for One Legislative Day, pending Passage to be Engrossed.

The President laid before the Senate:

Bill, "An Act to Encourage Early Resolution of Discrimination Complaints and to Clarify the Subpoena of Discrimination Complaints and to Clarify the Subpoena Power of the Maine Human Rights Commission." (S. P. 703) (L. D. 2150)

Tabled — February 23, 1978 by Senator Morrell of Cumberland

Pending — Passage to be Engrossed

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

The President laid before the Senate:

Bill, "An Act to Reconstruct the Fuel Adjustment Clause." (H. P. 2092) (L. D. 2137)

Tabled — February 23, 1978 by Senator Speers of Kennebec

Pending — Enactment

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

The President laid before the Senate:

Bill, "An Act to Expand the Elderly Low Cost Drug Program." (Emergency) (H. P. 1912) (L. D. 1973)

Tabled — February 23, 1978 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

On Motion of Mr. Conley of Cumberland,

Retabled for One Legislative Day.

Mr. Pray of Penobscot was granted unanimous consent to address the Senate on the Record.

Mr. PRAY: Mr. President and Members of the Senate: A great deal of media space has been used for the Indian Land Claim in the last few months, and we in the Legislature have even taken action in forming a Select Committee to address this issue. On many occasions we have addressed other issues, the topic of discrimination and the overall question of what is fair play for all.

I would like to read into the Record today a message from the State's largest private landowner and employer in the State of Maine. It is a thank you message which ran in yesterday's Bangor Paper and a number of other papers which says, "Thank you. Many, many people are — saying that they feel that the latest proposal to settle the Indian Land Claim controversy is unfair. A lot of people have gone out of their way to tell us so. Until we were told that the solution to the problem was making a half a million acres of private land available to the Indians, we believe that the White House Special Representative, Justice William B. Gunther, said in 1977, 'I have included the private property owners, only property within the claim area do not share any responsibility for the creation of the problem', Again thank you. When you are one of 14 being signaled out, it is nice to know that so many people still believe in fair play for all. If you want a copy of the statement explaining our views and the copy of the complete White House memorandum, write; Robert Hellendale, Great Northern Paper Company, Millinocket, Maine." Thank you.

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

Mr. HUBER: Mr. President, I move that Bill, "An Act to Facilitate the Making of Decrees by the Industrial Accident Commission." (S. P. 643) (L. D. 2010) be taken from the Unassigned Table.

The PRESIDENT: The Senator from Cumberland, Senator Huber, now moves that the Senate remove from the Unassigned Table, (L. D. 2010).

The Chair recognizes the Senator from Hancock, Senator McNally.

Mr. McNALLY: Mr. President, I offer Senate Amendment "A" and moves its Adoption.

The PRESIDENT: The Senator from Hancock, Senator McNally, now presents Senate Amendment "A" to (L. D. 2010) and moves its Adoption.

Senate Amendment "A" (S-476) Read and Adopted

This Bill, as amended, Passed to be Engrossed.

Sent down for concurrence.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Adjourned until 10:00 in the morning, Monday, February 27, 1978.