

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Ninth

Legislature

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

STATE OF MAINE
One Hundred and Ninth Legislature
Second Regular Session
JOURNAL OF THE SENATE
February 26, 1980
Senate called to order by the President

Prayer by the Honorable Andrew J. Redmond of Madison.

Senator REDMOND: In these last days that we are gathered here, the time is of essence, and we have very serious problems to solve. Therefore, we will ask God to help us.

I would ask you while I am saying the "Our Father" in my native tongue, I would ask you all to concentrate and join me in everyone's own tongue, saying the "Our Father"

Notre Pere, qui es aux cieux,
que ton nom soit sanctifie,
que ton regne arrive,
que ta volonte soit faite
sur la terre comme au ciel.

Donne-nous, aujourd'hui notre
pain quotidien, pardonne-nous nos
offenses comme nous pardonnons a
ceux qui nous ont offenseset ne nous
induisez point a la tentation, mais
delivrez-nous du mal.

Amen

Reading of the Journal of yesterday.

Papers from the House
Non-concurrent Matter

JOINT RESOLUTION Requesting the Attorney General to Examine the Price Increases in Petroleum Products. (H. P. 1857)

In the House, February 20, 1980, Read and Adopted.

In the Senate, February 20, 1980, Indefinitely Postponed, in non-concurrence.

Comes from the House, that Body having Adhered.

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

Senator O'LEARY: I would move that we Recede and Concur.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, moves that the Senate Recede and Concur.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, I request a Division, and ask you to vote against the motion so that the Senate can Adhere.

In some of my discretionary time, last night, I read, Time Magazine, and found a fascinating article on the results of the Federal Government's attempt, covering a period of some years to go after the major oil companies. They finally got a judgement against the American Oil Company, I guess it was, that required all the resources of the Federal Government over a period of years to accomplish something that this Joint Order, without a Fiscal Note, seeks to attempt, very very superficially.

I hope that you will realize that it is an expression of conscience rather than an effective vehicle for giving relief to Maine people.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Senator TROTZKY: Mr. President and Members of the Senate: About a month ago, the OPEC Nations met and raised prices, then all of a sudden Exxon announced price increases, they announced them retroactive, other companies announced price increases immediately retroactive. I couldn't understand how prices could become retroactive when the ships already had left Iran or left Saudi Arabia, and were on their way to the United States.

I immediately called the Attorney General's Office, and asked them was there any way that a law suit could be brought against every oil company in the State of Maine, that is affiliated with the majors? I was told you couldn't

do this because you would have to have some letter, some kind of agreements, where companies were working together to raise prices. If there was no evidence of this, then they couldn't bring any kind of law suit to try to stop these price increases.

They also informed me that this has to be done on a National level. In other words, we're talking about the major oil companies, and their records, and so on, which are in many different states. Although I would love to see the Attorney General investigate this whole area, because I think my constituents, as well as yours, are very concerned about the oil price increases and the international corporations that go beyond the bounds of government, which are the causes of many of these price increases.

The Attorney General doesn't seem to be able to do this. So I feel that it's not good government to just pass out a bill asking the Attorney General to do something when they don't have the abilities to do this. The Federal Government, I understand, is investigating through its office.

The PRESIDENT: Is the Senate ready for the question?

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

Senator O'LEARY: Mr. President and Members of the Senate: Each one of us in this Chamber received one of these, it's from the Atlantic Richfield Company.

At the pump yesterday I paid \$1.24 a gallon for gasoline. In this little booklet that they passed out to each and everyone of us, I'll take Indiana for example, 34,000,000 gallons of gasoline price \$15,200,000. That's about 48¢ a gallon. Now someone is gouging the American Public, someone is gouging us here in the State of Maine.

When it comes to fuel oil to heat our homes, this is another extreme. Some of our larger oil dealers bought at a cheap price last year, filled their tanks, and sold at a high price this year, and they are still doing it.

Some of them are making as much as 30% or 35% profit, and we have a Consumer Protection Division in the Attorney General's Office. What is happening? He should be looking into this in the State of Maine. I don't believe that the people in this State are getting a fair shake!

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

Senator KATZ: Mr. President, the Attorney General is reviewing the posture of Maine Dealers. That's going on now, and I thought the Senator should know that.

I think what we have to look forward to is gasoline, I'm a little pessimistic, \$1.75 before the end of this year. I don't see any happy news to report at all. I think the bad days are ahead of us, and we can yell and scream and pout and wiggle and everything we want, the fact is, this nation is in a very, very bad condition for energy.

Any indication that the only reason we're in bad shape is because of profits to oil companies, overlooks the fact that we have wasted all the years since 1973, the first Arab Oil Embargo, the OPEC Oil Embargo, and we haven't established any energy policy.

I wish this vote were a little bit more clear-cut. I wish that the vote were between people who had compassion and interest, in the welfare of Maine people and those who were insensitive. In which case the vote would be unanimous, because there is no group in the Senate that has any more compassion or desire to protect Maine people than any other. It probably won't show up in the vote because of a certain amount of posturing, but it certainly is the truth.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Motion to Recede and Concur, please rise in their

places to be counted.

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

The Chair recognizes the Senator from Washington, Senator Silverman.

Senator SILVERMAN: I request a Roll Call.

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

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

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

The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, I have a certain amount of intellectual curiosity. I'd like to address a question to the Senator from Washington, Senator Silverman. Here is a Joint Resolution with absolutely no appropriation, no money at all, addressed towards a Department of State Government, which is coming before us for additional funds to deal with the Indian situation, monies that they need because they have no further discretionary funds.

To what extent does the Senator look for some specific results that will end up with Maine people being benefited by the Passing of this Resolution?

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

The Chair recognizes the Senator from Washington, Senator Silverman.

Senator SILVERMAN: Thank you Mr. President.

When the other Body passes a Resolution because it is concerned that the biggest problem we have right now in the State of Maine is the cost of energy. It's quite obvious to the person that buys gasoline at \$1.20 now, and the person that has to buy fuel oil my last bill was over \$1.00, that they have to turn to somebody. They certainly can't turn to the big oil companies. They have to turn to government. Government can't help them by ignoring them.

It's easy to say it's out of our hands and at the Federal level. That might be, but unless you have a grass roots feeling, unless the states respond to it, to what extent will good and decent Maine people be able to live within their economic budgets. This is why I asked for a Roll Call.

I have people in my area and so do everyone of you who have lived without government assistance throughout their lifetime, that right now are going to have to turn to government programs because financially they can't make it anymore.

The only answer we know is an answer that government will give them some answer to their dire problems in handling the energy crisis at the local level and in each person's household, to date that solution has not been given. Thank you.

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

Senator KATZ: I thank the gentleman for his remarks, but I await the answer to my question. Specifically what do we hope to accomplish by passing a Resolution with no money on it, in an area where we are going to be up against the most highly paid lawyers in the country. An area where it takes the Federal Government years to move along to any Resolution with any company. What do you want to accomplish?

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

Senator PRAY: Thank you, Mr. President, and Members of the Senate, a few remarks by the Senator from Kennebec, Senator Katz, I think may have clouded the issue a little bit.

First of all in reference to the additional funding sought by the Attorney General's

House Papers

Office in reference to the Indian Lands Claims Case which I sponsored along with the Senators from Aroostook, Senator Martin, Senator Carpenter, and along with the Senator from Washington, Senator Silverman, does not intend to give the Attorney General additional money for his present staff but to hire outside counsel.

I had the opportunity to talk with a number of Maine citizens in the Community of Ellsworth last week. The concern time and time again was reference to the fuel oil situation, the gasoline price, and the large profits that were being made by companies.

Out of 40 or 50 individuals that I had the opportunity to talk to, I'd say for a large percentage of them this was their major concern. They kept talking about the gasoline dealer, the large oil distributor who has large volumes of oil stored in his tanks which are sitting there, which will be sold once the price gets high enough.

I think that the limitations of the Attorney General's Office in reference to investigating OPEC Nations, we all understand that's not what the order is for.

The order is basically to tell the Attorney General's Office that we the elected representatives of the people of the State of Maine want a higher priority on this than of the other consumer fraud issues. If we are going to establish priorities, let's put it into a perspective where the Maine needs are and where their concerns are.

The PRESIDENT: The Senator from Kennebec, Senator Katz, asks Leave of the Senate to speak a fifth time.

Is there objection?

The Senator has the floor.

Senator KATZ: Mr. President, coming back to my same question as to what we hope to accomplish without any appropriation. The question hasn't been answered, but it occurs to me that if you're going to be intellectually honest about this, that somebody should table this darn thing and go down to the Attorney General's Office, he's the top lawyer in the State, and ask him; in order to make a contribution to the people of this State such as we all want in this body, what is a reasonable appropriation to request to amend onto this Resolution?

Otherwise, it's a hoax. You're creating an illusion that we are doing things. Is there a willingness to put an appropriate appropriation on this? If there is, I suggest somebody table it and let's do it.

On Motion by Senator O'Leary of Oxford, Tabled for 1 Legislative Day, pending the Motion of Senator O'Leary of Oxford.

Joint Resolution

Joint Resolution in Memoriam:

WHEREAS, The Legislature has learned with deep regret of the death of Hon. Edsel G. Pratt lifelong resident and community leader of Turner and member of the 84th, 85th, 89th and 90th Legislatures. (H. P. 1870)

Comes from the House, Read and Adopted.

Which was Read and Adopted, in concurrence.

Senator Pierce of Kennebec was granted unanimous consent to address the Senate, Off the Record.

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

On Motion by Senator Pierce of Kennebec, Recessed until the Sound of the Bell.

Recess

After Recess

The Senate called to Order by the President.

Study Report — Subcommittee Studying the Provisions of Emergency Medical Services

The Joint Subcommittee studying the provisions of Emergency Medical Services to which was referred the study relative to the licensing of ambulance services and ambulance personnel and the relationship of the State with Medical Care Development, Inc., pursuant to Joint Order (H. P. 1435) have had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill, "An Act to Amend the Laws Relating to Ambulance Service" (Emergency) (H. P. 1869) (L. D. 1959) be referred to the Committee on Health and Institutional Services and printed pursuant to Joint Rule 17.

Comes from the House, the Report Read and Accepted, and the Bill referred to the Committee on Health and Institutional Services.

Which Report was Read and Accepted and the Bill referred to the Committee on Health and Institutional Services, in concurrence.

Study Report — Education

The Committee on Education to which was referred the Study relative to insufficient payments for placement of emotionally disturbed children in residential treatment centers, pursuant to Joint Order (H. P. 1552) have had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill, "An Act Appropriating Funds to the Department of Human Services, the Department of Mental Health and Corrections and the Department of Educational and Cultural Services for Insufficient Payments for Placement of Emotionally Disturbed Children in Residential Treatment Centers for the Fiscal Year Ending June 30, 1981" (H. P. 1868) (L. D. 1958) be referred to the Committee on Appropriations and Financial Affairs for public hearing and printed pursuant to Joint Rule 17.

Comes from the House, the Report Read and Accepted, and the Bill referred to the Committee on Appropriations and Financial Affairs.

Which Report was Read and Accepted and the Bill referred to the Committee on Appropriations and Financial Affairs, in concurrence.

Communications

Committee on Marine Resources

February 25, 1980

The Honorable Joseph Sewall
President of the Senate
State House
Augusta, Maine

Dear President Sewall:

It is with pleasure that I report to you that the Committee on Marine Resources has completed all business placed before it by the Second Regular Session of the 109th Legislature.

Total Number of Bills	7
Unanimous Reports	7
Ought to Pass	1
Ought to Pass as Amended	6

Respectfully,
MELVIN A. SHUTE
Senate Chairman

Which was Read.

The PRESIDENT: The Chair would offer its congratulations to Chairman Shute and the other Senate Members of the Marine Resources Committee, and thanks them for a job well done.

Which was Ordered Placed on File.

Committee on Education

February 25, 1980

The Honorable Joseph Sewall
President of the Senate
State House
Augusta, Maine

Dear President Sewall:

In accordance with 3 M.R.S.A., Chapter 6, Section 151, and with Joint Rule 38 of the 109th Maine Legislature, the Joint Standing Commit-

tee on Education has had under consideration the nomination of Inge Foster to the position of member of the State Board of Education.

After public hearing and discussion of this nomination, the Committee proceeded to vote on the motion to recommend to the Senate of the 109th Maine Legislature that this nomination be confirmed. The vote was taken by the yeas and nays. The Committee Clerk called the roll with the following result:

YEAS: Senators 3
Representatives 6

NAYS: Senators 0
Representatives 0

ABSENT: 4 Representative Joyce Lewis — Auburn

Representative Walter Birt — E. Mil-

linocket
Representative Edith Beaulieu —

Portland
Representative Porter Leighton —

Harrison

Nine members of the Committee having voted in the affirmative and none in the negative with four being absent, it was the vote of the Committee that the nomination of Inge Foster to the position of member of the State Board of Education be confirmed.

Sincerely,
HOWARD M. TROTZKY

Senate Chairman
LAURENCE E. CONNOLLY, JR.
House Chairman

Which was Read and Ordered Placed on File.

The PRESIDENT: The Joint Standing Committee on Education has recommended that the nomination of Inge Foster be confirmed.

The pending question before the Senate is: Shall the recommendation of the Committee on Education be overridden? In accordance with 3 M.R.S.A., Chapter 6, section 151, and with Joint Rule 38 of the 109th Legislature, the vote will be taken by the yeas and nays.

A vote of Yes will be in favor of overriding the recommendation of the Committee. A vote of No will be in favor of sustaining the recommendation of the Committee.

Is the Senate ready for the question?

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

ROLL CALL

YEA — None.

NAY — Ault, Carpenter, Chapman, Clark, Collins, Conley, Cote, Danton, Devoe, Emerson, Gill, Hichens, Huber, Katz, Lovell, Martin, McBreaity, Minkowsky, Najarian, O'Leary, Perkins, Pierce, Pray, Redmond, Shute, Silverman, Sutton, Teague, Trotzky, Usher, Sewall.

ABSENT — Farley, Trafton.

No Senators having voted in the affirmative and 31 Senators in the negative, with 2 Senators being absent and none being less than two-thirds of the membership present, it is the vote of the Senate that the Committee's recommendation be accepted. The nomination of Inge Foster is confirmed.

(Off Record Remarks)

Senate Papers

Senator Najarian of Cumberland (Cosponsor Senator Trafton of Androscoggin) presented.

Bill, "An Act to Provide Funds for Residential Energy Conservation." (S. P. 766)

Which was referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

Committee Reports

House

Divided Report

The Majority of the Committee on State Government on, Bill, "An Act Combining the Offices of Justice of the Peace and Notary Public and to Establish their Appointment by the Sec-

retary of State." (H. P. 1718) (L. D. 1829)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-798).

Signed:

Senators:

SUTTON of Oxford
MARTIN of Aroostook

Representatives:

MASTERTON of Cape Elizabeth
REEVES of Pittston
KANY of Waterville
LUND of Augusta
PARADIS of Augusta
BARRY of Fort Kent
CONARY of Oakland

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

Senator:

AULT of Kennebec

Representatives:

DAMREN of Belgrade
BACHRACH of Brunswick
LANCASTER of Kittery

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A" (H-798).

Which Reports were Read.

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

Senator AULT: Mr. President, I move acceptance of the Ought Not to Pass Report.

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

Senator PRAY: Mr. President and Members of the Senate: If I am correct that this bill is in response to a Constitutional Amendment, which the people ratified last year, more than just a motion to accept the Ought Not To Pass on the Divided Report. I would like to pose a question to the Chairman of the State Government Committee, the signer of the Minority Report, as to the reasons that he is opposed to this bill?

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

The Chair recognizes the Senator from Kennebec, Senator Ault.

Senator AULT: The J. P.'s were taken out of the Constitution as Constitutional Officers, but they are still mentioned in the Constitution. If this bill passes, I believe there will be a Constitutional Amendment before you to take J. P.'s completely out of the Constitution during this session.

What this bill does, it does away with the Office of the Justice of the Peace. It's simply a question of whether you want to do away with J. P.'s or not. I'm not ready to do it at this time so I favor the Ought Not to Pass Report.

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

Senator MARTIN: Mr. President and Ladies and Gentlemen of the Senate, I believe the Chairman of the State Government Committee is incorrect. In '78 a Constitutional Amendment was adopted, and the words Justice of the Peace were, in fact, removed. All this does, it complies with the votes of the people, and sets up language. It simply combines the Office of the Justice of the Peace and Notary Publics, and calls them Notary Publics. It becomes effective February 1st of 1981. So I would request a Division, Mr. President.

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

Senator LOVELL: Briefly, Mr. President and Ladies and Gentlemen of the Senate, I have been a Notary Public for 48 years, and in that period of time I have married some 500 couples, especially when I was on a Police Commission in Sanford.

As a Notary Public, I had all the powers that the Justice of the Peace had. So I don't see why we need both offices. I say let's kill this bill and

just have the Notary Publics.

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

Senator PRAY: Mr. President and Members of the Senate: I would like to state, at this time, I think the Senator from York, Senator Lovell may be confused, because if we do kill the bill, we will still have Justice of the Peace and Notaries, if we pass this bill then we will combine those two offices, as to what his statement was.

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

Senator O'LEARY: Mr. President, I have been a Notary and a Justice of the Peace, since I have first been elected to the Legislature back in 1963. I performed a lot of weddings, and they want a Justice of the Peace and not the Notary Public in my area. I'm one of the very few Justices in my area. So I would oppose the bill.

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

Senator LOVELL: I made a mistake. I suggested to kill the bill when I meant that I wanted the bill to pass. If you'll excuse me, I apologize.

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

Senator AULT: Mr. President, I would like to reply to the remarks of the Senator from Aroostook, Senator Martin. We still have before us in the State Government Committee, L. D. 1825, which is: "A Resolution Proposing an Amendment to the Constitution of Maine to Delete from the Constitution, All References to Justices of the Peace." They still are in the Constitution. If this bill were to pass, then we would have to consider L. D. 1825.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President and Members of the Senate: Needless to tell you at this time, I'm confused. Maybe we can get something straightened out. One, I'm a Justice of the Peace. the reason I'm a Justice of the Peace is so I can go out and get absentee ballots, not to marry people.

Now when you're a Notary Public you need a seal. Now if we do away with the Justice of the Peace, I've been recommissioned until 1985, I believe it is. What happens in a case like mine? Are we all going to need seals? These are some of the explanations I'd like to have the Chairman get up on. Are we going to do away with the Justice of the Peace? Everybody's going to be a Notary? Do we have to get a seal? Would you please get up and explain that? Thank you.

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

Senator MARTIN: Mr. President and Ladies and Gentlemen of the Senate, in reference to the question just posed by Senator Danton, there is in L. D. 1829, Section 151 a Revision Clause, which states: "wherever in the Revised Statutes, the word Justice of the Peace appears, or reference is made to that name, they shall be amended to read and mean Notary Public". It's just that simple.

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

Senator REDMOND: I happen to be a Notary Public. My first thoughts when I saw the bill were it was a good idea, it's not necessary to have both. However, since this bill has been in the Legislature I've had some people who have asked me to vote against this bill for the simple reason that many of these people are in their 60's and they have had a sign on the lawn: Paul Jones, Justice of the Peace. They have had that traditionally for 35 or 40 years, 55 years. They feel that they are retired from other activities and they feel as a Justice of the Peace, that sign would probably cost them \$25 to replace. They probably do not intend to replace it, but they would like to continue to live the career

that they have the privilege to live throughout their lifetime. They asked me to vote against this bill. So I guess it's not going to cost anything to anyone to leave it the way it is. I can't see any advantage so why should we offend these poor citizens.

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

Senator O'LEARY: Mr. President, in answer to the good Senator from York, Senator Danton, the law requires a Notary Public to have a seal.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Motion to Accept the Minority Ought Not to Pass Report of the Committee, please rise in their places to be counted.

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

12 Senators having voted in the affirmative, and 16 Senators in the negative, the Motion to accept the Minority Ought Not to Pass Report does not prevail.

The Majority Ought to Pass, as amended, Report of the Committee, Accepted, in concurrence, and the Bill Read Once.

Committee Amendment "A" Read and Adopted, in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Second Readers

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

Senate — As Amended

Bill, "An Act Relating to the Bonding of Voting Device Vendors." (S. P. 694) (L. D. 1816)

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

Sent down for concurrence.

Enactors

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

An Act to Amend the Law Regarding the Reporting of Accidents under the Motor Vehicle Laws. (H. P. 1626) (L. D. 1736)

An Act Relating to Plumbing Permits and Waivers for Septic Systems under Certain Conditions. (H. P. 1727) (L. D. 1846)

An Act to Increase the Level of the Maine Wage Assurance Fund. (H. P. 1785) (L. D. 1894)

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

An Act Establishing Expenditure Limits for Federal Funds Expended by State Departments and Agencies for the Fiscal Year Ending June 30, 1981. (S. P. 757) (L. D. 1944)

This being an emergency measure and having received the affirmative votes of 30 members of the Senate, with No Senators voting in the negative was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The Chair laid before the Senate the first tabled and specially assigned matter:

HOUSE REPORT — from the Committee on Health and Institutional Services - Bill, "An Act to Provide for Licensing and Regulation of Adult Foster Homes." (H. P. 1089) (L. D. 1466) Ought to Pass in New Draft under same Title (H. P. 1816) (L. D. 1927)

Tabled—February 25, 1980 by Senator Katz of Kennebec.

Pending—Acceptance of Report.

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

Senator HICHENS: Mr. President and Members of the Senate. I feel that it is wrong to Enact Legislation into law without proper consideration for people directly affected by such Legislation.

The Maine Health Care Association in a letter to the Chairman, and Members of the Health and Institutional Services Committee requested that the Bill be deferred until the Governor's Task Force on Long-term Care completes its report and refrain from any piecemeal approach of adjustments to existing law. This report will not be available until this Fall.

I do not feel it wise to Enact Laws with such consequential results until the facts are before us, there is no rush.

I have had placed on your desks this morning a copy of a redraft of L. D. 1466, which is now L. D. 1927, so that you may note all the concerns regarding this Bill by one directly affected.

With these thoughts in mind I move that this Bill and all its accompanying papers be Indefinitely Postponed.

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

Senator CONLEY: Mr. President, would the Secretary please read the report of the Committee.

The Committee Report was Read.

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

Senator HICHENS: Mr. President I am glad that the good Senator from Cumberland, asked that question, because as explained in our Republican Caucus this Bill was finally sent out of Committee during the recess session of our Legislative Session this year.

The 3 Senators were not present when the Bill was finally voted on. I was approached after the Bill had come out with a unanimous report, and stated very emphatically that I was upset by the fact that it was reported out, without my being consulted in anyway, shape or manner. I was told the other 2 Senators had been approached and had gone along with the Committee, they were not there when the final discussion took place. One Senator wasn't there at all, during the work sessions that week, the other one had to leave along with me earlier the day that the vote was taken.

So as was stated by the good Chairman of the Committee in caucus it was unanimous except for Senator Hichens. Well I do not see how anything is unanimous, except for 1 person. I regret the fact that I had not been contacted, I regret the fact that the other 2 Senators were not there when the final vote was taken and just gave their approval after a vote had been taken.

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

Senator CONLEY: Mr. President and Members of the Senate. I guess occasionally it becomes a little dangerous when we split up in different groups and go into caucuses. As a result of caucuses this is what happens. Somehow or other people get sort of a misunderstanding as to what took place in committees when they met in executive session.

If my memory serves me correctly, the good Senator from York, Senator Hichens was whipping up Strawberries and Ice Cream and serving them to the Senate the day that the committee met. Now I am surprised that he could not have been there to hear or to have voted on this particular bill.

I know that the good Senator from Cumberland, my colleague Senator Gill, strongly endorsed and supported this bill at the Committee Hearings and the Executive Session. I think that it would be a disgrace and a harmful effect upon the citizens of Maine if the Republican Senate, who met for 20 minutes this morning, decided that today because of the good Senator from York, Senator Hichens's attitude, that this bill just die an unmercenary death.

Support the good Senator from Cumberland, Senator Gill, and send this bill down to the Engrossing Department.

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

Senator LOVELL: Mr. President, you will note on your desk that there is a sheet. Now this sheet was made out by Doyle Sowerby. He owns 2 Nursing Homes in Sanford. He is also an authority on not only Nursing Homes, but Boarding Homes, and all types of such things that come under that category.

Mr. Sowerby has sent this sheet for you people to look over of the bad things in the bill. So I don't think there is any sense of us needing to bother to debate this at all. I would just ask for a Division. I'm sure the Republicans certainly will vote all to kill the bill. We'll let the good Democrats from Portland vote to keep it alive.

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

Senator CARPENTER: Mr. President, and Ladies and Gentlemen of the Senate, I happen to have been a Member of that Committee and I quite often get up here and don't agree with my good Floorleader. I certainly hope that the Members of this Senate this morning won't go along with his advice and support his colleague from Cumberland, Senator Gill.

Quite honestly I'm not prepared to debate this bill today, because until 20 minutes ago I thought that the good Senator from Cumberland was on my side. As usually happens in that committee, I allow her to kind of carry the ball for me, but something happened somewhere along the way.

This bill has been on the table and retabled and retabled now for a week or so. About every day I turn around and say you know, are we okay, are you going to give me a hand? The answer was always yes until this morning. When the answer was No. So I would ask for the courtesy of allowing my floorleader to table it for 1 day and was denied that.

If you look at the bill. I don't know perhaps what the good Senator from York, Senator Lovell says is more accurate than anything else that has been said here in the last few weeks, that we are going to vote as blocks, as groups this morning, but if you want to bother looking at the bill, you'll see that it has nothing to do with Nursing Homes. It deals with Boarding Homes and Adult Foster Care Facilities.

This is not a piecemeal approach at all. It's rather a profound change in statutes, an Enactment of statutes, that are needed by the Department of Human Services in order to regulate properly both Boarding Homes and Adult Foster Care Facilities, of which there are quite a few in the State of Maine. There's quite a difference between those and Nursing Homes.

I remember a great debate we had here the other day, about a little school down in Washington County, that had approved a bond issue, and the long arms of a couple of our former colleagues from Washington County have kind of reached up into this Chamber and were trying to influence us. I got a note from one of the Senators and said: Come on! One for my former seatmate the good Senator from Washington, Hollis.

I don't Legislate that way. I never have, and in answer to the remarks of the good Senator from York, Senator Lovell, I don't fail to Legislate because one person who happens to own a facility has written me and said bad bill, bad bill.

I really think we're advocating our authority this morning. I think it speaks for the power of the lobby. I think it speaks for the power of the Maine Health Care Association, that a lot of heads have been turned, in the last 24 hours I would assume. A lot of heads have been turned, a lot of votes have been turned around.

I didn't anticipate any problem with this bill, as I said. As of this morning when I came in

here, as of our caucus we discussed it briefly, the minority caucus we discussed it and I assured my colleagues that the bill was probably in pretty good shape because I had some help.

I would like to ask a question to somebody in this Chamber, preferably the good Senator from Cumberland, Senator Gill, as to exactly what happened, to change the ideas of some of the Members of that Committee? You heard the Committee Report read, one name on it, which means it's a unanimous Committee Report.

I've known for sometime that the good Senator from York, Senator Hichens, was upset, because in the 4 or 5 day time periods after the bill was discussed in work session, and I wasn't there, but in the 4 or 5 day time period, he didn't have time to sign the bill. Well I'm sorry about that. I believe we had a similar incident take place in the Agriculture Committee last week and I was given very emphatically 48 hours to get that bill out of committee. I won't tell you who gave me that directive, as a quoting of a Joint Rule of some sort.

It just really disturbs me, that the lobby is powerful enough, and efficient enough, in a matter of minutes they can turn this whole bill around, this whole bill that at the hearing people said was so desperately needed by both the facilities involved and also the Department of Human Services. Mr. President, I would request that when the vote is taken, it be taken by the Yeas and Nays.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Mr. President, first of all I would like to thank my colleague, Senator Conley, for speaking for me. I was waiting for the opportunity to rise myself and speak for myself.

I believe this is the first time since I've been in the Legislature that I have done an about face on a vote. I didn't do this lightly either. I'll go over the bill.

I would like to state first of all, on the bill. We had 2 people from the department who testified for the bill at the hearing we had. One of them was Mr. Robert Wyllie who was the Director of the Bureau of Social Welfare. He said in his statement. Let me explain how what we are considering here fits into the entire licensing responsibility of the department. The department licenses both Child Caring Facilities and Adult Caring Facilities as well as Medical Facilities.

Yesterday and this past week we've been working on a particular constituent issue, regarding the Day Care Facilities, private day care. It occurred to me that while we were trying to resolve this problem that the department has really overstepped what the Legislature did several years ago. The Legislature, in its wisdom, in 4 lines of statutes, gave the department the authority to license Day Care Facilities to set up rules and regulate and promulgate rules.

What had happened from that, was the rules and regulations have just expanded so, and they are so rigid and so tenacious about seeing that every letter of the law is followed, that they don't even take common sense into effect. I think that really got me thinking about this particular piece of legislation that we have before us now, on the Adult Foster Homes.

The bill had been tabled time after time. It was tabled out of the request for Senator Hichens. Senator Hichens felt that he was unfairly treated, in not being allowed to sign that bill Out of Committee. I don't know where the responsibility lays, I would gladly accept it as chairman. I should have seen that everybody had the opportunity to look at that bill. The Clerk was given the word that everyone had 48 hours to sign it. Somewhere along the way there was some lack of communication between Senator Hichens and our Clerk of the

Committee, that's beside the point.

This particular constituent problem in licensing Private Day Care just brought to mind that this is exactly what we were doing on the other end. We're talking about Adult Foster Homes. We're talking about setting up rules and restrictions for them, that are so restrictive that it might be difficult for them to abide by. So it has done a complete turn-around for me.

It's no surprise. We met with the department people yesterday to try to resolve this other problem. I don't know what's going to happen to that particular problem, but I made up my mind yesterday. I told the department people that I certainly wasn't going to vote on a bill that was going to restrict people further on down the line when people are trying to do good. They are trying to take care of people who need caring, and we're setting up all these extra rules for them to abide by, when I'm not sure it's necessary. That's why I have changed my vote on this bill. I hope I will never have to do it again. I have never done it in the past, but if need be, I probably will. Something was brought to light and I have just made the decision to do that. So if there are any questions from anyone, I would be happy to answer them.

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

Senator PRAY: Mr. President, and Members of the Senate, 4 years ago I had sponsored or co-sponsored a piece of Legislation dealing with Hospital Rate Review. At that time I was a Member of the Health and Institutional Services Committee.

It was one of the first bills which was a carry-over bill, and as a sponsor of that bill I, in this Chamber, spoke against carrying over and voted against carrying over all the bills that were carried over that year. I believe it was 4 of them.

Last year as a Member of Leadership, when the issues of carry-overs were brought up, I again voted against carrying over any proposals. Basically here we are today with 20 days left in the session with one of those carry-over bills, which hasn't been just changed in a few minutes. But the action that's been taking place on this bill is well over a year, being worked on, or close to a year.

If you'll check the LD number of the original report you can see that it was in the last session, the hearing was held last session. It was felt necessary enough by the committee itself to carry this bill over, to work on it. I think it's disgraceful that in a matter of a few minutes, that we take all of the work of the committee over this lengthy period of time of trying to come up with a proposal that meets the needs of Maine people and then just flush it out of the system.

If you read the Statement of Fact and if it's accurate since it's a re-draft, it had to be supported by the Members of that committee. It states that this bill is to give them authority necessary for the proper administration of these people, in the best interests of those individuals who are in these homes.

It goes on for 2 or 3 other reasons, but the underlying cause and the concern of the regulatory authorities of bureaucracy perhaps sometimes we shudder at what they have done with the statutes that we pass after we pass them. The solution isn't to give way to special interests, but it's to keep in perspective the interests of those individuals who are going to be served by these services. Those are the people that we are trying to protect. I think that this bill basically does that.

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

Senator GILL: I appreciate that this is a carry over bill, but the people that worked on it while it was being carried over were people from the Department of Human Services. Dave Williams, who is the Attorney General, who was the Attorney General for the Department, spent a great deal of time.

The bill, as it came in from the department after it had been worked on for all that time was a very lengthy, very wordy bill, which we worked on and we deleted a lot of the language, and a lot of the hypotheses about what might happen 10 years in the future. We have problems upon us now that we're not addressing. The bill went way into the future in some instances.

There again we have heard from no Boarding Home people in favor of that bill. As Chairman of the Committee, I have not had one piece of correspondence from the Boarding Homes, that told me they were in favor of that particular piece of Legislation, in anyway. So I will feel very comfortable in voting against this.

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

Senator PRAY: Mr. President, and Members of the Senate, I can see that my service 2 years ago on the Health and Institutional Services Committee and since leaving that committee it hasn't changed. It seemed as if always the lobby and the department did all of the work for the committee.

The PRESIDENT: Is the Senate ready for the question?

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

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

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

The pending question before the Senate is the Motion by the Senator from York, Senator Hichens, that LD 1927 be Indefinitely Postponed.

A Yes vote will be in favor of the Motion to Indefinitely Postpone LD 1927.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

YEA—Ault, Chapman, Collins, Devoe, Emerson, Gill, Hichens, Huber, Katz, Lovell, McBreairey, Perkins, Pierce, Redmond, Shute, Sutton, Teague, Trotzky.

NAY—Carpenter, Clark, Conley, Cote, Danton, Martin, Minkowsky, Najarian, O'Leary, Pray, Silverman, Trafton, Usher.

ABSENT—Farley.

18 Senators having voted in the affirmative, and 13 Senators in the negative, with 1 Senator being absent, the Motion to Indefinitely Postpone in non-concurrence does prevail.

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

Senator KATZ: Mr. President, I move reconsideration.

The PRESIDENT: The Senator from Kennebec, Senator Katz, moves that the Senate reconsider its action whereby LD 1927 was Indefinitely Postponed.

Will all those Senators in favor of the motion to reconsider, please say yes.

Will all those Senators opposed, please say No.

A Viva Voce Vote being had.

The Motion to Reconsider does not prevail. Sent down for concurrence.

The Chair laid before the Senate the second tabled and specially assigned matter:

Bill, "An Act to Increase the Fees for the Driver Education Evaluation Program." (H. P. 1691) (L. D. 1801)

Tabled—February 25, 1980 by Senator Katz of Kennebec.

Pending—Enactment.

On Motion by Senator Pierce of Kennebec, Retabled for 2 Legislative Days.

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

Committee Report

House

Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on, Bill "An Act to Amend the Emergency Home Heating Act of 1979." (Emergency) (H. P. 1866) (L. D. 1956)

Reports that the same Ought to Pass as amended by Committee Amendment "A" (H-802).

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" Read and Adopted, in concurrence. Under Suspension of the Rules, the Bill, as amended, given its Second Reading, and passed to be Engrossed, in concurrence.

Orders of the Day

On Motion by Senator Pierce of Kennebec, Adjourned until 10 o'clock tomorrow morning.