

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

March 11, 1980

Senate called to order by the President.

Prayer by Father James Karalexis of Saint Demetrius Greek Orthodox Church of Biddeford.

Father KARALEXIS: O' Lord, grant unto us serenity, and assist us in finding a rapid solution in freeing the hostages in Iran.

Grant us the power of understanding so that we may deal with one another, with harmony and love.

We pray that peace and consolement will be offered unto those who are suffering and going through trying moments in Afghanistan. Help us to love those who begrudge us and assist us so that we may not lead our souls unto temptation.

Grant peace of mind unto those who are going through moments of turmoil in Pakistan.

Grant health unto all thy dedicated lawmakers and direct them so that they may make correct decisions. Enlighten their minds so that they may not be surrounded with feelings of animosity.

All the above we request in the name of the Holy Trinity. Amen.

Reading of the Journal of yesterday.

Senator Katz 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.

Papers from the House
Non-concurrent Matter

Bill, "An Act to Amend Allocations from the Highway Fund for the Fiscal Years from July 1, 1979 to June 30, 1980 and from July 1, 1980 to June 30, 1981, Decrease the State Aid Bonus from 40% to 20%, and Revise Drivers' License and Examination Fees." (Emergency) (H. P. 1723) (L. D. 1827)

In the Senate March 7, 1980, Passed to be Engrossed as amended by Committee Amendment "A" (H-812) as amended by Senate Amendment "B" (S-434) Thereto, in non-concurrence.

Comes from the House, Passed to be Engrossed as amended by Committee Amendment "A" as amended by House Amendment "E" (H-868), Thereto in non-concurrence.

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

Senator KATZ: Mr. President, this is the Major Highway Funding Bill. It comes back to us in practically the same condition we sent it down, but with a slightly modified House Amendment.

I'm going to suggest that in its present form, it is completely unacceptable as a funding mechanism for the Transportation Department. Although it deals with the necessities of this biennium, it completely, absolutely, misses the target in giving us any indication at all on how the long-range needs of this department are going to be met.

My party is unwilling on good faith to patch it up one more time without a clear understanding of where we're going from here, where the people of the State can go from here, on long-

range solutions. On that basis I would request that somebody from my party table this unasigned.

On Motion by Senator Pierce of Kennebec, Tabled, pending Consideration.

Non-concurrent Matter

Bill, "An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine." (Emergency) (S. P. 770) (L. D. 1964)

In the Senate March 5, 1980, Passed to be Engrossed as amended by Senate Amendment "A" (S-426).

Comes from the House, Passed to be Engrossed as amended by House Amendments "B" (H-844), "C" (H-847), "D" (H-848), "E" (H-849) and "H" (H-856) and Senate Amendment "A", in non-concurrence.

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

Senator COLLINS: Mr. President, I move that the Senate Recede and I would speak to the motion.

The PRESIDENT: The Senator has the floor.

Senator COLLINS: Mr. President, the amendments placed in the other body seem innocuous with the possible exception of Amendment "E". For that reason I would ask that the Senate go through these amendments so that the Senator from York, Senator Hichens may explain the effect of Amendment "E".

The PRESIDENT: The Senator from Knox, Senator Collins moves that the Senate Recede. Is this the Pleasure of the Senate?

The Motion Prevailed.

House Amendment "B" Read and Adopted, in concurrence.

House Amendment "C" Read and Adopted, in concurrence.

House Amendment "D" Read and Adopted, in concurrence.

House Amendment "E" Read.

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

Senator HICHENS: I move that House Amendment "E" be Indefinitely Postponed, and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator HICHENS: Mr. President and Members of the Senate: Last year the Legislature enacted and the Governor signed a bill equalizing the sexes in dog licensing. As proof of neutering the applicant had to show a certificate of spaying or a paper signed by a veterinarian saying that a male dog had been neutered.

As the law became effective several town clerks were confronted with people who had no proof of such neutering, especially regarding male dogs. Following the letter of the law, they refused to issue licenses.

Applicants discovered that veterinarians charge up to \$14 to examine the dog, and sign statements that the dog was incapable of reproduction. When the matter was brought up to the Agriculture Committee, it was agreed that it had been the intent of the committee when the bill was written that satisfactory proof of such neutering was what we had in mind. A sworn affidavit by the applicant would be sufficient proof if certificates were not available.

I spoke to the Director of Research and asked if a separate bill was needed to correct the problem and was informed that if sufficient proof is provided by sworn affidavit was the intent of the committee, it could be included in the errors and inconsistencies bill.

The Judiciary Committee agreed and it was included and accepted by the Senate. Then someone representing MMA objected. I explained the reason to the committee and he appeared to accept my explanation. Now we have this amendment before us which he apparently convinced a House Member to submit.

I have enough confidence in our Maine citizens to believe that when they sign an affidavit that their dog is incapable of reproduction, that they are telling the truth, especially when they face a fine should they be found out. I hope,

therefore, that you will vote with me to Indefinitely Postpone House Amendment "E".

On Motion by Senator Hichens of York, House Amendment "E" Indefinitely Postponed, in non-concurrence.

House Amendment "H" Read and Adopted, in concurrence.

The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

(Off Record Remarks)

Joint Orders

Expressions of Legislative Sentiment recognizing:

Penny Moody, Wells High School, "most valuable player" and "best sportsman" in the State Girls Class C basketball tournament, for the 2nd consecutive year. (H. P. 1921)

The Town of North Yarmouth, which is celebrating the tricentennial anniversary of its founding in the year 1680. (H. P. 1922)

Come from the House, Read and Passed.

Which were Read and Passed, in concurrence.

Expressions of Legislative Sentiment Recognizing:

Sandra Hall, who is retiring from the Windham Rescue Unit after 6 years of dedicated service. (H. P. 1924)

Beverly Varney, who is retiring from the Windham Rescue Unit after 9 years of dedicated service. (H. P. 1925)

Come from the House, Read and Passed.

Which were Read.

On Motion by Senator Katz of Kennebec, Tabled, pending Passage.

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation report out a bill to establish the municipal cost components for the unorganized territory for services to be rendered in fiscal year 1981. (H. P. 1934)

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

Communication

Office of the Secretary of State

To the Honorable 109th Legislature of the State of Maine
Attention: House of Representatives, Clerk Pert

Info: Senate, Secretary Ross

I have the honor to transmit herewith an initiated bill, "AN ACT to Prohibit the Generation of Electric Power by Means of Nuclear Fission," and the results of the examination by this office of the initiative petitions relating to it.

The minimum number of valid signatures required to initiate this legislation is 37,026. On and before February 21, 1980, our office received 4,027 petitions said to contain 55,424 signatures. After extensive review we have determined the number of valid signatures to be 55,384.

In view of the foregoing determination, I hereby certify that these petitions have met the constitutional requirements of the minimum of 37,026 valid signatures. Since the petitions have previously satisfied the constitutional requirements in all other respects, under the provision of Article IV, Part Third, Section 18, of the Constitution of Maine, I do hereby declare this initiative petition to be valid.

In the event the Legislature rejects this initiative proposal, a referendum election will have to be called not earlier than four nor later than six months after the Legislature adjourns. For your information, a special election costs this office between \$65,000 and \$75,000, and I estimate that it costs municipalities all across the State another \$175,000 to \$200,000. It would appear that if the Legislature were not to officially adjourn until the early part of May, the

referendum question could be called by the Governor as part of the General Election next November, thus saving the expense of a special election.

Respectfully,
RODNEY S. QUINN
 Secretary of State
 (H. P. 1926)

Comes from the House, Read and Ordered Placed on File, and the accompanying Bill referred to the Committee on Public Utilities.

Which was Read and Ordered Placed on File, in concurrence, and the accompanying Bill referred to the Committee on Public Utilities, in concurrence.

Senate Papers

Study Report — Committees on Business Legislation and Education

The Committee on Business Legislation and Education to which was referred the study relative to Establishing a Program of Funded Self-Insurance for Public Schools, pursuant to Joint Order (S. P. 627) have had the same under consideration and ask leave to submit their findings and to report that the accompanying Bill, "An Act to Establish a Program of Funded Self-Insurance for Public Schools" (S. P. 787) (L. D. 1987) be referred to the Committee of Business Legislation for public hearing and printed pursuant to Joint Rule 17.

Which Report was Read and Accepted and the Bill referred to the Committee on Business Legislation.

Sent down for concurrence.

Orders

An Expression of Legislative Sentiment recognizing:

The Hodgdon High School Girls' Basketball Team, 1979-80 Class C State champions and winners of 2 consecutive Class C State titles. (S. P. 788) is presented by Senator Carpenter of Arrostook.

Which was Read and Passed.

Sent down for concurrence.

Joint Resolution

Joint Resolution in Memoriam:

WHEREAS, the Legislature has learned with deep regret of the death of Paul E.A. Ouellette, of Auburn, who served as chairman of the Auburn Democratic City Committee, 1974-75. (S. P. 789) is presented by Senator Trafton of Androscoggin (Cosponsors: Representative Brodeur of Auburn, Representative Hughes of Auburn and Representative Michael of Auburn).

Which was Read and Adopted.

Sent down for concurrence.

Committee Reports

House

Leave to Withdraw

The Committee on Public Utilities on, Bill, "An Act to Authorize the Public Utilities Commission to Establish an Electrical Family Farm Rate. (H. P. 1652) (L. D. 1761)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted, in concurrence.

Ought to Pass — As Amended

The Committee on Appropriations and Financial Affairs on, Bill, "An Act to Appropriate Funds for an Increase in Board Rates for Foster Parents and Clothing Allowances for Children under the Care or Custody of the Department of Human Services." (H. P. 1754) (L. D. 1881)

Reports that the same Ought to Pass as Amended by Committee Amendment "A" (H-837).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amend-

ment "A".

The Committee on Energy and Natural Resources on, Bill, "An Act to Establish Visible Emissions Standards and to Adopt and Revise Certain Definitions under the Environmental Laws." (H. P. 1690) (L. D. 1800)

Reports that the same Ought to Pass as amended by Committee Amendment "A" (H-846).

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

The Committee on State Government on, Bill, "An Act Relating to the Reorganization of the Board of Trustees of the State Employees Group Accident and Sickness or Health Insurance Plan." (H. P. 1766) (L. D. 1889)

Reports that the same Ought to Pass as amended by Committee Amendment "A" (H-850).

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

Which Reports were Read and Accepted, in concurrence, and the Bills Read Once. Committee Amendments "A" were Read and Adopted, in concurrence, and the Bills, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Education on, Bill, "An Act to Exempt Church-sponsored Schools and Schools of Religious Charter from Approval of the Department of Educational and Cultural Services." (H. P. 1711) (L. D. 1817)

Reported that the same Ought Not to Pass.

Signed:

Senators:

TROTZKY of Penobscot
 GILL of Cumberland
 MINKOWSKY of Androscoggin

Representatives:

CONNOLLY of Portland
 FENLASON of Danforth
 BEAULIEU of Portland
 ROLDE of York
 DAVIS of Monmouth
 GOWEN of Standish
 LOCKE of Sebec

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass in New Draft under same title. (H. P. 1918) (L. D. 1980)

Signed:

Representatives:

BIRT of East Millinocket
 LEWIS of Auburn
 LEIGHTON of Harrison

Comes from the House, Bill and Papers Indefinitely Postponed.

Which Reports were Read.

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

Senator TROTZKY: Mr. President, I move the Senate accept the Majority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, now moves the Senate accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: Mr. President, I am reluctant to read my words this morning, but I feel that I might leave something out if I ad-lib. So if you will go along with me, I will read my speech and hope you will give me your attention, and listen carefully to what I have to say.

It is a sad state of affairs when we reach this point in American History when such a bill as we considered this morning has to be before us. In a country that was founded on religious freedom, and with a heritage that we claim America to be a Christian Nation, it concerns me that we have to come to a time when people feel compelled to ask for complete severances from

State regulations and controls of any school system.

The first textbook in America was the Holy Bible. The morning prayers to start the school day was a natural procedure. Then people who apparently had disregard for one of our four freedoms began to fight not for freedom of religion, but freedom from religion.

The Majority of the Members of the Supreme Court, 9 men, of great stature and wisdom, decided that prayers in schools and Bible reading was Unconstitutional. We have gone down hill as far as not only Christian principle, but moral ideals are concerned, ever since.

I can well remember the day when one of my daughters came home from school, shortly after the Supreme Court decision was mandated in the State of Maine, and told how the teacher picked up the Bible from his desk, and saying "well, we won't have to have this thing around any more," slung it across the room, where it slid under a radiator.

I can well remember a day 2 years ago when my grandson coming home from school and in tears told his mother that when the teacher questioned him as to why he lowered his head at the lunch table, and he said that he was asking the blessing on his food, she told him that he was not allowed to do that in school.

I can well remember that as a Member of the Gideons International I had the privilege of offering copies of the New Testament, Psalms and Proverbs to children in Maine schools, who voluntarily accepted them and took them as a prized possession.

Now the Attorney General has given an opinion that such procedure is Unconstitutional, as is public funding for tuition for students attending private school.

Why are we considering L. D. 1980 at this point in time. It is because not only prayers, Bible reading, and Christian Principles are not only being banned in our school systems, but because every other philosophy in humanism teaching is being substituted for it.

Our State law mandates that morality is to be taught our students. With an allotted time each week set aside to teach love of birds, animals, and respect for humans. I question this morning how many teachers even know this to be a law. I question also how many teachers spent one half hour last Friday as mandated by law teaching temperance.

I'm not going to vote for L. D. 1980 today, because I feel that such a break from State regulations is too drastic a step at this time. I fear for discrimination against students attending Christian Schools if such a law was passed. But I hope that you fellow Senators, the people of Maine will take the introduction of such Legislation as a warning. Unless our Commissioner of Education, our Superintendents, our teachers begin teaching the love of God, love of country, and love for their fellow man, it will not be in the too distant future, that similar Legislation will be presented and passed.

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

Senator TROTZKY: Mr. President and Members of the Senate: I rise today to oppose L. D. 1980

The Committee has wrestled with this issue and through at least I believe 3 work sessions which were quite long. What we're wrestling with first of all is the First Amendment to the Constitution. The First Amendment to the United States Constitution says that Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. That First Amendment is made binding on the States by the 14th.

The question that I asked at the hearing and the question that I asked in work session has the free exercise clause of the First Amendment been violated by burdensome state regulations? I'm talking about Department of Education and Cultural Services regulations on religious schools in the State of Maine.

This bill was brought in by the Maine Association of Christian Schools. When we use the word in this respect 'Christian', it does not represent all of the Christian denominations, but a few of them.

The questions that were asked basically at the work sessions were, has the state put burdensome regulations on these schools, with approval, accreditation, curriculum, textbooks, certification?

At the hearing the proponents of the bill read testimony by William Standmyer, an Associate Professor of Law at Indiana University. It's underlined in the 16 page testimony, after a lot of cases have been quoted to the Education Committee, "these and other cases make it crystal clear that the State standards will be struck down unless they're truly minimum, truly reasonable, and truly not burdensome on religious free exercise".

The Maine Association of Christian Schools were asked some questions and I'd like to read you the answers to some of the questions that were asked of them.

First of all, what specific, and we're going to talk specifics today, what specific limitations have the laws of Maine and the Department of Education and Cultural Services Regulations placed on the development of Christian Schools? The answer to that is the Maine Association of Christian Schools has no way of knowing if someone ever decided not to open a Christian School, due to particular State regulation. Virtually every Christian School in Maine is approved by the Department of Education and Cultural Services at this time. Even the 4 new schools which chose not to apply for approval, Commissioner Reynolds graciously chose to use his waiver authority rather than to pre-empt the Legislature's scrutiny of our bill.

Concerning textbooks, the State of Maine prescribes no textbooks, to our knowledge, the Education Committee's knowledge, no textbook has ever been forbidden to be used in the Christian Schools.

How many teachers have been refused certification and why? The answer to that is the Maine Association of Christian Schools does not know the answer to this question. There was, at the hearing, one teacher whom the department was concerned about at one of the smaller schools. That teacher was given a waiver to teach for at least a year.

What schools have not been approved? Every such school we know of operating now is approved in some way. It may be safe to assume no Christian School has ever failed to become approved.

What programs have not been accepted and why? The same answer, no programs that I know of and Members of the Education know of, have not been approved.

Consequently, it is my judgement that the State of Maine at this time has not infringed on the free exercise of Religious Schools in the State of Maine. However, the concern that the proponents have is that there is potential, there is a potential for infringement in the future.

Well, I would like you, if possible, to take a look at the bill itself. The bill itself, L. D. 1980, basically says that a church sponsored or school of religious charter shall be exempt from approval by the Commissioner of Education and Cultural Services, only by the transmission of a letter, which states religious convictions against approval. All you have to do is state your religious conviction against approval and you become exempt from State Regulations and Standards, or most of them. The exemption is permanent, it is not revokable.

How do you define a School of Religious Charters. School of Religious Charter means a school which exists for religious purposes, and about which one of the following is true. A, for example, the school is not under the substantial lead or financial auspices of a church, a group of churches.

How do we define religion? I don't think we

can really. What one person may think of as a religion may be unacceptable to another person.

So what we do in passing this bill is we open up the State of Maine to any group which says it has a religious purpose to send a letter to the Commissioner of Education and Cultural Services, asking for an exemption from approval.

My concern about this bill here is the harm that may come to children under it. The Education Committee feels that the schools that we know of, especially the schools that came before the Committee, the Maine Association of Christian Schools is doing a good job in the State of Maine with its children. I know the school in my community, the Bangor Christian School is one of the outstanding schools in the State of Maine. However, again the main argument becomes what is the potential for State infringement in the future? I feel that the potential for State infringement on the free exercise of religion is outweighed by the potential harm that may come to children in the name of religion if L. D. 1980 is passed.

The facts set down before the committee demonstrate clearly that the State of Maine is not infringing on the religious freedoms in a school at this time. However, if potential infringement should come upon these schools, they only have to first, go to the Commissioner of Education and express their concern for regulations. If that doesn't work they have the right to go to the State Courts and to the Federal Courts. The courts in our country have jealously guarded that protection, that religious freedom that is guaranteed by the First Amendment. So consequently, I feel the future is protected by the U.S. Constitution.

We could pass this bill and it could be amended next year and changed, but the people of this country believe in that First Amendment, and it probably will never be changed.

I do want to say, however, that there is a positive aspect to the hearing that we had in Augusta, between 2,500 and 3,500 people attended that hearing. I think this is a warning to the Department of Education and Cultural Services and a warning to the Legislature, where it sensitizes government to the future that it be careful where it infringes upon the free enterprise of religion and the teaching of religion in religious schools throughout the State of Maine. Thank you, Mr. President.

On Motion by Senator Trotzky of Penobscot, the Majority Ought Not to Pass Report of the Committee, Accepted.

Sent down for concurrence.

Divided Report

The Majority of the Committee on Agriculture on, Bill, "An Act Concerning Regulation of Milk by the Maine Milk Commission in Municipalities which Vote for Decontrol." (H. P. 1679) (L. D. 1788)

Reported that the same Ought Not to Pass.

Signed:

Senators:

HICHENS of York
CARPENTER of Aroostook

Representatives:

ROLLINS of Dixfield
TORREY of Poland
SHERBURNE of Dexter
NELSON of New Sweden
ROOPE of Presque Isle
LOCKE of Sebec
TOZIER of Unity
MICHAEL of Auburn
MAHANY of Easton

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

Signed:

Representative:

WOOD of Sanford

Comes from the House, the Majority Ought Not to Pass Report, Read and Accepted.

Which Reports were Read.

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

Divided Report

The Majority of the Committee on Education on, RESOLVE, Appropriating Funds to Camden Community School, Inc. (H. P. 1645) (L. D. 1755)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-838).

Signed:

Senator:

TROTZKY of Penobscot

Representatives:

LOCKE of Sebec
LEWIS of Auburn
BEAULIEU of Portland
ROLDE of York
BIRT of East Millinocket
CONNOLLY of Portland
GOWEN of Standish

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

Signed:

Senators:

MINKOWSKY of Androscoggin
GILL of Cumberland

Representatives:

FENLASON of Danforth
LEIGHTON of Harrison
DAVIS of Monmouth

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

Which Reports were Read.

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

Senator TROTZKY: Mr. President, I move the Senate accept the Majority Ought to Pass Report of the Committee, and I would like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator TROTZKY: Mr. President and Members of the Senate: The Camden Community School is a school for dropouts in the State of Maine, and students who have been unsuccessful in the schools they have attended.

Four Members of the Committee went down and visited the school and saw it. What they do is they have a staff, they have 8 students per semester, that come from schools throughout the State, as far away as Fort Kent. So even though the school is located in Camden, it does accept students from throughout the State.

It is approved by the Department of Education and Cultural Services and receives funds, for example, from the Department of Mental Health and Corrections, \$15,000; the Office of Alcoholism, and Drug Prevention, about \$20,000; the Department of Human Services, \$10,000, School Administrative District, also.

However, the school in setting up its budget did not take into consideration the cost of inflation. Therefore, what this bill does, is a one time only bill, it asks for an appropriation of \$10,000. They came and asked for \$15,000. The Majority of the Committee amended it to \$10,000, so as to enable the school to continue successfully for the next year.

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

Senator MINKOWSKY: Mr. President and Members of the Senate: The good Senator from Penobscot did give you an excellent overview of what the intent and purpose of this Legislation was. I guess it goes without saying that the scope and magnitude of the school in Camden does a very commendable job, but to a very, very few students.

I think they brought out during the committee hearing the maximum amount of students that stay on during the course of that curriculum is no more than 5, which equates to about \$18,000 to \$20,000 per student, based upon the 4 or 5 different sources of revenue that they re-

ceive.

In my estimation it was a rather exorbitant cost to place on these dropouts in hopes of some type of rehabilitation. I understand the program has been in effect for about 4 or 5 years. It was started by a husband and his wife, who are still part of the Board of Directors.

Mr. President and Members of the Senate, during these very trying times in the State of Maine, there are many worthy, worthwhile projects that will have to go unfunded. I really believe at the present time that, this would be an effort in futility, to pass this bill beyond this particular point, since there is a \$10,000 appropriation attached to it.

If we are to maintain somewhat of an austerity program during the balance of this fiscal year, it certainly would be advisable at the present time to vote against the Majority Ought to Pass Report and accept the Minority Ought Not to Pass Report.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, and Ladies and Gentlemen of the Senate. I think the good Senator from Androscooggin, Senator Minkowsky, was in error in his statement, or I have been in error on the information I received.

He said they only educate 5 students here. As I understand it they started out this semester with 8. They run this twice a year, so that would be 16, not 5.

These students come from all over the State. They don't come from Waldo County, Knox County. Some of them come from Portland, some of them come from Ellsworth, Bangor, Belfast, wherever.

I don't know what the cost would be to the State, if we incarcerated these students. It would probably be greater than the amount of the \$10,000 we're talking about. We're talking about probably 12 to 15 students, and I wonder what that cost would be?

This is a good worthwhile program. These are students that can't get along in their own community. They have to go somewhere. If they don't go there, they go somewhere else. It doesn't matter to me. It doesn't make any difference to me where they go. It doesn't matter to me if they go to Camden or they go to Portland, but they have to go somewhere. So I would urge the Senate to pass the Ought to Pass Report.

The PRESIDENT: The Chair will order a Division.

Will all those Senators in favor of the motion by Senator Trotsky of Penobscot to accept the Majority Ought 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.

13 Senators having voted in the affirmative, and 8 Senators in the negative, the Motion to accept the Ought to Pass Report of the Committee in concurrence, does prevail, and the Resolve Read Once. Committee Amendment "A" Read and Adopted, in concurrence, and the Resolve, as amended, Tomorrow Assigned for Second Reading.

Committee Reports Senate Leave to Withdraw

Senator McBrearty for the Committee on Audit and Program Review on, Bill, "An Act Relating to the Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Law." (S. P. 672) (L. D. 1764)

Reported that the same be granted Leave to Withdraw.

Senator Trafton for the Committee on Judiciary on, Bill, "An Act to Require Parental Responsibility to Provide Medical Coverage and Make Support Payments to the Department of Human Services Whenever Children Receive Public Assistance." (S. P. 699) (L. D. 1835)

Reported that the same be granted Leave to

Withdraw.

Which Reports were Read and Accepted.
Sent down for concurrence.

Ought to Pass — As Amended

Senator Chapman for the Committee on Business Legislation on, Bill, "An Act Relating to the Qualifications for the Licensing of Auctioneers." (S. P. 708) (L. D. 1844)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S. 447)

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

Second Readers

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

House — As Amended

Bill, "An Act to Amend the Kennebunk, Kennebunkport and Wells Water District Charter to Include the Town of Ogunquit." (H. P. 1821) (L. D. 1969)

Bill, "An Act to Expand the State's Tourism Promotion Effort." (H. P. 1680) (L. D. 1789)

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

Bill, "An Act to Provide for County Self-government." (H. P. 831) (L. D. 1038)

Which was Read a Second Time.

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

Senator EMERSON: I would like to speak briefly in support of L. D. 1038, An Act to Provide for County Self-government. If you will recall last session we passed this bill through this body and through the other body, but it was held by the Governor, because there was some concern about the final approval of a County Budget.

The Committee on Local and County Government has reworked this section of the bill. We believe that it is acceptable to most groups, who had concern about it. I would like to briefly, point out the highlights of this bill.

This bill amends the present law found in Title 30, Chap. 11 to allow a county which adopts a charter to provide for home rule in the Charter. The present law allows a county to adopt a charter but prohibits a county from having budget home rule.

This bill amends the present law to require the inclusion of one county officer, one legislator and one municipal official on the Charter Commission along with the six public members who shall be elected without party designation.

Whether or not a county chooses to adopt a charter is a matter of local choice. There is no mandation. Two referendum votes will be required: the first, whether to form a charter commission, and if that is approved, the second on whether to adopt the charter approved by the Charter Commission. Any referendum votes on a charter must be held at the time of state elections to assure a maximum number of voters vote on the question.

If a county chooses to adopt a charter including budget home-rule it must also adopt in its charter a Finance Committee under one of the two options specified in Sec. 24 of Committee Amendment B.

Let me read the makeup of the Finance Committee. The Finance Committee would be appointed by County Commissioners, 2 ways of appointment, either by the county commissioner. Each county commissioner shall appoint a Finance Committee Member from that commissioner's district from among the municipal officers of that district, or the municipal officers of the district can caucus and elect members on the Finance Committee.

The Finance Committee would replace the Legislature as a check and balance in this case. However, a county could adopt a charter with-

out budget home rule, in this case the Legislature would still have to approve the budget for that county.

The House Amendment (H-827) specifies that a majority of the commissioners under a charter would constitute a quorum. That's in case that you had more than 3, the present law says that 2 shall constitute a quorum, but if you had 5 or 7 then a majority would constitute a quorum.

The House Amendment makes it quite clear that one or more public hearings would have to be held on any county budget adopted by a county with a charter that includes budget home rule.

This County Self-Government bill is the result of the work of many people over a long period of time. The bill is designed to strengthen an existing form of government by providing a means for those counties that wish to do so to adopt a charter that could include budget home rule. All decisions will be made on the local level. This bill is a protection against the expansion of substate regional governments headed by non-elected officials. It assures that counties will have the ability to handle the new tasks that may come to them and it allows counties to adopt the structure of government best suited to individual wants and needs.

I want to emphasize that this bill does not mandate any changes in county government. It really promotes Home Rule. Thank you.

The Bill, as amended, Passed to be Engrossed, in concurrence.

Senate — As Amended

Bill, "An Act Concerning the Membership of the State Energy Resources Advisory Board." (S. P. 702) (L. D. 1838)

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

Sent down for concurrence.

Orders of the Day

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

Bill, "An Act Relating to Bonds and Notes Issued by Sanitary Districts" (H. P. 1588) (L. D. 1808)

Tabled—March 10, 1980 by Senator Katz of Kennebec.

Pending—Motion of Senator Carpenter of Aroostook that Bill and Papers be Indefinitely Postponed.

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

Senator CONLEY: Mr. President and Members of the Senate: When this Bill came before the Senate yesterday, it was debated at great lengths.

It is apparent to me that no amendment has been prepared, for the purpose of the referendum by the voters living within these various Sanitary Districts.

I believe that there is a great deal of power given to two or three whatever the case, may be individuals, who serve on these sewer districts, without any great responsibilities of being accountable back to the voters.

It seems to me, as I stated yesterday, in order to provide some safeguards there should be given an opportunity to the voters of that district, and this statute that we are voting on now, applies to every sewer district in the state, it should give those individuals the opportunity to vote, on whether or not that community wants to be indebted financially for the amounts of those bonds that are to be sold.

It was only last year, that this body, wanted to mandate a ceiling cap on every community in this state. That they wanted to also have a ceiling cap on expenditures for the State Government itself. Yet we are willing to allow a Sanitary District such as what is before us this morning not to have any type of built-in protection for the voters of that district.

It seems to me that by inserting just 2 or 3 sentences, to allow the people of any sewer dis-

strict the opportunity to initiate a referendum as to whether or not the citizens of that district want to incur such a moral obligation. Seems to me to be short-sighted on the part of this Legislature.

Therefore, Mr. President, unless there is an amendment to be offered I support the motion of the good Senator from Aroostook, that this Bill and all of its accompanying papers be Indefinitely Postponed.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. I do not feel any differently today, than I did yesterday on this Bill.

It seems to me that the State of Maine can't bond itself further without Public referendum, it seems to me that water districts can not bond themselves without public referendum, and I do not understand why sanitary districts should be the one glaring exception.

It seems to me that there aren't any more controls over trustees of sewer sanitary districts than there are over State Legislatures, or the water district trustees or anything else. I don't understand why this sort of thing is so objectionable.

The good Senator from Penobscot, Senator Devoe talked yesterday about the Federal and State Governments mandating corrections, changes, improvements, etc. on the Sanitary Districts. As I said yesterday, all I would like to see on this would be a referendum clause, that whenever there is a non-mandated item, obviously if a sewer district is told by State Law, Federal law, or by EPA ruling that they must change their sewer district in some way obviously they must do it. Items of non-mandation (if there is such a word) should be up to the scrutiny of a local electorate. I do not understand why this is such an objectionable clause or phrase to put into this bill.

As the good Senator from Cumberland, Senator Conley, just said that this body went on Record last year, again, and again, and again, as wanting to put a ceiling, wanting to put a cap, on State Expenditures. On the cancerous growth of spending as was referred to here yesterday on a different bill. Here we are turning around and opening the door wide open for sewer districts, sanitary districts to do, to bond, to issue notes, whenever they so please, without any control by the local electorate.

I understand that the comments by the good Senator from Penobscot, Senator Devoe, said yesterday, that they could take it to court if they want to. Well taking it to court is not the proper avenue I do not believe. I am sure that the legal profession would prefer that but I do not think that when a user in a sewer district feels that some issuance of notes or bonds is wrong that he or she should have to go out and hire an attorney and take the trustees to court I just do not feel that is the right way to go.

I would end my remarks this morning by asking the good Senator from Penobscot, Senator Devoe, if a referendum clause on non-mandated items would be acceptable on this bill? If so I would prepare an amendment at a later date, if we do not kill the bill this morning.

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

Senator DEVOE: Thank you, Mr. President, Several weeks ago, the good Senator from Cumberland, came before the Public Utilities Committee on a little bill, concerning the Portland Water District or the Portland Sewer District. At no time in his presentation of testimony on another section of the Charter did he tell the Public Utilities Committee that he felt that it was critical that all districts have referendum provisions.

Here we are a few weeks later on a bill not involving his community when all of a sudden, there has developed a sudden critical need that we have a referendum provision.

This bill, does not need a referendum provision, very few if any projects that sanitary districts are faced with are prompted by private needs of the district. Virtually any project that a sanitary district is now presently undertaking or is about to undertake in the future is caused by compliance with Federal or State statutes.

These have notice provisions in them. Federal requirements call for full notice. I do not think that any sanitary district needs to have a referendum provision at this time. If it is so important for sanitary districts, as the good Senator from Cumberland, would suggest to us this morning. Why wasn't it important 6 or 7 weeks ago, when he came before our own committee on an amendment of the Portland charter area? Thank you very much, Mr. President.

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

Senator CONLEY: Mr. President and Members of the Senate: After listening to my good colleague and friend from Penobscot, Senator Devoe, when he makes reference to my appearance before his committee, it seems to me that that must have been 5 years ago, but it could have been within the last 2 or 3 years, because I am not accustomed to sponsoring bills, for water districts.

That bill does come back to me, the one that he speaks of and the only thing that I can remember that the bill did, was allow the Portland Water District to hold its election the same day that the municipal officers held their election. I do not know what that has got to do with the floating of bonds.

I wonder how many members of this Senate have looked at this bill before you? It is wide open, "it's as loose as a goose," if you will excuse the expression. There is absolutely no accountability whatsoever for the members of that district to the voters. In fact, I was surprised this morning to hear that some sewer districts, are appointed, the members are appointed, by apparently the selectmen.

I am not familiar with the laws dealing with bonds, I am not sure as to whether or not the Trustees of the Portland Water District when it comes to the issuance of bonds as to whether or not they come under jurisdiction of the Public Utilities Commission itself, who directly oversees the Portland Water District.

I know that the municipalities themselves whatever number of communities it is in the Cumberland County area that the Portland Water District serves that those Trustees at least have no eyes looking over their shoulders in the sense that the managers of those several communities are concerned with the rates that are going to have to be paid by the citizens of the community that they oversee.

This particular bill, before us today, a simple request stating that the issuance of bonds that those people who are going to have to place their residences on the line, to back up the financial responsibility that they be given the opportunity, that if they feel that these bonds are too excessive, the opportunity to vote on them. That is all, nothing more and nothing less.

It seems to me a very small request being made, as compared to what was trying to be mandated down the throats of most of us in the Democratic Party here last year, to put a ceiling cap on every expenditure in State government as well as mandating back to local communities a ceiling cap, as well.

(Off Record Remarks)

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: I request that when the vote is taken it be taken by the Yeas and Nays.

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 Sen-

ators 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 Aroostook, Senator Carpenter, that L. D. 1808 be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

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

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

ABSENT — Ault, Farley.

12 Senators having voted in the affirmative and 18 Senators in the negative, with 2 Senators being absent, the motion to Indefinitely Postpone, does not prevail.

The Bill, Passed to be Engrossed, in concurrence.

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

Bill, "An Act to Allow the Commissioner of Marine Resources to Exercise Limited Authority over the Conservation of Atlantic Salmon." (H. P. 1630) (L. D. 1740)

Tabled—March 10, 1980 by Senator Chapman of Sagadahoc.

Pending—Motion of Senator Shute of Waldo that House Amendment "B" (H-809) be Indefinitely Postponed.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, and Ladies and Gentlemen of the Senate: I think that we have accomplished the impossible, I hope. We have prepared a new amendment that should satisfy both of the sides in this issue, and hopefully that will be adopted today.

This has been approved by the Commissioner of Marine Resources, Spencer Apollonio, and some of the floorleaders in this bill. Hopefully we can dispose of this today.

I move that the Senate Indefinitely Postpone House Amendment "B"

On Motion by Senator Shute of Waldo, House Amendment "B" was Indefinitely Postponed, in non-concurrence.

On Motion by Senator Shute of Waldo, the Senate voted to Suspend its Rules.

On Motion by Senator Shute of Waldo, the Senate voted to Reconsider its action whereby it Adopted Committee Amendment "A".

Senator SHUTE: I now present Senate Amendment "B" to Committee Amendment "A" under filing S-448 and move its adoption.

The PRESIDENT: The Senator from Waldo, Senator Shute, now offers Senate Amendment "B" to Committee Amendment "A" and moves its adoption.

Senate Amendment "B" (S-448) Read.

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

Senator PRAY: Thank you, Mr. President, Mr. President and Members of the Senate: I have a couple of questions that I would like to ask you in reference to this amendment.

On checking the statutes which became effective January 1, 1979, and looking at the proposed amendment that we have here today, it is basically my understanding that the attempts that are taking place here, is to take the authority away from the Commission and to give that sole authority to the Commissioner and to give sole authority to the Commissioner of Marine Resources that would be the first

have a clear and definite answer to whether that is what the amendment is attempting to do?

If it is, in fact, I notice that looking at the statutes that the commission itself at this time is made up of the Commissioner of Marine Resources, the Commissioner of Fisheries and Wildlife and a third person appointed by the Governor.

Seemingly my second question and concern would be is there presently a problem with the Commission between the Commissioner of Marine Resources and the other members of that Committee?

I would like to have those two answered before I go on.

The PRESIDENT: The Senator from Penobscot, Senator Pray has posed a question through the Chair.

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, Ladies and Gentlemen of the Senate. At the present time, the regulation of Atlantic Salmon is under the Atlantic Salmon Commission, and that commission is made up of the two commissioners and a public member usually a sportfisherman. The Inland Commissioner is the permanent Chairman of that Commission.

At the present time the Commission has the authority to regulate Salmon and other species in the inland waters and the tidal waters of the State. I think that anyone would agree that it shouldn't be the Atlantic Salmon Commission regulating Herring fishing, or Cod fishing, or Flounder fishing or anything else out in the tidal waters of the State. It should be the Marine Resources Commissioner, and with the advice of the council, and not the Salmon Commission.

Now under Senate Amendment "B" the authority of the Salmon Commission is still in effect. They have the authority to regulate the fishing or taking of salmon in both the inland waters and tidal waters.

The Commissioner of Marine Resources, has the authority to regulate the taking of the species in the tidal waters. The Commissioner of Inland Fish and Game has the authority to regulate the taking of other species of the inland waters.

This is primarily what the agreement was, or what it should be. Now there isn't any reason why the Salmon Commission should be regulating other species out in the salt water other than salmon. That should be left to the Commissioner of Marine Resources not the Salmon Commission.

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

Senator PRAY: Mr. President and Members of the Senate: On the face of what was said I would have to agree with the Senator that the Commission should not have the authority to regulate the taking of other fish, but we have to also understand that there are limitations in the statutes that this is in relationship to the attempt to preserve the Atlantic Salmon.

I would suspect then that if there is overlapping authority then we have to establish priorities. I believe that the value of the Atlantic Salmon to the State of Maine, the return that those Atlantic Salmon have had into the inland waters have been through the actions of the Commission in the past, which have allowed that fish to return into the inland waters of this State.

The second question which I had asked which I don't feel was answered is to whether or not if these arguments or the 3 individuals who now presently serve on the commission are not able to work out a solution to this problem.

I do know that it was stated that the Commissioner of Marine Resources has agreed to this amendment, but I'm curious as to how the other 2 members of the Atlantic Salmon Commission may feel. Has anybody checked with either one of those members?

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: I talked with Al Meister, he's I guess the Executive Director of the Atlantic Salmon Commission in Bangor, when this bill first came up a couple weeks ago. He had no problems with House Amendment "B" at that time. The only problem I had with House Amendment "B" is it did leave open the right for the Commission to license sport fishing in the tidal waters of the State. We've never had that since immemorial and we're not going to have it, I hope. This is the only difference between this amendment and House amendment "B".

If you're talking about the economics of the State. You talk about the Commercial Fisherman vs. the Atlantic Salmon fisherman. We have a Commercial Fishing Industry of \$62,000,000 here we're talking about. You have Atlantic Salmon Fisheries. We're talking about 500 fish taken last year on rod and reel, 500. You know what it cost to take those 500. It cost a capital investment of \$11,000,000, and operating expenses of \$1,125,000. Now that's about \$2,700, or \$2,800 a fish.

So the Marine Resources, we do employ quite a few people. I don't think it should be the Atlantic Salmon Commission regulating other fisheries out there in the tidal waters.

Now you ask if there is any problem. The only problem is on, the Atlantic Salmon Commission regulating other species, is that the commission is made up of 2 sportfishermen and 1 commercial fisherman. You can put it that way. Your Inland Fish and Game Commissioner is a sportfisherman. The other member on the commission is always a sportfisherman, a doctor or somebody, then you have one commercial person, which is the Marine Resources Commissioner.

So that is where I think it might be unfair to have 2 sportfishermen, inland sportfishermen, regulating the tidal waters.

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

Senator PRAY: Mr. President and Members of the Senate: The statutes state that we won't have 2 sportfishermen and 1 Commercial fisherman but the Commissioner of Marine Resources, the Commissioner of Inland Fish and Wildlife and a member from the public who shall be a Maine citizen. I happen to note that he's appointed by the Governor. So I would suspect that the concerns of the Senator should perhaps go after the composition of the Commission, instead of the approach that he is taking at this time.

I would like to know personally if there has been and I am concerned about the economy of the coastal area. I am concerned about that we have that healthy economy and that the coastal fisherman also economically survive in this time, but has there to this date been existing regulations from the Atlantic Salmon Commission which have adversely affected the fishing industry, because of the Atlantic Salmon?

The PRESIDENT: The Senator from Penobscot, Senator Pray, has posed another question to the Chair.

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President, the Atlantic Salmon Commission has imposed some regulations that some of my people have been concerned about in the tidal waters of the State. I think the best way to get out of this thing is to pass the amendment and we will all know where the authority lies.

Right now if there is a new regulation put on the tidal waters of the State, you can go to the Atlantic Salmon Commission and ask who put that regulation on? Or you can ask the Marine Resource Commissioner, and he'll say, I'm outvoted, we got 2 sportfishermen on there, they put it on. You do something on inland. Well, I didn't put it on, the other 2 put it on.

Why don't you want responsibility designated

in this thing? When something is done, you can go to the Commissioner of Marine Resources and say, why did you do this, where was the public hearing held, and who voted for it other than you? He can't say the Inland Fish and Game Commissioner voted for it, and a doctor up in Bangor somewhere voted for it.

To get back to that other member of that commission. I've never known of a Commercial Fisherman to be on the Atlantic Salmon Commission. I wonder if the good gentleman from Penobscot, Senator Pray, could find that out for me, because I've never heard of it.

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

Senator CONLEY: Mr. President, when this little nugget first came down the pike, I thought it would be as simple as shooting fish in a barrel. However, it reminds me of the good old days, when I used to sit with my kids on the end of a wharf and catch mackerel, off the pier on Commercial Street, and I had a lot of fun. Then I happened to meet a fellow by the name of Shute, who came up the pike from Waldo. He's a very fine individual, a charming young man. There's something about him that I still have to keep both eyes on him when he starts talking about the Atlantic Salmon.

I got roped into the Atlantic Salmon by a couple of desperados who roped me one weekend and took me up into Canada. That was my big mistake I guess, because of that fact, I certainly have come to appreciate and love the sport of Atlantic Salmon. I know what the State has done, what the Legislature has done over the years and what Senator Trotzky, who's absent at the moment, certainly played a role in the return of the Atlantic Salmon to our streams. Particularly those individuals who reside in the great metropolitan area of our State in Penobscot, Bangor, certainly have enjoyed the luxury of seeing the Atlantic Salmon not only return to the Bangor pool, but also to go upstreams to many of its rivers.

I think what we're trying to aim at is that the Commercial Fisherman will not be allowed to net the Atlantic Salmon when there's a run on toward areas, sort of, as I stated, like the Bangor Pool, or upriver to where they will be spawning etc.

It's my understanding that the intent of the amendment would have given the Commissioner of Marine Resources the opportunity to cease netting of any fish at the time that the Atlantic Salmon run was on, which would then provide the safety of the continuation of the salmon return to our waters.

I'm hoping that the amendment that the good Senator from Waldo, Senator Shute, is offering this morning does exactly that and nothing more than that. We know, those of us who have done a little fishing, I've done quite a bit of it along in the ocean, I can't afford these high prices that my good friend the Senator from Westbrook Senator Usher keeps placing on me, through Fish and Game, everytime he sends a bill out in that committee. So I have to stick near the seacoast and like the good Senator from Waldo, Senator Shute, stated they have yet to impose a cost to deal with those of us who are fortunate enough to live on the ocean to take some of that healthy food from the ocean.

We know that the Bluefish that have all of a sudden come from the south, from down around Florida, who are coming up the coast now, chase what they call a trash fish, menhaden. Those fish can become mixed in with the Atlantic Salmon when they make a run upstream. We know the commercial fishermen chase the menhaden because it's a good trash fish to use for bait, for the catching of other 'fishes'.

The purpose of the amendment then, is to be able to allow the Commissioner of Marine Resources to restrict the commercial fisherman from seining or for those of you who live inland that is netting fish, and particularly those of us

who cherish the Atlantic Salmon from being abstracted from our clear blue waters. I hope that I have made this amendment quite clear and I hope that what I have said is true, and that the good Senator from Waldo, will attest to that.

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

Senator REDMOND: I move we table this item for 2 Legislative Days.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: I request a Division on the tabling motion.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion of Senator Redmond of Somerset to Table L. D. 1740 for 2 Legislative Days, 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 18 Senators in the negative, the Motion to Table does not prevail.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: I move that this item lie on the Table 1 Legislative Day.

The PRESIDENT: The Senator from Penobscot, Senator Pray, moves that this item be Tabled for 1 Legislative Day, pending adoption of Senate Amendment "B".

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion of Senator Pray of Penobscot, to Table L. D. 1740 for 1 Legislative Day please rise in their places to be counted.

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

6 Senators having voted in the affirmative, and 17 Senators in the negative, the Motion to Table does not prevail.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Having spoken 3 times, request permission to speak a fourth.

The PRESIDENT: The Senator from Penobscot, Senator Pray, requests Leave of the Senate to speak a fourth time.

Is there objection?

The Senator has the floor.

Senator PRAY: Mr. President and Members of the Senate: My concerns in reference to the amendment, I would not want anybody to feel that if you cast aspersions upon my beliefs in the intent of the amendment, but I did have some serious concerns about it. That was the attempts to table it for a day, so that we could clearly understand that the amendment did exactly what both my seatmate, the Senator from Cumberland, stated that he felt that it did, and the sponsor of the amendment believed that he felt that it did.

I think that we both are seriously concerned about species of fish and economic impact that it may have on different areas of the State.

Since it was not, and we were not able to muster the strength or the support to do that, then at this time I'm going to withdraw my opposition to the amendment, just out of the pure common sense that I'd get beaten rather badly if I did try to do otherwise, but the fact is that between now and final enactment we'll have a few days to look it over.

I do have some serious concern as to the fact that we don't have any faith or trust in our commission, which has a representative from the general public and 2 commissioners who are appointed by the Chief Executive of this State to look out for this resource that we have, that we feel that we have to concentrate the powers to regulate such resources into a single

man who at this time may be fine but at future dates we may also have that same bit of doubt that seemingly the Senator from Waldo, has upon the public member and the Commissioner of Fisheries and Wildlife.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Shute.

Senator SHUTE: Mr. President and Members of the Senate: The Marine Resources Committee had a great deal of faith in the Atlantic Salmon Commission. If it had not, they would have done away with the Atlantic Salmon Commission, but we were willing to compromise, allow the Atlantic Salmon Commission to regulate all of the Atlantic Salmon, regardless of whether they are on the Tidal Waters or the Inland Waters.

It does seem reasonable that the other commissioners might also keep a little bit of their authority, that's what we're paying them for, to regulate some of the fish that are in their designated areas.

There isn't any attempt here to buffalo anybody on this thing. I hope I've told you the truth. I've told you the truth as far as the person who drew this amendment up for me. This is supposed to be what House Amendment "B" was, with the exception of the licensing provision.

Senate Amendment "B" to Committee Amendment "A" Adopted. Committee Amendment "A" as amended, by Senate Amendment "B" Adopted, in non-concurrence.

The Bill, as amended, Passed to be Enacted, in non-concurrence.

Sent down for concurrence.

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

**Communication
State of Maine
Supreme Judicial Court**

March 10, 1980

The Honorable Joseph Sewall
President of the Senate
State House
Augusta, Me. 04330

Dear President Sewall:

I have the honor to transmit herewith answers the opinion of the Justices of the Supreme Judicial Court given pursuant to the Senate's request for an advisory opinion of the Justices dated March 3, 1980.

With all best wishes,

Sincerely,

Vincent L. McKusick

OPINION OF THE JUSTICES

To the Honorable Senate of the State of Maine:

In compliance with the provisions of section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, give the following opinion upon the questions propounded to us by the Senate on March 3, 1980.

QUESTION 1: Would S. P. 775, L. D. 1968, "AN ACT to Transfer Probate Jurisdiction to the Superior Court," if enacted, constitute a violation of the Constitution of Maine, Article V, Part First, Section 8, which excludes the appointment of "judges of probate" from the Governor's authority to appoint all judicial officers?

ANSWER: We answer the first question in the negative.

The main purpose of the bill now pending before the Senate is to place within the jurisdiction of the Superior Court matters that are now heard and determined by the judges of probate. In particular, section 4 of the bill would vest the Superior Court with the jurisdiction conferred on "the Court" by section 1-302 of the Probate Code (title 18-A of the Maine Revised Statutes, effective January 1, 1981) as well as jurisdiction over matters now within the jurisdiction of courts of probate except as concurrent or exclusive jurisdiction is vested in the District Court. Sections 7, 7-A, 7-B, 8, 8-A, 9,

and 10 of the bill would repeal the provisions of chapter 7 of title 4 of the current Revised Statutes which define, for the most part, existing jurisdiction of judges and courts of probate.

The probate courts have only the limited jurisdiction conferred on them by legislation. E.g., *Thaxter, Appellant*, 154 Me. 288, 147 A.2d 126 (1958); *Shannon v. Shannon*, 142 Me. 307, 51 A.2d 181 (1947). They were established and their special jurisdiction defined by the provisions of chapter 51 of the Laws of 1821. With relatively minor modifications, those provisions were carried forward into chapter 105 of the Revised Statutes of 1840 and eventually into chapter 7 of title 4 of the current Revised Statutes.

Before 1855, under Article V, Part First, section 8, of the Constitution, judges of probate, like other judicial officers, were appointed by the Governor with the advice and consent of the Council. Pursuant to chapter 273 of the Resolves of 1855, a constitutional amendment was adopted, excepting judges of probate from the Governor's appointive authority and requiring their election by the people of the several counties.

There can be no serious doubt that the 1855 constitutional resolve and amendment used the term "judges of probate" to mean only those judicial officers having the special jurisdiction provided for by chapter 105 of the Revised Statutes of 1840. It did not include justices of the Supreme Judicial Court even though that court then had jurisdiction, sitting as the Supreme Court of Probate, to review the decision of a judge of probate and, in doing so, to hear and determine all issues *de novo*. There has never been any suggestion, in the decisions of the Law Court or in legislation, that justices of the Supreme Judicial Court were excepted by virtue of the constitutional amendment of 1855 from the Governor's appointive power merely because they might on occasion hear and determine matters normally within the jurisdiction of judges of probate.

We conclude, therefore, that the expression "judges of probate," as used in Article V, Part First, section 8, refers to judges having the limited special jurisdiction now defined in chapter 7 of title 4 of the Revised Statutes of 1964, as amended.

Article VI, section 1, of the Maine Constitution provides:

The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

The pending bill would exercise that legislative power to reallocate the jurisdiction of the present probate courts to an already established court, the justices of which are constitutionally appointive judicial officers. The Superior Court is Maine's trial court of general jurisdiction. The pending bill would add to that jurisdiction probate matters which would thereafter constitute but a part of all the matters the Superior Court has jurisdiction to hear and determine. The justices of that court would not be transformed into "judges of probate" merely by that addition to their jurisdiction.

Finally, the Legislature is not prohibited by the Maine Constitution from abolishing the probate courts. The Constitution nowhere explicitly requires the establishment of courts of probate. The provision of Article V, Part First, section 8, excepting judges of probate from the class of appointed judicial officers, even when that provision is considered in conjunction with the provision now in effect for election of judges of probate in Article VI, section 6, falls short of requiring the establishment of courts of probate and the designation of their presiding officers as "judges of probate." The fact that a constitution provision prescribes the manner of designating the incumbent for an office does not alone imply a constitutional requirement that the office exist. Cf. *Ross v. Hanson, Me.*, 227 A.2d 606 (1967).

In view of the broad grant in Article VI, section 1, of legislative authority to create inferior state courts, Article V, Part First, section 8, and Article VI, section 6, must be construed to govern the designation of judges of probate only if probate courts are established and judges of probate exist, and not to require the establishment of such courts or the existence of such judges. If the pending bill is enacted, Superior Court justices, though exercising what was formerly probate jurisdiction, could not be properly characterized as "judges of probate" as the term is used in Articles V and VI of the Maine Constitution.

QUESTION 2: Would S. P. 775, L. D. 1968, if enacted, constitute a violation of the Constitution of Maine, Article VI, Section 6 in that it would not "establish a different Probate Court system with full-time judges?"

ANSWER: We answer the second question in the negative.

By the terms of chapter 77 of the Resolves of 1967, the repeal in 1967 of Article VI, section 6, of the Maine Constitution is to become effective "at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges."

Taken in conjunction with the Probate Court (Title 18-A of the Revised Statutes, effective January 1, 1981), the pending bill would establish a new and different system for the administration and adjudication of matters heretofore within the jurisdiction of the probate courts. See Maine Probate Law Revision Commission, *Report of the Commission's Study & Recommendations Concerning Maine Probate Law* (Oct. 1978). The pending bill, considered in connection with the Probate Code, would redefine and reallocate the authority and responsibility of the judge and the register in many important respects and would make the present sixteen county probate courts part of the single state-wide Judicial Department. See 4 M.R.S.A. § 1 (1979). It would thereby establish a different system. Since the bill would provide that justices of the Superior Court are to adjudicate controversies arising under the Probate Code, it is clear that the new system would have full-time judges.

In combination with the Probate Code, the pending bill may be properly regarded as establishing a "different Probate Court system" within the meaning of the constitutional amendment of 1967. The operative language of the 1967 amendment does not require a separate system of courts to handle matters heretofore administered or adjudicated by courts known as "probate courts." The purpose of the amendment was to give the Legislature discretion to study and determine the best system for administering and adjudicating matters traditionally within the jurisdiction of the probate courts. The intent was to open the way for change in the system. See 2 Me. Legis. Doc. 3425 (1967) (remarks of Senator Lund). It is not necessary to adopt a system of any particular nature in order to effectuate the repealing amendment as long as the system provides for handling of probate matters, is different from the existing system, and has full-time judges. The pending bill carries out the broad purpose of the operative language of the 1967 amendment.

Dated: March 10, 1980.

VINCENT L. McKUSICK
Chief Justice
SIDNEY W. WERNICK
EDWARD S. GODFREY
DAVID A. NICHOLS
HARRY P. GLASSMAN
DAVID G. ROBERTS
Associate Justices

Which was Read and Ordered Placed on File.

Senate Paper

Senator Pierce of Kennebec presents, Bill,
"An Act to Clarify the Status of a Certain
School Renovation Project in the City of Water-

ville Under the Education Laws and to Validate Proceedings Authorizing the Issuance of Bonds or Notes by that City. (Emergency) (S. P. 790)

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

Reference to the Committee on Education is suggested and Ordered Printed.

Which was Referred to the Committee on Education, and Ordered Printed.

Sent down forthwith for concurrence.

On Motion by Senator Pierce of Kennebec, there being no objections, all matters previously acted upon were sent forthwith.

Orders of the Day

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