

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

**One Hundred And Fifteenth Legislature**

OF THE

**State Of Maine**

**VOLUME IV**

**FIRST REGULAR SESSION**

Senate  
May 22, 1991 to July 10, 1991

Index

Representatives:  
LAWRENCE of Kittery  
JALBERT of Lisbon  
PLOURDE of Biddeford  
RICHARDSON of Portland

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

Signed:

Representatives:  
DAGGETT of Augusta  
POULIN of Oakland  
STEVENS of Sabattus  
TUPPER of Orrington  
HICHENS of Eliot  
BOWERS of Sherman

Which Reports were **READ.**

On motion by Senator **DUTREMBLE** of York, Tabled 1 Legislative Day, pending **ACCEPTANCE OF EITHER REPORT.**

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**Divided Report**

The Majority of the Committee on **STATE AND LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities

S.P. 42 L.D. 66

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-292)**

Signed:

Senators:  
BERUBE of Androscoggin  
EMERSON of Penobscot

Representatives:  
NASH of Camden  
LOOK of Jonesboro  
WATERMAN of Buxton  
KILKELLY of Wiscasset  
GRAY of Sedgwick  
SAVAGE of Union  
KERR of Old Orchard Beach

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

Signed:

Senator:  
BUSTIN of Kennebec

Representatives:  
LARRIVEE of Gorham  
HEESCHEN of Wilton  
JOSEPH of Waterville

Which Reports were **READ.**

Senator **BERUBE** of Androscoggin moved to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Senator **BUSTIN** of Kennebec requested a Division.

**THE PRESIDENT:** The Chair recognizes that same Senator.

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I just wanted to call your attention to this Bill, and as you see again, I am on the other side of the two members of the Senate on the State and Local Government Committee. However, I think that this bears at least your taking a look at the Statement of Fact on Committee Amendment "A" (S-292), which tells you that, in fact, what we will then do is, any mandate that we pass down from the state over \$100,000, in some instances that is in the advocate, that the state would fund that. Now on the surface, that doesn't sound bad at all. It sounds like something that we ought to do. But, I would hold that there are a great many laws, for instance, let's take the seat belt law, and the one that we just passed that raises the fee that you have to pay if you get caught without putting a baby in the car seat. The fine is up to \$200, I think, on the second or third offense. But in any case, what that means is, that municipal police officers would be involved in that kind of mandate. If I were in town government, and I wanted to recoup as much money as possible, I could then say, "I now have to send my police officers not only to take care of juveniles, not only to rattle the doors on stores, not only to do any number of traffic violations, etc., but now I have to stop when I think I see that there is not a seat belt worn by a baby". I could stretch that a bit, and the municipal police office could say, "Give me some money to pay for my police officers, because they are doing the job that you just mandated us to do". Maybe that is okay, and I would accept it if we had a progressive income tax that paid for all of these things. But, I don't see any progressive income tax attached to this Bill. I didn't hear any suggestion of that in the Committee when we discussed this Bill. I don't know how we are going to pay for it, and if you are going to sit here and pass this Bill on the Seat Belt Law, and ask municipal officers to issue citations for that, then you have got to back it up with the money to follow it. It is as simple, and as complex as that.

There are many, many laws that we make here that have an effect on municipalities, I will grant you that. There is a fine balance to what you send down to the lower form of government, as the Federal Government sends it down to the State, which is the lower form of government on the Federal level. We have to find the money to fund those. I think that there is a fine balance there, and I think we should pay attention to it. I just don't happen to think that this all inclusive Bill is the way to do that. I urge you to vote against the Ought To Pass As Amended Report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. There are times you see, however, if you noticed early on the calendar, that the distinguished Senator from Kennebec, Senator

Bustin, is on the same side that I am. But on this one, that has not occurred.

First of all, I will immediately respond to her main argument against the Bill. Perhaps it is just this Bill that she said that they wouldn't have been able to prevent the Seat Belt Law, that is incorrect. If she had read the Bill, I know that she is very busy with her three Committees, and sometimes is unable to be present at all three Committees at the same time, she would have known that in the Bill, the law that we proposed excludes those areas that deal with safety. For instance, criminal laws. It does not deal with any law that would expand or amend existing criminal laws. That is very important to know. If we do indeed pass, and we presently do have a Seat Belt Law for youngsters, that would not effect that one bit. I would hope that is clear.

What this legislation would do, is first of all send it out to the people of this state to speak once and for all via the form of referendum to tell us enough is enough. We have heard them, I know you have, I hear them every day when I walk into the friendly corner supermarket. It would force us to think, or rethink our position on issues when we enact legislation. Monies have been very free coming down the turnpike for many years now, and we have passed some wonderful legislation sending it back to the local community, well thought out, necessary many times, but there was no problem, there were monies coming in at all levels of government. But, that day has gone by, the well has run dry, and the people's pockets are dry. If anything else, it will tell us to please think twice before you enact legislation, send it down to the municipal level, or the county level, and mandate that they do things. This would not address those issues that are less than \$100,000, but those that exceed \$100,000. It would deal with the statutes that we enact here in this Body. It would deal with Executive Orders that would exceed the amount stated. It would also deal with the infamous rules and regulations, which unfortunately, so many times exceed legislative intent. Those would be addressed.

If added as a whole within one calendar year, it could not exceed 1% of the previous years property tax revenue to a municipality. This is not done retroactively, but prospectively, so that if after January 1992, the Legislature decides that they want to send a mandate to the people back home, fine. If we have the money to do it, then let's pay for it now when we enact the Bill. But let's not keep putting the burden on the shoulders of the people back home. I think that we should think twice if we are thinking of additional tax revenues from those very people. I think this is simple. It will allow the people to speak by referendum. Someone may very well get up and say that we already have an existing statute, but you well know, as I do, that is only good for the existing Legislature that is in a session. It doesn't mandate much in the future. This would bind it, it would put it in the Constitution, and I think that is a feasible piece of legislation. If this is the only thing that we do for the people back home this session, then I think that we will have earned our keep. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

**Senator CLEVELAND:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise to support the good Senator from Androscoggin, Senator Berube on this legislation.

I think that this Bill is really quite simple. What it says is, that despite a program on its merits, or initiative and benefits, the Legislature might think about the costs. We no longer have the luxury to simply pass on legislation and the costs to local municipalities. If we are concerned about the fact that we lack progressive taxes here, think about the property tax that you are asking to support these programs, the most regressive of all taxes. It is absolutely incumbent that we as Legislators take the responsibility to fund necessary programs, and not to require the local property taxpayer, where there is no relationship between the value of the property and the tax paid to pick up more programs year after year that this Legislature passes on, they think it is good, but they don't want to raise the tax. They don't want to reform the tax system, and they don't want to find the money to pay for it. This would put it in the Constitution, so it could not be changed at the whim of changing moods and tides of the economy and this Legislature.

As a former local official I can tell you, property tax can stand no more. It has come time when we have to put a stop to it, and I hope that you all support this motion.

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

**Senator PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. This particular Bill troubles me somewhat, because, number one, it is a Constitutional Amendment. We enacted some legislation, which I co-sponsored a while ago, dealing with state mandates on municipalities. Number two, the thing that I am troubled with, and I really don't know the answer because I am sort of scurrying here to catch up on what it is all about, as I understand it, it is \$100,000 statewide, and the state would have to pay for anything over that. When you spread a \$100,000 statewide, that doesn't mean very much per municipality.

What I am troubled with is, and I am trying to think back about some of the things that we have done. For example, salt sheds. We have required towns to have salt sheds, and we have said in our mandate to them, "You pay half and we will pay half". I think that was the mix as I recall it. We put it into five different groups, one, two, three, four, and five. And the worse threats to the environment had to do it, and have done it, and I think number two has done it, and number three, and number four, and number five is still waiting to be done.

If this were to pass, as I understand it, the first ones would be 50/50, and the next ones, the state would have to pay for all of it. You could never have a 10/90 match. For example, we have right now a Federal Law that is passed on the Safe Drinking Act. It says that we have got to clean up our water facilities in the various towns. We now have a Bond Issue downstairs dealing with that particular topic, and that Bond Issue is going to be on a match basis.

This Constitutional Amendment would prohibit a match basis in sewer, water, and that sort of thing. The way that the match was for sewers and water treatment plants was, 90% paid for by the State and Federal Governments, and 10% by the municipalities. That is not a bad match for a municipality. If this were to pass, we would be paying the whole thing.

I wonder if somebody could respond to whether or not we could ever have matches in the future if this Constitutional Amendment was to be passed between a partnership between the state and the local municipality?

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Frankly, I can't answer that as well as I might want to. I see no reason if we put monies into a General Fund through an appropriation, that we can't do what they do now when you give money to DHS, for instance, and they match it either 3 to 1, or 4 to 1. Number two, if it were a large project that we were mandating on the people back home, it would be paid in stages if the program had been implemented in stages. There would be a first stage, a second stage, a third stage, so if something were costing ten million dollars over a period of five years, it would be proportionately spread out over that five year cycle. I do not think that is an obstruction to passage of this Bill. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am not sure I can answer the good Senator from Penobscot, Senator Pearson's question entirely, but part of the Bill is, that any Federal Mandates that come down to us, we do not have to fund, unless, we go above the Federal requirements. I guess you could fool around with how much the Fed's are matching, and how much we match, and how much over and above that mandate of the Fed's is a State Mandate, and there would be a lot of figuring in that. But, there is another important thing in the Bill under Three D, where it says, "If a local unit of government receives any funds from the sale or disposition of any real or personal property purchased with state funds, provided to implement a mandate, it must forward any funds left over after deducting the costs necessary to effect the sale or disposal to the state". It seems to me that it gets very sticky as to how you are going to handle all of this money.

Talk about bureaucracy, we have got a good one going here if we pass this Bill and put it out to the people! Wouldn't I like to sign right on to that. As a responsible Legislator, I can't do that. I have to look at what's in this Bill, and what we are asking the people of the state to vote on. I have to look at how we fund state government, and how we fund municipal government. I don't disagree that there is too much weight on the property tax, but if somebody has come up with a solution to figure out how, when we send money down to the municipality, they reduce their property tax, nobody has come up with that formula yet. You have to have some way where the

towns, and hopefully, it is the voters that stop it, and they are beginning to do that, where some towns, if they get more money from the state are also going to build more up for their towns, and we are still going to have the property tax, and it is still going to be too large, and it is still going to be too heavy, and we still haven't solved the problem.

Folks, we are not solving the problem with this Bill. There may be a way to do it, but this Bill is not the way.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Dutremble.

Senator **DUTREMBLE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I rise to speak today as the Senator from District 34, and a taxpayer in the City of Biddeford.

I think there is no question what would happen if a Bill like this went out to the people for a vote, and I think that the majority of the people of the State of Maine would vote very strongly in favor of a Bill like this, and I would be amongst the majority of the people in the State of Maine. The days in this state where the state mandates and the municipalities pay, the days are over. They are done. They probably should have been done ten years ago. We have all seen time and time again the laws that were passed in this Body and the other Body that mandated to municipalities that they do certain things at a cost to them.

The good Senator from Penobscot, Senator Pearson, mentioned the salt sheds, and it was a half and half split. I would think that under this proposed amendment it wouldn't be a split. The state would have to pay for all of it. The good Senator from Cumberland, Senator Clark, just gave me some good advice, but if that is not the case, then I would like to know. But, I would like to stress again that the days where the state mandates and cities pay, and the burden is placed on the property taxpayers, those days are over. If we are going to pass Bills here where local property taxpayers have to pay for it, then I think we should take a long, hard look at that.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you Mr. President. Ladies and Gentlemen of the Senate. L.D. 66 is my Bill, as we say in the trade. Speaking as the individual Senator from Senate District 26, you wouldn't be surprised that I stand and speak on behalf of the Majority Ought To Pass As Amended Report from the Committee On State and Local Government.

While I believe that I can answer some of the questions that have been fielded and tendered here this morning, I would like to give you just a brief background of the genesis of this Bill. We all recognize that the 114th Legislature passed a law, now in the statutes, that provides for state mandates and reimbursement by the state for those mandates. We all also recognize, that there are also seven famous little words, "notwithstanding any other provision of the law", which can be included in any Bill, or Committee Report, so that the state funding