

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Tenth

Legislature

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

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FOURTH SPECIAL SESSION

April 28, 1982 and April 29, 1982

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FIFTH SPECIAL SESSION

May 13, 1982

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July 16, 1982

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STATE OF MAINE
One Hundred and Tenth Legislature
Second Regular Session
JOURNAL OF THE SENATE

Augusta, Maine
February 26, 1982
Senate called to order by the President.

Prayer by the Reverend Robert Rand of the United Methodist Church of Randolph.

REVEREND RAND: Let us pray. O Lord, our God, when we look at the great and varied gifts You have given to us in this State we call our home, we are awed by the beauty and goodness of this land. We rejoice at the seas, the lakes, and the mountaintops. We are invigorated by both the burning sand and sun of summer, and by crystals and biting winds of winter.

By Your systematic changes in our lives, we are endowed with a continuing hope in tomorrow, even as we gratefully accept today.

Good and gracious Creator, Who has called this Legislative Body into being, on behalf of the people of this State, may its members grow in the skills needed to do their tasks effectively and responsibly. Help them know the needs and limitations of the people they represent, even as they know their own needs and limitations. May their knowledge mature into wisdom. May their time be accepted as equal for all, lest they become weary and, therefore, negligent of their great work.

Give each of them the extraordinary ability to understand the needs of people whose situation in life is different from their own. May they recognize in each other a concern and loyalty to truth, that they can give and receive, and be brave enough to create new ideas from someone else's incomplete and infant expressions.

As they proceed with their deliberations, place in them the spirit of the psalmist, who in humble confidence prayed, "that the words of my mouth and the meditations of my heart be acceptable in Thy sight. O Lord, my rock and my Redeemer." Amen.

Reading of the Journal of yesterday.

**Paper from the House
Non-concurrent Matter**

Bill, "An Act to Transfer Certain Responsibilities for Insect Nuisance Identification from the Department of Conservation to the Department of Agriculture, Food and Rural Resources." (S. P. 741) (L. D. 1726)

In the Senate, February 16, 1982, Passed to be Engrossed.

Comes from the House, Passed to be Engrossed as amended by House amendment "A" (H-610), in non-concurrence.

The PRESIDENT: Is it the pleasure of the Senate to Recede and Concur with the House? It is a vote.

Order

An Expression of Legislative Sentiment recognizing:

Albert L. Godfrey, Sr., of Winthrop, who has been selected by the Institute of Transportation Engineers as the recipient of the New England Transportation Engineer of the Year Award for 1982. (S. P. 895) presented by Senator AULT of Kennebec (Cosponsor: Representative DAVIS of Monmouth).

Which was Read and Passed.

Sent down for concurrence.

**Committee Reports
House
Ought to Pass**

The Committee on Local and County Government on Bill, "An Act to Extend the Time for the Apportionment of County Taxes." (Emergency) (H. P. 2102) (L. D. 2025)

Reported pursuant to Joint Order (H. P. 1846) that the same Ought to Pass.

Comes from the House, the Bill and accompanying papers Indefinitely Postponed.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, I move the Senate Recede and Concur with the House.

The PRESIDENT: The Chair would advise the Senator that the motion is out of order.

On motion by Senator Perkins of Hancock, the Bill and accompanying papers, Indefinitely Postponed, in concurrence.

Second Readers

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

House — As Amended

Bill, "An Act to Adjust the Fees for Licenses of the Electricians' Examining Board." (H. P. 1728) (L. D. 1713)

Bill, "An Act to Require Removal of Motor Vehicles from Great Ponds, Rivers and Streams." (H. P. 1776) (L. D. 1766)

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

Resolve, Authorizing the City of South Portland to Bring a Civil Action against the State. (Emergency) (H. P. 1782) (L. D. 1772)

Which was Read a Second Time.

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

Senator CHARETTE: Mr. President, I would move at this time that L. D. 1772 and all its accompanying papers be Indefinitely Postponed and would speak briefly on the motion.

The PRESIDENT: The Senator has the floor.

Senator CHARETTE: Thank you. Women and Men of the Senate, I'm a little concerned about this Bill and, therefore, I rise for a second time to again explain my position. Being part of the Legal Affairs Committee, I feel, my conscience tells me that I have to speak up and voice my feelings and why I am asking to Indefinitely Postpone this Bill.

I'll try not to bore you and repeat all of what I tried to say last night. Obviously, I was not prepared for it.

I have distributed on everyone's desk several papers, naturally some of you had a chance to look at it, many of you were busy with your own committees. However, I'll briefly try to explain a few things that I thought should be brought out on this Bill.

The amount in question here was never recorded in the City records, but was deposited in a local bank in the name of the City of South Portland. City funds were reconciled to written bank verifications, or statements obtained from the depository. All figures contained in the 1975 report of the State Auditor were obtained from the records made available to him by the City of South Portland.

On May 10, 1976, City officials were informed during the exit interview that investments were not completely recorded in the City records. This was confirmed by a written report dated July 22, 1976.

Now, from these statements, it appears that good audit procedures, certainly appeared that reasonable caution and care was done here in regards to confirmation and verifications.

During the 1975 year, the only expenditures made on the sewage treatment plant were comprised of land expense and fees for architects and engineers. These federal grants are made to reimburse a percentage of funds spent. The auditor intended to review the 1976 progress and send a verification to the EPA in late fall, during the performance of preliminary audit work.

At the time, this was reasonable intent, since the State had been performing the audit of the City of South Portland for many, many consecutive years and federal reimbursements are usually made well after projects are completed.

As it was, this amount of dollars, \$289,000, was received in 1975 and never did surface until

1978.

As it happened, another firm was selected in 1976 for the yearly audit, thus breaking that continuity. In that year, this problem did not surface.

The bond amount, also, I feel was a problem area, for an employee to handle millions of dollars and to be bonded for only \$40,000. I think there was a lack on the part of the City Council, a lack of responsibility towards the population, or the people of South Portland. I think that bonds are very, very important. I, also, think that audit reports, as made by State auditors or any private firms are not to be rubber stamped by city councils. They are to be reviewed, acted upon, and expected to be in good form.

In summary, I believe that the State Audit Department did exercise reasonable caution, reasonable care. I feel the City Council did not act on the State's recommendation as far as the problems of not recording certain investments. Also, it did appear to have rubber stamped the audit for approval.

I would urge all of you to vote on my motion. Thank you.

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

Senator GILL: I would ask the Senate to vote against the motion, the pending motion, and I'd like to speak to that.

The City of South Portland entered into a proprietary agreement, a contract with the State auditors. They expected an auditing job done by the State auditors, as would be performed by a private auditor. There was no indication that anything other than that would happen.

There was a check received by the City of South Portland in the amount of \$289,300. That check was deposited into the Northern National Bank, along with several other deposits that had gone on through that year of 1975.

The Auditing Division of the State did not send a verification form or a confirmation form to that bank, to see whether, indeed, that money or any monies were in that account at that time.

I've had discussion with Mr. Rainville on the third floor here, and he admitted to me that the Audit Division was 10% at fault. And I ask you, when did we start quantifying how much fault was? If you're at fault, are you at fault? If I'm a little bit pregnant, am I pregnant, or am I a little bit pregnant? Is fault 10% fault, or are you at fault? I'm not pregnant. And he says he's not at fault, but I disagree with him.

The problem, of the confirmation records, is very important to me. Senator Charette did mention that he had sent out, or he had put on everybody's desk, had placed on everybody's desk, some information regarding this whole transaction with the City of South Portland. I don't know whether any of you have it handy or not, but on the Department of Audit forms, I find several errors and they are only in figures. They are only in dates, but if we're accepting this as an audit form from the Department as being correct, and that they're totally right. I would ask you to pull out the packet that was given to you on your desks. On the May 12, 1976 Department of Audit that was sent to the Casco Bank account, it says on here, the close of businesses on December 31, 1976, '76 is crossed out and '75 is put in.

On the next one, dealing with the Maine Savings Banks, the same thing occurs. They've put '76 in, crossed out '76 and put '75 in.

Then at the bottom of the page, where we've got the authorization signature, we have a date of 1978.

It appears to me that this is a sloppy job of auditing. I'm asking you, because of this sloppy job of auditing, to let the courts decide whether South Portland has a case here or they don't have a case here. I would urge you to vote against the motion.

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

Senator MINKOWSKY: Mr. President and Members of the Senate: I am not that cognizant of all the ramifications except what I've heard today, and what we have heard in the halls of the Legislature. I guess what the Portland delegation, or the South Portland delegation is asking is that the State of Maine assume the responsibility for this, to let the courts make that determination.

I happen to be looking over House Amendment H-600. Already in this particular Amendment, it appears to me that the author of the Amendment is placing the blame directly. I'd like to read something from the Statement of Fact to correlate it with the other part of it.

It says here, make it clear that the Legislature makes no inclusive determination of negligence, leaving that issue for the judicial determination.

I concur, that's correct. But if you look back on the original document itself, it makes it very clear, where it says, whereas the Department of Audit performed the municipal audit dated July 22, 1976 for the City of South Portland for the calendar year of 1975, and allegedly neglected to detect the embezzlement of \$289,300 excluding interest.

Then in the next paragraph, due to the negligent performance, it already appears to me that the author of this particular Amendment has found the State at fault. If they want fair play and equity in this entire thing, they shouldn't go to the extent of already blaming the Department of Audit for this particular case.

If Senator Charette was correct in his assessment yesterday, why should the taxpayers of the State of Maine pick up another \$25,000 of legal fees to hire an outside lawyer to handle this, since the Attorney General can not be involved in it, and nobody else in State government apparently?

It appears to me, being a former municipal officer, that as municipal officers, we were the responsible parties in hiring the people to do the job the municipality expects. If we, as municipal officials, fail and hire the wrong person, then I think it's incumbent upon the municipality to assume that obligation.

I think it will be setting, in my estimation, a very serious and a very dangerous precedent if we allow this particular Bill to go through as written.

The PRESIDENT: The Chair recognizes the Senator from Aroostook Senator Violette.

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate, I think the reason why the majority of the Committee on Legal Affairs reported this Bill out Ought Not to Pass is that they felt, if the State was going to be involved in the business of performing audits, and clearly they are, then they're entering, in a sense, into a contractual arrangement with various municipalities and other municipal entities, that they should be responsible for the work that they do. That if, indeed, this same arrangement, and what had resulted, had occurred between the City of South Portland, and a private auditing firm they could bring suit against that private auditing firm in court, and allow the court to make judicial interpretation as to whether or not the auditing firm was in error.

I think the most relevant question that was asked at that hearing, which was asked, and the auditor was present, was asked of one of his assistants. That question was whether the Bureau of Audit had used good accounting practices when it had followed through with the South Portland Audit? The answer was no, that it hadn't used good, sound audit practices. They admitted this themselves.

My only answer to that was that, well, in light of that, then we ought to allow the City of South Portland to bring suit against the State for what the Department itself admitted was an error on their part. If they're going to be involved in this business, then they ought to be

held accountable for it.

I think that was the reason, the rationale why the majority of the Committee felt that we ought to waive the immunity of the State in only this situation.

I don't think it establishes a dangerous precedent. I have to disagree with the Senator from Androscoggin. We have said other such joint resolutions before the State to waive our immunity. I think we have always looked at every one of them individually. We have never looked upon one as establishing a precedent upon another one. I don't think that's a valid argument to make. I know the Committee definitely doesn't feel that way. Even those that signed this out Ought Not to Pass, I think, would agree there that the Committee has always looked to each of these joint resolutions that would waive the immunity of the State on an individual basis. It has never looked at what it has done in the past. It has tried as best it can to look into each of these individual resolves.

I hope that the Senate today would vote to Accept the Majority Ought to Pass Report. Thank you.

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

Senator CHARETTE: In my past experience as a county commissioner and having dealt so many times with the State Audit Department at least four of those years. I found the Department to be very fair and reasonable. I found them to do their audit according to normal audit practices. They would certainly try to inform the commissioners of any findings. We would sit with the State Department and review those findings. Then it was up to the commissioners to make those corrections.

I didn't find the State Department to be negligent in the four years that I was a county commissioner. Therefore, I'm not sure that it's a practice that the State Audit Department is performing audits negligently. It doesn't appear to me that they would be.

This Body here set up that Department in 1907. Why, because CPA firms were almost or nearly unknown at that time. It's worked all these years. Now suddenly I'm hearing that the State Audit Department is just another way of getting a cheap audit done.

Well, I disagree. I don't think that's conclusive enough to base our reasoning as to the way we're going to vote on this Bill.

I think we also have, there's two sides to a book, or there's two covers rather. I think we've got to go through the whole book from cover to cover. I found as many problems on the other side of that cover.

As far as myself, I heard Mr. Rainville say, hey, if we were wrong 10%. I'm not sure that there was any, at any one time I heard them admit they were 10% wrong. He was trying to explain there, if we were wrong 10% and the City was wrong 90%, should the State be penalized? Who's right or wrong? It was an expression. It was some way of trying to explain his position.

I am concerned, also, in my second year of serving on that Committee. I'm concerned a little bit about the Torts Claim Act. It says no one can sue the State, however, we provided them a mechanism to come back and try and do it through Committee hearings.

From my experience, I've seen most of those suits go down whether in Committee or right here on this floor. So is the Torts Claim Act really working for us? I don't know. I have reason to believe at this time that I doubt that it is.

This particular Bill struck me, also, very strangely because the day we took a vote on it, there was 8 to 5 for Ought Not to Pass. The next day when it came out on the floor, that had reversed itself.

I guess, I'm concerned about the whole incidence of this particular Bill. Perhaps it should have gone back and be heard over again and clarify a lot of the points that never did come

out in the Bill.

Therefore, I still hope that you vote with my motion. I would ask for a Division. Thank you.

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

Senator GILL: Mr. President and Members of the Senate: I would just try to allay your fears about the Torts Claim. This issue took place prior to the Maine Torts Claim being in position. That took place in 1977 and this action was in 1975.

I would like to say that at the Committee, Senator Violette was absolutely right, at the Committee hearing Mr. Redmond from the Auditing Department said that verification forms were not sent out at all.

At a workshop session, Mr. Rainville subsequently said that the letters of confirmation were sent out, but he refused to show them at three different times to the people involved. The first time he said he refused to show them, and I'm quoting from one of my fellow South Portland members from down in the other Body, was because he didn't like the tone of the corporation counsel's voice when he asked for them.

The second time he refused to show them was because he left them at home. I'd like to know what in heck he's doing with files at home that are six and seven years old. I don't believe he should have those files at home at this point in time.

The third time, he finally did show them, but only after the Attorney General of this State was asked to intervene and get those reports. Then finally when the confirmation letters were shown, it was the ones that are in your packet that are wrong, or dated incorrectly, or with mistakes on them.

So I ask you, at the hearing, they did say they were at fault, that they did not send out the confirmation forms. I maintain that's the case. That's why I think it belongs in the court. I would urge you to vote against the pending motion and allow the court to make the decision on who is right and who is wrong.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Androscoggin, Senator Charette, that L.D. 1772 and its accompanying papers be Indefinitely Postponed, please rise in their places to be counted.

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

8 Senators having voted in the affirmative, and 19 Senators having voted in the negative, the motion to Indefinitely Postpone L.D. 1772 does not prevail.

Which was Passed to be Engrossed, as amended, in concurrence.

(Off Record Remarks)

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

Committee Report House Ought to Pass

The Committee on Local and County Government on, Bill, "An Act to Extend the Time for the Apportionment of County Taxes." (Emergency) (H. P. 2114) (L. D. 2035)

Reported pursuant to Joint Order (H. P. 2113) that the same Ought to Pass.

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

Which Report was Read and Accepted, in concurrence and the Bill Read Once. Under Suspension of the Rules, the Bill Read a Second Time, and Passed to be Engrossed, in concurrence.

Sent forthwith to the Engrossing Department.

Enactors

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

AN ACT Concerning Grandfather Provisions with the Oil Burnerman's Licensing Law. (S. P. 767) (L. D. 1825)

AN ACT to Clarify the Boundary Between the Town of Watford and the Township of Albany. (H. P. 1864) (L. D. 1858)

AN ACT to Clarify the Term "Account" in the Probate Code. (H. P. 1780) (L. D. 1770)

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

RESOLVE. Reimbursing Great Pond on Account of Taxes Lost Due to Lands Being Classified Under the Maine Tree Growth Tax Law. (H. P. 1736) (L. D. 1721)

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Final Passage.

RESOLVE. Authorizing the State Tax Assessor to Convey the Interest of the State in Certain Real Estate in the Unorganized Territory. (H. P. 1831) (L. D. 1813)

Which was Finally Passed and having been signed by the President was by the Secretary presented to the Governor for his approval.

Emergency

RESOLVE. Reimbursing Certain Municipalities on Account of Taxes Lost Due to the Veterans' Property Tax Exemption. (H. P. 1737) (L. D. 1722)

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Final Passage.

Constitutional Amendment

RESOLUTION. Proposing an Amendment to the Constitution of Maine to Limit the Life of Bond Authorization. (S. P. 753) (L. D. 1756)

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Final Passage.

(Off Record Remarks)

Orders of the Day

The President laid before the Senate the Tabled and specially assigned matter:

RESOLVE. Authorizing the Exchange of Certain Public Reserved Lands. (H. P. 1739) (L. D. 1728)

Tabled—February 25, 1982 by Senator PIERCE of Kennebec.

Pending—Final Passage.

On motion by Senator Pray of Penobscot, Retabled for 1 Legislative Day.

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

Papers from the House House Papers

Bill, "An Act to Ensure Funding for the Eventual Decommissioning of and Spent Fuel Disposal at Any Nuclear Power Plant." (H. P. 2096) (L. D. 2030)

Bill, "An Act to Revise the Charter of the Brunswick Sewer District." (H. P. 2097) (L. D. 2031)

Come from the House, referred to the Committee on Public Utilities and Ordered Printed.

Which were referred to the Committee on Public Utilities and Ordered Printed, in concurrence.

Committee Reports Senate

Leave to Withdraw

Senator DUTREMBLE for the Committee on Labor on, Bill, "An Act Concerning Municipal Employees under the Employment Practices Act." (S. P. 789) (L. D. 1853)

Reported that the same be granted Leave to

Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

Ought to Pass

Senator SHUTE for the Committee on Legal Affairs on, Bill, "An Act to Provide for Special Warehouse Storage Facilities for Liquor." (S. P. 828) (L. D. 1936)

Reported that the same Ought to Pass.

Which Report was Read and Accepted and the Bill Read Once, and Tomorrow Assigned for Second Reading.

(Senate at Ease)

The Senate called to order by the President.

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

Enactor

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

Emergency

AN ACT to Extend the Time for the Apportionment of County Taxes. (H. P. 2114) (L. D. 2035)

This being an emergency measure and having received the affirmative votes of 24 Members of the Senate, with No Senators having voted in the negative, was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

On motion by Senator Collins of Knox, Adjourned until Monday, March 1, 1982 at 4 o'clock in the afternoon.