

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2173

H. P. 1985

House of Representatives, February 4, 1976

Referred to the Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Rolde of York.

Cosponsors: LaPointe of Portland, Carey of Waterville and Garsoe of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Prevent Impoundment of Funds.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 3 MRSA § 167, sub-§ 5, is enacted to read:

5. To prescribe a system for and to monitor reports of the State Budget Officer for compliance with Title 5, section 1587 and to report to the Legislature as provided in Title 5, section 1587.

Sec. 2. 5 MRSA § 1587 is enacted to read:

§ 1587. Deferral or rescission of obligation or expenditure

1. Purpose. The purpose of this section is to provide a system to prevent unilateral deferral or rescission of obligation or expenditure of appropriated funds by the executive branch.

2. Definitions. As used in this section the following words shall have the following meanings unless the context otherwise indicates.

A. Deferral of obligation or expenditure. "Deferral of obligation or expenditure" shall mean the delay of obligation or expenditure of all or part of an appropriation so as to be inconsistent with the objectives of the appropriation.

B. Rescission of obligation or expenditure. "Rescission of obligation or expenditure" shall mean the reduction of obligation or expenditure of all

or part of an appropriation so as to be inconsistent with the objectives of the appropriation.

3. Special message by the Governor. Whenever the Governor determines that the obligation or expenditure of all or part of any appropriation should be rescinded or deferred from work programs and allotments approved pursuant to Title 5, section 1667, the Governor shall transmit to both Houses of the Legislature a special message specifying:

- A. The amount of obligations or expenditures which he proposes to rescind or defer;
- B. Whether his proposed action is a rescission or a deferral as defined in subsection 2; or whether it is a rescission or deferral of obligation or expenditure which is due to a change in requirements or savings made possible through greater efficiency of operations and which is consistent with the objectives of the appropriation;
- C. The account and agency of the government to which such authority is available for obligation and the specific project or governmental functions affected;
- D. The reasons why the appropriation should be rescinded or deferred; and
- E. All facts, circumstances and considerations relating to or bearing upon the proposed deferral or rescission and the decision to effect them, including an analysis of such facts, circumstances and considerations; specific elements of legal authority invoked by him which authorize such proposed deferral or rescission; and to the maximum extent practicable, the direct and indirect effect of the proposed deferral or rescission upon the objects, purposes and programs for which the appropriation is provided.

A special message may include one or more proposed deferrals or rescissions. A deferral or rescission may not be proposed for a period of time extending beyond the end of the fiscal year in which the special message is transmitted to the Legislature. No amount of any appropriation proposed to be deferred or rescinded as set forth in a special message under this subsection shall be deferred or rescinded unless the Legislature has passed a joint resolution approving such deferral or rescission. If the special message is received by the Legislature subsequent to its adjournment sine die, then no amount of any appropriation proposed to be deferred or rescinded as set forth in a special message under this subsection shall be deferred or rescinded unless the Legislative Council has passed a resolution approving such deferral or reduction. If the Legislature, or the Legislative Council, has not so approved the proposed deferral or rescission within 30 days of its receipt of the special message, then the amounts proposed to be deferred or rescinded shall be available for obligation and expenditure. No amount disapproved by the Legislature for deferral or rescission shall again be proposed for deferral or rescission unless the reasons therefor or effect thereby have substantially changed from those reasons or effects set out in the next preceding proposal on the same subject.

4. Failure to transmit special message. The Legislative Finance Officer shall make a report to the Legislature or, if the Legislature shall have adjourned sine die, to the Legislative Council, in either of 2 instances:

A. Legislative Finance Officer's findings. If the Legislative Finance Officer finds that the Governor is to defer or rescind obligations or expenditures with respect to which the Governor is required to transmit a special message under subsection 3 or has ordered, permitted or approved a deferral or rescission of obligations or expenditures; and that the Governor has failed to transmit a timely special message with respect to such deferral or rescission, the Legislative Finance Officer shall make a report on such deferral or rescission and any information concerning it. This section shall apply with respect to such deferral or rescission in the same manner and with the same effect as if such report of the Legislative Finance Officer were a special message transmitted by the Governor under this section.

B. Legislative Council motion. Whenever so directed by the Legislative Council, the Legislative Finance Officer shall make a report. Such report shall include a finding by the Legislative Finance Officer, whether the Governor is to defer or rescind obligations or expenditures with respect to which the Governor is required to transmit a special message under subsection 3 or whether the Governor has ordered, permitted or approved such a deferral or rescission of obligations or expenditures and any information concerning such finding. This section shall apply with respect to such deferral or rescission in the same manner and with the same effect as if such report of the Legislative Finance Officer were a special message transmitted by the Governor under this section.

5. Suits by the Attorney General. If, under subsections 3 or 4, appropriated funds are to be made available for obligation and expenditure and such funds are not so made available, then the Attorney General is hereby expressly empowered and directed to bring a civil action in the Superior Court of Kennebec County of the State to require such funds to be made available for obligation or expenditure, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer or employee of the State, any decree, judgment or order which may be necessary or appropriate to make such funds available for obligation or expenditure. The courts shall give priority to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals and writs.

6. Disclaimer. Nothing contained in this section shall be construed as:

A. Asserting or conceding the constitutional powers or limitations of either the Legislature or the Governor;

B. Ratifying or approving any deferral or rescission heretofore or hereafter executed or approved by the Governor, except insofar as pursuant to statutory authorization then in effect;

C. Affecting in any way the claims or defenses of any party to litigation concerning any deferral or rescission; or

D. Superseding any provision of law which requires the obligation of appropriations or the making of expenditures thereunder.

Sec. 3. 5 MRSA § 1667, first ¶, next to the last sentence, is amended to read:

The State Budget Officer shall transmit a copy of the allotments as approved by the Governor and Council to the head of the department or agency concerned and also a copy to the State Controller and Legislative Finance Officer.

Sec. 4. 5 MRSA § 1667, 2nd ¶, is amended by adding a new sentence at the end to read:

The State Budget Officer shall inform the Legislative Finance Officer of any approved changes from the initially approved allotments and the reasons therefor.

Sec. 5. 5 MRSA § 1667, last ¶, is amended by adding after the first sentence a new sentence to read:

The State Budget Officer shall inform the Legislative Finance Officer of any reserves approved and the reasons therefor.

Sec. 6. 5 MRSA § 1667, last ¶, 2nd sentence, is amended to read:

At any time during the fiscal year this reserve or any portion of it may be returned to the appropriation to which it belongs and may be added to any one or more of the allotments, provided the State Budget Officer shall deem such action necessary and shall notify the State Controller and Legislative Finance Officer of such action.

STATEMENT OF FACT

The purpose of this bill is to prevent unilateral deferral or rescission of obligation or expenditure of appropriated funds by the executive branch. At the same time, it maintains incentives to the executive branch to reduce costs due to legitimate changes in requirements or savings made possible through greater efficiency. The bill:

1. Defines deferrals and rescissions of funds which are inconsistent with the objectives of appropriations and distinguishes them from deferrals and rescissions which are not inconsistent;

2. Requires the Governor to notify the Legislature by special message of all proposals to defer or rescind funds;

3. Requires the Legislative Finance Officer to notify the Legislature if it appears that the Governor plans to defer or rescind funds and has not sent a special message as required. Permits the Legislative Council to require the Legislative Finance Officer to conduct an inquiry and prepare such a report;

4. Prohibits any deferral or rescission unless approved by joint resolution of the Legislature, or by the Legislative Council when the Legislature has adjourned *sine die*;

5. Directs the Attorney General to sue for enforcement of this bill.