

# MAINE STATE LEGISLATURE

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M I N U T E S

LEGISLATIVE COUNCIL MEETING  
Legislative Council Chamber

December 19, 1973

CALL TO ORDER

The meeting was convened at 10:25 a.m.

ROLL CALL

SENATORS: Berry, Brennan, Danton, MacLeod, Sewall

REPRESENTATIVES: Birt, Hewes, Simpson

GUESTS: Philip M. Savage, Director, State Planning Office, and staff assistants.

Richard G. Bachelder, Planning Engineer, Bureau of Public Improvements

Prof. Richard Morgan, Legislative Compensation Commission

SECRETARY'S REPORT

MOTION

Sen. Danton: That the Secretary's report be accepted as mailed.

Seconded: Sen. MacLeod

Motion carried unanimously.

COMMUNICATIONS - No communications received.

COMMITTEE REPORTS

1. Legislative Finance Officer -

The Legislative Finance Officer advised the Council of two outstanding legislative invoices and explained the reasons they had not been paid. The following motions were made in that regard:

MOTION

Sen. Berry: That the bill that was received for \$876 as submitted by Transco relative to shelving that was ordered for the Document Room and subsequently returned, be paid.

Seconded: Rep. Birt

Motion carried unanimously.

COMMITTEE REPORTS (Cont'd)

Legislative Finance Officer

MOTION

Sen. Danton: That we authorize payment of \$800 for lighting in the new House Majority Leaders' office.

Seconded: Sen. Sewall

Motion carried unanimously.

2. Legislative Staff - See attached report.
3. Legislative Reorganization - A meeting was held on December 18th.
4. Bill Status Retrieval System - See attached memorandum from David E. Smith, Director, Central Computer Services.
5. Collective Bargaining - No report.
6. Disaster Planning - See attached report.
7. Excise Tax Study - No report.
8. Appropriations and Financial Affairs - No report.
9. Business Legislation - See attached report.
10. Education - See attached report.
11. Health & Institutional Services - See attached report.
12. Judiciary - See attached report.
13. Labor - No report.
14. Legal Affairs - No report.
15. Liquor Control - No report.
16. Natural Resources - No report.
17. Public Lands - No report.
18. Public Utilities - No report.
19. State Government - No report.
20. Transportation - See attached report.
21. Veterans and Retirement - No report.

MOTION

Rep. Birt: That well documented reports on study orders assigned

COMMITTEE REPORTS (Cont'd)

to Joint Standing Committees be submitted to the Council and that all legislation necessary to implement the majority and any or all minority reports of the study be automatically introduced into the special session with appropriate committee reference by the Reference of Bills Committee..

Seconded: Sen. Danton

Discussion.

Motion carried unanimously.

MOTION

Sen. Berry: That the Committee Reports be accepted as presented.

Seconded: Sen. Danton

Motion carried unanimously.

OLD BUSINESS

MOTION

Sen. Sewall: That the subject matter of item 1-a (Placing legislative printing out to bid) be referred to a subcommittee of the Appropriations Committee and that they report back to the Council prior to the 107th Legislature.

Seconded: Sen. MacLeod

Motion carried unanimously.

MOTION

Sen. MacLeod: That the subject matter of item 2-c (coordinating all services concerning exceptional children under one program) be reviewed by the Legislative Staff and that a report be made back to us between sessions.

Seconded: Rep. Birt

Motion carried unanimously.

OLD BUSINESS (Cont'd)

MOTION

Rep. Birt: That we charge \$100 for docket service which would be provided to the Maine Municipal Association and the Maine Chamber of Commerce and that these fees be paid to the docket clerks as a salary adjustment.

Seconded: Sen. MacLeod

Discussion.

Motion carried unanimously.

Philip M. Savage, Director of the State Planning Office, distributed charts and other material to members of the Council and briefly explained reorganization plans. A copy of this material is attached.

NEW BUSINESS

Professor Richard E. Morgan, Jr., of Bowdoin College, Chairman of the Commission studying legislative compensation, appeared before the Council with his staff and presented a report of the results of their study. It was recommended that the present part-time salary program be continued with salary increases and expense allowance increase.

It was also recommended that there be an establishment of a continuing commission to review the legislative compensation every 4 years. This establishment would require a constitutional amendment.

Richard G. Bachelder, Planning Engineer of the Bureau of Public Improvement, appeared before the Council to advise that 20x20 square feet of space in the employees lounge of the new office building have been allocated to the Printing Division of the Bureau of Purchases to accommodate the installation of new printing machinery. Also, Mr. Bachelder advised the Council of Col. Parker F. Hennessey's request to the Executive Council regarding the obtaining of 12 thousand square feet of space at the Ray Building of the Augusta Mental Health Institute for the Department of Public Safety.

Discussion then concerned the use of Western Union credit cards and postage stamps by legislators. The following motions were a result of this discussion:

MOTION

Sen. Sewall: That we notify the Clerk of the House, Secretary of the Senate and the Legislative Finance Officer that Western Union Credit Cards are not to be distributed.

Seconded: Rep. Birt

Discussion,

Motion carried unanimously.

NEW BUSINESS (Cont'd)

MOTION

Sen. MacLeod: That every legislator be issued 100 10¢ postage stamps for use at home and that any correspondence he has in the halls of the Legislature go out on postage meter cards; and that a record be kept on each legislator on the amount of individual pieces of mail mailed.

Seconded: Rep. Birt

Discussion.

Motion carried unanimously.

ANNOUNCEMENTS AND REMARKS

The Council met with members of the Maine Management and Cost Survey Study Commission for lunch and discussed problems with the report and the possible implementation of it.

Next Meeting - January 16, 1974.

ADJOURNMENT

The Council meeting adjourned at noon.

MEMORANDUM

TO: Legislative Council  
FROM: Suzanne Havens  
SUBJECT: Legislative Staff Report  
DATE: December 17, 1973

1. Several of the studies assigned by the Council to the Joint Standing Committees are ready to be reported out, and Committee chairmen are uncertain as to procedure for doing this. As a temporary measure, I have asked the Chairmen to transmit a copy of the study to the Legislative Council for consideration, and to send any legislation, with a sponsor to the Legislative Research Office. Mr. Slosberg will send the bill either to the House or Senate with a note asking that the bill be held for approval of the Reference of Bills Committee. However, I would request that the Council outline a procedure for submitting studies and if necessary, for having them published.
2. The staff is receiving copies of the L.D.'s as they come from the printer. We plan to analyze each bill and keep a record of the analysis for our own information and that of any legislator who needs information, if this meets with the approval of the Council.
3. The following staff committee assignments have been made, subject to approval by the Council. With the heavy hearing schedule of the special session, there will undoubtedly be some conflicts, but there is apparently no way that these can be avoided.

1. Bob Frates: Appropriations, Human Relations, Veterans and Retirement
2. George Viles: State Government, Liquor Control, Labor

3. Tom Downing: Business Legislation, Taxation, County Government, Election Laws
4. Nancy Ross: Public Lands
5. Bob Clarke: Health and Institutional Services, Education, Agriculture, Public Utilities
6. Helen Ginder: Natural Resources, Transportation, Fisheries and Wildlife, Marine Resources

At this point I have no idea what my own time available will be. I plan to devote what time I have to the State Government Committee, since it appears that the work load of that committee will be extremely heavy. I am also hoping that Tom Downing will be able to give some time to that Committee.

4. During the interim, this office and the staff have been fairly relaxed about doing work which would normally be done by Committee Clerks, since frequently no clerk was available. Since the work load will be very heavy during the special session, I have instructed the staff that we can no longer do this kind of work, and that each staff person should try to talk with his committee chairman about the relationship of the staff person and the Committee Clerk and who should be asked to do what. Some clarification from the Council in this matter would be most helpful.

MEMORANDUM

TO: Legislative Council  
FROM: Bob Clarke  
RE: Civil Defense Disaster Study  
DATE: December 18, 1973

The day-to-day changes in energy problems have prevented any final drafting of a bill to alter the State's emergency preparedness laws. Timothy Wilson, Director of Civil Defense and Eric Stauffer of the Governor's office are continuing to provide assistance. In addition, representatives of the Federal Office of Emergency Preparedness have been consulted and are providing information relating to amendments to the existing law.

# STATE OF MAINE

Inter-Departmental Memorandum Date December 18, 1973

Hon. Larry Simpson, Chairman

Dept. Legislative Council

From David E. Smith, Director

Dept. Central Computer Services

Subject Legislative Bill Status System

I have recently reviewed the status of the Legislative Bill Status System and current planning indicates the system will be ready for live testing during the week of January 14, 1974.

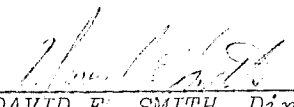
I wish to emphasize that a fully operational system will not be available on January 14th and would not want the Legislature to be misinformed. I do believe that valuable experience can be gained by both legislative staff and computer personnel involved in the implementation of the system. If the session continues for eight or more weeks, it will also be possible to provide the legislature with a demonstration of the capabilities of the system.

Although we will not be entering information into the system on January 2, 1974 this will not hinder the capabilities of demonstrating the system at a later date. We can easily enter all of the actions that have occurred prior to January 14, 1974 and have a system that would be fully up-to-date as of the 14th. We can then begin to test and correct problems and also identify areas of concern that are inherent in initial design because of communication misunderstandings. This will provide an excellent opportunity to strengthen and enhance the system prior to the convening of the 107th Legislature.

We are planning to install the communications equipment on December 28, 1973 and I have made arrangements for two terminal operators to be available as of January 2, 1974. This staff will receive training both in the legislative process and the computer system prior to the 14th of January.

I hope our planning meets with your approval. As I have stated previously I have severe reservations about installing a system that would in any way endanger the possibility of acceptance of a computer as a management tool by the Legislature. I would consider our efforts during the Special Session to be that of pilot testing and demonstration and I believe that it is necessary that the Legislature be fully aware that our initial efforts are testing and adjusting and that the demonstration of capability will not be possible until later in the Special Session.

If you have any reservations about our current planning, please contact me at your earliest convenience.

  
\_\_\_\_\_  
DAVID E. SMITH, Director

DES/ek

cc: David Silsby



State of Maine  
Senate Chamber  
Augusta, Maine 04330

December 6, 1973

Legislative Council  
State House  
Augusta, Maine 04330

Gentlemen:

The Business Legislation Committee met on December 5, 1973 for the purpose of reviewing final (I hope) amendments to the Consumer Credit Code and further discussion of the no-fault legislation.

Legislative Assistant Tom Downing is preparing a re-draft of LD 1803 as suggested legislation to be considered by the 106th Special Session. This is in accordance with the Joint Study Order. If a sponsor is needed, Representative Douglas Smith, sponsor of LD 1803 would like to have the bill in his name.

The Committee voted unanimously that there be no further study or consideration given to LD 1877, since it is covered by other legislation.

Absentees were Senator Katz, Senator Marcotte, and Representative Maddox.

Very truly yours,

  
John H. Cox

JHC/eh

MEMORANDUM

TO: Legislative Council  
FROM: Education Committee  
RE: Study of University of Maine  
DATE: December 19, 1973

The committee traveled to the Machias campus on December 5th. Members attending included Senator Katz, Representatives Ault, Lynch, Lawry, Murray, Bither and LeBlanc and committee clerk Joan Gerald.

The schedule for the day was as follows:

10:30	arrival & campus tour
11:00	meeting with President & staff
12:00	lunch with students
1:15	meeting with faculty
3:00	meeting with students
4:30	reception by President
5:30	dinner
7:00	public hearing

On Wednesday, December 5th, members of the committee met with the Management and Cost Survey. Members attending included Senators Katz and Minkowsky and Representatives Ault, Lynch, Lawry, Murray, LaCharite, LeBlanc and Bither.

Legislative Council  
Page 2  
December 19, 1973

The Maine Management and Cost Survey has invited committee staff to use the Survey files in relation to the University of Maine study as well as any other education matters.

The Committee will not meet again until after the beginning of the Special Session.

MEMORANDUM

TO: Legislative Council  
FROM: Health & Institutional Services Committee  
RE: Report on progress of studies

A. Study of  
HMO's

A meeting of the full committee was scheduled for Monday, December 10 in Augusta. The committee was to meet with a representative of Blue Cross - Blue Shield, view a film on existing Health Maintenance Organizations and review the first draft of an HMO bill with Mr. Everard Stevens of the Bureau of Insurance. A review of the bill by the Department of Business Regulation had not been completed, however, and, rather than meeting for less than a full day, the committee postponed its meeting until after the beginning of the special session. By postponing the meeting, the committee will also be able to then review an Attorney General's opinion on HMO's now in preparation.

B. Study of  
facilities  
for the  
retarded

A visit was made to the regional facility for the retarded and the sheltered workshop program at Presque Isle on Thursday, December 6. Members attending included: Senator Hichens, Representatives Dyar, Soulas, Lewis, Goodwin, Whitzell and Morin. The committee talked with staff, residents and met with town officials at an evening meeting.

Returning to Bangor, these same committee members visited the Elizabeth Levinson Center and the Bangor Day Activity Center on Friday, December 7.

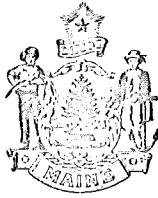
The committee is awaiting information and statistics to be provided by the Bureau of Mental Retardation regarding demand for services at regional facilities and will not meet again until after the beginning of the special session.

On Saturday, November 17, three members of the committee attended an open meeting of the union local at Pineland regarding problems arising from the initiation of the "unitization" program. "Unitization" was initiated with the ultimate goal of placing residents of institutions out in communities.

SENATE

WAKINE G. TANOUS, DISTRICT 30, CHAIRMAN  
JERROLD B. SPEERS, DISTRICT 15  
JOSEPH E. BRENNAN, DISTRICT 10

RAIG H. NELSON, LAW CLERK  
PATRICIA A. CLARK, CLERK



HOUSE

MRS. ETHEL B. BAKER, ORRINGTON,  
HOUSE CHAIRMAN  
LOWELL D. HENLEY, NORWAY  
MRS. CHARLOTTE H. WHITE, GUILFORD,  
SECRETARY  
STEPHEN L. PERKINS, SOUTH PORTLAND  
JOHN R. MCKERNAN, JR., BANGOR  
J. ROBERT CARRIER, WESTBROOK  
MRS. MILDRED F. WHEELER, PORTLAND  
MRS. JANE CALLAN KILROY, PORTLAND  
ROLAND A. GAUTHIER, SANFORD  
JAMES P. DUNLEAVY, PRESQUE ISLE

STATE OF MAINE

ONE HUNDRED AND SIXTH LEGISLATURE

COMMITTEE ON JUDICIARY

December 6, 1973

Memo

To: Rep. Larry Simpson  
Chairman, Legislative Council

From: Senator Wakine G. Tanous  
Chairman, Committee on Judiciary

The Judiciary Study Committee met on Tuesday, December 4 for both morning and afternoon sessions. The topic was the petition process. Mike Healy, Esq. spoke at the morning session, and Peter Damborg spoke in the afternoon. Absent for both sessions were Senator Speers, Senator Brennan, and Mr. Henley.

The Committee decided not to hold any more meetings until after the holidays.



State of Maine  
Senate Chamber  
Augusta, Maine 04330

December 10, 1973

Representative Larry E. Simpson, Chairman  
Legislative Council  
Rt. #1  
Sebago Lake, Maine 04075

Dear Representative Simpson:

Attached is a copy of a report summarizing the trip authorized by the Legislative Council for certain members of the Transportation Committee to travel to Vermont and New Hampshire to review highway maintenance activities.

The trip was exceptionally worthwhile and provided the Committee members with increased understanding so that we should be able to perform our legislative tasks with increased awareness of highway maintenance activities.

Sincerely,

A handwritten signature in cursive script that reads "Edwin H. Greeley".

Edwin H. Greeley, Chairman  
Legislative Committee on Transportation

EHG/el

Attach.

cc: Members, Legislative Council  
Members, Transportation Committee  
Deputy Commissioner Roger L. Mallar

## NORTHERN NEW ENGLAND HIGHWAY MAINTENANCE REVIEW

### Introduction

The Legislative Council of the 106th Maine Legislature authorized Senator Edwin H. Greeley as Chairman of the Legislative Transportation Committee and two members of that Committee to travel to Vermont and New Hampshire to review highway maintenance procedures in those states in order to gain a clearer insight into Maine's activities in this regard. The authorized trip took place the week of September 10, 1973. In addition to Senator Greeley, Representative Fraser of Mexico participated in most of the trip, Senator Cianchette of Somerset County participated in portions of the trip in each state, and the committee members were accompanied by Deputy Commissioner Roger L. Mallar of the Maine Department of Transportation. This report summarizes the results of that trip.

### Vermont

The group first traveled to Vermont where on the afternoon of September 10, a meeting with Vermont highway officials was held in the Vermont Department of Highways headquarters office in Montpelier. The Vermont Highway Department was represented by Assistant Chief

Engineer Robert O. Munn; Russell Watson, Acting Maintenance Engineer, Franklin Scribner; and others. A general discussion of the Vermont Highway Department and its maintenance activities was held to familiarize the Maine Contingency with the overall Vermont operations. During that discussion, the following facts were noted:

1. Vermont maintains 2815 miles of State Highways.
2. The Vermont Highway Department has 1286 authorized employees, about 700 of whom are in maintenance and 457 are authorized engineering employees (not including right-of-way).
3. Vermont has a \$2.00 operator's license fee and \$32.00 registration fee (\$64.00 for diesel).
4. Vermont has recently revised its town aid highway program. While this program was defined as a revenue-sharing effort, it appeared similar in some respects to Maine's existing program, was quite complex, and did require Vermont Highway Department approval procedures for implementation of local projects.
5. Vermont also used to provide for highway maintenance patrol with patrolman-owned trucks, but has gone to a state fleet which it feels is much more satisfactory from the standpoint of being able to provide more direction and better supervision.

6. Vermont estimates its winter maintenance costs at \$1519 per two lane mile, used 90,000 tons of salt last year and has a bare pavement policy.

7. Maintenance hot-top costs \$7.00 to \$9.00 per ton at the plant in Vermont.

8. The Vermont Highway Department uses "skinny-mix" almost entirely and very little "liquid" asphalt.

9. Vermont maintenance employees work a standard 45 hour week and receive time-and-a-half after 9 hours per day or 45 hours per week.

On Tuesday, September 11, the group was joined by Senator Cianchette and had the opportunity to go on a field trip and visit several different maintenance operations in Vermont. Among the highlights of that visit were the following:

-- The group visited a Vermont "skinny-mix" operation where the mix was being placed with a spreader-box and screed attached to a loader rather than with a paver. Otherwise, the Vermont operation, overall, seemed very similar to Maine's. Any reduction in cost in placement equipment seemed to be more than offset with a loss of production.

-- An opportunity was provided to review an Interstate rest area with a rest room building. At this time the Vermont contingency offered their compliments on the Kittery Information Building and Rest Area in Maine and indicated that they thought

the entire area was exceptionally well developed and attractive. Vermont's regular Interstate rest area buildings were similar in scope to Maine's but did include a small lobby manned during the summer months in order to provide travel and tourist information. The group did note an absence on roads other than the Interstate of regular rest area facilities which are very popular in Maine.

-- Several features of Vermont's Interstate Program were noted for reference and consideration of Maine Department of Transportation personnel such as the use of birdsfoot-trefoil on slopes providing excellent cover and the use of a stone blanket on bridge abutment slopes as opposed to slope paving.

-- It did appear that Vermont has a higher percentage of unpaved road surfaces than exist in Maine.

On Wednesday, September 12, before leaving for New Hampshire the Maine representatives had an opportunity to visit with John Gray, Vermont's Highway Commissioner, where they expressed their appreciation for the assistance and hospitality they had been provided and offered reciprocal treatment if the Vermont personnel would find it advantageous to travel to Maine. During this meeting, those present discussed the decision by Commissioner Gray to change the color of Vermont maintenance vehicles from highway orange to brown and green, the

state's colors. Commissioner Gray indicated that this decision was based on the public confusion of other orange trucks for Highway Department vehicles and an attempt to decrease the truck exposure in this regard. The group then traveled to Concord, New Hampshire to meet with New Hampshire representatives.

#### New Hampshire

On the afternoon of September 12, the Maine delegation met with the following representatives from the New Hampshire Department of Public Works and Highways: Mr. Robert Whitaker, Commissioner; Mr. Walter Mead, Assistant Commissioner; Mr. Reuel W. Webb, Deputy Commissioner and Chief Engineer; and Mr. Robert Hogan, Maintenance Engineer. At this introductory meeting, the following was noted:

1. New Hampshire maintains 4150 miles in the summer and 3629 miles in the winter.
2. Employees in the Department total 1650 including 737 permanent positions in Maintenance.
3. New Hampshire has seven maintenance divisions with nine to twenty-one patrol sections per division (total of 107), and are striving for 60 mile maintenance sections.
4. New Hampshire used to have one to two man patrols and found them inefficient.
5. 220 state trucks and 330 hired trucks with plows and wings are used in the winter maintenance operation.

6. New Hampshire has been using the thin bituminous overlay ("skinny-mix") since 1959, find costs of \$9.50 to \$13.00 per ton in place and a life of four to eight years. New Hampshire also uses as little "liquid" as possible. Two million dollars per year are available for this program or about 200,000 tons.

7. Maintenance costs in New Hampshire approximate \$1710 per mile in the winter and \$1000 per mile in the summer not including resurfacing.

8. New Hampshire uses 100,000 to 150,000 tons of dry, coarse salt per year.

On Thursday, September 13, a review was made by Senator Greeley and Mr. Mallar of the New Hampshire Public Works and Highways facilities in the Concord area including the materials lab, the sign shop, central garage, etc. This was followed by a field review of various highway facilities. The more noteworthy aspects of that trip follow:

-- A new patrol section garage facility was visited and found to be generally comparable to those in Maine but slightly more extensive.

-- A discussion of patrol maintenance activities suggested that maintenance foremen are provided more authority and responsibility in New Hampshire than in Maine with an absence of maintenance supervisor type personnel.

-- A sense of healthy competition seemed to exist between maintenance patrol crews which assisted in production levels.

-- The New Hampshire Maintenance Engineer indicated that he has had the opportunity to review the vehicle equipment fleets in most states east of the Mississippi and in his opinion Maine's equipment was the most effective and efficient that he was aware of. He further indicated that he hoped to utilize the Maine Specifications in replacing New Hampshire equipment.

-- Again, an Interstate rest area was visited. The lobby area in the New Hampshire building was even more extensive than those in Vermont and the area was manned to provide tourist information and other assistance. Also, the general absence of rest areas on other road systems was noted. The New Hampshire personnel were also extremely complimentary in regard to the Kittery Information Building and Rest Area.

-- It was indicated that environmental problems in New Hampshire as well as in Vermont were significantly affecting the orderly development of an adequate highway program.

-- After "working hours", the controversial Franconia Notch construction area was reviewed.

On Friday morning, September 14, 1973, the New Hampshire personnel were thanked for their assistance and offered Maine

hospitality if they would find a visit to Maine to be desirable. Senator Greeley and Mr. Mallar paid a brief visit to Governor Meldrin Thomson (a previous acquaintance of Senator Greeley's) and indicated to the Governor their appreciation for the New Hampshire hospitality during the visit. On the trip back to Maine, construction activities in the Portland and Harpswell areas were reviewed.

### Conclusion

The review of maintenance activities in the other New England states by the group provided a unique opportunity to broaden the background of those participating and was a most worthwhile investment. While no major differences in operations were observed which would lead to considering significant program shifts in Maine, several thoughts and ideas relative to individual methods and procedures have been made available to the Maine Department of Transportation for their evaluation. In summary, the group did not find that maintenance programs in Vermont and New Hampshire were any more effective, more efficient or less costly than those in Maine. Some strong points observed in those programs is offered below:

1. Both states rely almost entirely on the "skinny-mix" program for their resurfacing effort and have nearly eliminated the use of liquid asphalt.

2. Both states use the crew system in their maintenance operations, but in New Hampshire at least the foreman is provided more responsibility and authority.

3. New Hampshire uses a significant number of private trucks in their winter maintenance operations. This is due, however, to a lack of compatibility between winter and summer maintenance responsibilities so that additional state trucks would lie idle in the summer months if provided by winter maintenance.

4. Both states provide a lobby area in their regular Interstate rest areas for dispersing travel information.

5. Vermont has eliminated the highway orange color from the maintenance vehicles to "reduce the visibility" of essential maintenance operations.

ever, this is only an illustrative figure. The savings would take at least 3 years to achieve and be annual as long as aggressive management is continued. (Legislative/Executive)

**3. Make the Treasurer of State appointive.**

Historical reasons for making the Treasurer of State an elective officer are no longer germane. Responsibilities of the Treasurer are financial in nature, and efficient performance demands a high degree of career competence. He should be made appointive, with responsibility for his selection resting with the Governor. (Constitutional)

**4. Make the Attorney General appointive by the Governor.**

Currently, the Attorney General is selected by, and reports to the Legislature. He is charged with responsibility of providing legal counsel to all agencies. Due to the present method of appointment, he is most responsive to the Legislative Branch. This creates a conflict with the Executive Branch because of varying objectives and priorities. As a result, the Governor and executive agencies do not always receive the benefit of objective and timely counsel.

The Governor needs assistance from the Attorney General in areas such as bill drafting, rendering opinions, and representing the state in litigation. At times, it is also necessary for the Attorney General to serve as chief law enforcement officer to assist with special functions such as consumer protection and drug abuse. The Attorney General should be appointed by the Governor subject to approval by the Legislature and report to him. The Governor should have full power of his removal from office for cause. (Constitutional)

**5. Amend the laws to make executive positions appointive by the Governor.**

The Governor, in many cases, does not have the power of selection or removal of his top executives. This severely limits his ability to effectively manage the state. Executive positions should be made appointive. Terms of office should not be set and appointees would serve at the pleasure of the Governor. Confirmation by the Council would be required for appointments of Commissioners.

Implementation would allow the Governor to select his executive team on the basis of ability and capacity to work in consonance with him. It would also give him the power to replace them when necessary. (Legislative)

**6. Make boards, commissions, and councils advisory in nature, wherever possible.**

The content and control of many government programs are now vested in independent boards, commissions, and councils. The Governor, as chief ex-

ecutive, has little control or authority over their activities. They should, wherever possible, be made advisory in nature. Their advice in areas where special knowledge is needed is valuable but as a general principle, line authority for government programs should be solely vested in the Governor. (Legislative)

✓ **7. Reorganize central staff and management support functions to enhance the policy analysis, business management, and administrative capabilities of state government.**

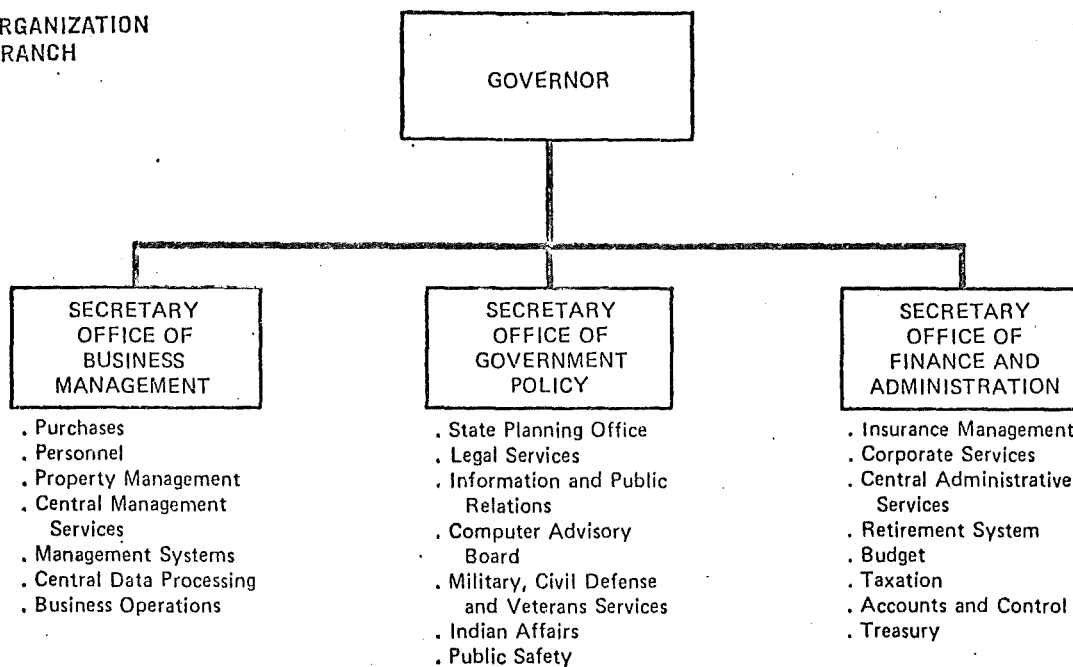
The management of government at all levels needs improvement. Modern business practices, techniques, expertise, and specialized disciplines should be available to individual agencies. Also, there is a dispersion of policy-making responsibility in all levels of state government. The number of individuals reporting to the Governor is too large for effective control.

Central staff and management support functions should be realigned to fulfill these needs. The precise organizational arrangement to accomplish this objective will require further careful study. One possible organizational arrangement would be to create three principal offices reporting to the Governor, each headed by a Secretary, as shown in the proposed organization chart to the right. This would establish the Office of Business Management, the Office of Government Policy, and the Office of Finance and Administration.

Office of Business Management— This office will have functional authority relative to all government agencies and be headed by the Secretary of Business Management who would become the Governor's chief business management aide. As constituted:

- ▶ The Bureau of Purchases would be transferred, as is, from the present Department of Finance and Administration. It is responsible for purchasing goods and services required by the state on a centralized basis. This action will enhance the overall effectiveness of purchasing.
- ▶ The Department of Personnel, reporting to the Governor, would become the Bureau of Personnel. This department is responsible for the state's Personnel Law which relates to employment by the state government.
- ▶ The Bureau of Property Management, presently the Bureau of Public Improvements under the Department of Finance and Administration, would be assigned to this office. This bureau is responsible for development of long-range public improvement programs for state departments and agencies.
- ▶ A Bureau of Central Management Services would be created to manage centralized serv-

PROPOSED ORGANIZATION  
EXECUTIVE BRANCH



ices such as a laboratory, motor pool, printing, and similar activities.

- ▶ A Bureau of Management Systems would be created. It would be responsible for statewide work measurements, manuals, systems design, forms control, records management, management development and training, accounting systems, management engineering, as well as cost/benefit, make/buy, and build/lease justification analysis. In addition, the records management of Maine State Archives and the management analysis functions of the Bureau of the Budget will be assigned to this bureau.
- ▶ Central Computer Services, presently under Finance and Administration, would be transferred here. A new Bureau of Central Data Processing is recommended which would coordinate all facilities, operations, systems analysis, and programming. More details are contained in the Data Processing report.
- ▶ A Bureau of Business Operations would be established, and assigned responsibility for managing various state businesses including the sale of alcoholic beverages, the state ferry system, and the Maine State Pier in Portland.

Office of Government Policy — This office would be headed by the Secretary of Government Policy reporting to the Governor and becoming his chief policy aide. It will have functional authority relative to all government agencies and act as liaison be-

tween the Governor and various commissioners. Further, it would promulgate and coordinate the Governor's policies and also assume responsibility for some of the special agencies. This office would consist of:

- ▶ The State Planning Office, which now reports to the Governor. This office is responsible for providing technical assistance in identifying long-range goals and policies for the state as well as preparing plans for physical development of the state.
- ▶ Create the Bureau of Legal Services, headed by an attorney, and transfer to it the in-house legal services presently provided by the Attorney General.
- ▶ A Bureau of Information and Public Relations, which centralizes the current public relations activities of various agencies. Its responsibilities would include promotion and marketing of the state and its products, provision of an ombudsman who would operate a Citizens Assistance Office with toll-free incoming phone service charged with helping the public by answering questions or directing them to the cognizant agency, and centralized production service for the creation of public relations materials.
- ▶ Reporting responsibility of the Computer Advisory Board, created elsewhere, which would be assigned to the Secretary of Government Policy.

- ▶ The Department of Military, Civil Defense and Veterans Services, which presently reports to the Governor.
- ▶ The Department of Indian Affairs, which presently reports to the Governor.
- ▶ The Department of Public Safety, which presently reports to the Governor.

Office of Finance and Administration — The mission of the Department of Finance and Administration is different from other departments of government in that it serves them while they work for the public. Its reporting relationship should reflect this difference. The department should be placed under the Governor in a staff position, and its name changed to Office of Finance and Administration. It would have functional authority relative to all government agencies and be headed by a Secretary who would be the chief fiscal and administrative aide to the Governor. The following changes will be necessary:

- ▶ Locate the newly created Bureau of Insurance Management in the proposed Office of Finance and Administration. Duties of this bureau are the same as those previously performed by the Maine Insurance Advisory Board in the Department of Finance and Administration.
  - ▶ Transfer the Corporations Section of the Secretary of State to the proposed Office of Finance and Administration and rename it the Bureau of Corporate Services.
  - ▶ Create the Bureau of Central Administrative Services. It would be responsible for providing centralized functions such as mail service and designated licensing operations.
  - ▶ Transfer the Division of Motor Vehicles, presently directed by the Secretary of State, to the newly created Bureau of Central Administrative Services.
  - ▶ Transfer responsibility for administration of the Maine State Retirement System to the proposed Office of Finance and Administration.
  - ▶ Absorb the duties, responsibilities, and staffs of the Bureaus of the Budget, Taxation, and Accounts and Control as presently constituted in the Department of Finance and Administration into the Office of Finance and Administration. (Legislative)
8. Establish an executive committee, consisting of the Governor and the Secretaries of Finance and Administration, Government Policy, and Business Management.

Business management of government and the implementation of policies and programs of the Governor

and the Legislature are hampered by the lack of a cohesive policy-making body. An executive committee of state government should be established with implementation helping to ensure that the business of government will be effectively managed and policies and programs of the Governor and Legislature are carried out. (Legislative)

#### 9. Transfer the duties of the Treasurer of State to the Office of Finance and Administration.

The duties of the Treasurer are closely aligned with those of the Office of Finance and Administration. The present separation promotes inefficiency. The Treasurer of State should be transferred to the Office of Finance and Administration. (Constitutional)

### Office of the Governor

This office is headed by the Governor, whose executive powers are specifically outlined by the Constitution of the State of Maine.

The Governor's Office has a staff of 17, consisting of 13 state and four federally funded employees. Expenditures for fiscal 1972 amounted to \$201,788. Of this, \$136,911 was for salaries and \$1,756 for capital expenditures. The estimated appropriation for fiscal 1973 amounts to \$219,872 of which \$148,052 is for salaries. Included in the totals are \$22,873 for the Council in fiscal 1972 and about \$43,930 for fiscal 1973.

The Governor meets monthly with an informal cabinet of his department heads and staff. He delegates many items. Reports from department heads are due monthly. Being informal, they mainly contain items requiring current action. Each day, the Governor's Office handles approximately 100 incoming phone calls and 40 to 100 pieces of mail requiring answers.

An office was opened in Washington, D. C., in April 1973 to provide better liaison with Augusta on federal matters. Its estimated annual cost is \$45,000. Additionally, a Canadian office was established in Augusta in October 1972 to provide closer liaison and action with Canada's provinces. The annual cost for this office is estimated at \$25,000.

Blaine House, which is adjacent to the Capitol, is provided as the Governor's residence. This house is staffed by seven employees and its operating expenditures for fiscal 1972 totaled \$67,044. Appropriations for fiscal 1973 amount to \$66,765.

The state's Executive Department includes the Division of Economic Opportunity, which provides technical assistance for administration of the federally sponsored community action programs. This func-

December 3, 1973

Ms. Patricia A. Clark, Clerk  
Legislative Committee on Judiciary  
State House  
Augusta, Maine 04330

Dear Pat:

Thank you for the minutes of the Judiciary Committee.

The Council does not intend nor do they feel it necessary for the committees to take transcripts of their hearings. All we are requiring is a notice of the meeting, those attending, and any formal action that is taken.

Very truly yours,

Larry E. Simpson, Chairman

csd



MEMO FROM

STATE OF MAINE  
LEGISLATIVE COMMITTEE  
ON  
JUDICIARY

PATRICIA A. CLARK  
CLERK

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November 28, 1973

Dear Larry:

Enclosed please find copy of minutes of the  
Judiciary Study Committee which met on the 15th.

PC

COMMITTEE ON JUDICIARY - STUDY COMMITTEE

10:25 A.M. Absent, Sen. Brennan, Rep. Perkins, Rep. McKernan. The topic is trespass.

Senator Tanous introduced Lawrence Stuart, Director, Maine Bureau of Parks and Recreation.

Mr. Stuart: The question has been raised "Has this been a problem?" We did some research, held two staff meetings, and a regional meeting of all 13 Park Supervisors in the state. There was no one who felt that there was an existing problem. The only place we knew of where there was a problem was at Sebago Lake when the water is low people come to that beach and have parties. Because it adjoins state park land, whenever we develop such a thing we be sure that our own patrons are not over there, and we notify the sheriff's department and the state police. This might happen two or three times a summer at Sebago and it is mostly young people. My rangers have no authority outside of the Park. This does not involve any infringement on any private rights as it is undeveloped and is now owned by an out of state development.

When we acquire land these areas are visited frequently by the area Supervisor and problems usually center around fire. We contact the Forestry Department then as they have the power over fires.

I am glad to have an opportunity to make a statement to your Committee. There is a real problem developing on rights of the public to use the area between high and low tide along the coast of Maine. Most significant on coastal bodies but it exists north of Penobscot Bay along the rock-bound coast. To my knowledge there is no attorney who has been able to give me a positive answer as to what the rights of the public are between low and high tides in regard to recreation. We know that we inherited the old fish and fowl rights under the Massachusetts constitution and it was later written into ours, and the public does have the right to fish and fowl between high and low water marks providing they can get to it. The question becomes "What is the right to use it for recreation?" There is a further extension of that--what about lying down on a blanket and having a picnic? We do have a problem with people who own private land particularly at the coastal beach areas such as Saco, Wells, Ogunquit, who are objecting to the public using their beaches down front. In some cases owners have tried to drive these people off and are generally successful, but there are others who think they have a right to be there and refuse to move, and I understand some town officers have assumed they have the right to move them on and some don't feel they have that power.

I talked with Commissioner Brownell this morning, and the Massachusetts Legislature is considering a bill, it has been passed in the Senate, which asserts that the public has a right to that area between what is called the vegetative line (which is quite often different from the high tide line) and the low

water mark along the ocean. They have the right to passive recreation in that area--that is, to walk up and down it and perhaps to wade in it, but as I understand the bill it does not go so far as to say they have the right to squat on it for a picnic, or spend the day on it. This bill is now in the House and if it passes, the state of Massachusetts Department of Conservation will provide some public accesses to these areas.

There has been some talk to bring a test case in Maine. To my knowledge nobody has done so, and I don't know exactly what should be done, but someone is going to have to decide what rights the public has in the area between high and low tide.

We created a problem at Scarborough when we bought the Jordan Beach which is a right of way to the ocean which divides an area of two miles. For years Gladys Jordan operated it as a concession, charging admission to the beach. The state owns access to the beach but it is only 65 feet wide where it meets the ocean but on either side there is a mile of beautiful sand beach owned by the Sprague Corporation. We have parking facilities for 100 cars and during the summer we are full. They pay a fee and then fan out on the two sides of this property. The state has been trying to buy this from the Sprague Corp. but has not been successful. They have raised the question as to what their rights were, and I understand they hired an attorney to investigate what their rights would be to bar off their property on either side between high and low tide so that the public could not move in either direction. The attorney did give an opinion to the Corporation. It was a privileged letter and maybe could be obtained by you, but I have no access to it.

We have the same problem at Crescent Beach where people will work their way up the beach and get on to other land, but we have built a fence from the high tide mark up making it difficult for them.

Sen. Speers: You mentioned that there was a difference between vegetative and high water mark.

Mr. Stuart: Particularly on the sand beach area the high tide often does not come into the grass line of the dunes and there is an area depending on the slope of the beach, which two or three times a year is underwater, but most of the time it is nice, dry sand. These opinions that have been handed down have gone to the vegetative line rather than the high tide line.

The state of Oregon has adopted an Open Beaches Act which goes further than the Massachusetts Act. The Open Beaches Act says that the public has the right to use all of the area between low tide and the vegetative line and is the public domain. The State Parks Department of Oregon now is providing multiple access to these beaches. There are two other states, I think they are Florida and Texas, that have similar laws but I am not familiar with them. I have sent for a copy of the Mass. law and it is in the mail.

Sen. Tanous asked Mr. Stuart to also obtain a copy of the Oregon law.

Mr. Stuart: We are going to have to face up to this, particularly in the southern part of the state. People are fanning out in all directions making use of what some feel is their private domain. You might want to use the Massachusetts law as a stepping stone. Their problems might be similar to ours here in Maine.

Sen. Speers: The difference between the Oregon and Massachusetts laws is that Massachusetts restricts it to passive recreation?

Mr. Stuart: Yes. Passive recreation is walking. Going in for a dip would be permissible as long as you don't stay in one place and keep moving. Massachusetts is an extension of the fish and fowl.

Mrs. Baker: Could you restrain people from landing a boat there?

Mr. Stuart: If they stop and sit down, the owner has felt that this was trespassing. You couldn't keep them from landing a boat. Digging clams would be considered fishing. The Department is trying to buy up islands and put them under state control. The real problem is fires and litter.

Mr. Henley: Do you understand the Massachusetts law to not only propose to relax the trespass situation between high and low water but to also feel that they are responsible for the procurement of access?

Mr. Stuart: Massachusetts has about the same law that we have in Maine which says that the public has the right to great ponds, and the Parks and Recreation Department has the funds to provide access. My impression from Commissioner Brownell is that Massachusetts says they also have the right to the Ocean and the state will provide access.

Mr. Henley: We do not supply access to our ponds, do we?

Mr. Stuart: That is the right we have now. Under the Boat Facilities Act Parks and Recreation "shall provide public access", meaning access by vehicle if necessary. We are doing this by buying rights of way and establishing roads, particularly to the ponds that are completely rimmed by private ownership. We have a cooperative program with Fish and Game. They have a policy that they will not stock ponds which the public does not have access to. They tell us where access is needed. (These are man-made ponds over 30 acres.)

Mr. Gauthier: I notice that there are quite a few passages with "public way" signs. Did the town give them that right.

Mr. Stuart: The towns laid those out as public ways. If that was their intention they must have intended for them to use the beach but there never has been anything established as to just what their rights are between high and low tide except for fishing and fowling.

There have been one or two cases where a person built a property line down to low tide into the ocean. Fences were removed by the trespassers themselves. If this were allowed

and legal, it would be an awful mess.

Mrs. Kilroy brought up a problem of a relative at Pine Point who could not get help in keeping people off her property. She asked about policing, especially at night.

Mr. Stuart: I would think that the policing should be by the local authorities. That's what they pay taxes for. They could get additional help from the Forestry Department. They can enforce the out of doors fires. That's one of the quickest ways. Enforcement officers don't know their rights between high and low tides. Public nuisances should be stopped by local officers.

Sen. Speers: Getting back to inland water, who owns between the average low water mark and an unusually low water mark?

Mr. Stuart: Most deeds on subdivisions have front posts and a clause that reads "and continuing in a straight line to the edge of the water". Owning a property on Sebago Lake this was the opinion I got but when I bought on Rangeley and it was a flowage lake there was quite a different set of circumstances. As fast as the water went down, I still owned the property and picked up some footage. It depends upon the deeds. I don't recall any deeds where people bought frontage property without that clause written in.

Sen. Tanous: You have the authority to regulate the beach area in all of your state parks?

Mr. Stuart: We assume we do. By the same token, at Crescent Beach people don't go through the gate. You can park down the street and walk up between high and low tide and use the facilities.

Mr. Carrier: Under the Massachusetts law, it would provide a right of way to go to the ocean. Would you have to use eminent domain?

Mr. Stuart: The Parks Department has the right now, but we don't have to use it. We could use it, up to 200 acres, but haven't had to. I don't think if Maine passes this law we would be building many accesses. Towns have already provided these by making public streets to the ocean.

Mr. Carrier: On inland waters, does the owner own to the water's edge?

Mr. Stuart: It depends on the deed. There are deeds which terminate up on the bank somewhere, and then who owns down front is a question for an attorney to decide.

Mr. Carrier: They own to the high water mark?

Mr. Stuart: I have seen deeds which said "to the high water mark"

Mr. Carrier: Would there be a problem if you give them to the low water mark?

Mr. Stuart: Generally speaking, they have so little to use I don't know why the public would want to get to the average lake. The average Maine lake does not fluctuate that much.

Sen. Tanous: If the Committee decided to recommend legislation in this area whereby the Fish and Game Department and your Department might issue rules and regulations on that area of the land between the mean water mark and the low water mark, do you feel that this would be within the province of your department?

Mr. Stuart: I would have to have a revision in my statutes. It says, the Department shall issue rules and regulations on state parks and you are not talking about state parks. Our personnel is not trained in arresting people. We have no sidearms in the state Parks system. Fish and Game has training on how to handle problems, and if we have one we call in state police or the sheriff. We would have to change our training of personnel. We go from 65 employees at this time of the year to 265 next summer. These are mostly college and young people and we have no time to train them to handle arrests. I don't think we could contribute much in the way of enforcement. We would be glad to help draw up rules and regulations and point out the needs in these areas. If the Department of Conservation is established including the Fish & Game Department and Sea and Shore Fisheries then you would have an enforcement arm within the department.

Sen. Speers: If we were to get to the point of asking Parks and Recreation to promulgate regulations we first have to ask the question and determine whether or not that area between high and low water mark is actually state property. If it is private property we would have no authority to issue regulations.

Sen. Tanous: I was discussing great ponds. I don't think an individual has the right to convey that portion of the land under the water of a great pond, no matter what the deed says.

Mr. Stuart: There is a legal interpretation of rights on a natural lake vs. a flowage lake.

Sen. Tanous asked Tom if he had found any legislation that controls that property in regard to policing or trespassing.

Tom: The state does own the land when the water recedes from the mean water mark. Did not find any at all.

Sen. Speers: It is not a pressing problem. We had one small problem and the local authorities should have come in and taken care of it.

Sen. Tanous: Local authorities refuse to enforce because they feel it is state-owned property. We might consider legislation granting authority to some department. You can give it to the local authorities. Fish and Game are on the lakes in the summertime. They have got the environmental problems. There are lakes that are not in townships. Fish and Game would be the ideal people to grant authority to. You would have to give them authority to write regulations as well as enforce.

Mr. Carrier: If you make the water's edge as the line, put it at low tide. The water's edge is the best measurement there is.

Sen. Speers: You could lose a lot of property when the water rises.

Sen. Tanous: We have a general statute that Game Wardens have the same powers as deputy sheriffs. We can make a decision after we hear from Fish and Game. I think the entire state has been canvassed.

Sen. Speers: What about the situation where what we would be doing in this statute would be declaring the area between the mean low water mark and the actual low water mark in a particularly dry year-- would we get into any kind of a problem where the private owner goes down to the mean low water mark, and let's say the state sets regulations and the private owner goes down to the point of mean low water and he's doing whatever he wants on his own private land--there could be some confusion in the mind of the officers charged with enforcing as to where that mean low water mark is.

Sen. Tanous: They have it on record.

Mrs. Baker: They have it on record generally speaking, but would that establish a definite point on everybody's land?

Sen. Tanous: Leon said they annually establish a mean water mark, so I would assume the mean water mark would be established from the prior year. They determine the water's edge by the mean water mark.

Mr. Dunleavy: What reference points do they use to establish the mean low water mark?

Sen. Tanous: They take an average of the water mark.

Mr. Dunleavy: As things stand now, then, any land from the mean low point on the lake side to the then existing water's edge is state owned property. Then the formula that the state owns the property between the mean low point and the then existing water's mark is not necessarily true, if the then existing water's edge is beyond the mean low point. It has got to be below the mean water mark. I think if Mr. Carrier's idea were implemented we would get into the area of taking property without due process.

Sen. Speers: You would be.

Sen. Tanous: The individual owns to the mean low mark. We're talking about towards the water's edge and not toward the shore line. Legislation would have to be specific.

Mrs. Wheeler: If we passed a law and allowed the land owner to own land to the lowest mean low water mark wouldn't you be taking state property? Would you have to change the deeds?

Sen. Tanous: Yes.

Mr. Dunleavy: We are faced with the very real fact that it is a very localized problem. Why can't we solve it by providing that the state can sell that exposed property to any owner who wants to buy it and set up a specific formula for the price. The money could be used for facilities.

Sen. Tanous: You are in violation of the statutes. It would be discriminatory. You have a statute for buying state owned property.

Tom: Possibly unconstitutional.

Sen. Speers: If they refuse to buy it you have the same problem.

Sen. Tanous: A lot of practical problems would arise from that. You can give land, but I don't think you can sell it. If you don't give everybody an opportunity to buy it, you're discriminating.

AFTERNOON SESSION 1:25 P.M. TOPIC - TRESPASS

ABSENT: Sen. Brennan, Sen. Speers, Rep. McKernan, Rep. Perkins.

Senator Tanous introduced Richard Parks, from the Department of Fish & Game.

Mr. Parks: I understand you are concerned primarily with access to and from great ponds, and great ponds themselves. The definition of a great pond is a pond greater than ten acres which is state owned. We have had people write in on ponds (what they are is dammed up streams) and they look like ponds and perhaps have a pond name and generally our law on streams and rivers applies to them rather than the law on ponds.

Reference: 42 Maine 218 Robertson vs. White which quotes an old Massachusetts dictum that says a well-defined shore line is considered a great pond. We have had problems over this, as to whether a pond is a great pond or not. A better definition of a great pond would be in order.

Another thing we have a little problem with is a pond of less than ten acres which we consider a private pond, say 6 or 9 acres. We have been regulating the fishing on these ponds by law and we question whether we have the right to do this. We say we do in that the fish are natural.

As far as stocking ponds, we stock them now if there is a foot right of way where the public can go by foot to fish. Prior to that we only used to stock them if they could get a car or boat to the pond. When the law was repealed we simply go by the new law which was passed last session, Chapter 530, Section 3860, "Great Pond Access Law". We have some state ponds that are great ponds that we do not stock that we would stock if there was some way to get to them.

As far as the trespass, this new law probably will take care of that. It used to be that we had trouble with the definition of enclosed land. That could use some defining. What is improved land? Trespass generally, I can't find any statute where if it was absolutely common woodland and there was no chance of it being called enclosed land, is there any trespass law even though it is posted?

Mr. Parks: Another thing we sometimes have are signs along the road saying "no hunting". We asked the Attorney General for an opinion and he said they hold no weight at all, as only the Department has the right to regulate hunting. The owner of the land has no right to regulate hunting. We need a definition of unimproved land.

Sen. Tanous: Have you had any problems with trespassers on that part of the land between the mean water mark and the low water mark?

Mr. Parks: We don't really have that problem. We did have some complaints when the right of way overlapped and people didn't like others parking on their road. I have heard about Sebago where there have been parties on shore. It has not affected us.

Sen. Tanous: Does the Warden Service patrol all the lakes in the state?

Mr. Parks: Yes. As far as fishing on small ponds, our authority is being questioned. We have resident wardens and cover the whole state.

Sen. Tanous: We have had complaints brought to our attention dealing with that portion of the land when the water goes down on an unusually dry summer, to people using that land for beach parties, etc., and apparently they have, in some instances called local officials to either disban the group or make an arrest for causing a nuisance, but the officers feel the state owns the land and they won't make an arrest.

Mr. Parks: That applies to the mean low water mark on a lake. Supposing the lake had a dam which brings the water level up considerably so that when the lake fluctuates, at no point was it more than eight feel lower to what the original lake was there is a problem as to whether or not it is privately owned. We have run into it with fishing regulations as to whether it is a pond or a lake or a stream.

Mr. Dunleavy: How can a citizen find out what the mean low point is?

Mr. Parks: It would take an engineering survey over a period of 20 to 30 years. We don't know where the mean low is.

Sen. Tanous: I think Mr. Walker was under the impression that your Department kept track of that on an annual basis--all the lakes in Maine.

Mr. Parks: No. We have soundings. We don't even have all the lakes surveyed yet.

Sen. Tanous: Would some other state department have this?

Mr. Parks: Not that I know of. Possibly the US Army Engineers or the Coastal Geometric Survey. The Federal Government has an elevation on every lake. Our Department doesn't run into any problems as far as trespass. Fishermen generally don't cause too much trouble.

Mr. Dunleavy: Then we couldn't legislate referring to the mean low point.

Mr. Parks: I don't see how. Someone may have kept levels as far as water supplies, etc. You would have to have an engineer run a benchmark level. To determine where state land starts would be quite a problem if you did this on all the lakes in the state.

Senator Tanous: Do you control the dams on several lakes?

Mr. Parks: Some.

Sen. Tanous: Are there summer residents at those lakes, and are there complaints?

Mr. Parks: Yes. We have been sued. They have not been successful. We had several suits and I think there were some small awards made. We try to keep away from owning dams on the lake as we don't have the funding for the maintenance on them. We do construct dams in the duck areas.

Senator Tanous: Well, if we can't establish a mean water mark I don't think there is anything we can do. The only thing we can do is to enforce the statutes on violations committed on the shorelines of our lakes.

Mr. Dunleavy: If you can't prove title, you can't prove trespass.

Mr. Henley: We can't we establish water's edge?

Sen. Tanous: You have a lot of lakes with coves and the lines will cross.

Mr. Henley: Didn't Larry's bill supply a possible answer; that the abbutter could control the land which he borders on to the water's edge for police and trespass reasons only?

Mr. Carrier: 80% of Larry's bill is different from what we are discussing.

Tom: I don't really see any way of clearing anything up. The problem doesn't come up very frequently.

Sen. Tanous: Asked for a motion. Stated that we ought to make a report to the Council that the problem is not severe, and since the state has no definition of mean water mark there is no way we could recommend legislation. Also we might recommend that the only area that legislation might be enacted is having the Fish and Game Department reestablish enforcement on the shores.

Mr. Dunleavy: We might recommend that the nuisance law be redefined. If they can't be prosecuted under the existing law, amend it so that squatters can be prosecuted.

Sen. Tanous: Perhaps you might add that any fines derived be directed to the Fish and Game Department. It isn't now. This might give them more incentive to enforce.

COMMITTEE VOTED UNANIMOUSLY IN FAVOR OF THE ABOVE RECOMMENDATIONS AND SEN. TANOUS ASKED TOM TO PREPARE THE REPORT TO THE COUNCIL AND TO PREPARE A BILL DEDICATING FUNDS.

Sen. Tanous: Relative to the open waters, if we can get copies of bills from other states, we can discuss that at our next meeting.

Senator Tanous reported that the Governor had appointed a task force to study prison reform so he sent a letter to the Council stating that it would be useless to have the Judiciary Committee study the same matter, and the Council said to hold off the Committee's study. Rep. Perkins and Rep. McKernan are both on the task force.

Senator Tanous asked if the members wanted to discuss the referendum at this time and they decided to hold a meeting in December. The 14th was set as a tentative date, at 10:00 A.M.

Judiciary Committee

Tape #1

326 - 798

P. Clark