

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

INDEX

Senate Confirmation Session

June 14, 1978

INDEX

First Special Session

September 6, 1978 — September 15, 1978

INDEX

Second Special Session

October 18, 1978

INDEX

Third Special Session

December 6, 1978

INDEX

APPENDIX

SENATE

March 8, 1978

Senate called or Order by the President.
Prayer by Reverend Howell K. Lind, Winthrop Street Universalist Church, Augusta.

Reverend LIND: Oh Lord of life, we invoke Thy blessing upon this assembly. Grant to them wisdom enough to learn from the past. Fill their hearts and minds with gladness for the presents which they have inherited and may this August Body accept with resolution and courage their present task. May they be bold in their expectations and anticipations of the future that they may do their share in the building of a better tomorrow for all the citizens of this Great State.

In Thy spirit we ask for their guidance, Thy blessing upon these men and women here assembled and in Thy name we pray. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

The PRESIDENT: The Chair would ask the Sergeant-at-Arms to escort the Senator from Knox, Senator Collins, to the rostrum to assume the duties of President Pro Tem.

Thereupon, the Sergeant-at-Arms escorted Senator Collins of Knox to the rostrum where he assumed the duties of President Pro Tem, and President Sewall to the seat assigned to Senator Collins.

Paper from the House
House Paper

Bill, "An Act to Provide Compensation and Benefits Agreed to by the State and the Maine State Troopers Association." (Emergency) (H. P. 2200) (L. D. 2179)

Comes from the House, referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Which was referred to the Committee on Appropriations and Financial Affairs and Ordered Printed, in concurrence.

Committee Reports
House

Divided Report

Seven members of the Committee on Judiciary on, Bill, "An Act to Lower the Costs of Medical Malpractice Arbitration." (Emergency) (H. P. 1964) (L. D. 2051)

Reported in Report A that the same Ought to Pass as amended by Committee Amendment "A" (H-1120).

Signed:

Representatives:

SPENCER of Standish
HUGHES of Auburn
JOYCE of Portland
NORRIS of Brewer
HOBBINS of Saco
HENDERSON of Bangor
BENNETT of Caribou

Three members of the same Committee on the same subject matter Reported in Report B that the same Ought to Pass as amended by Committee Amendment "B" (H-1121).

Signed:

Senator:
COLLINS of Knox

Representatives:

SEWALL of Newcastle
DEVOE of Orono

Three members of the same Committee on the same subject matter Reported in Report C that the same Ought to Pass as amended by Committee Amendment "C" (H-1122).

Signed:

Senators:

CURTIS of Penobscot
MANGAN of Androscoggin

Representatives:

TARBELL of Bangor

Comes from the House, Report A Read and

Accepted, and the Bill Passed to be Engrossed as amended by Committee Amendment "A". (H-1120)

Which Reports were Read.

On Motion of Mr. Speers of Kennebec, Tabled until later Today's Session, pending Acceptance of a Committee Report.

Senate

Ought to Pass in New Draft

Mr. KATZ for the Committee on Education on, Bill, "An Act Relating to Post-graduate Education in the Field of Medicine, Dentistry, Optometry and Veterinary Medicine." (S. P. 626) (L. D. 1958)

Reported that the same Ought to Pass in New Draft under same title (S. P. 732) (L. D. 2177)

Which Report was Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Pierce.

Mr. PIERCE: Mr. President and Members of the Senate: I think perhaps this Bill this morning deserves a few words of explanation.

This was a result of a unique experience in which we combined members from three committees to come up with a Bill which we feel is in the best interest of everybody in the State of Maine. As you know in the past we have had many discussions about whether or not we really have a firm grip on health care and are we going in the right direction in the State of Maine. The contract physicians which we now have are very expensive. We feel that with this piece of legislation we have finally taken some first steps in getting a real handle on what we are doing.

This Bill was the result of an effort by four members of the Appropriations Committee, four members of the Education Committee, and four members of the Health and Institutions Committee. I think that we had some unique hearings, we had input from people from around the state, from all the medical professions, and to just what we are doing in this state in regards especially with our health care needs and with emphasis on primary health care and our health care in the rural areas. We think that with this legislation we have taken some first steps in establishing not only a permanent Advisor Committee to the Commissioner but also put a lid on the costs of this program and with this piece of legislation we hope that we can build from this point on in a real program that is going to benefit all the citizens of the State of Maine.

Which Report was Accepted.

The Bill, in New Draft, Read Once, and Tomorrow Assigned for Second Reading.

Second Readers

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

House — As Amended

Bill, "An Act to Require the Licensing of Insulation Installers." (H. P. 1941) (L. D. 2105)

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

Bill, "An Act to Revise the Laws Concerning Marine Resources." (H. P. 2146) (L. D. 2166)

Which was Read a Second Time.

On Motion of Mr. O'Leary of Oxford, Tabled until this Afternoon's Session.

Pending Passage to be Engrossed.

Senate

Bill, "An Act Concerning the Number of Persons Required to be Covered by an Existing Group Health Insurance Policy for its Renewal or Replacement." (S. P. 689) (L. D. 2123)

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

Sent down for concurrence.

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following: "An Act to Clarify County Law Enforce-

ment." (H. P. 671) (L. D. 2075)

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

Emergency

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Washinton County for the Year 1978." (H. P. 2156) (L. D. 2168)

This being an emergency measure and having received the affirmative votes of 26 members of the Senate, was Finally Passed and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The President Pro-tem laid before the Senate:

Bill, "An Act to Establish a Uniform Confidentiality Statute for Tax Information and to Update the Maine Income Tax Law with Respect to the Internal Revenue Code." (H. P. 1952) (L. D. 2031)

Tabled — March 7, 1978 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

On Motion of Mr. Speers of Kennebec, Retabled until later in Today's Session.

Mr. Redmond of Somerset was granted unanimous consent to address the Senate on the record.

Mr. Redmond: Mr. President and Members of the Senate: I'd like to take a minute or two this morning to call attention to a very important gathering in our state this week. This is the 58th annual meeting of the New England Section of the Society of American Foresters.

As you know, Maine is the most heavily forested state in the union, and Maine's forest industries are the biggest part of this state's economy.

Thus, it is significant for Maine that more than 800 professional Foresters are holding their three-day annual meeting in Portland, starting today.

We, as a State, rely very heavily on the professional forest management that keeps our forests productive, and we should be proud of the dedicated service of the Maine members of the Society of American Foresters.

Not only do they keep our forests healthy and growing more wood for our hundreds of wood-using industries and their many thousands of jobs — they apply their professional know-how to maintain — and improve — the forests of Maine where so many of our people work.

People who work in the woods are the most independent people anywhere, they are industrious — and self-reliant. They are the kind of people that make up the commendable character of Maine people.

The professional forester, with his expertise — and his independent nature — has contributed so much to the well-being of the State of Maine and Maine people — that we owe him a big debt of gratitude.

I think it's important for us — as lawmakers — to respect the professionalism of our foresters — and the independent nature of all Maine people — to restrain ourselves and our government from the danger of overregulation in the field of forest management.

This is a danger of killing the independent spirit which makes us great by too many laws — to many regulations — to many restrictions. This is the danger of non-professionals trying to "Second Guess" in some cases — instead of giving the professionals the freedom to make their expert judgment where it counts.

Thank you, Mr. President and Members of the Senate, for letting me say these few words to mark this occasion. The Society of American Foresters should know that the State of Maine is pleased to host its New England Section

meeting in Portland this week.

(Off Record Remarks)

Mr. Sewall of Penobscot was granted unanimous consent to address the Senate on the record.

Mr. SEWALL: Mr. President and Members of the Senate: I would ask the Senate to join me and rise and give the presiding officer a round of applause for an excellent job this morning.

(Applause)

The PRESIDENT Pro-Tem: The Chair thanks the Senate for their kind cooperation.

All matters previously acted upon were ordered sent forthwith.

(Off Record Remarks)

On Motion of Mr. Speers of Kennebec, Recessed until 4:00 in the afternoon.

Recess

After Recess

Senate called to order by the President. Out of order and under suspension of the rules, the Senate voted to consider the following:

Papers from the House
Joint Orders

Expressions of Legislative Sentiment recognizing that: Vera Billings of Deer Isle, who has served as Treasurer and Tax Collector for twenty-four years, is retiring, (H. P. 2191)

Ellen Berry of Brownville, flutist in the Penquis Valley High School Band, has been chosen for the United States Collegiate Wind Band, a highly selective musical organization which will make a concert tour of seven European countries during July and August of 1978.

James Silvia, Jr., an American Artist, has been recognized for his devotion to Blace Identity and his efforts to achieve cultural awareness, (H. P. 2194)

Donald V. Vereault of Old Town has attained the rank and distinction of Eagle Scout in the Boy Scouts of America, (H. P. 2197)

The following graduating seniors are the top ten senior honor students at Edward Little High School in Auburn: Thomas R. Berube, Lisa Sizeland, Mark Albert Doyon, Catherine Pissath, Jody Lynn Harris, Sebastian Theodore Ventrone, Jane Ann Farrell, Monique Marie Bergeron, Patricia Ann Bell and Paul Dana Ervin, (H. P. 2198)

The Oak Grove-Coburn Tigers have won the State Class D Boys' Basketball Championship for the academic year 1978, (H. P. 2193)

Come from the House, Read and Passed.

Which were Read and Passed in concurrence.

The 42nd Bombardment Wing of Loring Air Force Base, Maine, has been named the most outstanding Wing within the entire Strategic Air Command, (H. P. 2196)

Which was read.

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

Mr. COLLINS: Mr. President, I would like to call attention to this particular order because most of what we read in the papers concerning Loring Air Force Base has to do with the phase out or withdrawal. And it is very much a great pleasure to read that Loring Air Force Base, the 42nd Bombardment Wing was selected as the outstanding Bombardment Wing in the whole world. Out of thirty-five SACE Wings in the world. It was the first time that a base located in the northeastern part of the country has received that award.

I note in the AP report that it says, "the Base had a perfect refueling aircraft assignment record meeting every receive on time, and on

target in 1977."

I am pleased to report that Loring Air Force Base does in fact have the very best Bombardment Wing in the world and it is a bit ironic to note that the government would like to close down that base. Thank you Mr. President.

Which was Passed in concurrence.

Joint Resolution
STATE OF MAINE

In the Year of Our Lord One Thousand Nine Hundred and Seventy-Eight

Joint Resolution Urging the Maine Department of Human Services to Request that a Federal Pilot Program Providing Jobs to Food Stamp Recipients to be Established in Maine WHEREAS, Congress, in the 1977 Food Stamp Act, has authorized a federal pilot project to provide part-time CETA jobs to enable people to pay for food stamps; and

WHEREAS, Congress has directed the U.S. Department of Agriculture to implement two of these pilot projects in New England; and

WHEREAS, the pilot project would permit healthy unemployed persons, whose income is less than the amount they must pay for food stamps, to obtain temporary employment long enough to earn the amount of money required for them to pay for their allotment of food stamps; and

WHEREAS, implementation of such a pilot program in Maine is greatly needed to help the State meet its problem with unemployed recipients of public assistance while enabling those recipients to earn the money necessary to purchase food stamps without giving up their pride; now, therefore, be it

RESOLVED: That we, the Members of the 108th Legislature, in the Second Regular Session now assembled, respectfully request and urge that the Maine Department of Human Services petition the U. S. Department of Agriculture to have Maine designated as a site for a pilot program providing CETA jobs to eligible individuals to assist them in paying for food stamps; and be it further

RESOLVED: That, upon passage in concurrence, a suitable copy of this resolution be prepared by the Clerk of the House for transmission to David Smith, Commissioner of Human Services. (H. P. 2199)

Comes from the House, Read and Adopted.

Which was Read.
On Motion of Mr. Pierce of Kennebec Indefinitely Postponed in non-concurrence. Sent down for concurrence.

Communications
Department of State

To: The Honorable Senate of the 108th Legislature of the State of Maine:

Examination of the initiative petitions relating to "An Act to Repeal the Control of Milk Prices at the Wholesale and Retail Levels" filed with this office on February 23, 1978 has been completed.

The minimum number of valid signatures required to initiate this legislation has been determined to be 36,395. Our examination of these petitions reveals the following:

| | |
|------------------------------|--------|
| Number of petitions received | 856 |
| Number of valid signatures | 32,000 |

In view of the foregoing determination of the number of valid signatures, it would appear that these petitions have not met the Constitutional requirements of the minimum of 36,395 valid signatures.

Respectfully,
Signed: MARKHAM L. GARTLEY
Secretary of State
(S. P. 733)

Which was Read and Ordered Placed on File. Sent down for concurrence.

Augusta, Maine
The Honorable Joseph Sewall
President of the Senate

The Honorable John L. Martin
Speaker of the House
Dear Joe and John:

I have today nominated John C. Caldwell of Cundy's Harbor, Maine to serve on the Maine State Board of Education. Mr. Caldwell will be replacing John Ekhaya whose term on the board has expired.

Pursuant to Title 20, Section 51 of the Maine State Revised Statutes Annotated, this nomination will require confirmation by the Joint Standing Committee on Education and by the Senate.

Thank you for your assistance.

Sincerely

Signed:

JAMES B. LONGLEY
Governor
(S. P. 734)

Which was Read and referred to the Committee on Education.

Sent down for concurrence

(Off Record Remarks)

Enactors

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

"An Act to Provide Interpreter Service for the Hearing Impaired." (S. P. 720) (L. D. 2169)
On Motion of Mr. Huber of Cumberland, placed on the Special Appropriations Table.

"An Act to Permit Law Enforcement Officers, Agencies and Associations to Make Limited Solicitations for Advertising in or Purchase of Certain Publications Published by Them." (H. P. 2153) (L. D. 2167)

"An Act Providing for Notice to Parents under the Child Abuse and Neglect Statutes." (H. P. 2143) (L. D. 2160)

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

Emergency

"An Act to Continue the Potato Tax at the Rate of \$.025 per Hundredweight." (H. P. 2033) (L. D. 2097)

Emergency

"An Act to Amend the Child Welfare Laws." (H. P. 1990) (L. D. 2065)

These being emergency measures and having received the affirmative votes of 26 members of Senate, these Bills were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Orders of the Day

The President laid before the Senate:

House Reports — From the Committee on Judiciary — Bill, "An Act to Lower the Costs of Medical Malpractice Arbitration." (Emergency) (H. P. 1964) (L. D. 2051) Report "A" — Ought to Pass as Amended by Committee Amendment "A" (H-1120); Report "B" — Ought to Pass as amended by Committee Amendment "B" (H-1121); Report "C" — Ought to Pass as amended by Committee Amendment "C" (H-1122)

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

Mr. MANGAN: Mr. President and Members of the Senate: I move at this time the Adoption of Committee Report "C" and I would like to speak briefly to my motion.

The PRESIDENT: The Senator from Androscoggin, Senator Mangan, now moves that the Senate accept Report "C".

The Senator has the Floor.

Mr. MANGAN: Mr. President and Members of the Senate: You all recall the last session we passed a major piece of legislation called the Pomeroy Commission Bill. That legislation which is now law made many changes in our statutes which effect Medical Malpractice Insurance rates in Maine. One of those provisions

was to allow patients and health-care providers to enter into agreements to arbitrate any disputes which might develop over the treatment received by the patient from either the doctor or hospital.

Under that law, there are three members of the arbitration panel. One member is chosen by the defendant, one member chosen by the plaintiff, and the third so-called neutral member is chosen by the other two arbitrators, or if they cannot agree, by a process established by the American Arbitration Association.

The Maine Medical Association is currently compiling a list of doctors who would be willing to serve as arbitration panelists in the various medical specialties, and the Hospital Association is developing arbitration agreements as well as informational brochures for patients on the arbitration process. So you can see that though this is a very new concept in resolving medical malpractice disputes.

The Medical Community is moving in that direction under the legislation which we passed last session.

This bill with the committee report which was adopted by the other body would change the law to provide that only one arbitrator would resolve malpractice disputes in which less than \$40,000 was at issue. What this report would do would be to allow one person, probably not even a lawyer, to be a one person jury without a judge. There was testimony before our committee that neither doctors nor hospitals would be inclined to continue to work toward using arbitration to resolve malpractice claims if there were only one arbitrator. In fact, we received a letter from Dean Burt Prunty of the University of Maine Law School, who was counsel to the Pomeroy Commission. He indicated in his letter to the Judiciary Committee that passage of the bill in a form similar to Committee Amendment "A" would be detrimental to the whole arbitration process established by the Pomeroy Commission.

Therefore, I have supported Report "C" which, in my view, not only maintains the three member arbitration panel but strengthens the panel as well.

Briefly, Committee Amendment "C" would provide that all three members of the panel be neutrally chosen. The amendment would require that one member of the panel be a doctor, one member be a lawyer, and one member be neither a doctor or a lawyer. A lawyer would serve as chairman of the panel.

The specific members of an arbitration panel would be chosen through a list which would be submitted to both parties to the arbitration. Each party would strike from the list those members in each category who are unacceptable and number in order of preference those who are acceptable. The American Arbitration Association would then select in each category the first person acceptable to both parties. There is also a procedure for the American Arbitration Association to select a member in any category in which the parties cannot agree.

What the process which I propose in Report "C" would accomplish is an arbitration panel which has been neutrally and objectively chosen. Under the present system with each party choosing his own arbitrator I predict that there will be very few unanimous decisions of any arbitration panel. There will be a treat tendency for those arbitrators specifically picked by one of the parties to support the position of that party, thus leaving the arbitration panel's decision to the neutral.

Finally, I want to thank the Senate for hearing my remarks and would urge you to accept Report "C". However, if you do not, I want to urge you to leave the law the way it is, because I fear that changing the law at this point to provide for only one arbitrator would, for all intents and purposes, be the same as repealing the arbitration section in the Pomeroy Commission Bill.

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

Mr. COLLINS: Mr. President, I can agree with many of the points that were made by my colleague on the Judiciary Committee but I would like to explain to the Senate why I cannot support Report "C" but would support Report "B".

I agree with the previous speaker that it would be a mistake at this time to shift over this newly established program to a single arbitrator. There is no experience yet with the program but in other states where this system is now being used the three arbitrators are the usual method and it does give a balance of advocacy which we think that at least in the early stages of this experiment should be useful.

Report "B" is leaving the law very much as it was enacted by this Body last year. Report "B" would only add to the available procedures a few details about the selection of the neutral arbitrator. Utilizing, when necessary, the services of the American Arbitration Association.

The other value that the Bill has is, that it provides that district court facilities throughout the state shall be available as a meeting places for these arbitrations without charge to the parties in the arbitration.

Report "B" in my judgment would have the majority support of Maine physicians and hospitals. The report which is supported by the Senator from Androscoggin, Senator Mangan, does enjoy the support from at least one county and perhaps more where those interested in this procedure have discussed this and have developed the idea that there ought to be three pools of neutral from whom to select the Board of Arbitration.

The problem is that in a small state like Maine it is not easy to find pool of neutrals and it could very well result in finding enough neutrals in all three categories; the physician category, the lawyer category, and the neutral neutral, that we would have to go out of state for many of our arbitrators. This, of course, makes a more expensive procedure and one of the objectives of this measure in the first place was to hold down expense. It is important that we want this law to work and to be useful that it be acceptable and comfortable for those that must put it to work. And those people, of course, in the first instance are the physicians and the hospital management.

I made it a point to furnish both Report "B" and Report "C" to the medical staff of the leading hospital in my own district, and to the hospital administrators of all the hospitals in my district and to several surgeons and physicians that were known to me to be interested in this because they devoutly hope that this procedure may stabilize the premiums on their malpractice insurance.

No, we do not know for sure whether it will or not, but that was certainly one of the reasons for adopting the program, and until it is really tried we really will not know whether we have made a important contribution or not. But the first thing is to have it tried, and it seems to us a mistake to amend this law with any significant change until we have tried out what the professionals were taught in the beginning was developed to give them a new still before they even got started I think would discourage the whole process.

I very much agree with my friend from Androscoggin that there should be the three arbitrators and that means acceptance of either Report "B" or Report "C". But I submit to you that the better choice is Report "B". The head of the medical staff of the hospital in my own district called me yesterday, or this morning actually, saying that they had had a special meeting of the staff yesterday to consider this, and they had both versions in front of them and they considered it carefully and came out with a strong opinion that they ought to stick by that which was the nearest to the original enactment. Which I like to call the Conley Act rather

then the Pomeroy Act.

I urge you to vote against Report "C" and if the Senate does so vote I would then move the acceptance of Report "B".

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

Mr. CURTIS: Mr. President, I would like to explain briefly why I am in support of Report "C" the pending motion that is before you right now and as was very ably described by the Senator from Androscoggin, Senator Mangan.

My concern I suppose is very similar to the concerns expressed by the senator from Knox, Senator Collins. And that is what is going to be acceptable to the medical community, what do they find is going to be the most workable solution to this problem of rising medical malpractice costs. And I think that the key to the entire concept of arbitration is whether or not the physicians and whether or not the hospitals will use what we give them as a tool.

I was very disappointed, Mr. President, to find out that very, very few doctors and very, very few hospitals have started to use this procedure which the Judiciary Committee worked on very diligently last summer at the urgent request of the medical community and which went into law in October. I happen to feel that they have implemented this legislation with about the same speed as the coming of spring.

Early in January my wife had a opportunity, a fortunate one, to have a very minor operation and as she was checking into the Eastern Maine Medical Center in Bangor I went with her particularly to find out among other things, whether or not this arbitration procedure was going to be implemented and nobody that I could find at the hospital in this checking procedure knew what I was talking about when I was inquiring about the forms that I expected to see.

So I would hope that the medical profession would use whatever we give them, as far as I am concerned, either Report "B" or "C" would be workable. I think that "C" is preferable for the very reason that I first explained that we have got to give the profession the best thing that they feel they will be able to work with, otherwise they will not use it and it will not be used at all. In my conversations with representatives of the medical profession indicate that their preference is Report "C".

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

Mr. MANGAN: Mr. President and Members of the Senate: Just a few brief comments. The Maine Medical Association, I think, has already begun to compile a pool of neutrals as far as the medical arbitrators will be concerned and I think that the Maine Bar Association will have no problems in seeking some neutrals as far as the attorney side is concerned. Of course, there is a pool of neutrals under the American Arbitration Association that is currently available.

The problem that I basically have and that is the reason why I signed out Report "C" is that we have had experience with Report "A" for the last year, and doctors are not using it and the Report "B" is basically at this point, I think, the equivalent to Report "A" because the defendant goes out and hires his own lawyer and the doctor goes out and hires his own lawyer and you basically have two people who are going to be immovables anyway and basically that middle arbitrator, the neutral is going to make the decision. In this way a pool of neutrals you could have a doctor who is a neurologist deciding a matter over a case that concerns surgery — rather than something that is necessary neurological. But at least you would have the basics of understanding of a medical position and I think that the doctors would rather have a doctor on that arbitration panel than anybody else.

So I would, basically what I am saying is that we have had Report "B" for the past year and they are not using it. I have had indications of

great support from Androscoggin County and I understand from other counties that the doctors would use arbitration under "C" and I, therefore, urge the passage of Report "C".

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Mangan, that the Senate accept Report "C".

The Chair will order a Division.

Will all those Senators in favor of the motion to accept Report "C" please rise in their places to be counted.

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

9 Senators having voted in the affirmative, and 13 Senators in the negative, the motion to accept Report "C" does not prevail.

Is it the pleasure of the Senate to accept Report "B"? It is a vote.

The Bill Read Once.

Committee Amendment "B" Read and Adopted.

This Bill, as amended, Tomorrow Assigned for Second Reading.

The President laid before the Senate:

Bill, "An Act to Revise the Laws Concerning Marine Resources." (H. P. 2146) (L. D. 2166)

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President and Members of the Senate: We have in this Bill 64 pages as amended, change some of our laws on Marine Resources and the lengthy amendment of 25 pages, which must be a record.

It puts back into the law, some of the provisions of the present law. Some of which I consider as an inland resident of this state, to be very controversial and bordering on the point of unconstitutional. Remember please that I use the word bordering because although I am now a lawyer, I think I can distinguish that fine line, after reading a decision of the Supreme Judicial Court of Maine in the case of the State of Maine versus Russell Boynton handed down on November 18, 1977. Russell Boynton was found guilty in the Superior Court of Hancock County of violating a town ordinance regulating to clam diggers. I think that the key to the finding of the court decision hinged upon the question, was it permissible for the state to delegate to the communities the right to establish ordinances regulating the digging of shell fish. I will read one part of the decision under constitutional law key is 60, "the purpose of non-delegation doctrine is to protect citizens against arbitrary or discriminatory action by public officials. But in practice the goal has been to make certain that delegated powers were guarded in meaningful standards."

Mr. President, I would ask of the Senate or any members of this Body, particularly any member of the Committee on Marine Resources, if there is meaningful standards set up in this piece of legislation. So that the delegated powers to public officials will not be applied in the discriminatory manner. By that Mr. President I mean between a commercial diggers right versus those of a resident, the community and those of resident versus those of a non-resident.

Mr. President, I would challenge the right of any municipality to grant a right to the resident of their town to earn a living harvesting a natural resource that belongs to all the residents of this state, and deny to someone who is not a resident to earn his living in the same manner in the same town. Mr. President, the only way that it is conceivable to me is through a shell fish conservation program. And that is in the best interest of all the people of this state, and will stand this test of constitutionality. I have always believed that if we are to leave anything to those who follow us, we must practice conservation.

To go further into this issue of the court was made in the manner it was and I will read it

into the record. And it is part two, Constitutional Law, the key is 60, "Generally Legislative Authority must declare policy or purpose of law and set standards and guides to indicate extent and prescribe limits of discretion it is delegating." And it goes further and sights the law as it is in the present statute and I will read this into the record.

"This enabling statute provides impertinent part any municipality which has raised or appropriated money within two years. Next prior to acting under this section is Forest Shell Fish Conservation Program approved by the Commissioner as authorized under Section 4251 many enact a municipal ordinance fixing the time when clams, cohogs, and mussels may be taken, from any or all of the coastal waters and flats within the municipality. Except for those areas closed by regulation of the Commissioner under Section 3503 and Section 3504. The ordinance must have written approval of the Commissioner and I say things and I want to emphasize it must have the written approval of the Commissioner before adoption and approval must be filed with the municipal clerk prior to adoption. The ordinance may provide limitations on the amount of clams, cohogs, mussels which may be taken within a municipality, and may provide for municipal licenses be required for the taking of any such species within the municipality and may determine the qualifications for the license. Including residents requirements."

I note in the original Bill and I note again in the House Amendment that the same things are in theirs so which reaffirms the present law, and they also may fix the license fees. Mr. President and members of the Senate, this is presently law and is also in the House Amendment that we adopted. I would stress before any municipality enacts any ordinances it must have meaningful standards. And I want the record to show that residency was not one of the questions before the court in this decision. And I will read it into the record part of that decision.

"Pursuant to the provision of 12 MRSA, Sub-Section 4522-1 and prior to the date of the alleged violation, the Hancock County Town of Lamoine duly adopted ordinance regulating the digging of shell fish in that town. One ordinance here invoked provided by resident shell fish digging licenses. Both commercial and non-commercial. Another ordinance provided for similar non-residents shell fish digging license, and I want to appreciate the fact that the Town of Lamoine in Hancock County did provide for non-residents, but the case in point here was not whether the man was a resident or non-resident, in this case as I will point out going down through here, the defendant a Lamoine resident was charged in District Court with violation the ordinance regulating resident diggers by digging clams in Lamoine on July 22, 1976 without a license required of him by that ordinance.

And I would submit that to this Legislature that we in the State of Maine require licenses for a lot of things and I do not think that being an inland resident of this state that I would object to being a non-resident of a community having to pay a license fee to dig clams in that municipality.

The case was transferred to the Superior Court and was tried by the jury waived thereby appropriate motions the defendant unsuccessfully challenged the enabling statutes as an illegal delegation of legislative power. It has been determined by the Court that we have the right to delegate to the communities certain powers, but it must be applied in such a manner that it is nondiscriminatory. The parties have stipulated all steps required of a town to adopt an ordinance of this type as it has been taken in this case. Upon appeal the defendant renewed his attack upon enabling statute as illegally delegating legislative power in violation of state and federal constitutions, and the deci-

sion was that they denied the appeal. The purpose of the non-delegation doctrine, this is in Section 1 of the findings, upon which the defendant here relies is to protect the citizen against arbitrary or discriminatory action by public officials. In practice, however, the doctrine has not prevented the delegation of legislative power, rather the goal has been to make certain that delegated powers were guided by meaningful standards and I said this one before and I reiterate it.

Now Professor Davis observes that the focus should no longer be exclusively upon the standards but on the totality of protections against arbitrariness. Including both safe guards and such others, but I would like right now to read into the record the ordinances as their were in the Town of Lamoine. Section 1, municipal shell fish license required. "It is unlawful for any person to dig or take shell fish from the shores flats or coastal waters of the municipality without having a eurrent license issued by the clerk of this municipality as provided in this ordinance." Now this was the sum total of this case that went to the Supreme Court, whether this man had to have a license in order to as I interpret this and I believe that I interpreted it right and then it goes on to state, "those who are commercial and those who are non-commercial and non-commercial are limited to a peck a day." And if you will remember correctly this was an amendment that was offered by the good Senator from Sagadahoc, Senator Chapman and I supported that amendment and I believe that he had the best interest of non-residents in the municipalities in his thoughts when he presented that amendment. However, that amendment is lost and I would wonder about the germanous of House Amendment "A" when it comes to that.

But Mr. President, because the present law in the House and we have adopted nearly identical in language of the present laws, I want the record to show that it is not the intent of the Legislature to in anyway perpetuate the discrimination of residents and non-residents, unless it is for conservation purposes and I believe that that is spelled out very clearly in this bill that before us, and that the Commissioner of Marine Resources would not approve any ordinances which are not the intent of this Legislature.

Now Mr. President, I will go further in to the court opinion and it says, "Our court has recognized that the line of demaration between the legitimate and illegitimate delegation of legislative power is often quite dim." Small vs. Maine Board of Registration Examination Optometry Maine, 1972, what that means I do not know. However, as a general rule the legislative authority must declare the policy or purpose of the law instead of standards or guides to indicate the extent and to prescribe the limits of the discretion that is delegating.

The statutes here challenge withstand the constitutional attack. Mr. President, once again I reiterate that it was just a case of a person within the municipality not having a license as required for the purpose of digging clams within that municipality. As for standards, 12 MRSA Sub-Section 14551 and 4552, are basically conservation measures. The Legislature has defined conservation for the purposes of this chapter.

Conservation means providing for the development and wise utilization for Maine's marine resources or protecting the elements applied for present and future generations, or preventing a waste or implementing sound management programs.

I think Mr. President that the past statements on this floor that I have reiterated a number of times my position on conservation for those who are going to follow us and I believe that this is being consistant with my stand on that.

Mr. President, there is one statement that bothers me in the court decision and that is the

last statement in the judgment that this is by purification of authority between state and local levels of government is further protection against uncontrolled discretionary power. I believe Mr. President, that this last sentence fails to recognize that there is perhaps, there will forever will be, discretionary powers used in one community versus another. But because I am aware that there is another case pending before the Supreme Court dealing with our natural resources of the State of Maine and I believe that it is in the same area, and it is not up to us to prejudge or guess at the outcome of it, I am going to vote for this bill in its amended form, very reluctantly. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Ladies and Gentlemen of the Senate: Sheer size and thickness of this Bill obviously have raised some concern to many. It is the result of a lot of hard work on the Committee, Representatives of the Department of Marine Resources, members of the public, and I believe that I can fairly say that it is a good restatement of present law with changes to put a lot of things in more logical form, conciseness, makes uniform a lot of terms and definitions.

What changes are incorporated in this that are different are by and large non-controversial, every effort has been made to make this so. As I mentioned the other day, the provision also incorporates the provision of the APA, the Administrative Procedures Act within the Marine Resources Laws. House Amendment "A" does incorporate the municipal shell fish ordinance provisions which the Senator from Oxford, Senator O'Leary has referred. It was left out of the original bill because it was treated earlier in a separate bill and was treated in a separate bill because the changes in this area of the Marine Resources Law were substantive. The original bill has attempted to change present residency restrictions to which the Senator from Oxford, Senator O'Leary has spoken to, but as you recall, we killed these attempts to remove these residency restrictions. So replaced within the law provision by the House Amendment is a restatement of the present municipal shell fish ordinance law in its essential from as it is right now.

Last Friday a problem did arise and did come to my attention concerning the new language in this bill with respect to one section, the special licensing section. The new language allowed for a one year license only, for a special license. The special license is a provision for research or argiculture and can exempt the holder from one or more Marine Resources Laws as to time place, length, conditions, amount with the manner in taking or processing any marine ordinance.

The old law, the present law provides for a five year license, for a special license in the form of the original one year license with four automatic renewals. It was apparent to me that this was going to work a hardship on the special license holder. That received a license under the present five year provisions on January 1 of this year.

Aquaculture which requires a substantial investment in facilities and equipment of necessity demands a longer term in order to justify the necessary capital investment to work in this field. I am going to offer and amendment which will correct this situation and I am happy to say that after four meetings with the Committee, that it has the unanimous support of the committee. Which in itself is no mean feat.

Mr. President, I therefore, move that we reconsider our action whereby we adopted House Amendment "A".

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, now moves that the Senate reconsider its action whereby it adopted House Amendment "A" to L. D. 2166. Is it the pleasure of the Senate? It is a vote.

Mr. CHAPMAN: Mr. President, I now offer Senate Amendment "B" to House Amendment "A" (S-525) and move its Adoption.

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, now offers Senate Amendment "B" to House Amendment "A" and moves its adoption. The Secretary will read Senate Amendment "B"

Senate Amendment "B" (S-525) Read and Adopted.

House Amendment "A", as amended, Adopted in non-concurrence.

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

Sent down for concurrence.

The President laid before the Senate:

Bill, "An Act to Establish a Uniform Confidentiality Statute for Tax Information and to Update the Maine Income Tax Law with Respect to the Internal Revenue Code." (H. P. 1952) (L. D. 2031)

Tabled - Earlier in the Day by Senator Speers of Kennebec

Pending - Passage to be Engrossed

On Motion of Mr. Speers of Kennebec, Retabled for One Legislative Day.

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

Mr. HUBER: Mr. President, I understand that there will be an Amendment proposed to L. D. 1939 and I now move that L. D. 1939 be taken from the Special Appropriations Table.

The PRESIDENT: The Senator from Cumberland Senator Huber, now moves that the Senate remove from the Special Appropriations Table L. D. 1939, "An Act Pertaining to Ordinary Death Benefits under the Maine State Retirement System." Is it the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I now move that the Senate, suspend its rules whereby this Bill was Passed to be Engrossed.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate suspend its rules to reconsider its action whereby this Bill was Passed to be Engrossed. Is it the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, this matter has to do with a change in the retirement system and there were two errors discovered in the Bill after we placed it on the Appropriations Table. I will make the necessary motions to put this Bill in a posture for amendment to correct these two errors and then there is one further change that this Amendment would accomplish. This relates to the options available to local districts who are in the retirement system and designating the beneficiary who can receive benefits in the event of the death of someone covered under system where we provided that they could make those choices. We did not provide what would happen if no choices had been made and this permits the local district to make provision as to what happens to the benefits if no designation has been made.

Mr. President, I move that we reconsider our action whereby we adopted Committee Amendment "A". Under suspensions of the rules.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves that the Senate reconsider its action whereby it adopted Committee Amendment "A". Is it the pleasure of the Senate? It is a vote.

Mr. COLLINS: Mr. President, I now offer Senate Amendment "A" to Committee Amendment "A" (S-522) and moves its adoption.

The PRESIDENT: The Senator from Knox, Senator Collins, now offers Senate Amendment "A" to Committee Amendment "A" and moves its adoption. The Secretary will Read Senate Amendment "A".

Senate Amendment "A" (S-522) Read and

Adopted. Committee Amendment "A", as amended, Adopted in non-concurrence. This Bill, as amended, Passed to be Engrossed in non-concurrence Sent down for concurrence.

Enactors

The committee on Engrossed Bills reports as truly and strictly engrossed the following:

Emergency

"An Act to Extend the School Budget Adoption Date. (H. P. 2125) (L. D. 2151)

This being an emergency measure and having received the affirmative votes of 23 members of Senate, was Passed to be Enacted and having been signed by the President, was by the Secretary presented to Governor for his approval.

On Motion of Mr. Huber of Cumberland, Adjourned until 10:30 in the morning, Thursday, March 9, 1978.