

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Ninth

Legislature

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

HOUSE

Tuesday, February 19, 1980

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Donald Jones of the First Baptist Church, Livermore Falls.

Rev. JONES: Mr. Speaker, Members of the House of Representatives and guests, let us pray.

As we begin this session of the House of Representatives, we remember the words of the psalmist, "This is the day which the Lord has made; let us rejoice and be glad in it."

We pause to ask your divine guidance upon these proceedings, O God, for we remember how you have led us in the past. We are aware of the responsibility entrusted to us by the people of this state. We would not treat it lightly neither by shirking our responsibilities nor abusing them. To that end, give us wisdom and understanding as we deliberate the issues before us. Enable us to be decisive when it is called for and temper all our work this day with a keen awareness of your presence. We ask this in the name of Jesus Christ, Our Lord. Amen.

The members stood at attention during the playing of the National Anthem by the Bonny Eagle Wind Ensemble, Bonny Eagle High School, West Buxton.

The journal of the previous session was read and approved.

Papers from the Senate

The Following Communication:

February 15, 1980

The Honorable Edwin H. Pert

Clerk of the House

109th Legislature

Augusta, Maine 04333

Dear Clerk Pert:

The Senate today voted to Insist and Join in a Committee on Conference on, Joint Order Relative to Lakeville Plantation, (H. P. 1811).

Respectfully,

S/MAY M. ROSS

Secretary of the Senate

The Communication was read and ordered placed on file.

Legal Affairs

RESOLVE, Authorizing Roland and Lelia Bracy of Portland to Bring a Civil Action against the State of Maine on Behalf of Their Son, Erwin G. Bracy (S. P. 758) (L. D. 1954)

Came from the Senate referred to the Committee on Legal Affairs and ordered printed.

In the House, was referred to the Committee on Legal Affairs in concurrence.

Reports of Committees

Ought to Pass in New Draft

Committee on Appropriations and Financial Affairs on Bill "An Act Establishing Expenditure Limits for Federal Funds Expended by State Departments and Agencies for the Fiscal Year Ending June 30, 1981" (Emergency) (S. P. 675) (L. D. 1773) reporting "Ought to Pass" in New Draft (S. P. 757) (L. D. 1944)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

In the House, the Report was read and accepted in concurrence, the New Draft given its first reading and assigned for second reading tomorrow.

Orders

On motion of Mr. Cox of Brewer, it was ORDERED, that Representative James Reeves of Newport be excused February 19, 1980 and for the duration of his illness.

AND BE IT FURTHER ORDERED, that Representative Donald Hall of Sangerville be excused February 15, 1980 and for the duration

of his illness.

Special Sentiment Calendar

In accordance with House Rule 56, the following Joint Orders (Expressions of Legislative Sentiment) recognizing,

The Monmouth Middle School Girls' Basketball Team, winner of the regional conference girls' basketball championship; (H. P. 1854) by Mr. Davis of Monmouth.

The Bangor High School Rams, coached by Gabby Price, won the 1979 State Class "A" Football Championship by the record-setting margin of 42-8, (S. P. 759)

There being no objections, the House Paper was passed and sent up for concurrence, and the Senate Paper was passed in concurrence.

House Reports of Committees

Ought to Pass in New Draft

Mrs. Kany from the Committee on State Government on Bill "An Act to Amend the Lobbyists Disclosure Law" (H. P. 1639) (L. D. 1748) reporting "Ought to Pass" in New Draft (H. P. 1855) (L. D. 1955)

Report was read and accepted, the New Draft read once and assigned for second reading tomorrow.

Consent Calendar

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H. P. 1662) (L. D. 1771) Bill "An Act to Establish Time Limitations for Applications for Attendance at Certain Approved Secondary Schools under the Education Laws" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-794)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 20, under listing of Second Day.

Consent Calendar

Second Day

(S. P. 654) (L. D. 1693) Bill "An Act to Provide Arthritic Drugs to Eligible Individuals under the Low Cost Drug Program" (C. "A" S-414)

(H. P. 1716) (L. D. 1822) Bill "An Act to Clarify Provisions for Fish Weirs and Clam Ordinances in Unorganized Territories" (C. "A" H-793)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was passed to be engrossed in concurrence and the House Paper was passed to be engrossed and sent up for concurrence.

Passed to Be Engrossed

Bill "An Act Pertaining to the Abandonment of Public Ways" (H. P. 1738) (L. D. 1856)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent up for concurrence.

An Act Amending the Charter of the York Sewer District (H. P. 1740) (L. D. 1858) (C. "A" H-773)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 126 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to Be Enacted

An Act Relating to Hunter Safety (H. P. 1612) (L. D. 1722) (H. "A" H-780; C. "A" H-765)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

Mr. Peterson of Caribou requested a roll call

vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Bachrach, Baker, Beaulieu, Benoit, Berry, Berube, Birt, Bordeaux, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, D.; Brown, K.C.; Carter, D.; Chonko, Churchill, Cloutier, Conary, Connolly, Cox, Curtis, Damren, Davies, Davis, Dellert, Diamond, Doukas, Dow, Dutremble, D.; Dutremble, L.; Elias, Fenlason, Fillmore, Fowlie, Gavett, Gillis, Gray, Gwadodsky, Hickey, Higgins, Hobbins, Howe, Hughes, Immonen, Jackson, Jacques, P.; Joyce, Kane, Kany, Kiesman, Lancaster, LaPlante, Lizotte, Locke, Lowe, Lund, MacEachern, Mahany, Marshall, Martin, A.; Masterman, Maxwell, McKean, McPherson, Mitchell, Morton, Nadeau, Nelson, M.; Norris, Paradis, P.; Paul, Payne, Pearson, Prescott, Reeves, P.; Rolde, Simon, Small, Sprowl, Stover, Tarbell, Theriault, Tierney, Tuttle, Vincent, Violette, Vose, Whittemore, Wyman.

NAY—Austin, Blodgett, Bowden, Brown, K.L.; Bunker, Call, Carroll, Carter, F.; Cunningham, Dexter, Drinkwater, Dudley, Garsoe, Gowen, Hanson, Huber, Hunter, Hutchings, Lewis, Lougee, MacBride, Master-ton, Matthews, McHenry, Michael, Nelson, A.; Peltier, Peterson, Rollins, Roope, Sewall, Sherburne, Silsby, Smith, Strout, Studley, Torrey, Tozier, Twitchell, Wentworth.

ABSENT—Barry, Boudreau, Carrier, Hall, Jacques, E.; Jalbert, Kelleher, Laffin, Leighton, Leonard, McMahon, McSweeney, Nelson, N.; Paradis, E.; Post, Reeves, J.; Soulas, Stetson, Wood.

Yes, 91; No, 40; Absent, 19.

The SPEAKER: Ninety-one having voted in the affirmative and forty in the negative, with nineteen being absent, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

An Act to Eliminate the Requirement for Certain Adjudicatory Proceedings before the Board of Registration in Medicine (H. P. 1642) (L. D. 1751) (C. "A" H-782)

An Act Relating to Suspension on Nonappearance under the Motor Vehicle Laws (H. P. 1644) (L. D. 1753) (C. "A" H-774)

An Act Providing for Return of Patients to Mental Health Institutions (H. P. 1683) (L. D. 1792) (C. "A" H-778)

An Act to Redefine Golf Club, under the Liquor Laws to Include Clubs with over 1,200 Yards per 9 Holes (H. P. 1688) (L. D. 1796)

An Act to Increase the Fees for the Driver Education Evaluation Program (H. P. 1691) (L. D. 1801)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

Bill "An Act to Allow the Commissioner of Marine Resources to Exercise Limited Authority over the Conservation of Atlantic Salmon" (H. P. 1630) (L. D. 1740) (C. "A" H-785)

Tabled—February 15, 1980 by Mr. Fowlie of Rockland.

Pending—Passage to be Engrossed.

On motion of Mr. Fowlie of Rockland, re-tabled pending passage to be engrossed and tomorrow assigned.

The Chair laid before the House the second tabled and today assigned matter:

An Act to Amend the Pay Schedule of Physicians to Include Actuaries (S. P. 707) (L. D. 1843)

Tabled—February 15, 1980 by Mr. Garsoe of Cumberland.

Pending—Passage to be Enacted.

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Wyman.

Mr. WYMAN: Mr. Speaker, I move the rules be suspended for the purpose of reconsideration.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Pittsfield, Mr. Wyman, that the rules be suspended for the purpose of reconsideration. This requires a two-thirds vote of all the members present and voting. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

53 having voted in the affirmative and 60 having voted in the negative, the rules were not suspended.

The SPEAKER: The pending question now before the House is on passage to be enacted. The Chair will order a vote. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Wyman of Pittsfield requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Wyman.

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: This particular bill, L. D. 1843, will permit the hiring of actuaries at the physicians' pay scale. If you will read the bill, this is basically what the bill will do, because the administration has had difficulty in hiring actuaries at the present salary range.

My objection to this particular bill is not based on the premise of what the bill is attempting to do, and that is to hire actuaries. I have heard no comment whatsoever in any of the discussions on or off the floor of this House regarding this bill to the nature that the bill is not needed or that we don't need actuaries or that we don't need to pay them more money. That is not the reason I object to the bill.

The reason I object to the bill is because, as far as I am concerned, this bill, in the way that it is drawn up and its impact, will circumvent the collective bargaining process.

The administration which proposed the bill, specifically the Governor, feels that this particular item that the bill deals with is a negotiable item. There has been some discussion as to whether this legislation will actually move the actuaries into the physicians' pay range or whether it will simply move them into a different grade. While there can be technical disagreements as to exactly what this bill does specifically, it does alter the actuaries' pay range or grade or scale or whatever term you want to use; it does affect it, it changes it to some extent. If it changes it at all, it seems to me that we ought to be very careful about passing legislation which is going to move a group of employees into a different category or classification arbitrarily without going through the collective bargaining process.

There have been some arguments raised that, well, this has never been done before and therefore this bill would not be setting a precedent. In fact, civil engineers' salary range was negotiated the last contract, so there is a prece-

dent for negotiating this type of thing at the collective bargaining table. My concern is the integrity of the collective process.

I would ask you to consider two separate issues: (1) whether we need actuaries, because I think that we do; and (2) I think the overriding issue, because we all agree on the former one, the overriding one is the latter one, that is the more important issue and the issue is whether we are going to do it this way, through the legislature, or whether we are going to permit this to go through its proper course, and that is through the collective bargaining process.

Now, if there is a question over whether this item is negotiable, ladies and gentlemen, then I don't think the legislature ought to be addressing that. I think that the Labor Relations Board should be the ones to decide whether or not this is a negotiable item. They have the expertise; they are in a position to do it.

The amendment that I hope to offer, which I realize is not debatable at this point, would have dealt with that issue. Unfortunately, we are not going to be able to discuss it because we couldn't suspend the rules. But I wanted to say on the record that this is my very grave concern, that we not set a precedent with the passage of this bill so that other groups of state employees, and there are a lot of them that would like to have their pay scales changed and their pay ranges altered, that we not set a precedent and permit or encourage other groups to come in and try to win through the legislature what they were not able to win at the table in collective bargaining.

Some of you who were in the legislature remember at that time the real fiasco we had with the Hay study, and the legislature decided to develop a collective bargaining process so we would not have to negotiate and interfere in the negotiating process. This bill will, in effect, be doing that, and for that reason, I hope you will vote against it this morning.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker and Members of the House: I would like to give you, in my words, what is transpiring here.

The bill is necessary in order to get actuaries onto the pay table where physicians are now and where physicians fit all by themselves. There are two pay tables. I believe there are Table 1 and Table 1-A, and everybody that works for the state, except physicians, is on Table 1 and physicians fit over there on Table 1-A all by themselves.

The Bureau of Insurance operates on dedicated revenue and has quite a bit of it sitting there which it wants and needs to use to increase its staff and increase the salary levels of existing positions, including this one, and this one position is the most vital, I think, of all of those that the Bureau of Insurance needs. Actuaries are mathematical whiz kids, if you will.

It takes ten years to develop full professional status. There are only about 2,000 life actuaries in the country and about 700 property casualty actuaries, and you have got to pay quite a bit in order to get one to work for the State of Maine or anywhere else.

If the bill fails, I think it is clear that we are not going to be able to put an actuary or two into the Bureau of Insurance, and I think that hurts both the insurance industry and consumers. It hurts the insurance industry because it means that their rate request increases are help up while the state goes out and contracts for actuarial services, which cost a lot more than they would if they were an on-staff actuary, and it hurts the consumer, I think, because the Bureau of Insurance, by its own admission, is not in a position to properly analyze rate increase and in fact manytimes has to take the industry's word for it, and that is not a healthy situation for a regulatory body to be in.

The bill will move the actuaries out of that Table 1 over to Table 1-A, but it won't actually

change their pay. That will take a second step that will be done administratively when the administration designates which pay range the actuary will be in. That part of the procedure will work precisely the same with or without the amendment that Mr. Wyman had hoped to put on the bill.

I hope you will support passage of this bill today because I think the need for an actuary or two in the Insurance Bureau is strong, and if the bill fails, that will be in serious jeopardy.

The SPEAKER: The Chair recognizes the gentleman from East Millinocket, Mr. Birt.

Mr. BIRT: Mr. Speaker, I move this lie on the table for one legislative day.

Whereupon, Mr. Jackson of Yarmouth requested a division.

The SPEAKER: The pending question is on the motion of the gentleman from East Millinocket, Mr. Birt, that this matter be tabled for one legislative day pending passage to be enacted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Wyman of Pittsfield requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from East Millinocket, Mr. Birt, that this matter be tabled pending passage to be enacted and tomorrow assigned. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Austin, Bachrach, Baker, Beaulieu, Berube, Birt, Blodgett, Bordeaux, Brennerman, Brodeur, Brown, A.; Brown, K. C.; Carroll, Chonko, Churchill, Cloutier, Connolly, Cox, Curtis, Davies, Diamond, Doukas, Dutremble, D.; Elias, Fowle, Gowen, Hobbins, Hughes, Kane, LaPlante, Locke, MacEachern, Mahany, Marshall, Masterman, Maxwell, McHenry, Michael, Mitchell, Norris, Paradis, P.; Paul, Pearson, Post Prescott, Reeves, P.; Rolde, Silsby, Simon, Theriault, Tierney, Tuttle, Twitcheil, Vincent, Violette, Vose, Wyman.

NAY—Aloupis, Berry, Bowden, Brannigan, Brown, D.; Brown, K. L.; Bunker, Call, Carter, D.; Carter, F.; Conary, Cunningham, Damren, Davis, Dellert, Dexter, Dow, Drinkwater, Dudley, Dutremble, L.; Fenlason, Fillmore, Garsoe, Gavett, Gillis, Gray, Gwadlosky, Hanson, Hickey, Higgins, Howe, Huber, Hunter, Hutchings, Immonen, Jackson, Jacques, P.; Joyce, Kany, Kelleher, Kiesman, Lancaster, Leighton, Lewis, Lizotte, Lougee, Lowe, Lund, MacBride, Martin, A.; Masterton, Matthews, McPherson, Morton, Nadeau, Nelson, A.; Nelson, M.; Payne, Peltier, Peterson, Rollins, Roope, Sewall, Sherburne, Small, Smith, Sprowl, Stover, Strout, Studley, Tarbell, Torrey, Tozier, Wentworth, Whitemore.

ABSENT—Barry, Benoit, Boudreau, Carrier, Hall, Jacques, E.; Jalbert, Laffin, Leonard, McKean, McMahon, McSweeney, Nelson, N.; Paradis, E.; Reeves, J.; Soulas, Stetson, Wood.

Yes, 57; No, 75; Absent, 18.

The SPEAKER: Fifty-seven having voted in the affirmative and seventy-five in the negative, with eighteen being absent, the motion does not prevail.

The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, I would like to pose a question to the Chair or anyone who may care to answer it. Does this bill contain a fiscal note and should it.

The SPEAKER: The Chair would advise the gentleman from Old Town, Mr. Pearson, and

members of the House, that at some point in the process, there was a committee amendment that was adopted as it came out of committee which contained the fiscal note. Subsequent to that, Committee Amendment "A" was killed in both bodies.

I have no idea what the history is and it does require a fiscal note. The matter then, as a result, is in violation of the rules. The matter is no longer before the body until an amendment is prepared to put on with the fiscal note.

The Chair recognizes the gentleman from Yarmouth, Mr. Jackson.

Mr. JACKSON: Mr. Speaker, the amendment was taken off with an emergency enactor. This is dedicated revenue. Does that require a fiscal note?

The SPEAKER: The Chair would answer in the affirmative, pursuant to the rules.

Thereupon, the chair, tabled the matter pending a fiscal note.

The Chair laid before the House the third tabled and today assigned matter:

An Act Relating to Maine Educational Advisory Organizations (H. P. 1646) (L. D. 1756)

Tabled—February 15, 1980 by Mr. Garsoe of Cumberland.

Pending—Passage to be Enacted.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker, Members of the House: I would like to pose a question. It appears from information that we have received this morning that this bill may also need a fiscal note and I would like to have a ruling from the Chair on that.

The SPEAKER: The Chair would like to respond to that question posed by the gentleman from Portland, Mr. Connolly. The information that the Chair has on the fiscal note request is not contained here in the material and I have no knowledge of a fiscal note being required. It has not been made known to me in this process that we have.

The Chair recognizes the gentleman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: I think when this bill was last before us, I raised some questions in terms of the potential tax impact of an organization body of the state and it seems as though, in looking at the present charter of the Maine School Management Association anyway, that because they are called a literary scientific and educational purpose is why they are organized, that they presently have a property tax exemption.

We, last year, did enact some more stringent standards with that and haven't had a chance to see whether they still would come under the property tax exemption.

However, in looking this over, it did become clear that they presently do not have a sales tax exemption. Our sales tax statutes are different than our property tax statutes and different from the income tax statutes, so presently there is no sales tax exemption for literary and scientific institutions generally. There is one for schools. This bill, because it makes them an instrumentality of the state or makes them an instrumentality of their districts and municipalities, would make them eligible for a sales tax exemption; so it seems, therefore, there should be a fiscal note on the bill.

I think it is also interesting to note that at least as far as they are organized under their charter, that no substantial part of their time should be spent in lobbying legislation.

One thing that happens once we make them an instrumentality of the state, their charter can be changed however they want. They don't necessarily have to follow the same lobbying guidelines and everything else in order to remain tax exempt. By making them an instrumentality of the state, no matter what they do, they will be able to maintain that status.

There is a conflict as far as I can see in the bill on the charter itself also, because the charter says that the property of at least the Maine School Management Association shall go to other scientific educational organizations under 501C3 of the Internal Revenue Code and this bill would have the property eventually going back to the municipalities themselves.

I think the issues that we have been raising makes me think we ought to think very clearly when we make anything an instrumentality of the state and I understand that it has already been done with a previous organization such as MMA but, you know, we can't correct all the sins of previous legislatures.

The SPEAKER: The Chair recognizes the gentleman from Monmouth, Mr. Davis.

Mr. DAVIS: Mr. Speaker, do you have the Committee Report on this bill? May we hear it please?

Thereupon, the Committee Report was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Connolly.

Mr. CONNOLLY: Mr. Speaker, based on the information that the Chairwoman of the Taxation Committee has given us that this bill would apparently grant a sales tax exemption to the Maine School Boards Association and Maine School Management Association, it would then seem that that is new information that was neither before the Chair nor before the committee and would require a fiscal note on this bill. So, based on that information, I would now ask for a ruling as to whether or not this bill would require a fiscal note?

The SPEAKER: The Chair thanks the gentleman from Portland, Mr. Connolly.

The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, I would pose a question to the gentleman from Portland, Mr. Connolly. What basis does he suggest we need a financial note on this bill? I am not aware of any obligation on the part of the legislature to compensate the sales tax exemption.

The SPEAKER: The gentleman from Cumberland, Mr. Garsoe, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Members of the House: We don't have to reimburse the sales tax and any time we grant a sales tax exemption, that is a loss to the General Fund and we, therefore, have to have a fiscal note.

On motion of Mr. Garsoe of Cumberland, tabled and tomorrow assigned.

(Off Record Remarks)

On motion of Mr. MacEachern of Lincoln, adjourned until ten o'clock tomorrow morning.