

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**

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

February 21, 1980
Senate called to order by the President.

Prayer by the Reverend David Glusker of the Green Street Methodist Church of Augusta.

Reverend GLUSKER: Let us pray! Lord God we pause in your presence as we begin the work of the day. We do so with an acknowledgment of your activity in all of the events of life. We affirm that you are always present, that you never leave us, although we may choose to turn from you.

So Lord, God as we acknowledge your presence; we seek your activity; we seek a harmony with your will. It is our prayer that each member of this Body may be close to your will and may be a participant in those kinds of activities that are in keeping with your will for all your people.

Help us to make wise decisions, to move in just and correct ways, and to be faithful and obedient to you, and to humanity. We pray these things, even as we pause in your presence. Amen.

Reading of the Journal of yesterday.

(Off Record Remarks)

Papers from the House
Non-concurrent Matter

Bill, "An Act to Authorize Cutting of Trees on State Park Lands." (H. P. 1623) (L. D. 1733)
In the House, February 12, 1980, Passed to be Engrossed as amended by House Amendment "A" (H-783).

In the Senate, February 19, 1980, Bill and Papers, Indefinitely Postponed, in non-concurrence.

Comes from the House, that Body having Insisted.

On Motion by Senator Katz of Kennebec, Tabled for 1 Legislative Day, pending Consideration.

Non-concurrent Matter

Bill, "An Act to Develop Elderly Congregate Housing in Maine." (S. P. 724) (L. D. 1873)

In the Senate, February 12, 1980, Passed to be Engrossed, as amended by Committee Amendment "A" (S-413).

In the House, February 14, 1980, Passed to be Engrossed, as amended by Committee Amendment "A", as amended by House Amendment "A" Thereto (H-789), in non-concurrence.

On Motion by Senator Katz of Kennebec, Tabled for 1 Legislative Day, pending Consideration.

Joint Order

An Expression of Legislative Sentiment recognizing:

Robert O. Wyllie, Director of the Bureau of Social Welfare, who is retiring after 25 years of faithful service to this State. (H. P. 1856)

Comes from the House, Read and Passed.

Which was Read and Passed, in concurrence.

(Off Record Remarks)

Joint Resolution
STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND EIGHTY

JOINT RESOLUTION REQUESTING THE
ATTORNEY GENERAL TO EXAMINE
THE PRICE INCREASES IN
PETROLEUM PRODUCTS

WHEREAS, the Legislature of this State is empowered by the Constitution to protect the general welfare of the citizens of Maine; and
WHEREAS, it appears that citizens of Maine

have been, during the past year, overcharged by major oil companies, for petroleum products which are a necessity of life; and

WHEREAS, the citizens of Maine feel a sense of frustration due to their apparent inability to gain recourse against this profiteering; and

WHEREAS, existing law may provide that recourse; now, therefore, be it

RESOLVED: That we, the members of the 109th Legislature on behalf of the people of the State, urge and request the Attorney General of the State to examine these recent price increases made by the major oil companies and determine whether any violations of existing law have occurred; and be it further

RESOLVED: That if, after investigation, it is determined that violations have occurred, the Attorney General take appropriate action to recover, on behalf of the citizens of the State, the maximum amount of damages or fines as restitution for these over charges, to be returned to the General Fund; and be it further

RESOLVED: That if funds are returned to the General Fund, the Legislature determine an appropriate and equitable method of returning the money to the citizens of this State; and be it further

RESOLVED: That a suitable copy of this Resolution be forwarded to the Attorney General.

Comes from the House, Read and Adopted. (H. P. 1857)

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, I move this Joint Resolution be tabled for 1 Day.

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

Senator CONLEY: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion to table this Joint Resolution for 1 Legislative Day, please rise in their places to be counted.

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

16 Senators having voted in the affirmative, and 10 Senators in the negative, the Motion to Table for 1 Legislative Day pending Adoption does prevail.

Communications
House of Representatives

February 20, 1980

Honorable May M. Ross

Secretary of the Senate

109th Legislature

Augusta, Me

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Joint Order Relative to Lakeville Plantation (H. P. 1811)

Mr. DUDLEY of Enfield

Mr. PEARSON of Old Town

Mr. CHURCHILL of Orland

Respectfully,

EDWIN H. PERT

Clerk of the House

Which was Read and Ordered Placed on File.

Senate Papers

Senator Pierce of Kennebec presented, Bill, "An Act to Extend the Period for Issuance and Coverage under the Maine Medical and Hospital Malpractice Joint Underwriting Association Act By One Year." (Emergency) (S. P. 764)

(Approved by a Majority of the Legislative Council pursuant to Joint Rule 27.)

Which was referred to the Committee on Business Legislation and Ordered Printed.

Sent down for concurrence.

Orders

Expressions of Legislative Sentiment recognizing:

Laurin Kelly, member of the Belgrade Grange for 70 years, who celebrated his 85th birthday on January 27, 1980: (S. P. 761) is presented by Senator Pierce of Kennebec (Cosponsor: Representative Damren of Belgrade).

Pam Valliere of Biddeford, who won the nationwide "Design Your Room" contest sponsored by Co-Ed Magazine: (S. P. 762) is presented by Senator Farley of York.

Kevin McKenzie, of Lawrence High School, winner of the Ray Story Memorial Award as the Pine Tree Conference's most outstanding football player, student and sportsman: (S. P. 763) is presented by Senator Teague of Somerset (Cosponsor: Representative Gwadosky of Fairfield).

Which were Read and Passed.

Sent down for concurrence.

Committee Reports
House

Ought to Pass — As Amended

The Committee on Education on Bill, "An Act to Establish Time Limitations for Applications for Attendance at Certain Approved Secondary Schools under the Education Laws." (H. P. 1662) (L. D. 1771)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-794).

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A".

Which Report was Read and Accepted, in concurrence, and the Bill Read Once. Committee Amendment "A" was Read and Adopted, in concurrence, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

The Committee on State Government on, Bill, "An Act to Amend the Lobbyists Disclosure Law." (H. P. 1639) (L. D. 1748)

Reported that the same Ought to Pass in New Draft (H. P. 1855) (L. D. 1955)

Comes from the House, the Bill, in New Draft, Passed to be Engrossed.

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

Senate

Leave to Withdraw

Senator Shute for the Committee on Legal Affairs on, Resolve, Authorizing the Town of Strong to Sue the State of Maine. (S. P. 700) (L. D. 1836)

Reported that the same be granted Leave to Withdraw.

Senator Shute for the Committee on Legal Affairs on, Resolve, Authorizing Larry R. Coffren of Strong to Bring Civil Action Against the State of Maine. (S. P. 701) (L. D. 1837)

Reported that the same be granted Leave to Withdraw.

Which Reports were Read and Accepted.

Sent down for concurrence.

Ought to Pass — As Amended

Senator Devoe for the Committee on Public Utilities on, Bill, "An Act Relating to the Provision of Telephone Equipment by Telephone Companies to the Hearing Impaired and Their Families." (S. P. 655) (L. D. 1694)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-420)

Which Report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as amended, Tomorrow Assigned for Second Reading.

Second Readers

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

House

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

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

House — As Amended

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

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

Enactors

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

An Act to Permit Participating Local Districts of the Maine State Retirement System to Amend Retirement Benefits for Policemen and Fire Fighters Prospectively. (H. P. 1665) (L. D. 1774)

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

An Act to Permit the Department of Transportation to Acquire Railroad Operating Equipment. (S. P. 666) (L. D. 1720)

On Motion by Senator Pierce of Kennebec, Tabled for 1 Legislative Day, pending Enactment.

Emergency

RESOLVE, Authorizing Execution of Leasehold Agreement Between Department of Educational and Cultural Services and the City of South Portland Establishing a Greenbelt and Public Park Area on the Southern Maine Vocational-Technical Institute Camp as Part of the Spring Point Shoreway. (S. P. 674) (L. D. 1778)

This being an emergency measure and having received the affirmative votes of 26 members of the Senate with No Senators voting in the negative 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 Chair laid before the Senate the first tabled and specially assigned matter:

HOUSE REPORT—from the Committee on Health and Institutional Services—Bill, "An Act to Provide for Licensing and Regulation of Adult Foster Homes." (H. P. 1089) (L. D. 1466) Ought to Pass in New Draft Under Same Title (H. P. 1816) (L. D. 1927)

Tabled—February 19, 1980 by Senator Katz of Kennebec.

Pending—Acceptance of Report.

On Motion by Senator Pierce of Kennebec, Retabled for 2 Legislative Days.

The Chair laid before the Senate the second tabled and specially assigned matter:

Resolution, Proposing an Amendment to the Constitution of Maine to Bring into Conformance the Year in which the House and Senate shall be Apportioned. (H. P. 1720) (L. D. 1824)

Tabled—February 20, 1980 by Senator Katz of Kennebec.

Pending—Passage to be Engrossed.

On Motion by Senator Pierce of Kennebec, Retabled for 2 Legislative Days.

The Chair laid before the Senate the third tabled and specially assigned matter:

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

Tabled—February 20, 1980 by Senator Katz of Kennebec.

Pending—Enactment.

On Motion by Senator Pierce of Kennebec, Retabled for 1 Legislative Day.

The Chair laid before the Senate the fourth tabled and specially assigned matter:

Bill, "An Act Relating to Hunter Safety." (H. P. 1612) (L. D. 1722)

Tabled—February 20, 1980 by Senator Katz of Kennebec.

Pending—Enactment.

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

Senator O'LEARY: Mr. President, I wish my seatmate, the Senator from Penobscot, Senator Devoe, were here, because he had some questions on the implications of this bill, and the complete legality of it. I know he would do a better job of the legal aspects than I.

I'm bothered, Mr. President and Members of the Senate, by the one word in this bill that says "reckless". Then it refers to reckless as being described in the criminal code. In the criminal code it says a person is guilty of reckless conduct, if he recklessly creates a substantial risk or serious bodily injury to another person.

Mr. President, when a hunter goes in the woods after a deer, the fact that he has a gun that's loaded is reckless perhaps in itself. Because there were 3 cases where they tried to prosecute and couldn't find the person guilty. When there is no proof really that the person was guilty, of the present law, they decided that well perhaps we ought to do it another way.

Mr. President, I think that this is a dangerous bill and I would move the Indefinite Postponement of it.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, moves that L. D. 1722 be Indefinitely Postponed.

Is this the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Usher.

Senator USHER: Mr. President, I oppose the pending motion, and would ask for a Division.

During the workshop of this bill in committee, a Member of the Attorney General's Office was there. He said that this conforms with the criminal code, which the Senator from Oxford, has just defined.

They had 3 or 4 cases in the past 2 years that were lost in court, on account of the definition was not in the present statutes. This would help them in their court cases. The other part of the other amendment, which is attached, reinstates the 5 years that they will have to go to get their license back, which Members of the Committee thought that we should leave in the bill.

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

Senator PRAY: Mr. President, I would like to request that the Secretary read the Committee Report.

The Committee Report Read.

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

Senator PRAY: Mr. President and Members of the Senate: As I look at the Enactor, and I look at the present statute that we have, I believe, if my interpretation is correct, that the only way that the Commissioner would have the right to revoke somebody's license is if they do kill or do wound somebody.

I would think that if we have an individual who was reckless with firearms that did endanger the safety of another hunter, then that person should also have his license revoked. It's my understanding of reading the statute that's before us, it just says that if you are not successful in shooting the hunter you still could lose your license.

The PRESIDENT: Is the Senate ready for the question?

A Division has been requested.

Will all those Senators in favor of the Indefinite Postponement of L. D. 1722, 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 17 Senators in the negative, the Motion to Indefinitely Postpone does not prevail.

Which was Passed to be Enacted.

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

Senator PRAY: Mr. President, with respect to the Senator from Oxford's persistence and perseverance in matters, I move that we reconsider this item. I would urge the Senate to vote against the motion.

The PRESIDENT: The Senator from Penobscot, Senator Pray, moves the Senate reconsider its action whereby L. D. 1722 was Passed to be Enacted.

Will all those Senators in favor of Reconsideration, please say Yes.

Will all those Senator opposed, please say No.

A Viva Voce Vote being had.

The Motion to reconsider does not prevail.

The Bill, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The Chair laid before the Senate the fifth tabled and specially assigned matter:

Bill, "An Act Providing for Return of Patients to Mental Health Institutions." (H. P. 1683) (L. D. 1792)

Tabled—February 20, 1980 by Senator Conley of Cumberland.

Pending—Enactment.

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

Senator CONLEY: Mr. President and Members of the Senate: I know that we all take the time to read Legislation, as it comes before us, but I think in particular I think it's nice to look at Legislation when it's in its final stage.

Yesterday as we were going through the Enactors, the title of this bill sort of caught my eye. I've always been very concerned with respect to the rights of individuals, in particular, the rights of those who aren't able to care for themselves.

So when I took a look at this particular title, and it said "An Act Providing for Return of Patients to Mental Health Institutions", it sort of again irked me. I just wanted to see what this bill was all about. The bill is all about nothing at all. It really says nothing, it give no powers at all to no one. So I said well what are we cluttering again the statutes up with another 2 paragraphs, that are only going to give some printing company down the road the opportunity of codifying our statutes.

Now I'm not trying to spread some levity across the Senate Floor this morning on this particular bill. If you read it, it does absolutely nothing, does absolutely nothing! It injects the word "may" in 2 paragraphs. It just seems to me that if we pass this law and we give a little confusion out there, to municipal police departments, for them to make decisions with respect to civil matters. Now it's not criminal! These are not criminal matters. We're dealing here in a civil matter.

If someone makes that decision years from now, the Legislature through it's wisdom has said, we're providing enabling Legislation that allows us to make that decision as to whether or not we want to transport someone who may have overstayed their leave at a Mental Institution by 1 day or 2 days or whatever the case, that we may now invoke the power of a police department by transporting this individual back to a mental hospital.

What happens once he gets in, or she gets in to that vehicle and something happens. Who then becomes liable for negligence on whoever's part it may be, if something seriously happens.

I'll tell you who's going to be responsible. The community is going to be held responsible. I don't believe that we should be getting into areas, again where we're just putting a carrot out there, saying go ahead. We're allowing you

if you want to, we'll allow you to make your own mind up, and make a fast decision.

Some chief of police, some patrolman on duty on a Sunday, with everybody off relaxing or something over the weekend, makes that decision, and something seriously happens. I think it's a bad piece of Legislation to allow to be incumbent by communities.

If we've gotten along this far down the road, and it's 1980, I think we should be able to get by for a few more years without passing Legislation like this.

Now I want you to know that I'm not being parochial. I look at the sponsors of this bill. The first thing that I saw again was Governor's bill on the top. I said that's nonsense. Obviously, that's nonsense. Then I looked again, they didn't get one sponsor, they'd have flooded this bill with sponsors. They would have had 151 sponsors if they could have got joint partisan sponsorship. They got 4 fine outstanding Members of my Party to sponsor this very, very important piece of Legislation.

I don't think it's worthy to be on the books. I move the Indefinite Postponement of the bill.

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

Senator GILL: Mr. President and Members of the Senate: I think one of the questions that Senator Conley raised, the question of liability and whose liability this would come under is exactly why the Governor chose to submit this bill. It would be answered once and for all, if the people at the Department of Mental Health requested the help of the local police agency, sheriff's departments to aid them in returning people to the institutions, the State would then be responsible. So it would list the liability from the different municipalities with the different sheriff's departments and the different counties.

I feel in a very unique position, being here in defense of this particular bill, that came out of Health and Institutional Committee, where I am a Member of the opposite party of the sponsors of this bill, and having my colleague here get up and want to kill the bill that comes from his party.

I think this practice has been going on. The people in Mental Health have asked the help of the various departments through the years. All this is is putting into statute the authority for them to do that. It's not changing any practice that has taken place. It's just writing in so that it will assure the proper authorization where it's placed.

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

Senator CONLEY: Mr. President and Members of the Senate: I wish to thank the good Senator from Cumberland, Senator Gill, for her remarks on this particular bill.

Again, I don't care if you want to load the statutes down with 5,000 bills every year. It's just getting a little bit ludicrous. This bill says nothing. Absolutely says nothing at all, but it does I believe, provide the potential of the very dangerous thing, later on down the road.

How many times in this Senate have we heard. Well, in fact we heard it just a few moments ago, by the previous speaker, who said well the Attorney-General's Department sat there. Nothing irritates me any more than to have somebody tell me that the Attorney General or the Commissioner of Mental Health or the Commissioner of Human Services, they are not members of the Legislature. Exercise our own common sense, and good judgement. That's what we are here for.

If we want the Commissioner of Mental Health to be sitting here in this seat, tell him to run for the Senate. I'm sure my good com-padre, Senator Danton, as always, give me the A-O.K. on measures such as this, and is supporting me again. He nods his head in the affirmative. I'm glad to have him on my side.

Honestly, it just appears to me that for us to continue to draft, upon draft, clutter up the

statutes because somebody down the road says, well, it's a good idea that we have this, makes no sense. We're not doing anything with this bill. Just read it! Again, there are 2 words in there that says, "may". Then who knows what the little Town of Freeport, once their big chief says Yea we'll take that little girl down to Augusta this afternoon for you. Something happens. Well there goes the property tax up to pay off whatever happens.

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

Senator COLLINS: Mr. President, the remarks of the good Senator from Cumberland, Senator Conley, has excited me to read the bill, and the amendment to the bill and reflect back on some of the material that has come through the Judiciary Committee in this area.

This is an era when lawsuits are proliferating against all kinds of public officials including law enforcement officials. Over in my county we have had 2 or 3 cases where people committed to mental institutions have after they got out sued everybody in sight from the selectman to the boat man to the deputy sheriff, and the game warden and so on, and having lost in the State Court went to the Federal Court.

I think probably the chief value of this bill, while the Senator may be correct that it basically reflects what people think is the law, this gets it in black and white so that some of those people who insist in returning escapees or overstayers to an institution, won't feel quite so intimidated, with the threat of lawsuit. Their authority will be, at least this much clarified. I think that does have a value in a day when many public officials are hesitant to act in doing these duties, because of these threats.

As I see it, this really isn't any different than authority of an officer to help return an escaped convict to the State Prison. This happens to be to a Mental Institution, but the people that are there are there under court commitment. It isn't as though the police were acting without any court decision in the background. The decision is in the background. It's really a modest help, but I think, a useful help to these authorities.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the Indefinite Postponement of L. D. 1792, please rise in their places to be counted.

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

6 Senators having voted in the affirmative, and 19 Senators in the negative, the Motion to Indefinitely Postpone does not prevail.

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

Senator Pray of Penobscot, was granted unanimous consent to address the Senate, On the Record.

Senator PRAY: Thank you Mr. President. Mr. President and Members of the Senate. It was just brought to my attention of the hearing schedules for next week, where we have over this week, and last week debated the reference to a number of bills to committees.

We have discussed the financial condition and the situation of the Fisheries and Wildlife Department, and I just noticed looking at the schedule that we have 8 bills scheduled for the same day in 3 different hearings.

I just think that the opportunity of public hearings to allow the general public to come in and testify on matters of their concern, and after two sessions of serving on the Fisheries and Wildlife Committee, I always found these types of hearings to have large crowds.

I just think that it really is too bad that the schedule provides that we are going to have 3 hearings throughout the State House and elsewhere on the same subject matter in reference to the revenues that go to that department,

where individuals who may want to testify on all of these matters are not going to have that opportunity.

Senator Conley of Cumberland, was granted unanimous consent to address the Senate, Off the Record.

Senator Pierce of Kennebec, was granted unanimous consent to address the Senate Off the Record.

On Motion by Senator Pierce of Kennebec, adjourned until 12 noon tomorrow.