

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Tenth
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

MAY 4, 1981 to JUNE 19, 1981

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HOUSE

Friday, June 12, 1981

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

Prayer by Senator Michael Carpenter of Aroostook.

The journal of yesterday was read and approved.

The following paper appearing on Supplement No. 2 was taken up out of order by unanimous consent:

Passed to Be Enacted

An Act Establishing the Bonding and Excess Insurance Requirements for Self-insuring Workers' Compensation Employers (H. P. 834) (L. D. 1001) (H. "A" H-562)

Was 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.

By unanimous consent, ordered sent forthwith to the Senate.

The following paper appearing on Supplement No. 1 was taken up out of order by unanimous consent:

**Passed to Be Enacted
Bond Issue**

An Act Authorizing a Bond Issue in the Amount of \$28,300,000 for the Purposes of Fostering Agricultural and Economic Development in the State of Maine (S. P. 488) (L. D. 1428) (H. "B" H-571) to C. "A" S-297)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 14 of Article IX of the Constitution, a two-thirds vote of the House being necessary, a total was taken. 91 voted in favor of same and 4 against, and accordingly the Bond Issue was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith to the Senate.

On motion by Mr. Diamond of Windham, the following matter was removed from the Unassigned Table:

SENATE DIVIDED REPORT — Majority (10) "Ought to Pass" in New Draft (S. P. 598) (L. D. 1594) — Minority (3) "Ought Not to Pass" — Committee on Judiciary on Bill, "An Act to Clarify the Status of Certain Real Estate Titles in the State" (S. P. 362) (L. D. 1061)

Tabled—May 14 by Representative Diamond of Windham.

Pending—Acceptance of either Report.

Thereupon, the Majority "Ought to Pass" Report was accepted and the New Draft read once.

Under suspension of the rules, the New Draft was read the second time.

Ms. Benoit of South Portland offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-573) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentlewoman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: Very briefly, I would like to explain this amendment which replaces the bill. The bill is An Act to Clarify the Status of Certain Real Titles in the State.

This amendment deals with submerged lands or lands that were once under water and have been filled and therefore are no longer subject to tidal action or below the actual low water mark.

Prior to the enactment of the submerged lands act, which became law on October 1, 1975, these filled in portions of the submerged or intertidal lands have been sold, leased, taxed and otherwise used in good faith by municipalities and private citizens as if they possessed full title free and clear of any encumbrances. The fact is that these filled

lands are not owned free and clear of any encumbrances.

The purpose of this legislation is to present a plan by which the State of Maine could release its interest in certain filled in portions of submerged and intertidal lands. If the state relinquishes its right to these filled lands, the lands would then be released to the owners of any such filled lands.

This amendment also provides for a declaration of such release from the state if a request for such a declaration is made to the Bureau of Public Lands. The declaration would state that that particular land is filled land and may be filed as such with the appropriate registry of deeds.

The amendment further recognizes that these filled lands have been impressed with the public trust, which gives the state an interest and responsibility in its development.

In addition, the amendment makes it clear that those portions of the submerged and intertidal lands which have been filled prior to October, 1975, are excluded from this legislation.

This is a very complex issue and it still needs more work done. We did pass an order in here yesterday which will provide that that work will be done by the Judiciary Committee. I urge you to accept this amendment.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: That is putting it very mildly, that it is a complicated bill. Yes, it is a complex bill, and this amendment will make it more complicated.

This submerged land bill has been referred to as the reverse Indian land claims bill.

I searched back through my memory to try to get some incident in American history that I could associate this with. All I could think of was the days of our youth, before World War II. Remember, and there are many of you here that will, remember how envious we were of our friends, few in number, who, prior to the great war, would go down to New York and how we waited for them to return home. What did you do in that big city? And before they got through talking, they most certainly, many of them, would say, what a deal I got down there. You know, I bought that Brooklyn Bridge for one dollar. That is about what this is. But that person from Maine, I remember how our parents went on to explain to us, it wasn't because that yokel from Maine was ignorant that he bought the Brooklyn Bridge for one dollar. Our parents would tell us, he was so honest that he felt no one would ever sell something they did not own. You know, that is the way we were brought up.

Well, here we are here today giving away something that we really don't own. They look to the Maine Constitution and they say there isn't anything in there about public trust. They went back to 1215 and looked at the Magna Carta and found nothing there. But, you know, that public trust has been there a long time. I started reading some law on it and I got back to 49 B.C. when they pushed that great lawyer Cicero out of town because he didn't agree with them. We probably should do that today to people that think we have a right to violate our public trust.

We would all like to be Santa Claus and give things away, but we have been entrusted with this land by the people. There has not been any serious problem with it. This started with the fish pier in Portland — no problems — getting 40 year leases for a dollar. The state wants that.

My big objection to this bill is really that this House should not vote on it until we go to the courts and have the brethren there tell us whether or not we can give this land away. We should know from the courts beforehand what the legislature can and cannot do. If not, we stand the risk of starting, years down the road, going through this whole thing again. Certainly

it is going to end up in the courts. There are all kinds of problems that you can see.

I will spend only a minute on the order, a study order, that study order we passed last night, I voted for it. Basically all that is going to do is take care of the whole mess of errors we got into when we passed a bill in 1975 about these submerged lands. They are trying to cure mistakes. There are going to be a lot of mistakes to cure the next time we come around. I think you have got to be honest with people.

We weren't sent up here to be Santa Claus. If legislation like this passes out of here, I would predict the next term up here we will have a bill in to give away our precious dome with Minerva on it. We have got no more right to give away Minerva than we have to give away that land.

The courts should decide the question before we move. We stand at the threshold, if we pass this bill, that every suit the state will be brought into, and you are talking dollars, many, many dollars.

Yes, there are questions that bother me, there are questions that bother the other end of the hall. There were a lot of questions that bothered my Judiciary Committee. We had perhaps 30 lawyers involved in this, some from prestigious firms. I was ashamed of some of them, they acted like vultures wanting to grab something.

I have a lot of respect for the officers of the court. I don't want them to get us in a mess. I don't want them to twist arms to have the good people of this House violate their public trust.

You know, the problems that I have with this bill, we are attempting to convey land that we don't even know where some of it is. The study order is going to try to take care of that.

A few of the questions that I have problems with, as I mentioned, it is the ownership of the land, the ocean and the great ponds. I had concern yesterday when my friend and your friend, Representative Carroll, was concerned because of that pond that separates his property and the property next door, the other farm. Somebody has been filling it in, but not on George's side. Is he going to lose his land? Some attorneys in here tell me yes. I feel sorry for George; he has been abused a lot this session.

I am concerned that the passing of this Bill will relinquish any of the claims that the state already has out there. There is so much confusion over the low water mark or the subject tidal action vested in this state, and always that public trust rises when you read this bill. How can we give away something when we don't have the authority?

I have a problem with the question, is there any distinction in the trust responsibility to the state as to lands still below the low water mark? Under circumstances, may the state convey title in fee simple to such filled lands without violating the public trust? Some pretty good attorneys tell me no, we can't.

Another question seems to be popping up whether the legislature, by enacting this L.D. gives up the public trust responsibility over portions of state-owned submerged land and intertidal lands, like conveying submerged and intertidal lands in fee, fee of public trust. The courts should tell us whether we could do these things.

The state foresees the problem, they transfer this land, abutting owners might sue one another. Again, here they would have to make the state a third party to the suit. We are really asking for a can of worms on this one.

I just feel that we have so many problems with this particular legislation that I feel the thing should go to our brethren of the Maine Supreme Court and let them give us the answers as to where we stand so we can put this submerged land to rest forever.

Mr. Speaker, I do not want to belabor this bill much longer, because I know the 8-hour seminars on this bill held in the halls yesterday and

in the majority leader's office yesterday, apparently there was no room for the young gentleman from Portland, because I wasn't invited, but that doesn't hamper me. I have got to get up here on this and I have got to tell you, when they start studying things like they studied this, it goes right back to my old refrain — there is only one study that I have ever had faith in, and that is that study of why did the chicken, cross the street. When they studied that chicken, they found that she never ever went across the street, she only walked out there to that white line and she went out there so she could lay it on the line, and that is what I want to do for you here today, lay it on the line. You have got to look at your heart on this one; there are too many unanswered questions. You can go home and say, yes, Nancy, there is still a Santa Claus, because we have been giving away the state jewels the past few days.

Mr. Speaker, I feel now that I have a duty to my people out there, and I consider them my people from Kittery to Fort Kent, and on behalf of those people, I would like to move for indefinite postponement of this bill and all its accompanying papers.

The SPEAKER: The Chair would advise the gentleman from Portland, Mr. Joyce, that his motion to indefinitely postpone will be in order after House Amendment "A" is disposed of or adopted.

The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Ladies and Gentlemen of the House: If my eyes appear a bit bloodshot and red this morning, I assure you it is not because of the late night nor is it because of sorrow that the session is ending, it is because of the smoke that has been billowing back from a couple of rows in front of me.

This is a complex issue, and it is really too bad that we have such a short time to debate this matter on the floor, but I think it is at least fair to give some historical background and give you some reasons why I think this legislation is proper, not only proper but necessary, for the continuing enjoyment of the use of property that has been used and enjoyed by people all up and down our coast and on our ponds and wetlands.

It is true, the State of Maine does own the land that is submerged. That is the land below the waters of the oceans and the great ponds. The state's ownership of these submerged lands extends all the way back to the Colonial Ordinances and the Ordinances of 1620 that give us our background of our real estate law today. The state's ownership of these submerged lands raised a problem during 1975, during the Pittston environmental licensing proceedings, and the way this problem arose was, in order for an applicant in an environmental licensing procedure to have standing, that is to have the ability to present that application, they have to show an interest in the real estate.

Pittston wanted to put in some structures on submerged lands, and obviously they had no interest in that because it was state owned. The decision that caused the problem for Pittston and other developments needing these kinds of structures required them to prove that they had a right, title or interest in the submerged lands. It was decided that the best way to solve this problem was to permit the applicants to lease those submerged lands from the state for the purposes of erecting structures. So in 1975, the 107th enacted enabling legislation which included the right to use those submerged lands on a lease basis. The bill did two things. First, it permitted the Bureau of Public Lands to grant leases or easements for structures to be erected in the future on these submerged lands. Second, the bill gave a 30 year grandfather clause for a lease or easement to people who already had structures on submerged lands on the effective date of that act.

Today, that bill raises a problem which I

don't think we ever anticipated. Throughout the state's history, Maine people have filled in submerged lands to provide a foundation for buildings, wharfs and for access to the water. Thousands of acres of valuable Maine land are actually filled land reclaimed from our rivers and ponds.

The problem confronting us today, the problem that L. D. 1061 as amended remedies, is that the 1975 enabling legislation for leases on submerged lands is now being applied by the bureau to areas that were filled years ago. The state of Maine, acting through the Bureau of Public Lands on the basis of certain opinions that it has received from the Attorney General, has asserted ownership over lands that may have been submerged 10 years ago, 50 years ago or, in some cases, 250 years ago but have been filled in over the years.

The 1975 law is being interpreted to mean that people owning these lands that they filled in and used for years and years, and have been taxed upon as if they owned them, now have only 24 years remaining on a 30 year lease. In light of this background, the problem before us today is that the people who have owned this filled land and have always believed they owned it free and clear, the state says they do not.

I think all of you, if you look at your coastal communities, if you look at communities on the lakes and the great ponds in the state, can see areas that have been filled in over the course of time. They have been filled in as a common sense solution to the commercial ventures that have gone on in those areas and for the benefit of the private landowners and for the communities. You only have to look at the areas such as the Bath Iron Works, which is almost totally on filled land, you look at Boothbay Harbor, you look at Bar Harbor, you look at Camden.

There are more than 3,000 miles of Maine coast, and unless something is done about these submerged land problems, private citizens, municipalities and the state itself can become entangled in endless litigation to determine when and under what circumstances a particular parcel of land was filled. Was the fill placed on the submerged land or the intertidal land owned by the state? Where was the original water line? If the fill is on state claimed land, is the previous owner legally responsible? What is the value for tax purposes? Should the town be taxing this property as a leasehold interest now, and if it is, isn't the landowner entitled to rebate or an abatement for the past three years? The questions arise almost as fast as the answers are sought, and the staggering thought is that the process would have to be repeated for each and every parcel up and down the coast and on every great pond.

The circumstances under which these properties were filled, in my view, doesn't really matter now; what matters is that until very recently, the owners, the municipalities and the state thought that the owners of these lands held them free and clear. These lands have been sold, they have been leased, taxed and treated in good faith by the people of this state as if the land were owned with a clear title and with a clear right to use it as they saw fit.

From all appearances, you can't tell the difference between filled in and submerged land. In many instances, records are either incomplete or non-existent. Landowners in communities with complete historical records would have an advantage. It might be possible to determine whether or not the property was filled, but in the majority of the cases, I would guess that this would be impossible.

I feel that we would be abdicating our responsibility as a legislature if we didn't resolve this problem now before it becomes worse. What is needed is a common sense solution that will avoid these paralyzing problems of these lingering state claims to filled in, submerged lands.

Agreed, we do have to balance the state's le-

gitimate interest in the public trust in coastal resources. L. D. 1061 and its amendment is a common sense approach to the problem. What it says is that if the land was filled prior to 1975, when this original statute became in effect, the state does not have a claim to that filled land, and it confirms the party's ownership in that filled land. The owners of the property would hold that property free and clear of any claimed ownership in the public trust to the extent that they were not submerged when that bill became effective in 1975.

There has been some question raised as to the authority of the legislature to do this. Let me quote to you from a law court decision in 1919 when the court spoke to this issue and it said: "Since the people, as beneficiaries, possess these public rights, the legislature, which represents the people, has the power to abridge these rights and to grant them or any portion of them to private individuals or corporations if it sees fit so to do."

I urge you to support the amendment and let's pass this bill and solve this problem.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Hickey.

Mr. HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: I think this bill is of paramount concern to many communities. Presently in our city, and for a number of years, we have been developing a waterfront parking lot adjacent to our business district. This lot was built at considerable expense to our city and fulfills a serious parking need to our community. Without any previous claim to the property by the state, land claims, it seems unconstitutional that they, at this time, should challenge the right of ownership. For many years, we have faced spring flooding costs to continue to provide parking for our citizens. At no time during this crisis has the state participated in any reconstruction of our parking lot.

I do hope the House will support the right of each community to receive the ownership of these badly needed areas they have developed over the years that are vital to the development of each community.

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

Mrs. POST: Mr. Speaker, Men and Women of the House: I certainly do support the original bill. I have some problems with the amendment, primarily with the process that it sets up that Maine citizens will have to go through in order to get confirmation, whatever that means, that they actually do own the land that they have been paying taxes on for years.

Essentially what will happen, and the burden will be on those landowners to prove that they do in fact own the land when they come to get confirmation of that fact from the Bureau of Public Lands, essentially what they will have to do is to have proof by a registered land surveyor of the land, which costs money, they will have to get an accurate legal description, which means lawyers' fees and, in addition to that, will have to pay the state \$50.

We are not talking about land which has been filled in within the last two years necessarily; what we are talking about is land that has been filled in 50 years ago, 100 years ago, and which people have been paying taxes to their community for all this time.

I can tell you the public uproar that the registration of the islands would cause in my area and that of the Maine people along the coast, particularly in my area there is a high percentage of filled land, to tell them they are going to have to get somebody to survey their land, get a legal description of it and pay \$50 if they want confirmation of the fact that they actually do own it is going to cause even more considerable uproar.

I understand that the bill doesn't say you have to get confirmation. Can you imagine the situation that Maine people are going to be in? They have no idea, really, whether that land is filled land or not filled land, so if they really

want to have peace of mind themselves and be able to really find out whether they do, in fact, own the land or whether the state does, in fact, own the land, or at some future point in time they want to prove the land was filled in before 1975, not in 1976, they really are going to have to go through that process.

While I do support the bill, we are talking about the amendment, I think we were better off with the basic premise and I have some major concerns about the process that was set up in the amendment and I would therefore ask for the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Westport, Mr. Soule.

Mr. SOULE: Mr. Speaker, Ladies and Gentlemen of the House: I think the point has to be made that the process of which Mrs. Post speaks is not mandatory. It provides a procedure whereby if the question is raised, the landowner will have an opportunity to apply to the Bureau of Public Lands, obtain a confirmation that the land was not filled after 1975, and allow for the recording of that instrument so that any future title examinations will reveal that the property was not filled subsequent to 1975.

I think it is a necessary addition to the act to give people an avenue to resolve those questions that do arise on individual parcels on a case-by-case basis. I reiterate that the act itself does confirm the title to all existing filled lands as of 1975 and that this is an optional route to confirm those problem cases that may arise from time to time.

The SPEAKER: The Chair recognizes the gentleman from Camden, Mr. O'Rourke.

Mr. O'ROURKE: Mr. Speaker, Ladies and Gentlemen of the House: I rise in support of L.D. 1594 as amended. Starting from our earliest time, even before we became a state, our forefathers encouraged the development of our state and they encouraged settlers and warehouses and sawmills, granaries and foundries along our shores, and the people did come and they filled the lands and they built docks, they built the warehouses, the granaries, the fisheries, and they occupied these lands for over 150 years. Villages grew up and big cities grew up along our shores, and down through the years people paid taxes on these lands. They paid for schools, they paid for bridges, they paid for highways, and they transferred the land freely from father to son and from business to business because they felt that they owned these lands. The cities and towns received these taxes with welcome hands and good use was made of that portion of the land because it permitted the state to prosper and become the great state that it is today.

Now the bureaucrats of our state have decided that the land no longer belongs to these people who filled it and lived on it and made good use of it for 150 years and who had conveyed it freely by deed from one to another. I am talking about land along the harbor in Portland and Rockland, in Bar Harbor, in Boothbay, in Camden and every little city and town up and down our coastline in the state, and up the great rivers that have tidal flow, the Kennebec and the Penobscot, clear up to Augusta and Hallowell and Bangor. It affects many of our island communities, North Haven, Vinalhaven, as well as the islands out in the Casco Bay.

Marginal Way in Portland is all filled land. Commercial Street in Portland is filled land from Canadian National Railway nearly the entire length of the street. In Rockland, Marine Colloids, one of the city's largest employers, is all built on filled land, not to mention their shipyard and their recently completed sewer plant. This situation is repeated over and over throughout the entire length and breadth of the coastal area. Many of these businesses have been operating for more than 150 years at these locations and they have been paying taxes all that time, and these taxes were warmly received by the cities and towns.

What and how much tax will these people be

entitled to by way of rebate if the state does own these lands? How much is the municipality going to return to these people? What will they do in the way of collecting taxes in the future? Certainly, they will be entitled to some reduced amount in years to come. How are the leases on these lands going to be handled by the state? In many of these large metropolitan areas, there are long term leases existing.

Because of this bold and I feel rather a brash unwarranted and unfounded claim that the state is making, the banks are refusing to loan money; the purchasers were refusing to buy these properties; the owners are reluctant to build. Our economy is being hurt at a time when we can least afford to have this happen to us.

I feel that our forefathers used very good judgment encouraging the settlers to come and fill this land and to treat it as their own. I think we are going to have you settle this problem once and for all and I think L.D. 1594, as amended, is designed to take care of the problem. I feel it is a good bill, it is a needed bill and it should be enacted just as soon as we can possibly do it.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor 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 before the House is on the adoption of House Amendment "A". Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Armstrong, Austin, Beaulieu, Bell, Benoit, Berube, Boisvert, Bordeaux, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, D.; Brown, K.L.; Cahill, Cahallan, Chonko, Clark, Conary, Connolly, Cox, Crowley, Damren, Davis, Day, Dexter, Diamond, G.W.; Diamond, J.N.; Dillenback, Drinkwater, Dudley, Erwin, Foster, Fowlie, Gavett, Gowen, Gwadosky, Hall, Hanson, Hickey, Higgins, H.C.; Higgins, L.M.; Holloway, Huber, Hunter, Hutchings, Ingraham, Jackson, Jacques, Jordan, Kane, Kany, Ketover, Kiesman, Kilcoyne, Lancaster, LaPlante, Lewis, Lisnik, Livesay, Locke, Lund, MacBride, MacEachern, Macomber, Mahany, Martin, H.C.; Masterman, Masterton, Matthews, McGowan, McPherson, Michaud, Mitchell, E.H.; Moholland, Murphy, Nadeau, Nelson, A.; Norton, O'Rourke, Paradis, E.; Paradis, P.; Paul, Pearson, Perkins, Perry, Peterson, Pouliot, Racine, Randall, Reeves, J.; Richard, Ridley, Roberts, Salsbury, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soulas, Soule, Stevenson, Stover, Studley, Tarbell, Telow, Theriault, Treadwell, Tuttle, Vose, Walker, Webster, Wentworth, The Speaker.

NAY—Baker, Boyce, Carroll, Davies, Fitzgerald, Gillis, Hayden, Joyce, Kelleher, McCollister, McHenry, McKean, McSweeney, Mitchell, J.; Post, Prescott, Thompson.

ABSENT—Carrier, Carter, Connors, Cunningham, Curtis, Hobbins, Jalbert, Laverriere, Manning, Martin, A.; Michael, Nelson, M.; Reeves, P.; Rolde, Strout, Swazey, Twitchell, Weymouth.

Yes, 115; No, 17; Absent, 18; Vacant, 1.

The SPEAKER: One hundred and fifteen having voted in the affirmative and seventeen in the negative, with eighteen being absent, House Amendment "A" is adopted.

At this point, the rules were suspended for the purpose of allowing the members to remove their jackets for the remainder of today's session.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, I would like to pose a question through the Chair. Where did the amendment originate? I would like to know how you found it and did you draft it yourself or who drafted it and put the amendment together for you? Just a series of questions, and why did you happen to have the amendment and why was it drafted?

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentlewoman from Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I would be happy to answer the question. I am glad that you asked it because it gives me an opportunity to explain my real position on this bill.

When this bill first came out of committee, it was a Divided Report, and I was on the "Ought Not to Pass" Report. However, this bill has been heavily lobbied both by legislators and by lobbyists. Because of that, I became concerned for the bill as it was in its original form, and I worked with Representative Soule, Representative Livesay, myself, a person from the Attorney General's Office and Representative Kane. We just kind of all came together, haphazardly, it was not planned, and we also had the Speaker's help for awhile and we put together this amendment.

It is not perfect, I will be the first to agree with you, but I felt better with this than I did with the bill. Quite frankly, I would be very happy if this bill was killed and recommitted to committee. The political reality seems to be that we do not have the votes to do that, we do not have the votes to kill it and we do not have the votes to recommit it to committee. For that reason, I worked on this amendment with others and tried to make it more acceptable to myself and perhaps to others.

Mr. KELLEHER: Mr. Speaker, I guess I didn't quite understand what you said, Ms. Benoit, it is early in the morning. You drafted this amendment, you and the legislators put the ideas together in the amendment? There was not one from the lobby that did it, no law firm did it? Is that correct?

Ms. BENOIT: Mr. Speaker, Members of the House: My friends here are telling me to tell you that it was not a person by the name of Mr. Sample.

The amendment had been, I believe, completely written before one or two lobbyists got involved and it was not changed in any substantial way at that point. I think there were one or two words that were changed and that was it.

Mr. KELLEHER: Mr. Speaker, Members of the House: I never was in the Army but they tell me that the Army and this House has one thing in common, that there are a great many rumors that fly around. You can answer this question, or any of the other distinguished authors of this amendment, but I understand a reliable, prestigious law firm in Portland made a grave error dealing with this subject matter a while back and to get themselves out of a bind, and their clients, this is only a rumor now. I could be wrong, but to get themselves out of a bind, this amendment just does that. Is that true?

Ms. BENOIT: Mr. Speaker, Members of the House: I certainly have heard that rumor. You've got me, I don't know whether it is true or not. I have asked. Of course, they deny it. I think perhaps we could ask the lobbyists exactly for whom they are working. I think there are other things involved in this too, for instance, the development that is being planned in Portland. You will have to ask them, I guess.

Mr. KELLEHER: Mr. Speaker, Members of the House: Those helpful agents that helped the five distinguished people here to draft this amendment, they wouldn't by any chance be associated with that firm that allegedly made that gravest error, Ms. Benoit?

Ms. BENOIT: Mr. Speaker, Members of the House: Yes, Mr. Kelleher, they would be, but as I said before, they did not help us write the amendment until after we had written it; then two of them came in and looked it over. Please, I hope and I believe that someone is going to make the motion to recommit this to committee, and that would make me very happy.

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

Mr. KANE: Mr. Speaker, I move that we recommit this bill and all its papers to the Committee on Judiciary.

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

Mrs. POST: Mr. Speaker, Men and Women of the House: I hope that we will oppose this motion to recommit this bill to Judiciary. This issue is here and it has to be dealt with in a timely manner. The Judiciary Committee had plenty of time to deal with this bill. The bill has been sitting here on the Unassigned Table for several weeks, if not months. The issue is causing great concern along the coast, as well as economic concerns, and I would therefore urge that you not vote to recommit this bill to Judiciary.

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

Mr. KANE: Mr. Speaker, Ladies and Gentlemen of the House: It is not often, as you may have been able to figure out, that I feel compelled to disagree with my friend, mentor, chairman, Mrs. Post, but it seems to me in this case that she is right about the Judiciary Committee having plenty of time to work on this bill. For whatever reason or reasons, they didn't.

This bill came out 9 to 4, including the chairman being opposed to it. This bill was just too big and it was going too fast and there aren't enough people in this House that understand it.

This problem has been with us since 1975 and the thing that puzzles me is, what makes the upcoming six months so different than the last six years? I don't think there are many districts, as far as percentage of the districts go, that have more filled land or submerged land than mine. We have ongoing development on filled land right now, today. It seems to me that a lot of what you hear about closed titles stopping everything colder than a mackerel is that people are blowing smoke and I don't know why.

Mr. Soule said that if we don't pass this bill, even though we don't know anything about it, we will be abdicating our responsibilities. I have to disagree with him on that. I think if we pass this bill to the other body, where I understand it has a pretty fair chance of survival, that we will have abdicated our responsibility then.

The approach to this bill after it came out, after the Divided Report, the approach that was described by Ms. Benoit as haphazard, I describe as frenzied. Everyone involved was acting as sincerely as he possibly could, but when all was said and done, and those people with whom Mr. Kelleher is so concerned had their input in the product, I just couldn't, there was no way that I could go along with this, it was out of the question.

If we do recommit this, then either the legislature or the administration will have the chance to pose questions to the Supreme Judicial Court. I don't see any reason, as I said before, why the upcoming six months is so different from the last six years. I have asked that question again and again and you hear about there was a development in Camden that just stopped. I checked with the Attorney General's Office on that and they said what happened in that case was that the developers misinterpreted the land. When they came to the AG's Office, they were told that they had and that they weren't subject to it. There was no applicability at all.

I have heard of another development that is

being hindered to some degree, but I know that the development in my district is not and I don't think that every piece of land on the coast or on the tidal waters is going to be under this cloud over the next six months if we just bide our time, recommit to the Committee on Judiciary, not Taxation, and give everybody in this legislature the option to vote on something that they know something about.

The SPEAKER: The pending question before the House is the motion of the gentleman from South Portland, Mr. Kane, that this Bill and all its accompanying papers be recommitted to the Committee on Judiciary. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

40 having voted in the affirmative and 86 in the negative, the motion did not prevail.

Thereupon, the Bill was passed to be engrossed as amended by House Amendment "A" in non-concurrence and sent up for concurrence.

On motion of Mr. Diamond of Windham, the following matter was removed from the Unassigned Table:

SENATE DIVIDED REPORT — Report "A" (9) "Ought to Pass" as Amended by Committee Amendment "A" (S-193) Report "B" (3) "Ought to Pass" as Amended by Committee Amendment "B" (S-194)

Report "C" (1) "Ought Not to Pass" — Committee on Judiciary on Bill "An Act to Clarify the Status of Certain Real Estate Easements in the State" (S. P. 224) (L. D. 611) — In Senate, Report "A" Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (S-193)

Tabled—May 13 by Representative Diamond of Windham.

Pending—Acceptance of Any Report.

Thereupon, the Bill was indefinitely postponed in non-concurrence and sent up for concurrence.

By unanimous consent, all matters acted upon were ordered sent forthwith to the Senate.

The Chair laid before the House the second item of Unfinished Business:

An Act Making Supplemental Appropriations from the General Fund for the Fiscal Years Ending June 30, 1981, June 30, 1982, and June 30, 1983 (Emergency) (S. P. 666) (L. D. 1686)

Tabled—June 9 (Till Later Today) by Representative Mitchell of Vassalboro.

Pending—Passage to be Enacted.

The pending question before the House is passage to be enacted. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of same and 16 against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith to the Senate.

The Chair laid before the House the fourth item of Unfinished Business:

An Act Establishing a Voluntary Income Protection Program for Shellfish Harvesters (H. P. 1450) (L. D. 1590) (C. "A" H-510)

— In House, Passed to be Enacted on June 9.

— In Senate, Bill and Accompanying Papers Indefinitely Postponed.

Tabled—June 11 (Till Later Today) by Representative Fowlie of Rockland.

Pending—Further Consideration.

On motion of Mr. Kelleher of Bangor, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Amend the Maine Tree Growth Tax Law" (H. P. 801) (L. D. 955) which was passed to be engrossed as amended by Committee Amendment "B" (H-547) as amended by House Amendment "A" (H-569)

thereto in the House on June 11, 1981.

Came from the Senate passed to be engrossed as amended by Committee Amendment "B" (H-547) as amended by Senate Amendment "A" (S-373) thereto in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, I move that the House recede and concur.

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

Mrs. POST: Mr. Speaker, Men and Women of the House: I think it is important that we understand or at least try to understand how difficult it is within the machinations of the tree growth tax law what we do, and I hope that we will vote against the motion to recede and concur so we can vote for the motion to adhere.

Essentially, what this Senate Amendment does is, it increases the discount factor which is how the formula, which goes into studying the value for tree growth land, goes from five percent, which the House had requested, to ten percent.

What that does, by increasing the discount factor, is that it decreases the value of tree growth land relative to the House's position. That will mean that if you accept the Senate's position, which is to recede and concur, the value of tree growth land will be less than it would be if you would go along with the House position, which is five percent. That will be that the money that your towns will be able to receive from tree growth land will go down by approximately — the difference of the value of land will be about seven percent, so if we stick with the House position, the value of the land under tree growth will be approximately seven percent higher than it will be with the Senate position and you can judge for yourself what that might mean in increased tax base in your particular communities.

As far as the reimbursement goes, if we go with the Senate position, you will get 15 cents an acre, if we stay under one of the reimbursement schemes. If we go with the House position, your town would get 17 cents an acre, so that is 2 cents an acre difference in each particular community. If your community is reimbursed by the cents per acre provision, you can judge for yourself what that might mean in reimbursement from the state level.

If your community is getting reimbursed under the more complicated formula that was in effect when tree growth went into effect, what happens is a little bit more difficult to explain. If you increase your value, that particular formula when tree growth land went into effect is based primarily on the value of your land presently compared to what the value of your land was when tree growth went into effect. You get reimbursed the difference in that, the difference in those two figures.

If you increase your value, then the reimbursement will be less but, on the other hand, the more you increase your value, the more money your town will be able to get from tax base. As the value increases, more and more towns will not be able to get reimbursement under that provision but will get reimbursement under the 17 cents an acre provision.

I think it is fair to say that if you want to be fair to the majority of the towns, both to increase their tax base, which means a lower discount factor, the five percent rather than the ten percent, and to increase the reimbursement, which is 15 cents to 17 cents on the cents per acre basis, then you will stick with the House Amendment. Now, if that isn't as clear as mud, I don't know how to make it any clearer, because it is very difficult to tell you how it would affect any particular town. There is no question, if you are on a cents per acre reimbursement, you will get more money under the house Amendment than you will under the

Senate Amendment. If you are under the old system, it is still very likely that you will be helped more by the House Amendment than you will by the Senate Amendment. I am not sure of my figures, but it seems to me about 60 percent of the communities, and if anybody has the exact figures, I would be glad to have them use them — about 60 percent of the communities in the state are reimbursed under the percent per acre rather than the old system.

The SPEAKER: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, Members of the House: What they are trying to do is make a bad bill a little better with the amendment that the other body put on it yesterday. The amendment isn't better, but you are not going to get the 5 percent. No way in heaven do I see that they are going to budge on that.

We have come a long way on this already. The amendment as presented to you, you have made a great deal of progress in the discount factor already, from 20 percent down to 10 percent, so that is a step in the right direction. We have also made stipulations in this amendment that show you have to have definite programming in order to ready yourself to become eligible underneath the tree growth act. I assure you that this is about the last I want of fiddling around with this. If this doesn't work, I will assure you that next time it comes around, we will do something to really and truly fix it, get rid of the whole thing.

I would ask you to go along with recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, Members of the House: I think it is accurate to say that what we are facing here is a choice of trying to make a bad bill as good as possible. One of the ways to think about this bill is that with the Senate Amendment we might not be making a bad bill better, but we may be making a difficult situation impossible for some communities. One of the effects, in general, of the Senate Amendment would be to take the towns, particularly the smaller towns in Androscoggin County and coastal towns, who are facing a loss of that reimbursement, which is the figure that most of the people in the towns care most about, and increasing that loss. That would be the effect of this kind of amendment. That is the choice that we have before us today.

The House Amendment hurts some and helps some, but the harm to those people in Androscoggin County and along the coast is lessened by the House Amendment.

The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, Ladies and Gentlemen of the House: For two days we have been going around on tree growth and I am sure that now everybody is totally confused. I would like to add a little more confusion to the problem.

I would like to support completely the recede and concur motion but I would also like to give you a little bit of information which hasn't been given to you, that has been very misleading. One reason why the people in Androscoggin County who are not going to receive reimbursement under tree growth has absolutely nothing to do with the bill that is before us now or the bill that was before us last night. That is very misleading the way the chairman of the committee represented it.

In 1980-81, the way the stumpage rate was established in Androscoggin County, it was a 61 percent increase; in Oxford County, it was a 43 percent increase; and in York County, it was a 47 percent increase. If you understood the formula and you can plug that in with the discount factor and all the other material, that is why those people in a lot of those counties that were brought out last night were not going to receive reimbursement. It has nothing to do with the bill that was before us. It is already law: we

passed that a year ago.

The bill that is before us today, the amendment in the Senate cleans up the bill a little bit. It is still a tragedy what we are trying to do, but it does clean up the bill a little bit. You can't take your total acreage and multiply it by 17 cents. The formula is much more complicated than that, so with all the computer sheets running around here, don't accept that as fact because it is untrue. You have to take into consideration your school subsidies, the valuation, how many areas are in tree growth and it is a very complex formula to figure out.

The amendment that is coming back from the Senate cleans up the bill a little bit. It makes it a lot more acceptable for the entire state.

Another thing that I would like to point out is the fact that in the Part I Budget that we already passed, there is \$600,000 which is the limit, it is going to cover the tree growth reimbursement, so that is supposed to be divided upon among the towns which are most severely hurt. They are really feeling more than a 3 percent tax shift and I urge you to support Mr. Hall's motion to recede and concur.

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

Mrs. POST: Mr. Speaker, Men and Women of the House: I would like to respond to a couple of comments that the gentlelady made which were simply inaccurate.

You want to take the situation of Androscoggin County, we have two systems of reimbursement; stumpage values, capitalization rates, discount values, and other of the sections that go into the formula of studying the value of tree growth land have absolutely nothing to do with the present system of reimbursement if you are reimbursed under the cents per acre program, absolutely nothing. The tree growth value could go to \$500 if you want to, and if you are getting reimbursed under the cents per acre, you can still get that reimbursement.

You want to take the situation in Androscoggin County, such as Minot, since that was brought up last night, under the cents per acre system, they would get \$1,240 on the 11 cents per acre. Increases in stumpage value under either bill that we discussed last night would not have any effect on that. Under the original Committee Amendment "A" which was discussed last night, Minot would not have gotten any reimbursement because of the provision that said you could only get reimbursement if it was over 3 percent of the tax shift. With the situation as far as Minot goes, right now, since Committee Amendment "A" is away from us, is whether or not for the 11,276 acres which they had in 1980, and it is very likely that we are talking about a higher number of acres at the present time, whether they will get 15 cents an acre or whether that town will get 17 cents an acre. Under the House Amendment, they would get 17 cents an acre. Under the House Amendment they would get 17 cents; under the Senate Amendment they would get 15 cents an acre.

The 7 percent, if you want to take a look again at the town of Minot, they have a tree growth value right now of \$619,477, that is their value of tree growth land. Under both the House Amendment and the Senate Amendment, that value will go up. It will go up because of changes we have made. When stumpage values are set, it will also go up because the discount factor in both bills has been reduced and the discount factor when you figure that you have so much value, you can subtract from the land and then you discount part of it. The discount factor in the Senate bill is 10 percent and you discount the value by 10 percent. The discount factor in the House Amendment is 5 percent; you discount the value by 5 percent.

In talking with the Bureau of Taxation, when I asked them, what will be the overall difference be the value of the land itself that Minot will be able to tax, their response to me last

night was the difference between the discount of 5 percent and 10 percent will be about 7 percent in value. So the difference for Minot, whether or not you accept the Senate Amendment or House Amendment, is that the value of the land that Minot will be able to tax that is presently under tree growth will be 7 percent greater if we stick with the House position. If you go with the Senate position, it will be 7 percent less than what it would have been if we had gone with the House position. Under either bill, it will be higher than what it is presently.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I think the House voted quite clearly 101 to 37 yesterday to support the House Amendment; therefore, I hope that we do not recede and concur but adhere.

The SPEAKER: The Chair recognizes the gentleman from Island Falls, Mr. Smith.

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: The tree growth tax law is a very complex issue and I am not going to stand here and say that I fully understand it but I do know that we need a change. This is the best that we can get at this time and I say to you that a half a loaf is better than none.

I hope that you accept the motion to recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Milo, Mr. Masterman.

Mr. MASTERMAN: Mr. Speaker, Ladies and Gentlemen of the House: I think each one of us had our little bit to say on tree growth and as we have said it, I have sat here and listened and realized that each one of us come from a unique district and were demonstrating self-interest. I don't think there is any harm in that. Each one of us is interested in our own area.

I think we should back away from that for a minute and consider why we are here. I tell my people back home and some of them don't agree with me — I said, my number one priority is representing the state of Maine, number two, the people in my district. I am going to do that this morning. I haven't gotten what I wanted. There are going to be a lot of us in here that don't get what we want, but I want to keep the tree growth concept and keep trees growing in Maine, our number one industry.

I hope you will join with me this morning. I am going to recede and concur, I am going to vote with Mr. Hall this morning and hope that many of you will do the same.

The SPEAKER: The Chair recognizes the gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, Ladies and Gentlemen of the House: One last word of warning — here we are on the second day, half past ten, we are all getting kind of weary and tired. Let me just say this to you, if you have seen the facts, you have seen what is going on the last three or four days and what I am very much afraid of is that if we don't do this, we are going to go out of here with the same thing we had last year.

This is a step in the right direction. It is not all that we hoped for. The thing I would hope to get, as I said before, is to get rid of the whole thing, but you are not going to be able to do that now, we haven't got that much time.

Mr. Speaker, when the vote is taken, I would like to have the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from Sangerville, Mr. Hall.

Isn't it a fact that if we recede and concur with the Senate, that Piscataquis County will do quite well in this amendment?

The SPEAKER: The gentleman from Enfield, Mr. Dudley, has posed a question through the Chair to the gentleman from Sangerville, Mr. Hall, who may respond if he so desires.

The Chair recognizes that gentleman.

Mr. HALL: Mr. Speaker, Members of the

House: As a matter of fact, Mr. Dudley, had we gone with Amendment "A", Piscataquis would have done very well, but going this way, we don't make out any better than any other of my towns.

The SPEAKER: A roll call has been requested. 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 Sangerville, Mr. Hall, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Armstrong, Austin, Baker, Beaulieu, Bell, Benoit, Berube, Boisvert, Bordeaux, Boyce, Brannigan, Brennerman, Brown, A.; Brown, D.; Brown, K. L.; Cahill, Callahan, Carroll, Chonko, Clark, Conary, Connors, Connolly, Cox, Crowley, Curtis, Damren, Davies, Davis, Day, Dexter, Diamond, G. W.; Diamond, J. N.; Dillenback, Drinkwater, Erwin, Fitzgerald, Foster, Fowlie, Gavett, Gillis, Gowen, Gwadosky, Hall, Hickey, Higgins, H. C.; Higgins, L. M.; Hobbins, Holloway, Hunter, Hutchings, Ingraham, Jackson, Jacques, Jordan, Joyce, Kany, Ketover, Kiesman, Lancaster, Lisnik, Livesay, Locke, Lund, MacBride, MacEachern, Macomber, Mahany, Martin, H. C.; Masterman, Masterton, Matthews, McCollister, McGowan, McKean, McPherson, McSweeney, Michaud, Mitchell, E. H.; Moholland, Nelson, A.; Nelson, M.; Norton, O'Rourke, Paradis, E.; Paradis, P.; Paul, Pearson, Perkins, Perry, Peterson, Pouliot, Prescott, Racine, Randall, Reeves, J.; Reeves, P.; Richard, Ridley, Roberts, Salisbury, Sherburne, Small, Smith, C. B.; Smith, C. W.; Soulas, Soule, Stevenson, Stover, Studley, Tarbell, Telow, Theriault, Thompson, Treadwell, Tuttle, Walker, Webster, Wentworth.

NAY — Brodeur, Dudley, Hanson, Hayden, Kane, Kilcoyne, LaPlante, Laverriere, Lewis, McHenry, Mitchell, J.; Murphy, Nadeau, Post, Vose.

ABSENT — Carrier, Carter, Cunningham, Huber, Jalbert, Kelleher, Manning, Martin, A.; Michael, Rolde, Strout, Swazey, Twitchell, Weymouth, The Speaker.

Yes, 120; No, 15; Absent, 15; Vacant, 1.

The SPEAKER: One hundred twenty having voted in the affirmative and fifteen in the negative, with fifteen being absent, the motion does prevail.

House at Ease

Called to order by the Speaker.

On motion of Mr. Diamond of Windham, the following matter was removed from the Unassigned Table:

HOUSE DIVIDED REPORT — Majority (7) "Ought Not to Pass" — Minority (6) "Ought to Pass" in New Draft (H. P. 1517) (L. D. 1630) — Committee on Labor on Bill "An Act Relating to Self-insurance under the Workers' Compensation Act" (H. P. 821) (L. D. 975)

Tabled—May 21 by Representative Diamond of Windham.

Pending—Acceptance of Either Report.

Thereupon, the Bill was indefinitely postponed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers were taken up out of order by unanimous consent:

Non-Concurrent Matter

Bill "An Act to Clarify the Status of Certain Real Estate Easements in the State (S. P. 224)

(L. D. 611) on which the Bill and Accompanying Papers were Indefinitely Postponed in the House on June 12, 1981.

Came from the Senate with that Body having Adhered to its previous action whereby Report "A" was read and accepted and the Bill was Passed to be Engrossed as amended by Committee Amendment "A" (S-193) in non-concurrence.

In the House: The House voted to adhere.

By unanimous consent, ordered sent forthwith to the Senate.

Special Sentiment Calendar

Recognizing:

The Reverend John W. Neff, pastor of the Orono United Methodist Church, and Mrs. John W. Neff, for 13 years of dedicated service to the people of Orono (S. P. 699)

There being no objections, the above item was considered passed in concurrence.

On motion of Mrs. Mitchell of Vassalboro, Adjourned until Friday, June 19, at nine-thirty in the morning.