

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Tenth

Legislature

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

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FOURTH SPECIAL SESSION

April 28, 1982 and April 29, 1982

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FIFTH SPECIAL SESSION

May 13, 1982

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SECOND CONFIRMATION SESSION

July 16, 1982

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HOUSE

Wednesday, March 3, 1982

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

Prayer by the Reverend William Menshausen of the Seventh Day Adventist Church, Norridgewock.

The journal of yesterday was read and approved.

Orders

On motion of Representative McSweeney of Old Orchard Beach, it was

ORDERED, that Representative Sharon B. Benoit of South Portland be excused March 3 through March 12 for personal reasons.

Special Sentiment Calendar

In accordance with House Rule 56, the following items (Expressions of Legislative Sentiment) Recognizing:

Steve Averill, of Bangor, who has been named to the 1981 Maine Class AA All-State Football Team; (H. P. 2125) by Representative Diamond of Bangor. (Cosponsors: Representatives Kelleher of Bangor, Tarbell of Bangor and Senator Trotzky of Penobscot)

The Eagles, of Lincoln Academy, and coach Dan Pinkham winners of the Girls' Class B Basketball Championship for the academic year 1981 - 1982; (S. P. 899)

Elinor Multer, of Orr's Island, who has been appointed to the Maine Civil Rights Advisory Committee by the United States Commission on Civil Rights; (S. P. 898)

Charleen Chase, of Norway, who has been named Outstanding Woman of the Year for 1982; (H. P. 2126) by Representative Bell of Paris. (Cosponsors: Senator Sutton of Oxford, Representatives Jackson of Harrison and Twitchell of Norway)

Chief Warrant Officer Dennis J. Small, of Brownville Junction, who saved the life of a 5-year-old boy from drowning at Fort Campbell, Kentucky; (H. P. 2130) by Representative Masterman of Milo. (Cosponsor: Senator Pray of Penobscot)

The Cougars of Dirigo High School and Coach Robin Marshall, who have won the State Class C Boys' Basketball Championship for the 1981-1982 academic year; (H. P. 2132) by Representative Armstrong of Wilton. (Cosponsor: Representative McCollister of Canton)

Mrs. Geraldine Deering, of Hartland, Department President of the American Legion Auxiliary of Maine, for her good work and service to Maine and the Nation (H. P. 2133) by Representative McGowan of Pittsfield. (Cosponsor: Representative Kany of Waterville)

There being no objections, these items were considered passed in concurrence or sent up for concurrence.

House Reports of Committees**Leave to Withdraw**

Representative Twitchell from the Committee on Taxation on Bill "An Act to Restore a Property Tax Exemption Previously Granted to the American Red Cross" (H. P. 1797) (L. D. 1787) reported "Leave to Withdraw"

Report was read.

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

Mr. JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: I will explain this briefly and then I have an opinion to read from the Attorney General's Office and a couple of comments I would like to make of my own.

In the 109th Legislature, the Taxation Committee did a study and made an attempt to pull together a lot of the tax exempt organizations in the State. The bill that was turned out was L.D. 855.

In the Statement of Fact of that bill, in the first paragraph of it they said, "This legislation is the result of the Joint Standing Committee on Taxation's Report on certain property tax

exemptions pursuant to Title 1, Chapter 31, and provides the following." Then you skip down a couple lines and it specifically says: "This bill repeals the specific tax exemption for the Red Cross. The Red Cross will still be eligible for tax exemption as a benevolent and charitable institution."

The problem that we got into here was that the Red Cross is chartered under the federal government, it isn't chartered under the state, and therefore a loophole was created and made the Red Cross taxable in the State of Maine, although with some fear that it might be.

The bill was put in, L. D. 1787, to correct this. As some of you may be aware, there has been a series of problems when you get into trying to tax exempt things and the state having to pay back 50 percent to the towns, and so an Attorney General's opinion was sought on this trying to clarify where the Red Cross stood on this, and I will read this opinion into the record. The opinion was submitted February 16, 1982, to me from James Tierney, the Attorney General.

"Dear Representative Jackson: You have asked for an opinion of the Attorney General as to whether the American National Red Cross is exempt from property taxation in the State of Maine under 36 M.R.S.A. § 651(1)(A). We are of the opinion that the Red Cross is exempt.

Section 651 of Title 36 provides that

651. Public property

The following public property is exempt from taxation:

1. Public property.

A. The property of the United States so far as the taxation of such property is prohibited under the Constitution and laws of the United States.

"The United States Constitution prohibits the taxation by states of the property of the United States government. Equally well settled is that property of instrumentalities of the federal government, such as national banks, is immune from state taxation. *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316 (1819).

"The United States Supreme Court held in *Dept. of Employment v. United States*, 385 U.S. 355 (1966), that the American National Red Cross was a tax-immune federal instrumentality. The organization was chartered by Congress, and it is subject to considerable government supervision. The officers of the Red Cross are appointed by the President. The organization must undergo a regular audit by the Defense Department. The Red Cross assists the Armed Forces in a wide variety of functions, and aids the government in providing disaster assistance to the states. See 36 U.S.C. § 1 et seq. The traditional view of the status of the Red Cross was expressed by the Justice Fortas as follows:

... [T]ime and time again, both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the Government. *Id.* at 359-360.

"Since the Supreme Court has held that the Red Cross is constitutionally immune from state taxation, and Congress has passed no law waiving the Red Cross's property tax immunity, it is our opinion that the property of the Red Cross is exempt from property tax in Maine by virtue of 36 M.R.S.A. § 651(1)(A) and the United States Constitution.

"Insofar as our answer eliminates the necessity of enacting L. D. 1787, we need not address whether the intent of the Legislature expressed in the statement of fact of L. D. 855 of the 109th Legislature would render the reimbursement requirement in art. IV, pt. 3d, § 21 of the Maine Constitution inapplicable if L.D. 1787 were enacted. Please do not hesitate to contact this office if we may be of further assistance."

Sincerely,

S/JAMES E. TIERNEY

Attorney General

I thank you for bearing with me while I read this into the record. It is important that this be done and the bill will then be dropped and this

will give the protection to the Red Cross under it.

There is one further comment I want to make, and this is something that I have been aware of as time goes on. In the nine years that I have sat in this body, the debate on the floor and the things given on the floor have become more and more a question of record and more and more the courts have used these in interpreting what we have intended to do in passing laws. This trend is growing and I think it is an important one, and I think in our debate on the floor we should keep this in mind. What is said here is being used more and more to interpret the laws, far more, certainly, than it was nine years ago.

Thereupon, the Report was accepted and sent up for concurrence.

Consent Calendar**First Day**

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

(H. P. 2075) (L. D. 2018) Bill "An Act Relating to Maintenance and Snow Removal in Compact Areas" (Emergency)—Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-620)

(H. P. 1825) (L. D. 1807) Bill "An Act to Authorize Governmental Entities to Provide Self-insurance"—Committee on Business Legislation reporting "Ought to Pass"

(H. P. 1735) (L. D. 1720) Bill "An Act to Clarify Certain Provisions of the Public Advocates Statutes"—Committee on Public Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-621)

(H. P. 1990) (L. D. 1966) Bill "An Act to Reduce Discrimination by Allowing Employees of Local Districts which Participate in the Social Security System the Option of Withdrawal from the Maine State Retirement System"—Committee on Aging, Retirement and Veterans reporting "Ought to Pass"

No objections being noted, the above items were ordered to appear on the Consent Calendar of March 4, under listing of Second Day.

Passed to Be Engrossed**Amended Bill**

Bill "An Act Relating to Guide Dogs for Handicapped Persons" (S. P. 765) (L. D. 1823) (S. "A" S-393 to C. "A" S-390)

Was reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was passed to be engrossed as amended in concurrence.

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

Emergency Measure**Tabled Unassigned**

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Waldo County for the Year 1982 (H. P. 2103) (L. D. 2026)

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

On motion of Mrs. Mitchell of Vassalboro, tabled unassigned pending passage to be enacted.

Passed to Be Enacted

An Act to Clarify Variable Rate Disclosures in the Maine Consumer Credit Code (H. P. 1752) (L. 1742) (C. "A" H-595)

Finally Passed

RESOLVE, Authorizing the Maine Forest Service to Convey by Bid Sale of the State's Interest in Certain Real Estate in the Maine Forestry District and to Use the Proceeds for Energy-saving Improvements to Other Existing Fire Control Buildings (H. P. 1922) (L. D. 1904) (C. "A" H-609)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed,

the Bill passed to be enacted and the Resolve finally passed, signed by the Speaker and sent to the Senate.

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

Bill "An Act to Provide for the Storage and Disposal of Illegal and Obsolete Pesticides and Handling Empty Pesticides Containers" (Emergency) (S. P. 905) (L. D. 2047)

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

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

Later Today Assigned

Bill "An Act to Provide Equal Access to Justice" (S. P. 902) (L. D. 2046)

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

On motion of Mrs. Kany of Waterville, tabled pending reference and later today assigned.

(Off Record Remarks)

By unanimous consent, unless previous notice was given to the Clerk of the House by some member of his or her intention to move reconsideration, the Clerk was authorized today to send to the Senate, thirty minutes after the House recessed, all matters that required Senate concurrence.

On motion of Mr. Clark of Millinocket,
Recessed until four thirty in the afternoon.

After Recess 4:30 p.m.

The House was called to order by the Speaker.

The following papers appearing on Supplement No. 3 were taken up out of order by unanimous consent:

Consent Calendar First Day

(S. P. 746) (L. D. 1749) Bill "An Act to Provide the Districts Courts with Concurrent Jurisdiction Over Mechanics Lien Actions"—Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (S-394)

(H. P. 1904) (L. D. 1889) Bill "An Act to Repeal the Maine Bid Preference Law"—Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-624)

(H. P. 1843) (L. D. 1838) Bill "An Act Relating to the Publication of a Consolidated Map of the State" (Emergency)—Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-623)

No objections having been noted, the above items were ordered to appear on the Consent Calendar of March 4, under the listing of Second Day.

The following papers appearing on Supplement No. 4 were taken up out of order by unanimous consent:

House Reports of Committees Leave to Withdraw

Representative Soule from the Committee on Judiciary on Bill "An Act Concerning Negotiating a Worthless Instrument" (H. P. 1881) (L. D. 1874) reporting "Leave to Withdraw"

Report was read and accepted and sent up for concurrence.

Representative Roberts from the Committee on Local and County Government on Bill "An Act Concerning Reimbursement of Salaries of Persons Attending the Maine Criminal Justice Academy" (H. P. 1883) (L. D. 1876) reporting "Leave to Withdraw"

Report was read.

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Crowley.

Mr. CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: This bill, An Act Concerning the Reimbursing of Salaries of Persons Attending the Maine Criminal Justice Academy" became a legislative document because two of the communities in my district asked for a little help. I thought that before letting this thing die a natural death here, I would just give you some of the thoughts that I had pertaining to this and what is happening in the State of Maine and what we don't want to happen. I think all 184 of the legislators probably ran on a ticket saying that we will not pass any of these bills down on the property taxpayer.

This particular academy is a good academy, doing good work, but, for example, in 1977, they raised the training from two weeks to twelve weeks. This change from two weeks to twelve weeks cost the property taxpayers \$240,000 plus, and I think these are the things we have to be looking out for, because at the time they made these changes, we had the LEAP programs, the Law Enforcement Assistance Programs, and we also had CETA programs, so we were faked into this thing and now our property taxpayers are having to pick up this bill and maybe this is one of the reasons that we only have 80 police forces in 490 towns in Maine.

Thereupon, the Report was accepted and sent up for concurrence.

The following papers appearing on Supplement No. 5 were taken up out of order by unanimous consent:

Petitions, Bills and Resolves Requiring Reference

Bill "An Act to Revise the Term of Appointment of Legislative Directors and Officers" (H. P. 2143) (Presented by Representative Martin of Eagle Lake) (Cosponsor: Senator Sewall of Penobscot) (Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 27)

Bill "An Act to Authorize the Repair, Maintenance and Improvement of the Building and Grounds of the Statehouse" (H. P. 2144) (Presented by Representative Lund of Augusta) (Cosponsors: Representative Hickey of Augusta, Senators Clark of Cumberland and Ault of Kennebec) (Approved for introduction by the Legislative Council pursuant to Joint Rule 26)

Were referred to the Committee on State Government, ordered printed and sent up for concurrence.

The following paper appearing on Supplement No. 6 was taken up out of order by unanimous consent:

The following Communication: (S. P. 907)

State of Maine
Senate Chamber
President's Office
Augusta, Maine 04333

March 2, 1982

Honorable David R. Ault

Honorable Judy C. Kany

Chairmen

Joint Standing Committee on State Government

State House

Augusta, Maine 04333

Dear Committee Chairmen:

Please be advised that Governor Joseph E. Brennan is renominating Cythia Murray-Belliveau of Augusta for appointment to the State Personnel Board.

Pursuant to Title 5 MRSA Section 591, this nomination will require review by the Joint Standing Committee on State Government and confirmation by the Senate.

Sincerely,

S/JOSEPH SEWALL

President of the Senate

S/JOHN L. MARTIN

Speaker of the House

Came from the Senate read and referred to the Committee on State Government.

In the House, the Communication was read and referred to the Committee on State Government in concurrence.

The following paper appearing on Supplement No. 7 was taken up out of order by unanimous consent:

Consent Calendar First Day

(H. P. 1921) (L. D. 1903) Bill "An Act Relating to the Compensation of Public Utilities Commissioners"—Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-626)

No objections having been noted, the above item was ordered to appear on the Consent Calendar of March 4, under the listing of Second Day.

Orders of the Day

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

Bill, "An Act to Require the Towing of Unauthorized Vehicles from Parking Areas Designated for Handicapped Persons' Vehicles" (H. P. 1819) (L. D. 1804) (C. "A" H-613)

Tabled—March 1 by Representative Carroll of Limerick.

Pending—Passage to be Engrossed.

On motion of Mr. Carroll of Limerick, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" was adopted.

The same gentleman offered House Amendment "B" to Committee Amendment "A" and moved its adoption.

House Amendment "B" to Committee Amendment "A" (H-622) was read by the Clerk and adopted.

Mr. Racine of Biddeford offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-619) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: The reason why I introduced House Amendment "A" was to provide municipalities and owners of private off-street parking an opportunity to enter into agreements whereby unauthorized vehicles using handicapped spaces would be tagged.

This has been a tremendous problem in the past. There is no enforcement requirement or opportunities for municipal government to enforce the no-parking or the handicapped parking violations that are occurring in our off-street parking, and I am making specific reference to shopping centers.

The original bill that was submitted included a towing requirement. It mandated that vehicles that were parked either in public parking lots or private would be towed at the owner's expense. At the committee hearing, it was felt that this measure was too restrictive, and as a result of it, Committee Amendment "A" provided that municipalities could provide on-street parking and establish a maximum fine of \$25. In most municipalities, this could be adopted by local ordinance. However, the problem with off-street parking is that it is private property and your local officials have no authority to enter and tag vehicles that are violating the handicapped parking areas.

The statute is silent in this matter. The only thing that the statutes now call for, Title 5, Section 4593, specifies that any building that is remodeled with funds that exceeds the amount of \$250,000 will be made accessible to the handicapped and the accessibility is based on curbing, entrances, restrooms and making drinking fountains available within reach of those who are in wheelchairs.

The American National Standard Institute, which covers specifications for making buildings and facilities accessible and usable by physically handicapped people specifies that when federal funds are used by municipalities, they shall provide parking space for physically handicapped persons. These spaces must be located on the shortest possible accessible circulation route to the entrance of a building.

I believe owners of private off-street parking areas provide parking spaces for physically handicapped persons because they are sensitive to the needs of their disadvantaged customers, not because they have to but because they feel there is a need for it.

Since there is no legal authority to enforce illegal parking on off-street parking, we have chronic abusers, and those chronic abusers are those that are inconsiderate, selfish and feel that they have special parking areas that have been designated for them to use. There is no violation, there is no penalty, there is no fine, so they use that as a private parking area.

The amendment authorizes municipalities, if they have the resources, manpower and capability, to enter into an agreement with owners of private off-street. It is not a mandatory requirement but it is permissive. If owners of private off-street parking areas are sensitive towards their handicapped patrons, they will now have a tool whereby they can seek assistance from municipal officials who, in turn, may either accept or reject the offer depending on their capability to provide the service. This tool is needed to protect those that cannot protect themselves against those who constantly abuse the rights of others.

Thereupon, House Amendment "A" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendments "A" and "B" thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" as amended by House Amendments "A" and "B" thereto and sent up for concurrence.

The Chair laid before the House the following matter:

Bill "An Act to Provide Equal Access to Justice" (S. P. 902) (L. D. 2046) which was tabled earlier in the day and later today assigned pending reference in concurrence. (In Senate, referred to Committee on Judiciary)

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker, I would like to pose a question to the Chair. Is this bill in violation of Joint Rule 37 and Joint Rule 4?

The SPEAKER: The Chair would advise the gentlewoman from Vassalboro, Mrs. Mitchell, and members of the House that L.D. 2046 is in violation of Joint Rule 4 and Joint Rule 37, that bill being identical, word for word, as L.D. 1323, S.P. 467, Bill "An Act to Provide Equal Access to Justice for Small Business," introduced in the last legislative session on March 17, 1981. The bill is improperly before this body and the Chair rules that it be returned to the other body.

(Off Record Remarks)

On motion of Mrs. Post of Owl's Head,
Adjourned until nine thirty tomorrow morning.