

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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SECOND CONFIRMATION SESSION

July 16, 1982

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Yes, it was in Research for one month — how many people here have gone to find out where your bills are, what has happened to your bills or what is in Research, it is here and there — the Cumberland County Budget, which was finalized February 19th, is still somewhere in a machine someplace and you can go and ask where it is — why are you penalizing the intent of this bill because we don't have enough staff to do what we need to do when we need to do it?

I am very sorry that this committee has these bills late — we all have bills late — our very own committee is having a hearing on Thursday. Because it is inconvenient for this particular committee, are you saying that the people of the state of Maine should be denied the right to decide on this issue?

I know what is going to happen to this bill when it sits on the Appropriations Table, you can hear it from the Chair right now, but give it a chance. I am sorry that it was in there for a month. How much more can you do except call up and say, where is it, where is it?

Why the Department of Human Services didn't know about this bill is beyond me since we had three people from that department serving on our boarding home study. Let's be fair.

You are right, Representative Pearson, let's be fair, let us reconsider this and let's deal with it the way it should be done. We have a responsibility here and the responsibility goes beyond what is best or in the best interest of a particular committee.

We are talking about the people and the people that this bill, hopefully, if it is funded, will serve. That is what we are talking about here today and that is what we need to vote on.

I urge you to please allow us to reconsider this.

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

MR. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I served on this boarding home study group and I can appreciate the frustrations and the concerns of the good gentlelady from Portland, Mrs. Nelson, but I wholeheartedly concur, reluctantly this morning, with my House Chairman - I think the thing for us to do at the moment is not reconsider this measure.

THE SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

MRS. NELSON: Mr. Speaker, Men and Women of the House: If not now, when?

THE SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the gentlewoman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to recede and concur. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mrs. Nelson of Portland requested a roll call.

THE SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. 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 motion of the gentlewoman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Baker, Beaulieu, Bell, Benoit, Boisvert, Boyce, Brannigan, Brenerman, Brodeur, Brown, K.L.; Carroll, Clark, Cox, Davies, Diamond, J.N.; Erwin, Fitzgerald, Fowlie, Gillis, Gowen, Gwadosky, Hall, Higgins, H.C.; Hobbins, Holloway, Ingraham, Jalbert, Joyce, Kane, Kany, Ketover, LaPlante, Livesay, Locke, MacBride, Macomber, Mahany, Man-

ning, Masterton, McCollister, McGowan, McSweeney, Michael, Michaud, Mitchell, J.; Moholland, Nadeau, Nelson, M.; Norton, Paradis, P.; Paul, Perry, Pines, Post, Racine, Reeves, P.; Richard, Roberts, Rolde, Smith, C.B.; Soule, Theriault, Thompson, Walker, Webster.

NAY—Aloupis, Armstrong, Austin, Berube, Bordeaux, Brown, A.; Brown, D.; Cahill, Callahan, Carter, Chonko, Conary, Connors, Connolly, Crowley, Cunningham, Curtis, Damren, Davis, Diamond, G.W.; Dillenback, Drinkwater, Dudley, Foster, Gavett, Hanson, Hayden, Hickey, Higgins, L.M.; Hunter, Hutchings, Jackson, P.T.; Jackson, P.C.; Jacques, Jordan, Kelleher, Kiesman, Kilcoyne, Lancaster, Lewis, Lisnik, Lund, MacEachern, Martin, A.; Martin, H.C.; Masterman, Matthews, McHenry, McPherson, Mitchell, E.H.; Murphy, Nelson, A.; Paradis, E.; Pearson, Perkins, Peterson, Pouliot, Randall, Reeves, J.; Salsbury, Sherburne, Small, Smith, C.W.; Stevenson, Stover, Strout, Studley, Swazey, Telow, Treadwell, Twitchell, Vose, Wentworth, Willey.

ABSENT—Carrier, Day, Dexter, Huber, Laverriere, O'Rourke, Ridley, Soulas, Tarbell, Tuttle, Weymouth, Mr. Speaker.

Yes, 65; No, 74; Absent, 12.

THE SPEAKER: Sixty-five having voted in the affirmative and seventy-four in the negative, with twelve being absent, the motion does not prevail.

Matters Pending Rulings

Bill, "An Act Relating to Harness Racing at Agricultural Fairs, the State Stipend and Pari-mutuel Pools" (Emergency) (S. P. 864) (L. D. 2006)

Tabled—March 29 by Speaker Martin of Eagle Lake.

Pending—Ruling of the Chair on Germaneness of Committee Amendment "A" (S-424)

THE SPEAKER: The Chair would now rule on the germaneness of Committee "A" and the Chair would rule that Committee Amendment "A" is germane.

Thereupon, Committee Amendment "A" was adopted.

The bill was assigned for Second Reading later in the days session.

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

Ought Not to Pass

Representative Kilcoyne from the Committee on Taxation on Bill "An Act to Remove Winterville Plantation from the Maine Forestry District" (H. P. 1816) (L. D. 1801) reporting "Ought Not to Pass"

Representative Kilcoyne from the Committee on Taxation on Bill "An Act to Remove West Forks Plantation from the Maine Forestry District" (H. P. 1818) (L. D. 1803) reporting "Ought Not to Pass"

Were placed in the legislative files without further action pursuant to Joint Rule 22 and sent up for concurrence.

Consent Calendar

First Day

(H. P. 1796) (L. D. 1786) Bill "An Act to Remove Wallgrass Plantation from the Maine Forestry District" Committee on Taxation reporting "Ought to Pass"

There being no objections, under suspension of the rules, the above item was given Consent Calendar Second Day notification, passed to be engrossed and sent up for concurrence.

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

Consent Calendar

First Day

(H. P. 1817) (L. D. 1802) Bill "An Act to Remove Allagash Plantation from the Maine Forestry District" — Committee on Taxation

reporting "Ought to Pass" as amended by Committee Amendment "A" (H-718)

(H. P. 795) (L. D. 1785) Bill "An Act Concerning the Rate of Return on Investment Factor Under the Railroad Excise Tax" — Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-720)

(H. P. 1974) (L. D. 1949) Bill "An Act to Eliminate the 2¢ Excise Tax Imposed on Jet Fuel Used by International Flights" — Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-719)

There being no objections, under suspension of the rules, the above items were given Consent Calendar Second Day notification, passed to be engrossed as amended and sent up for concurrence.

By unanimous consent, all matters requiring Senate concurrence were ordered sent forthwith.

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

Passed to Be Enacted Emergency Measure

An Act to Encourage Fuel Diversity by Increased Use of Natural Gas (H. P. 1956) (L. D. 1929) (C. "A" H-689)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Revise the Definition of Forest Land for Purposes of the Tree Growth Tax Law and to Require Notification of Landowners' Obligation to Reapply (H. P. 2178) (L. D. 2068) (C. "A" H-688)

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

THE SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

MR. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: There has been so much controversy and concern over the tree growth tax issue, I wish someone from the committee might give us a brief but concise rundown of what we did last year, what we are doing here and what we expect to with the bill that was heard yesterday, I believe. I know that that will take probably close to an hour, but perhaps someone might be able to inform the body clearly and concisely where we stand on this issue.

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

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

MRS. POST: Mr. Speaker, Men and Women of the House: I am afraid it is impossible to talk about what we did last year, what we are doing this year and what we intend to do in the future in tree growth in a brief manner.

As you know, the Taxation Committee left yesterday's session to deal with another bill that is coming along which deals with penalties on the tree growth issue.

Essentially what we did last year, some of what we did last year, those sections of the law that caused some controversy, we established a fact which many people thought was part of the tree growth law anyway, which was that tree growth, for land to be in tree growth, it should be used for commercial purposes and that it was not appropriate for land to be in tree growth as a tax dodge, if you will, people who simply wanted to pay lower taxes on their land around their summer estates. So the legis-

lature established some criteria that it asked people to meet to stay in the tree growth program.

The intent of the legislature was to particularly not force landowners, or landowners under a hundred acres, to go, for instance, to the great expense of hiring a professional forester, but it was set up in such a manner that people had choices on how they managed their land, or how they met the criteria for managing their land in the future. They could hire a registered forester; they could draw up a management plan themselves using accepted forestry practices; they could indicate that they were in the business of producing wood products and use the timber from that land in that particular business; or if it was under a hundred acres, they could indicate that they were following accepted forestry practices that produced a tree of having commercial value.

Something happened between the time we went out of session and we came back in, and I guess from time to time there has been a lot of finger pointing, and I am not really interested in getting into that at this point. But I think a great deal of misinformation went out, particularly about what it would take to stay in the tree growth program and what kinds of future actions might be expected of people if they wanted to stay in the tree growth program.

There have been some problems in individual communities, I think, in the assessors using the action that the legislature took last year to try to force people out of tree growth. For instance, we have had people tell us that they manage a woodlot, and yet the plan that they have drawn up and taken to their assessor, under a hundred acres has been turned down.

What we are trying to do in this particular bill, in this bill that is before us now, is to make sure that people are not forced out of tree growth and therefore have to pay the penalties involved, which are substantial, because of action beyond their control.

A couple situations came to our attention — one is in communities which have an extremely restrictive shoreland zoning law which may say within 200 feet of the shore you cannot commercially harvest trees. That would seem to indicate that if you were in that community, you could not have that land within the 200 feet zone under the tree growth and would have to pay the penalty when it was taken out.

What this particular bill does is to say that regardless of zoning ordinances by communities which may, in fact, prohibit commercial harvesting in the area, people who have land in tree growth can keep it. And in the future, for instance, communities will not be able to do spot zoning to try to keep people out of tree growth.

It also says that if you have a deed or a restrictive covenant, which is in effect presently or was in effect, that does not allow you to commercially harvest trees, then you will not be forced out of tree growth; you can remain in tree growth. It will not allow you to put a deed restriction on your land in the future to do that and thereby get around the intent of the law. But for those people who are presently in tree growth, who have a deed restriction that says you cannot harvest trees on that land, they will be able to stay in.

The other issue which was really unclear in the law that we passed last year was whether or not trees that we used for personal use could qualify people to stay in the tree growth program. We have clarified that and said if your land is under a hundred acres and you harvest the trees for personal use, then you are able to stay in the tree growth program. You still have to meet the criteria of accepted forestry practices but people who either use the wood for firewood or for lumber to build a home will be able to stay in tree growth.

Another thing that came to our attention was that in some communities assessors were not notifying people ahead of time of the changes in

requirements to stay in tree growth as far as the classifications go and that people might have to make a choice by April 1 whether to apply for tree growth or another program, which is farm and open space.

What we did, if you will take a look at the back of the pink amendment, is to set up a schedule whereby assessors will have to notify people of the new rule. People have a period of time in which to apply. The assessors will then have to tell them if they are not eligible for tree growth and after that period of time, for those people who are no longer eligible, they can appeal that decision if they want to or they will have 30 days to then transfer into the farm and open space law, if they are eligible for that. We didn't want people to be caught in a time bind of April 30 finding out they weren't eligible for tree growth and then not being able to go back for farm and open space.

These were the issues upon which there was unanimous agreement within the Taxation Committee.

The other issue that came up, and there was not at that point unanimous agreement on the Taxation Committee and that is why it was put in as a separate bill, it is a Governor's bill, dealt with the issue of penalties. That issue will be dealt with in another bill and will provide for a window, if you will, of a one-year time period in which people will no longer want to remain in the tree growth program will be able to get out of paying back taxes and interest with a provision that if they developed the land within five years, that they would have to go back and pay the penalty provision. We don't know whether that is going to be a unanimous report or not, but that is the bill we held the hearing on yesterday.

I can only say, though, even after yesterday's hearing, it reinforced my belief anyway and the belief of many Taxation Committee members that a lot of the calls that you have been getting and a lot of the issues that have been raised have been by misinformation that has been given out and has been reinforced by the press, and in some instances, you can pinpoint it where local assessors are using the new rule to try to force people out of tree growth. If you have particular problems, I would urge you to either talk to individual members of the Taxation Committee or talk to the Bureau of Taxation themselves, because the problems that have been raised, many of them are just not there.

That is about as brief and concise as I can be as far as what we are doing, have done, are doing and will do.

This bill that you have before you now deals with the issue of not forcing people out of tree growth, and it is important that we enact it before April 1 so that people know exactly what the situation is going to be. It also will provide some time for the people to make rational decisions as to whether they want to stay in tree growth or whether they want to go into open space.

The bill on withdrawal is in committee now and will be coming out in a day or so.

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

Mrs. MITCHELL: Mr. Speaker, I would like to pose a question through the Chair to the gentlewoman from Owl's Head, Mrs. Post. Should this legislature decide to pass the bill which the Taxation Committee heard yesterday, which allows a window, I believe, as Representative Post called it, for those people who did wish to withdraw, what about the April 1 deadline for this legislature to deal with that issue?

The SPEAKER: The gentlewoman from Vassalboro, Mrs. Mitchell, has posed a question through the Chair to the gentlewoman from Owl's Head, Mrs. Post, who may answer if she so desires, and the Chair recognizes that gentlewoman.

Mrs. POST: My understanding, in talking with the Bureau of Taxation this morning, if we

pass this one, the penalty provision, or the new withdrawal provisions, apply to anybody being able to withdraw in 1982, so people will have time to make the choice once we pass both bills as to whether or not they want to stay in tree growth, whether they withdraw under the new provisions, or whether they try to move forward into farm and open space.

The SPEAKER: The pending question is on passage to be enacted. This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

120 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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

Passed to Be Enacted Emergency Measure

An Act Concerning the Regulation of Atlantic Salmon (H. P. 2256) (L. D. 2104)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure Tabled Unassigned

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Washington for the Year 1982 (H. P. 2253) (L. D. 2102)

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

On motion of Mrs. Mitchell of Vassalboro, tabled unassigned pending final passage.

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

Special Sentiment Calendar

The following item:

Recognizing:

Frank and Marguerite Haley, of Limerick, on the 50th anniversary of their wedding; (H. P. 2276) by Representative Carroll of Limerick. (Cosponsor: Senator Wood of York)

There being no objections, the above item was considered passed and sent up for concurrence.

Passed to Be Enacted

An Act Concerning Maine Emergency Medical Services (H. P. 2234) (L. D. 2092) (H. "A" H-690)

An Act to Amend the Charter of the Lucerne-in-Maine Village Corporation (H. P. 2257) (L. D. 2105)

An Act to Remove Restrictions Preventing State Retirees from Receiving Certain Benefits (H. P. 2260) (L. D. 2106)

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

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

The following Communication:

Committee on Business Legislation

March 30, 1982

The Honorable John L. Martin

Speaker of the House

State House

Augusta, Maine

Dear Speaker Martin:

The Committee on Business Legislation is pleased to report that it has completed all business placed before it by the Second Regular