

MAINE STATE LEGISLATURE

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

when the vote is taken I request the yeas and nays. Thank you.

Representative LUTHER of Mexico requested a roll call on adoption of House Amendment "B" (H-928).

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All 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 and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Keane.

Representative KEANE: Mr. Speaker, Ladies and Gentlemen of the House: It's been my experience in administering the Fair Labor Standards Act and other labor legislation in the State of Maine that work performed, whether it's within shift or not, is work that must be paid for at least at the minimum wage. If there is anybody that has any knowledge in that regard I would appreciate their guidance in that. If this is true then it doesn't seem to me that there is any need for this legislation and that those employees involved need to file a grievance with the Department of Labor or the Wage an Hour Division in the Contracts and Compliance Office. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Dore.

Representative DORE: Mr. Speaker, Men and Women of the House: I'm always amused when an attorney tells me there are probably some rules, and there may be some rules, and there is probably something on the books, because I can't think of anybody who has a greater ability than an attorney to go immediately and in the next twenty minutes find out exactly what the rules are on preparatory time and what you can do. I would be happy to table this for twenty minutes if Representative Carleton is truly concerned about the preparatory time regulations so that he can inform us about whether or not there is any way you can get a minimum wage during preparatory time. I will make that motion if you like but I can't, my apologies to the House. Thank you.

Representative LEMAIRE of Lewiston moved to table until later today pending adoption of House Amendment "B" (H-928).

Representative JOY of Crystal requested a roll call on the motion to table.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All 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 and voting having expressed a desire for a roll call, a roll call was ordered.

The pending question before the House is to Table until Later in today's session, pending adoption of House Amendment "B" (H-928). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 399

YEA - Adams, Ahearne, Benedikt, Berry, Bigl, Bouffard, Brennan, Bunker, Campbell, Carleton, Chartrand, Chase, Chick, Chizmar, Clark, Daggett, Davidson, Desmond, Dexter, DiPietro, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gooley, Gould, Green, Hartnett, Hatch,

Heeschen, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Joyner, Keane, Kilkelly, Kneeland, Kontos, LaFountain, Lemaire, Lemke, Lemont, Libby JD; Lindahl, Luther, Marshall, Martin, Mayo, McAlevey, McElroy, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, O'Gara, O'Neal, Ott, Paul, Peavey, Perkins, Plowman, Pouliot, Povich, Reed, G.; Richard, Richardson, Rosebush, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stevens, Strout, Thompson, Treat, Tripp, Tuttle, Tyler, Vigue, Volenik, Watson, Wheeler, Winglass, Winn.

NAY - Aikman, Ault, Bailey, Barth, Birney, Buck, Cameron, Carr, Clukey, Cross, Damren, Donnelly, Gieringer, Greenlaw, Guerrette, Heino, Jones, S.; Joy, Joyce, Labrecque, Lane, Layton, Look, Lovett, Lumbra, Madore, Marvin, Meres, Nass, Nickerson, Pendleton, Pinkham, Poirier, Reed, W.; Robichaud, Stedman, Taylor, True, Tufts, Underwood, Waterhouse, Whitcomb, Winsor.

ABSENT - Cloutier, Kerr, Libby JL; Poulin, Rice, Stone, Townsend, Truman, The Speaker.

Yes, 98; No, 43; Absent, 9; Excused, 0.

98 having voted in the affirmative and 43 voted in the negative, with 9 being absent, the motion to table until later today, pending adoption of House Amendment "B" (H-928) was accepted.

The Chair laid before the House the following item which was tabled earlier in today's session:

Bill "An Act to Implement the Compact for Maine's Forests" (H.P. 1390) (L.D. 1892) (Governor's Bill) which was tabled by Representative JACQUES of Waterville pending adoption of Committee Amendment "A" (H-924).

Representative GOOLEY of Farmington presented House Amendment "C" (H-932) to Committee Amendment "A" (H-924) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Gooley.

Representative GOOLEY: Mr. Speaker, Men and Women of the House: I rise to offer this amendment. It is a very important one. Here in Maine we have 6 million acres of small woodland and 100,000 woodland owners owning between 10 and 1,000 acres each. We have a valuable forest resource which I think over the last year has shown that the forest resource is the number one industry in the State of Maine and in terms of not only forest products but forest recreation, wildlife management, habitat, and water. Water, which when we go to the fountain or to turn our faucets on, the water is always there and water is a very important item in the forest today, that is readily apparent. We have at the present time an average annual growth in the Maine forest of approximately 5.1 million cords, excuse me, we have a forest industry that uses, by U.S. Forest Service estimates, 6.2 million cords of wood and the average annual growth is 5.1 million cords with a cut-to-growth ratio of 1.2 to 1. This is a very serious figure. These figures are not good. Who is out there in the forest to manage the forest but foresters? We have in the Bureau of Forestry a lack of foresters at the present time. There are eight district foresters to cover the whole State of Maine and this program was cut very drastically in 1981. There were something like 21 district foresters in 1981 and that has been cut back to where today there are 8 district foresters covering the whole State of

Maine. We need to have on the average one per county. I think I am thinking in terms of three in Aroostook County and then in the other counties, some counties would have two, but an average of one per county. We need to have a managed forest.

With 100,000 woodland owners out there there are consulting foresters who work with woodland owners and there are industry programs which work with woodland owners, but the problem is that there is so much work to do to better these figures which I have just given you. We do not have enough public employed foresters out there to handle, we need more public foresters to handle working with municipalities, education for owners, working with loggers, and also for the regulatory process. So, those are the main reasons why we need to expand this program and that is why I am offering this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: With all due respect to Representative Gooley, who I much admire, particularly on this issue and he has worked very hard on this issue, there are two things I would like to point out in this amendment which I think make it fatally flawed. First, while I don't disagree with the fact that 16 field foresters would be helpful, by assigning one to each county we tip the balance so that the large counties, in fact, are under represented and the smaller counties, in fact, have possibly an excess in terms of field foresters. So, I think by saying that a forester must be assigned to each county is, in fact, not the proper way to go about it.

The other issue that concerns me greatly has to do with municipal ordinances. One of the things that we worked very hard on this bill, and also hard on in committee over the last two years, was assuring that, in fact, the rights of land owners, be they absent land owners or resident land owners, and the rights of communities were both protected in a reasonable way. In the bill before you there is a statement that says municipal ordinances may not be capricious or arbitrary and must have means appropriate to the protection of public health, safety and welfare. That language is the language that the court uses to assess home-rule issues in every other case. If we link the municipal ordinances to generally accepted silvicultural practices, part of what we are doing is linking the municipal ordinance to an ever changing fact. What is acceptable today in terms of silviculture may not be acceptable a year from now. It may not be acceptable six months from now. Those kinds of things do change. Every time there is a change like that every municipality that has an ordinance on forest harvesting would need to go back and redo that because they have to be in compliance with the definition that is set about in law. So, maintaining the language that says they may not be unreasonable, arbitrary or capricious actually is better language because that's the standard that the Judiciary has used since 1970 to judge home-rule cases and that's the language the people within the municipal communities use as their standard.

To create a whole new standard to judge municipal ordinances is not going to be beneficial to communities and I think it is going to confuse the

issue even more. I would hope you will vote against this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: First of all for the record, this never was intended for one for each county. It is supposed to be left up to the discretion of the Director of the Bureau of Forestry. I want to make sure that is on the record. Another part of this amendment, as I read it, is the audit board. The Governor, under this amendment, would appoint three members, the President of the Senate would appoint two, and the Speaker of the House would appoint two. Presently the Governor appoints all seven members, which would be fine with the present Governor but he won't be here forever. I just don't quite follow the logic of changing the generally accepted silvicultural practices. They are still acceptable practices today. They will be acceptable a month from now, a year from now or ten years from now. Thank you.

The SPEAKER: The Chair recognizes the Representative from Glenburn, Representative Winn.

Representative WINN: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative WINN: Thank you. Is it possible that an amendment that might correct this law might be forthcoming? When I was listening to my constituents and trying to research this area around the state one of the key issues that kept coming again and again for me was the issue that the State has supposedly hired foresters to oversee the existing laws but that never happened and we never funded those positions and if we had funded those positions a lot of the laws would have been implemented and things might have been a little bit better than they are today. What I am asking is is there anyway that we can work this out so that we could come up with something that I think the people that intended it to happen, that for some reason the wording doesn't say what the intention was, and possibly take out the area that affects the municipalities and still ensure the funding for the foresters? Thank you.

The SPEAKER: The Representative from Glenburn, Representative Winn has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Mr. Speaker, Ladies and Gentlemen of the House: There are a lot of good things in this amendment, but the item that I have a problem with is the part on the silvicultural practices and why I have a problem with that is I liked this yesterday. I do like it, in fact I made a motion in committee yesterday to put this part of the amendment in the whole package, but through a discussion yesterday we found exactly as Representative Kilkelly explained the wording in the pact as it was. I don't have it right in front of me, but that has been proven in courts and that is what they need to fall back on. I realize this reads a lot better to the ordinary people, but the municipalities would have a problem with it holding anything up in court. Because of that I do have a problem with it. I have no problem with the other parts. I would like to see more foresters out

there. I think we need them, although I think we are making improvements with the education part of the compact. So, because this is in here and we discussed it yesterday, I just cannot in good conscience vote for it. Thank you.

The Chair ordered a division on adoption of House Amendment "C" (H-932) to Committee Amendment "A" (H-924).

A vote of the House was taken. 41 voted in favor of the same and 69 against, subsequently, House Amendment "C" (H-932) was not adopted.

Representative JACQUES of Waterville presented House Amendment "B" (H-931) to Committee Amendment "A" (H-924) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I hope that the final adoption of this amendment will put an end to a long and lonely road that I have travelled in the last six weeks. What this amendment does is refocus the attention of this compact back on an issue that it should have been focused on in the very beginning, and that is the impact of clear-cutting and forest practices on the cold water fisheries in this state, and most predominantly native brook trout. When the compact was first reported out I looked through it and one of the original versions of the discussion group talked about the protection of the cold water fisheries in this state and I prematurely applauded that and thought they were going down this road and it was a wonderful thing. Then somewhere between the June 14 version and the June 29 version it was struck out. A lot of attention was paid to the wildlife and what impact clear-cuts have on wildlife. Men and women of the House clear-cuts have great impact on some wildlife and not so great on others. In the overall scheme of things I think wildlife will adapt to clear-cuts a lot better than the fisheries will. All along during my discussion, my discussions with the large companies, the Governor, everybody said we understand what you want to do. We understand that this is something we can be doing and we might be doing and we want to do. So I took the time to go down to the Fish and Wildlife Department, strangely enough the place where by mandate and by law they are responsible for looking after the critters and the fish and wildlife in this state, and I asked them how much input did you have on this compact? I was told none. As a matter of fact I was told they weren't even invited to the table, which kind of surprised me. I was a little critical of the Commissioner for not being a little more assertive in being involved. I went to the people in charge of the wildlife department and the fisheries department and I said what should we strive for. Their answer to me was, "We don't need anymore rules and regulations. We have some things going on," and I may talk about some of those a little later during the debate on this compact, but "we have some things going on with some of the land owners right now that are great, far reaching, certainly extremely important. What we would like to see is you and the Legislature not only reaffirm that but encourage that and talk about that and put some language in this compact and this bill that doesn't add rules and regulations and establish new laws, but recognizes that cold water management is very important when you start talking about clearcuts in lumber operations." I don't think I

have to spend any time, to any of you who spend any time in the woods, talking about what has happened to our native brook trout population. I don't think I have to spend time talking about opportunities to go out and catch them trout. I had lunch with Representative Jones today and most of the lunch was spent telling me about his seven year old daughter catching her first 16-inch trout. I told him I still remember the first native brook trout I caught, where I caught it and when I caught it. I was about six years old. It was Old Misery Stream near Brassway Lake. I also told him I'm sorry to say I don't remember my first date. I remember I had one, but I don't remember who she was and I don't remember where we went and I don't remember, unfortunately, what we did, but I do remember the first brook trout I caught.

We can talk a lot about the war on drugs and spending this kind of money and the things we want to do to keep our young people away from these drugs. One thing you can do to help keep them away from drugs is encourage them to do what I used to do. Every spare minute I had I was trying to catch a fish. If there was a hole with more than a gallon of water in it I was trying to catch a fish out of it. Between spending my time fishing and playing football and playing hockey, I didn't have any time for drugs. So, here's a cheap investment you can make above and beyond all the rhetoric. You give them kids an opportunity to go up and catch them native brook trout that I used to catch when I was a kid, that Representative Jones' daughter had the opportunity to catch and we will really be doing something to keep those young people going in the right direction. What this amendment does is simply sets up a cold water fisheries working group that will help establish bench marks and goals, and make recommendations to the bigger overall party of this thing, the auditing group, on how we are going to work to protect and preserve, and I hope restore some of those cold water fisheries across this state. It will be a cheap investment for a big return.

What this group is set up of, but is not limited to, someone who is a representative of the Department of Inland Fisheries and Wildlife, strange that that would be on there, having expertise in cold water fisheries management, a representative of a statewide association of sportsmen and women, it says sportsmen but I am going to fix that in respect to Representative Jones' daughter, a representative of any Maine organization engaged in the stocking, restoration or protection of cold water fisheries, a representative of the University of Maine System with expertise in aquatic ecology, they want science, we want science, and a representative of the Maine Forest Products Council. That's the basic core. There are many other groups that can be added on to this working group, and hopefully they will start to work right away and truly we can really say that if we include this in the compact that we now have a compact that is better than the current practices, better than the initiated referendum because it will concentrate, men and women of the House, on an area that is really, honestly, largely impacted by cutting operations in this state.

I must add that everybody involved except for the janitor of this building who I could not find this morning has signed off and agreed to this amendment. I checked and double checked and triple checked and made sure that everybody that I could talk to was in support of this amendment. Everybody told me that

they are, from the Governor on down. So, hopefully we will put this amendment on and my long journey, which started out with language in a compact, language in the bill, sidebar, addendum, letter of agreement, is ultimately down to this very small, very conservative amendment that does not force any more rules and regulations but encourages and gives the legislative stamp of approval on what the companies are doing that are doing it right, and hopefully peer pressure will cause the companies that aren't doing it right to jump right in and voluntarily, without government over their head, without rules and regulations, do what is right for your kids and your grandkids. I urge the adoption of this amendment and I request the yeas and nays. Thank you.

The same Representative requested a roll call on adoption of House Amendment "B" (H-931) to Committee Amendment "A" (H-924).

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Kilkelly.

Representative KILKELLY: Mr. Speaker, Men and Women of the House: I regret that the amendment that is before you needs to be put on in this fashion. It was my hope that it could have been included in the bill yesterday. There was some confusion and it wasn't. One of the things that I would like to add to what Representative Jacques has said is that there is also a very serious economic impact in terms of this issue. My son just got back from a trip to Canada to go brook trout fishing. I know hundreds of other people who are, in fact, leaving the state in order to go fishing. Those are economic dollars and economic activity that we could have in this state as long as we protect this resource. I think there is a serious economic impact, as well as the obvious impact that we would all like to see maintained in terms of having a healthy aquatic environment for brook trout. I would urge you to vote for this amendment and I would hope that it would make it into the compact. Thank you.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All 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 and voting having expressed a desire for a roll call, a roll call was ordered.

The pending question before the House is Adoption of House Amendment "B" (H-931) to Committee Amendment "A" (H-924). All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 400

YEA - Adams, Ahearne, Ault, Bailey, Barth, Benedikt, Berry, Bigl, Birney, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Carr, Chartrand, Chase, Chick, Chizmar, Clark, Clukey, Cross, Daggett, Damren, Davidson, Desmond, DiPietro, Donnelly, Dore, Driscoll, Dunn, Etnier, Farnum, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gieringer, Gooley, Gould, Green, Greenlaw, Guerrette, Hartnett, Hatch, Heesch, Heino, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joy, Joyce, Joyner, Keane, Kerr, Kilkelly, Kneeland, Kontos, Labrecque, LaFountain, Lane, Layton, Lemaire, Lemont, Libby JD; Lindahl, Look, Lovett, Lumbr, Luther, Madore, Marshall, Martin, Marvin, Mayo, McAlevey,

McElroy, Meres, Mitchell EH; Mitchell JE; Morrison, Murphy, Nadeau, Nass, Nickerson, O'Gara, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Poirier, Pouliot, Povich, Reed, G.; Reed, W.; Richard, Richardson, Robichaud, Rosebush, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Simoneau, Sirois, Spear, Stedman, Stevens, Strout, Taylor, Thompson, Townsend, Treat, Tripp, True, Tufts, Tuttle, Tyler, Underwood, Vigue, Volenik, Waterhouse, Watson, Wheeler, Whitcomb, Winglass, Winn, Winsor.

NAY - Aikman.

ABSENT - Cloutier, Dexter, Lemke, Libby JL; Poulin, Rice, Stone, Truman, The Speaker.

Yes, 140; No, 1; Absent, 9; Excused, 0.

140 voted in the affirmative and 1 voted in the negative, House Amendment "B" (H-931) to Committee Amendment "A" (H-924) was adopted.

On motion of Representative JACQUES of Waterville, tabled pending adoption of Committee Amendment "A" (H-924) as amended by House Amendment "B" (H-931) thereto.

The Chair laid before the House the following item which was tabled earlier in today's session:

An Act to Conform the Maine Tip Credit to the Federal Tip Credit (H.P. 1392) (L.D. 1893) (C. "A" H-923) which was tabled by Representative LEMAIRE of Lewiston pending adoption of House Amendment "B" (H-928).

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Gerry.

Representative GERRY: Mr. Speaker, Men and Women of the House: I'm going to withdraw my request for this amendment for two reasons. One is it is true what the good Representative has said, that we haven't had a public hearing on this process, so we don't know how really necessary or not necessary this is. So, what I am going to do, like I said, I am going to withdraw the bill. They could not show me in statute because it's not in statute exactly what I want. Because at this present time, without the public hearings and everything else, it's going to be another nightmare for all of the businesses, so I am going to bow to different counsel that I have got and, like I said, pull the bill and come back in January, whether I get elected or not, get it somehow submitted and have it relooked at. I thank you for your indulgence.

Representative GERRY of Auburn withdrew House Amendment "B" (H-928).

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-923).

Representative JACQUES of Waterville requested a roll call on passage to be enacted.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of members present and voting. All 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 and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Men and Women of the House: I asked a question earlier in the course of the amendment that we dealt with and I