

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

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Tabled — March 16, 1977 by Mr. Higgins of Scarborough.

Pending — Reference.

Thereupon, the Bill was referred to the Committee on Local and County Government, ordered printed and sent up for concurrence.

The SPEAKER: The Chair recognizes the gentleman from Stonington, Mr. Greenlaw.

Mr. GREENLAW: Mr. Speaker, is the House in possession of "An Act to Make Allotments from the Maine Coastal Protection Fund for the Fiscal Years Ending June 30, 1978 and June 30, 1979," Senate Paper 105, L. D. 234?

The SPEAKER: The Chair would answer in the affirmative, having been held at his request.

On motion of Mr. Greenlaw of Stonington, the House reconsidered its action where the Bill was passed to be enacted.

On further motion of the same gentleman, tabled pending passage to be enacted and specially assigned for Tuesday, March 22.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, is the House in possession of L. D. 531?

The SPEAKER: The Chair would answer in the affirmative. Bill "An Act to Correct Errors and Inconsistencies in Laws of Maine," Senate Paper 186, L. D. 531, held at the request of the gentleman from Farmington, Mr. Morton, is in the possession of the House.

Mr. Morton of Farmington moved the House reconsidered its action whereby the Bill was passed to be enacted.

The SPEAKER: The gentleman may proceed.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: My standing here today is an old story to older members, but it may be an education to some of the newer members of this body. It happens sometimes that an inconsistency creeps into the Errors and Inconsistencies Bill which is in error and inconsistent with the purposes of the Errors and Inconsistencies Bill. If I have confused you, that is exactly what has been intended by the actions that have previously taken place in this body.

The idea of the Errors and Inconsistencies Bill is to correct spelling, punctuation and to decide which of two separate laws about the same thing, one saying yes and the other saying no, is correct among other things.

This particular L. D. 531, which I happen to have gone out and dug up a copy of because I doubt that very many others did and there are plenty up in the stack up there, has 72 sections in it, and as usual, only the members of the Judiciary Committee are entirely familiar with its contents. I am informed that they are familiar with the contents of this particular bill, L. D. 531, that they went over it item by item, which is their duty and their responsibility to the rest of us here in the House, and I am also informed that an amendment was offered in that committee process which was unanimously rejected by the committee, they obviously did not consider it proper or germane. It appeared here on the House Floor and was adopted as House "B", H-52, under the gavel.

Furthermore, it might be interesting for you folks to note that this amendment, or the substance of this amendment, was also filed as an L. D., L. D. 525. If you want to take the time to look at your books, you will find that L. D. 525 is in there and also, if you look at L. D. 531 and you have kept your records properly, you will find H-52, House Amendment "B", and they are exactly the same thing. So what in effect House Amendment "B" is a substitute for an L. D.

Of course, the L. D. is subject to certain restrictions that an amendment doesn't have to go through, one of the biggest ones being a public hearing and the total legislative process,

so by slipping it into the E and I Bill, all the public scrutiny has been avoided.

Frankly, and I won't go on with this any longer because I think you can all see the picture in the matter, but what I hope to do here today is to back this bill up to the engrossment stage, remove House "B" (H-52) and then reenact the bill without House "B". The matter in question can then be dealt with in a normal manner for any L. D., and L. D. 525 is the vehicle which has already been filed to do that with.

What I am fighting here for today is more than the substance of this or any other amendment. It is a principle that may affect any one of you or your constituents at any time. Whether I was aware at the time this amendment was brought up, or whether I was even on the floor when it was brought up, is immaterial. I have every confidence that had it been noted in the legislative process prior to enactment, it could have been stopped. I accept responsibility for missing and not catching it at that time. Now I am asking that you reconsider so that it can be properly addressed through the routine legislative process, and in order to do that, we will have to reconsider our enactment, then I will have to get a two-thirds vote to suspend the rules to go back to engrossment, and finally we will get back to engrossment where we can take this amendment off.

I am sorry to have taken so much of your time this afternoon, but this is the first time this particular little incident has happened in this session of the legislature and it is time that we had just a little parliamentary lesson.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: Principle is exactly the reason why House Amendment "B" was placed on the Errors and Inconsistencies Bill. Mr. Morton from Farmington, my able friend and almost seatmate, is absolutely correct in what he has related to you, as far as he went.

I have to go back to the first regular session of the 107th Legislature, where a bill was introduced by Representative Mahany that contained the exact language as indicated in both the L. D. and in Amendment "B" to the Errors and Inconsistencies Report.

This bill had public hearings, it was debated here on the floor of the House and may have been debated in the other house, I do not know. The exact substance of L. D. 525 and Amendment "B" was the subject of those debates. This was enacted into law and became Chapter 465 of the Public Laws and signed by the Governor on June 12, 1975. We presumed that this was the effective law, it was still in effect until I was contacted by the Fair Manager of the New Portland Fair, I believe sometime in December to the effect that there had been a change made in the law. I was dumbfounded to realize or think how it could be changed.

Well, you are absolutely correct, principle and the Errors and Inconsistencies Bill, when I checked the Errors and Inconsistencies Bill for the special session of the 107th, I found that Chapter 770 of the Public Laws, and I believe it was Section 44, had a very inconspicuous paragraph in it indicating that the Title 7 Subsection 65, subsections under that, one and two, were hereby repealed; so, therefore, substantive change was made by the Errors and Inconsistencies Bill in the special session of the 107th Legislature. That was the same legislature that had already enacted this action.

The remainder of this points out very, very well that when this Errors and Inconsistencies Bill comes along, you had better be on your toes and looking very, very closely.

Therefore, I object to the moving back on this and I request the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to explain the posture of this as far as the Judiciary Committee is concerned. In the last legislature, during the consideration of the Errors Bill, a change relating to the Agriculture Fairs was brought into the committee and it was presented to the committee as a bill that did not involve a substantive change, and I personally, although at the time I was not the Chairman, was concerned that it was a substantive change and I was directed to go and speak to a member of the other body who I had understood was the sponsor of this original legislation, and he said there was no problem with the change that was put into the Errors Bill in the last session. It turned out, I learned when I got back here this session, that there were several bills in on this subject and the change that went into the Errors Bill last time did significantly affect one of the fairs, which was the New Portland Fair which Representative Burns is concerned about.

The Judiciary Committee was presented with an amendment by Representative Burns to restore the status quo prior to the last Errors Bill and, essentially, the question that was raised was whether two wrongs make a right.

In the last legislature, a substantive change was put into the Errors Bill, which ought not to have been, and the committee was faced with the questions of whether to correct that by establishing the status quo as it existed before. The committee voted not to make another substantive change in the Errors Bill this time, though the vote was not, in fact, unanimous, and I for one felt that it was proper to have the issue raised on the floor of the House as to whether an error in the original Errors Bill should be corrected. I didn't have any objections to Representative Burns offering his amendment to reestablish the status quo. He did that and I was surprised that there was no debate about it. There obviously is some debate now.

If we pass the bill as it is, we will be back where we were before a substantive change was made in the Errors Bill last session. If we don't pass this, we will be where we were after a substantive change was made in the Errors Bill, and I think it is up to the House on how they want to proceed.

The SPEAKER: The Chair recognizes the gentleman from Lisbon Falls, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, I would like to pose a question through the Chair to the gentleman from Standish, Mr. Spencer. The question is, trying to clarify his remarks, is he going to vote with Mr. Morton or is he going to vote with Mr. Burns?

The SPEAKER: The gentleman from Lisbon Falls, Mr. Tierney, has posed a question through the Chair to the gentleman from Standish, Mr. Spencer, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. SPENCER: Mr. Speaker, I am not sure that I so desire. I think I will vote for Mr. Burns.

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

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I understand that the New Portland Fair is in the fall, and I am wondering if there would be any harm in our going through the regular procedure. I haven't anything against the New Portland Fair, except that in Bangor there are two fairs within 15 miles of each other. I know that our city attorney is interested in reviewing the bill and there may be no problem with this, but when he asked me about the issue, I indicated that it had come to the Judiciary Committee as an error proposal, that we had decided not to consider it as an error and that he would have an opportunity to come to a public hearing. So, I am just

wondering if there is any damage to be done by letting the normal process go forward, both to protect the integrity of Errors Bill and to provide the public input if there could be some. I would like to support Representative Morton's position unless there is any unalterable damage that would be done by doing it otherwise.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: I understand from the information that I got today that it also involves the Lewiston Fair and the Maine State Fair in Lewiston has been in existence for over 100 years and it would abridge some of their, from what I am told, activities, because there is another fair within, I guess, the required distance, so I am with Mr. Morton on this one.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, I would pose a question to the Chair, is this amendment germane to this bill where it is a substantive change and has had no public hearing?

The SPEAKER: The Chair would advise the gentleman from Brewer, Mr. Norris, that the time to question the germaneness of the amendment is prior to it being adopted. Once the amendment was adopted by this body, it is not before this body for a ruling by the Chair and, therefore, the Chair cannot give a ruling on the amendment.

The Chair recognizes the gentlewoman from Newcastle, Mrs. Byers.

Mrs. BYERS: Mr. Speaker, Ladies and Gentlemen of the House: The issue before us this afternoon does not really have anything to do with the fairs. The issue is whether this new Committee on Judiciary, whether its members are going to accept substantive changes in the Errors and Inconsistencies Bill. We had hoped, the majority of us on the committee, that we would not accept these and that the Errors and Inconsistencies Bill would not be something looked at to put a sneaky in. This is something which is just supposed to deal with the errors and inconsistencies and not with a substantive change.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Mr. Cote is correct in it involving the Lewiston State fair as well as Farmington. I am somewhat familiar with the problem that Mr. Burns has, as well as Mr. Morton and Mr. Cote, and my opinion is that the committee should recommit it and clean the bill up, because it is a major substantive change and I do move recommitting the bill to the Committee on Judiciary.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I agree in part with my friend from Bangor, Mr. Kelleher, but the committee didn't report this bill out with this amendment on it. This is an action that was taken by this body, the House.

As I look back over the few semesters that I have been here, I know in years past that there have been errors made on many pieces of legislation. I have never seen an error allowed to continue on, such as an error like this one, with a substantive change in an Errors and Inconsistencies Bill where the House didn't allow it to be backed up and the problem taken care of. I think this is a unique situation because there definitely is a problem here of some magnitude.

We have an amendment, and I am as guilty as the rest of the members on the Judiciary Committee, I think, for allowing this amendment to go on. I wasn't aware of it at the time it happened, because it does present a substantive change to a bill that is not created for that pur-

pose, so we are in error this afternoon. This House is in error, in my opinion, and I think the only reasonable thing to do is to back the bill up and take care of the error, and then if we have a problem, a legislative problem, that Mr. Burns be allowed to present legislation to take care of his problem and argue it and debate it through due process.

I would hope that this House would allow the bill to be backed up and to take care of an error that is wrong. I think we all admit that.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I will withdraw my motion to recommit and do exactly what Mr. Norris urges the House to do, back the bill up and properly take care of it here. However, it does take two thirds to suspend the rules, if I remember correctly, and if the House is not able to get the two thirds necessary, then perhaps Mr. Spencer or one member of the committee would then recommit it themselves and take care of it in the fashion that it belongs.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I think perhaps the proper resolution on this would be to allow the bill to be backed up and then to have the House vote on whether to correct the original error that was made or not and put it on an equal basis so the House can make that determination.

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to draw your attention to the record of March 3, 1977. When I introduced this amendment, I specifically stated that this was a substantive change in the law, so the House was made aware that this was a substantive change. I stand on my motion and hope you defeat the vote to reconsider.

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 motion of the gentleman from Farmington, Mr. Morton, that the House reconsider its action whereby the Bill was passed to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Alopis, Ault, Austin, Bachrach, Bagley, Beaulieu, Benoit, Berry, Berube, Biron, Birt, Boudreau, A.; Boudreau, P.; Brenerman, Brown, K. L.; Brown, K. C.; Bunker, Bustin, Byers, Carey, Carter, D.; Carter, F.; Churchill, Clark, Connors, Cote, Cunningham, Devoe, Dow, Drinkwater, Dudley, Durgin, Dutremble, Flanagan, Fowlie, Garsoe, Gill, Gillis, Gray, Henderson, Hickey, Higgins, Howe, Huber, Hunter, Hutchings, Immonen, Jackson, Jacques, Joyce, Kane, Kany, Kelleher, Kerry, Kilcoyne, Laffin, LaPlante, LeBlanc, Lizotte, Locke, Lougee, Lunt, Lynch, Marshall, Masterman, Masterton, Maxwell, McBreairty, McKean, McMahon, McPherson, Mills, Mitchell, Morton, Nelson, M.; Nelson, N.; Norris, Palmer, Pearson, Peltier, Perkins, Peterson, Raymond, Rollins, Shute, Silsby, Smith, Spencer, Sprowl, Stover, Strout, Stubbs, Tarbell, Tarr, Teague, Torrey, Trafton, Valentine, Wyman.

NAY — Burns, Carroll, Chonko, Connolly, Cox, Curran, Diamond, Elias, Goodwin, K.; Greenlaw, Hughes, McHenry, Moody, Nadeau,

Najarian, Post, Prescott, Quinn, Theriault, Tierney, Tozier, Twitchell, Wilfong, Wood.

ABSENT — Bennett, Blodgett, Carrier, Davies, Dexter, Fenlason, Gauthier, Goodwin, H.; Gould, Green, Hall, Hobbins, Jalbert, Jensen, Lewis, Littlefield, MacEachern, Mackel, Mahany, Martin, A.; Peakes, Rideout, Talbot, Truman, Tyndale, Whittemore.

Yes, 99; No, 24; Absent 26; Vacant, 1.

The SPEAKER: Ninety-nine having voted in the affirmative and twenty-four in the negative, with twenty-six being absent, the motion does prevail.

On motion of Mr. Morton of Farmington, under suspension of the rules, the House reconsidered its action whereby the Bill was passed to be engrossed.

On further motion of the same gentleman, under suspension of the rules, the House reconsidered its action whereby House Amendment "B" was adopted.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, it is my intention to see that this bill is enacted without House Amendment "B". However, I am wondering if at this time you would clarify it for myself and the House. L. D. 525 is still filed and before us so that will be a vehicle Mr. Burns can use to get his idea before the House and the legislature, and I would ask you at this time if it would be proper to consider the germaneness of this amendment or don't we have to be concerned with that anymore?

The SPEAKER: The Chair would advise the members of the House that one must keep in mind that when you are dealing with the Errors and Inconsistencies Law, there is a great deal of flexibility since it deals with Title I through the end of the titles, wherever that may be, and there is nothing to which it can be referred to. Therefore, the Chair would have to rule that the amendment offered is germane pursuant to the bill. Whether or not it is a substantive change is one which is not covered by rules and is one that must be decided by this body.

Mr. MORTON: Mr. Speaker, then as I understand it, the bill is ready to be engrossed without the House Amendment "B". Is that correct?

The SPEAKER: The Chair would advise the gentleman that the present position is that House Amendment "B" is now pending adoption. That is in the position which we are now in.

Mr. MORTON: Mr. Speaker, I move the indefinite postponement of House Amendment "B."

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: I bow to Mr. Morton. We will hear more about this bill later on.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, a parliamentary inquiry. If under these extenuating circumstances in the question of fairness, is it possible for Mr. Burns to bring this matter before the House in a legislative document? That is, can he clear it through leadership?

The SPEAKER: The Chair would advise the gentleman from Brewer, Mr. Norris, that the gentleman from Anson, Mr. Burns, does have a bill which covers this and is before this body and before the committee.

Thereupon, House Amendment "B" was indefinitely postponed.

Mr. Spencer of Standish offered House Amendment "D" and moved its adoption.

House Amendment "D" (H-81) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: House Amendment "D" is directed at an error that was called to

my attention yesterday afternoon in Title 5, Section 8B. Title 5, Section 8B, among its other provisions, creates an exception to the requirement that state employees pay rent for housing which is provided to them. As it was originally adopted in 1973, Section 8B provided that a state employee whose classification was 21E or less would not have to pay rent on the state provided housing, for instance, in the area of the prison or other state facilities. What that meant was that a state employee who was earning less than \$275 a week would not have to pay rent for the housing that was provided by the state in connection with his job.

When we enacted the Hay Classification Plan, we set up a whole new system of classifications, and an amendment to Title 5, Section 8B, was never drafted to reflect that change. So what happened was that the classification 21E turned out to be a lower rate of compensation and employees who previously were not paying rent for their housing, who were earning less than \$275, all of a sudden are faced with the prospect of paying rent for their housing if their income falls between \$254 and \$275. It doesn't appear to me that this was the intent of the legislature to suddenly make this class of employees start to pay rent. It was a failure to change the classification reference in Title 5, Section 8B, and this amendment would correct that so that the group of employees who would not have to pay rent for their housing would remain the same as it was prior to the adoption of the Hay Report.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Byers.

Mrs. BYERS: Mr. Speaker and Members of the House: This is the first I have seen of this amendment, I am on the Judiciary Committee, and I haven't had a chance to really look it over and I would hope that someone, so that we don't go through this whole process again, might table it for one legislative day.

Thereupon, on motion of Mr. Palmer of Nobleboro, tabled pending adoption of House Amendment "D" and specially assigned for Tuesday, March 22.

The SPEAKER: The Chair would like to say a few words so that the record will show that the members of the Natural Resources Committee who missed roll calls today missed them pursuant to the approval of the Speaker because they were attending a special committee meeting in their hearing room.

(Off Record Remarks)

On motion of Ms. Clark of Freeport,
Adjourned until Tuesday, March 22, at 9:30 in the morning.