

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

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Index

**Senate Confirmation Session
September 16, 1977**

Index

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front of that Committee, explain as to what this Resolve actually does. I know that it is to allow him to go to the Courts. I have full confidence that he will be given a fair hearing in the Civil Courts, but I would like some explanation as to this. I have not been able to get one to this point.

The PRESIDENT: The Senator from York, Senator Danton has posed a question through the Chair.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, this apparently has been a running dispute between the Department of Transportation and this contractor on the particular section of the Interstate, and like other cases that come before the Judiciary Committee, we do not try to pass on the merits of the case, but we do look at the case as a sort of screening committee to see if there is enough merit there to permit the case to go into a Court or to arbitration. That is the situation here.

John Carlo is seeking a million and one-half for various disputed matters in that construction project, which was a major project. The State has retained in a hold-back under its contract, a substantial amount of money, and the contractor has already filed suit in the Superior Court, Kennebec County. The State informed us that they intended to plead sovereign immunity, unless the legislature should say otherwise by permitting the suit to go forward without the State exercising a sovereign immunity position. So the matter is in the Court, but the Department of Transportation will have the option in conjunction with their attorneys, the Attorney General's office, of shifting the matter over to arbitration if they feel that is a wiser way to go. It is up to the Department which way of working out the dispute is established.

I think that neither the Committee nor this Legislature is, by passing this Act, taking any position about the merits of the case. We really are not the competent body to decide that. The Courts or an arbitration panel should decide it. It was simply the judgment of the Committee that there were enough disputed facts there to warrant that kind of an examination.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President and Members of the Senate: I would pose a question through the Chair to one of the Members of the Judiciary Committee. Are there not provisions in the contract that DOT awards to a bidder, such as John Carlo, Inc., that will permit an action in case there is some dispute as to the amount of money that has been held back? Further, you say there has been a suit brought. I take it there has been no affirmative response by the State filed yet or they have not filed their answer. If it is already in Court, why do we need this, and then has the State sued John Carlo, Inc., and if they have, as I get the impression they may have, could not a counter claim be filed in that suit by John Carlo, Inc. against the State of Maine.

The PRESIDENT: The Senator from Cumberland, Senator Hewes, has posed a question through the Chair.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I have not read the complete contract in question so I cannot answer your first inquiry. It is my understanding that the State very likely will have counter claims against this contractor. It has not put those in formal status as of yet, and at the time of our hearing the State had not filed its pleading, but the Deputy Attorney General working on the case came before our Committee and informed us they would feel obliged to present a defense of sovereign immunity unless the Legislature did take some action.

The PRESIDENT: The pending question is passage of L. D. 1231. Is it now the pleasure of the Senate that this Resolve be finally passed.

The Chair will order a Division.

Will all those Senators in favor of the final passage of this Resolve, please rise in their places to be counted.

Will all those Senators opposed to final passage of this Resolve, please rise in their places to be counted.

17 Senators having voted in the affirmative, and 8 Senators in the negative, this Resolve is finally passed.

This Resolve, having been finally passed, will be signed by the President and presented by the Secretary to the Governor for his approval.

Emergency

"An Act to Provide Home Winterization for Low Income Elderly, Disabled and Other Low Income Families." (H. P. 1243) (L. D. 1468)

On Motion of Mr. Huber of Cumberland.

Placed on the Special Appropriations Table. Pending Enactment.

Emergency

"An Act to Allocate Moneys for the Administrative Expenses of the State Lottery Commission for the Fiscal Years Ending June 30, 1978 and June 30, 1979." (S. P. 107) (L. D. 236)

This being an emergency measure, and having received the affirmative votes of 22 Members of the Senate, and the negative votes of 2 Members of the Senate, and 22 being more than two-thirds of the entire elected Membership of the Senate, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Emergency

"An Act Repealing the York Beach Village Corporation." (H. P. 1601) (L. D. 1809)

This being an emergency measure, and having received the affirmative vote of 24 Members of the Senate, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

(Off Record Remarks)

Out of order and under suspension of the rules, and on Motion of Mr. Collins of Knox,

Joint Orders

ORDERED, the House concurring, that the following be recalled from the Governor's Office to the Senate: Bill, "An Act to Repeal Certain Laws Relating to Domestic Relations." (H. P. 1627, L. D. 1830) (S. P. 558)

Which was Read and Passed.

Sent down forthwith for concurrence.

Out of Order and Under Suspension of the rules, and on Motion of Mr. Speers of Kennebec,

ORDERED, the House concurring, that notwithstanding Joint Rule 19, the following bills may be retained by the committee to which they have been referred during the course of the interim between the first and second regular sessions of this Legislature and may be considered by the respective committees during that time under the supervision of the Legislative Council and shall be reported to the appropriate House on the first day of the second regular session:

State Government H. P. 671, L. D. 729

"An Act to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Departments and Agencies:

Marine Resources H. P. 1321, L. D. 1640

"An Act to Revise the Laws Concerning Marine Resources:"

Health and Institutional Services H. P. 724, L. D. 1202

"An Act Establishing a Maine Certificate of Need Program:" S. P. 384, L. D. 1358

"An Act Relating to Certificate of Need;" H. P. 1471, L. D. 1721

"An Act to Require the Department of Human Services to License and Make Direct Reimbursements to Free-standing Health Clinics." (S. P. 559)

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I would like to draw the attention of the Senate to the fact that this is Senate Paper 559 and not Senate Paper 557 which was distributed to the Senate earlier, and the differences between the two Orders are simply two, and that is in the first paragraph after the words "Legislative Council" there has been inserted the words "and shall be recorded" rather than leaving it open to an interpretation that perhaps they may be recorded. This mandates that these Bills will be recorded on the first day of the second regular session.

The second difference is that one of the Bills that had been included in the previous Order has been eliminated. That Bill being L. D. 851, the Bill in Marine Resources which the Members of the Committee have indicated they will be able to get out today.

But I did want to draw the attention of the Senate to the fact that this is a different Order than the one that was distributed previously.

(Off Record Remarks)

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I would just like to inquire through the Chair as to whether or not this Order is going to be tabled, or whether or not it has already received the approval of the Legislative Council. I think this can be a good thing, and I would hope that the Legislative Council would adopt a fairly stringent procedure whereby this would be allowed, say a two-thirds vote or something of that kind, and I just would inquire through the Chair whether or not the Majority Leader would consider that to be appropriate or necessary or whatever, but I do think that this is something that could be abused, and I would hope that we would establish some precedent here if this is the way we are going to deal these things now that we have two regular Sessions that would make it fairly stringent.

The PRESIDENT: The Senator from Cumberland has posed a question through the Chair.

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I thank the Senator from Cumberland, Senator Merrill, for raising this question, because I certainly agree with him that it is a procedure which could be abused, and I would hope that this would not be established as a precedent which would grant an excuse for future Legislatures to simply hold on to Bills which may be difficult Bills in the hopes of being able to act on those in the second regular Session.

In answer to his specific questions, I do not contemplate that this would be tabled today because the Joint Rules require that Bills not accepted in this manner be reported out to the Legislature by the end of this evening, so that the Order does have to be passed by both Branches today. It is an Order which has been discussed by the Legislative Council and the Joint Leadership of both Branches, and it is in the form as agreed upon by the Joint Leadership in both branches.

As I indicated, there had been some very serious discussion as to whether this would be allowed at all because it is establishing at least some precedent with regard to carrying Bills over, and there is considerable sentiment, which I share, against the idea that Bills would be carried over from one Session to another, but it was generally agreed that these particular

Bills were of such import and such difficulty that they would be allowed to be carried over to the next Session.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: The questions raised by my colleague from Portland, Senator Merrill, are certainly valid ones, and they are concerns that I have had and expressed very strongly before leadership and, well, which is also Legislative Council.

My personal feeling is that we are establishing a very bad precedent. I think that if we are to get these Bills out of Committees by a certain time on a certain given day, then every effort should be used to get those Bills before the Legislative Session. And why I do not like this particular arrangement, if this does become, in fact, an Order such as this being introduced on the last day to allow Bills to be carried over to the next Session gives, what I consider to be, an extraordinary amount of power to Committee Chairmen, to the Committees themselves and, in particular, to Members of the third house, notably referred to as the Lobby. Now I know that most of us here, perhaps all of us, would very diligently, both as Members of Committees or as leadership trying to exert expediency of getting these Bills out, but there is always the possibility, having served on Committees in the past, knowing Committee procedure, analyzing and reviewing Bills, that as you take them out of the can you continue to get to the back of the can, and the back of the can, and the back of the can, and all of a sudden we arrive at the day of judgment and this is the result of it, if this is going to be a procedure that is going to be adopted in the future.

So I would question and it would always be a question in my mind as to whether or not this was an honest problem that originated and initiated in the Committee, or as to whether or not there might have been some undue influence being brought in from outside. These particular matters that are before us today, I think, obviously are of value. In fact, earlier today when we discussed these in leadership meeting, it was anticipated there would be about ten Bills, so the fact is that we only have nine makes me feel lots better and certainly more comfortable.

I concur with the Floor Leadership on the Order that is before us, and I would urge the Senate, because of the fact that at 5:00 tonight if all Bills are not reported out, they are automatically dead. One may take the position that if they are not reported out by 5:00 tonight instead of being dead maybe they all ought to be Enacted. The fact of the matter is, that is not the case, so I would hope that the Senate would join the leadership in moving for the adoption and the passage of this particular Order.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I object to the Order and I want the record to show that, I believe we have had ample time to discuss all pieces of legislation put before the Committees, so I would ask for a Division on that.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I would like to make my feelings clear. I think this is an important enough decision to warrant some discussion of it.

My own feelings is, of course, in the past when we have not really had two, well we really have had two regular Sessions, but where we have called one a Special Session, therefore, it was not a part of the process in an official sense at this point in time, we have used the Study Order approach as everyone has known, and we have put these sorts of issues out to Study Order and then hearings have been held over the sum-

mer and the study work has been done, and then they have to get reintroduced into the process, and they have another hearing, and it seems to me the advantage of carry-over really can be, if we use it in a disciplined way, is that those things that we would have used the Leave to Withdraw Study Order approach for before, we could have right at the beginning of the Session.

And, frankly, it is an exciting prospect to me to be able to come to the Legislature and have some important complex ideas brought up at the beginning when everybody is fresh, instead of always having all these sorts of things coming at the end and be in a position where you are in such a rush to do anything that when problems arise and you recognize that it is an important area, you find yourself in the position of having to vote against things just because it cannot be dealt with because of its complexity at that point.

So, I am not against the precedent. I would just hope that in doing it we would, either as we go on, and as I understand, what we are going to do is set Joint Rules to deal with this in the future, or I guess it is too late in dealing with this specific item itself, but we would establish some fairly stringent procedures, and I would hope that it would require unanimous vote of Committee in order for this to happen, and it would require an extraordinary vote of the Legislative Council in order for this to happen, so we could protect against the problems brought up by the Senator from Cumberland, Senator Conley, and then it would be my hope that we would use the study approach not to deal with this sort of problem where we have a Bill in and we want to deal with it in the next Session, and we would then study and Study Orders would be hopefully a more limited number and for a different sort of purpose, not a purpose where we have a specific item like certificate of need before us and really is a matter of weighing out all of the concerns of dealing with it, but an area where we are much less certain about what direction we are going in, and we have not had Legislation to deal with it.

So I have no problems with voting for this Order today, but I would hope that the Legislative Council, as it works on preparing Joint Rules for us, would establish stringent procedure, and then would see to it that the Leave to Withdraw procedure would not make this another avenue to do the same thing, and I think that if we can get here next year and have some of these important questions before us the first day we got here, that would be very useful to the Legislative process.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate: I am sure that all the many members of this Body have discussed this, either through the caucus formalities or around the floors in debate or through the Committee process. We have talked about it in the Democratic caucuses, and we have talked about it within Committee.

A number of these Bills, three of the Bills that are coming out are coming from Health and Institutional Services Committee, which I happen to be on. It has kind of been an undercurrent feeling on the Committee that the carry-over would prevail, so we did not have to spend the additional time. I do not want anybody to misunderstand that I would think that either the House Chairman or the Senate Chairman were not pushing the issues that were before us. I think they did a tremendous job. I think we all could have worked a few longer hours and had a number of these Bills out, but once that undercurrent was established that there would be a possibility of a carry-over, I think the work on these items became very lax.

I am opposed to the carry-over to establish any type of carry-over system, and I see there are some safeguards in this system which re-

quire that the Bills would be reported out when we come back in, and that the legislative leadership, the Legislative Council would have supervision over these Committees throughout the summer, and I think that is appropriate. At least if something is going to pass, it should be written in the best forms, the best ways available.

As I sit over and I look at these Bills, I go down through them and look at the date they were introduced, and I just start off with the top one of L. D. 729, and it was introduced March 9th, and it is now June 17th. The latest Bill that was introduced was introduced April 25th. I do not know where May and half the month of June went with this Bill on these Committees, and why we are coming down here to the final days of the Session and that we are starting to establish this new precedent.

I would urge the individuals here that we would vote against this Joint Order, that the Bill would come out, and the individuals could take care of it in the legislative process, if they need changes, or we could put Senate Amendments or House Amendments on it, according to each individual's concern with their particular legislation or those of individuals that have interest in it. So I would hope that we would support the Motion of the Senator from Oxford, Senator O'Leary, and dispose of this matter now.

The PRESIDENT: Is the Senate ready for the question? The pending question is passage of this Joint Order.

A Division has been requested.

Will all those Senators in favor of passage of this Joint Order, please rise in their places to be counted.

Will all those Senators opposed to passage of this Joint Order, please rise in their places to be counted.

23 Senators having voted in the affirmative, and 3 Senators in the negative, this Joint Order is passed.

Sent down forthwith for concurrence.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland.

Adjourned to June 20, 1977 at 10:00 in the morning.