

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eighth  
Legislature***

OF THE

STATE OF MAINE

**1978**

**Second Regular Session**

January 4, 1978 — April 6, 1978

INDEX

**Senate Confirmation Session**

June 14, 1978

INDEX

**First Special Session**

September 6, 1978 — September 15, 1978

INDEX

**Second Special Session**

October 18, 1978

INDEX

**Third Special Session**

December 6, 1978

INDEX

APPENDIX

great support from Androscoggin County and I understand from other counties that the doctors would use arbitration under "C" and I, therefore, urge the passage of Report "C".

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Mangan, that the Senate accept Report "C".

The Chair will order a Division.

Will all those Senators in favor of the motion to accept Report "C" please rise in their places to be counted.

Will all those Senators opposed please rise in their places to be counted.

9 Senators having voted in the affirmative, and 13 Senators in the negative, the motion to accept Report "C" does not prevail.

Is it the pleasure of the Senate to accept Report "B"? It is a vote.

The Bill Read Once.

Committee Amendment "B" Read and Adopted.

This Bill, as amended, Tomorrow Assigned for Second Reading.

The President laid before the Senate:

Bill, "An Act to Revise the Laws Concerning Marine Resources." (H. P. 2146) (L. D. 2166)

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

Mr. O'LEARY: Mr. President and Members of the Senate: We have in this Bill 64 pages as amended, change some of our laws on Marine Resources and the lengthy amendment of 25 pages, which must be a record.

It puts back into the law, some of the provisions of the present law. Some of which I consider as an inland resident of this state, to be very controversial and bordering on the point of unconstitutional. Remember please that I use the word bordering because although I am now a lawyer, I think I can distinguish that fine line, after reading a decision of the Supreme Judicial Court of Maine in the case of the State of Maine versus Russell Boynton handed down on November 18, 1977. Russell Boynton was found guilty in the Superior Court of Hancock County of violating a town ordinance regulating to clam diggers. I think that the key to the finding of the court decision hinged upon the question, was it permissible for the state to delegate to the communities the right to establish ordinances regulating the digging of shell fish. I will read one part of the decision under constitutional law key is 60, "the purpose of non-delegation doctrine is to protect citizens against arbitray or discriminatory action by public officials. But in practice the goal has been to make certain that delegated powers were guarded in meaningful standards."

Mr. President, I would ask of the Senate or any members of this Body, particularly any member of the Committee on Marine Resources, if there is meaningful standards set up in this piece of legislation. So that the delegated powers to public officials will not be applied in the discriminatory manner. By that Mr. President I mean between a commercial diggers right versus those of a resident, the community and those of resident versus those of a non-resident.

Mr. President, I would challenge the right of any municipality to grant a right to the resident of their town to earn a living harvesting a natural resource that belongs to all the residents of this state, and deny to someone who is not a resident to earn his living in the same manner in the same town. Mr. President, the only way that it is conceivable to me is through a shell fish conservation program. And that is in the best interest of all the people of this state, and will stand this test of constitutionality. I have always believed that if we are to leave anything to those who follow us, we must practice conservation.

To go further into this issue of the court was made in the manner it was and I will read it

into the record. And it is part two, Constitutional Law, the key is 60, "Generally Legislative Authority must declare policy or purpose of law and set standards and guides to indicate extent and prescribe limits of discretion it is delegating." And it goes further and sights the law as it is in the present statute and I will read this into the record.

"This enabling statute provides impertinent part any municipality which has raised or appropriated money within two years. Next prior to acting under this section is Forest Shell Fish Conservation Program approved by the Commissioner as authorized under Section 4251 many enact a municipal ordinance fixing the time when clams, cohogs, and mussels may be taken, from any or all of the coastal waters and flats within the municipality. Except for those areas closed by regulation of the Commissioner under Section 3503 and Section 3504. The ordinance must have written approval of the Commissioner and I say things and I want to emphasize it must have the written approval of the Commissioner before adoption and approval must be filed with the municipal clerk prior to adoption. The ordinance may provide limitations on the amount of clams, cohogs, mussels which may be taken within a municipality, and may provide for municipal licenses be required for the taking of any such species within the municipality and may determine the qualifications for the license. Including residents requirements."

I note in the original Bill and I note again in the House Amendment that the same things are in theirs so which reaffirms the present law, and they also may fix the license fees. Mr. President and members of the Senate, this is presently law and is also in the House Amendment that we adopted. I would stress before any municipality enacts any ordinances it must have meaningful standards. And I want the record to show that residency was not one of the questions before the court in this decision. And I will read it into the record part of that decision.

"Pursuant to the provision of 12 MRSA, Sub-Section 4522-1 and prior to the date of the alleged violation, the Hancock County Town of Lamoine duly adopted ordinance regulating the digging of shell fish in that town. One ordinance here invoked provided by resident shell fish digging licenses. Both commercial and non-commercial. Another ordinance provided for similar non-residents shell fish digging license, and I want to appreciate the fact that the Town of Lamoine in Hancock County did provide for non-residents, but the case in point here was not whether the man was a resident or non-resident, in this case as I will point out going down through here, the defendant a Lamoine resident was charged in District Court with violation the ordinance regulating resident diggers by digging clams in Lamoine on July 22, 1976 without a license required of him by that ordinance.

And I would submit that to this Legislature that we in the State of Maine require licenses for a lot of things and I do not think that being an inland resident of this state that I would object to being a non-resident of a community having to pay a license fee to dig clams in that municipality.

The case was transferred to the Superior Court and was tried by the jury waived thereby appropriate motions the defendant unsuccessfully challenged the enabling statutes as an illegal delegation of legislative power. It has been determined by the Court that we have the right to delegate to the communities certain powers, but it must be applied in such a manner that it is nondiscriminatory. The parties have stipulated all steps required of a town to adopt an ordinance of this type as it has been taken in this case. Upon appeal the defendant renewed his attack upon enabling statute as illegally delegating legislative power in violation of state and federal constitutions, and the deci-

sion was that they denied the appeal. The purpose of the non-delegation doctrine, this is in Section 1 of the findings, upon which the defendant here relies is to protect the citizen against arbitrary or discriminatory action by public officials. In practice, however, the doctrine has not prevented the delegation of legislative power, rather the goal has been to make certain that delegated powers were guided by meaningful standards and I said this one before and I reiterate it.

Now Professor Davis observes that the focus should no longer be exclusively upon the standards but on the totality of protections against arbitrariness. Including both safe guards and such others, but I would like right now to read into the record the ordinances as their were in the Town of Lamoine. Section 1, municipal shell fish license required. "It is unlawful for any person to dig or take shell fish from the shores flats or coastal waters of the municipality without having a eurrent license issued by the clerk of this municipality as provided in this ordinance." Now this was the sum total of this case that went to the Supreme Court, whether this man had to have a license in order to as I interpret this and I believe that I interpreted it right and then it goes on to state, "those who are commercial and those who are non-commercial and non-commercial are limited to a peck a day." And if you will remember correctly this was an amendment that was offered by the good Senator from Sagadahoc, Senator Chapman and I supported that amendment and I believe that he had the best interest of non-residents in the municipalities in his thoughts when he presented that amendment. However, that amendment is lost and I would wonder about the germanous of House Amendment "A" when it comes to that.

But Mr. President, because the present law in the House and we have adopted nearly identical in language of the present laws, I want the record to show that it is not the intent of the Legislature to in anyway perpetuate the discrimination of residents and non-residents, unless it is for conservation purposes and I believe that that is spelled out very clearly in this bill that before us, and that the Commissioner of Marine Resources would not approve any ordinances which are not the intent of this Legislature.

Now Mr. President, I will go further in to the court opinion and it says, "Our court has recognized that the line of demaration between the legitimate and illegitimate delegation of legislative power is often quite dim." Small vs. Maine Board of Registration Examination Optometry Maine, 1972, what that means I do not know. However, as a general rule the legislative authority must declare the policy or purpose of the law instead of standards or guides to indicate the extent and to prescribe the limits of the discretion that is delegating.

The statutes here challenge withstand the constitutional attack. Mr. President, once again I reiterate that it was just a case of a person within the municipality not having a license as required for the purpose of digging clams within that municipality. As for standards, 12 MRSA Sub-Section 1451 and 4552, are basically conservation measures. The Legislature has defined conservation for the purposes of this chapter.

Conservation means providing for the development and wise utilization for Maine's marine resources or protecting the elements applied for present and future generations, or preventing a waste or implementing sound management programs.

I think Mr. President that the past statements on this floor that I have reiterated a number of times my position on conservation for those who are going to follow us and I believe that this is being consistant with my stand on that.

Mr. President, there is one statement that bothers me in the court decision and that is the

last statement in the judgment that this is by purification of authority between state and local levels of government is further protection against uncontrolled discretionary power. I believe Mr. President, that this last sentence fails to recognize that there is perhaps, there will forever will be, discretionary powers used in one community versus another. But because I am aware that there is another case pending before the Supreme Court dealing with our natural resources of the State of Maine and I believe that it is in the same area, and it is not up to us to prejudge or guess at the outcome of it, I am going to vote for this bill in its amended form, very reluctantly. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Ladies and Gentlemen of the Senate: Sheer size and thickness of this Bill obviously have raised some concern to many. It is the result of a lot of hard work on the Committee. Representatives of the Department of Marine Resources, members of the public, and I believe that I can fairly say that it is a good restatement of present law with changes to put a lot of things in more logical form, conciseness, makes uniform a lot of terms and definitions.

What changes are incorporated in this that are different are by and large non-controversial, every effort has been made to make this so. As I mentioned the other day, the provision also incorporates the provision of the APA, the Administrative Procedures Act within the Marine Resources Laws. House Amendment "A" does incorporate the municipal shell fish ordinance provisions which the Senator from Oxford, Senator O'Leary has referred. It was left out of the original bill because it was treated earlier in a separate bill and was treated in a separate bill because the changes in this area of the Marine Resources Law were substantive. The original bill has attempted to change present residency restrictions to which the Senator from Oxford, Senator O'Leary has spoken to, but as you recall, we killed these attempts to remove these residency restrictions. So replaced within the law provision by the House Amendment is a restatement of the present municipal shell fish ordinance law in its essential from as it is right now.

Last Friday a problem did arise and did come to my attention concerning the new language in this bill with respect to one section, the special licensing section. The new language allowed for a one year license only, for a special license. The special license is a provision for research or argiculture and can exempt the holder from one or more Marine Resources Laws as to time place, length, conditions, amount with the manner in taking or processing any marine ordinance.

The old law, the present law provides for a five year license, for a special license in the form of the original one year license with four automatic renewals. It was apparent to me that this was going to work a hardship on the special license holder. That received a license under the present five year provisions on January 1 of this year.

Aquaculture which requires a substantial investment in facilities and equipment of necessity demands a longer term in order to justify the necessary capital investment to work in this field. I am going to offer an amendment which will correct this situation and I am happy to say that after four meetings with the Committee, that it has the unanimous support of the committee. Which in itself is no mean feat.

Mr. President, I therefore, move that we reconsider our action whereby we adopted House Amendment "A".

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, now moves that the Senate reconsider its action whereby it adopted House Amendment "A" to L. D. 2166. Is it the pleasure of the Senate? It is a vote.

Mr. CHAPMAN: Mr. President, I now offer Senate Amendment "B" to House Amendment "A" (S-525) and move its Adoption.

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, now offers Senate Amendment "B" to House Amendment "A" and moves its adoption. The Secretary will read Senate Amendment "B"

Senate Amendment "B" (S-525) Read and Adopted.

House Amendment "A", as amended, Adopted in non-concurrence.

This Bill, as amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate:

Bill, "An Act to Establish a Uniform Confidentiality Statute for Tax Information and to Update the Maine Income Tax Law with Respect to the Internal Revenue Code." (H. P. 1952) (L. D. 2031)

Tabled - Earlier in the Day by Senator Speers of Kennebec

Pending - Passage to be Engrossed

On Motion of Mr. Speers of Kennebec, Retabled for One Legislative Day.

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

Mr. HUBER: Mr. President, I understand that there will be an Amendment proposed to L. D. 1939 and I now move that L. D. 1939 be taken from the Special Appropriations Table.

The PRESIDENT: The Senator from Cumberland Senator Huber, now moves that the Senate remove from the Special Appropriations Table L. D. 1939, "An Act Pertaining to Ordinary Death Benefits under the Maine State Retirement System." Is it the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I now move that the Senate, suspend its rules whereby this Bill was Passed to be Engrossed.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate suspend its rules to reconsider its action whereby this Bill was Passed to be Engrossed. It is the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, this matter has to do with a change in the retirement system and there were two errors discovered in the Bill after we placed it on the Appropriations Table. I will make the necessary motions to put this Bill in a posture for amendment to correct these two errors and then there is one further change that this Amendment would accomplish. This relates to the options available to local districts who are in the retirement system and designating the beneficiary who can receive benefits in the event of the death of someone covered under system where we provided that they could make those choices. We did not provide what would happen if no choices had been made and this permits the local district to make provision as to what happens to the benefits if no designation has been made.

Mr. President, I move that we reconsider our action whereby we adopted Committee Amendment "A". Under suspensions of the rules.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves that the Senate reconsider its action whereby it adopted Committee Amendment "A". Is it the pleasure of the Senate? It is a vote.

Mr. COLLINS: Mr. President, I now offer Senate Amendment "A" to Committee Amendment "A" (S-522) and moves its adoption.

The PRESIDENT: The Senator from Knox, Senator Collins, now offers Senate Amendment "A" to Committee Amendment "A" and moves its adoption. The Secretary will Read Senate Amendment "A".

Senate Amendment "A" (S-522) Read and

Adopted. Committee Amendment "A", as amended, Adopted in non-concurrence. This Bill, as amended, Passed to be Engrossed in non-concurrence Sent down for concurrence.

#### Enactors

The committee on Engrossed Bills reports as truly and strictly engrossed the following:

#### Emergency

"An Act to Extend the School Budget Adoption Date. (H. P. 2125) (L. D. 2151)

This being an emergency measure and having received the affirmative votes of 23 members of Senate, was Passed to be Enacted and having been signed by the President, was by the Secretary presented to Governor for his approval.

On Motion of Mr. Huber of Cumberland, Adjourned until 10:30 in the morning, Thursday, March 9, 1978.