

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

**STATE OF MAINE**

**SECOND REGULAR SESSION**

**January 4, 1984 to April 25, 1984**

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**FOURTH CONFIRMATION SESSION**

**(FIRST CONFIRMATION SESSION – SECOND REGULAR SESSION)**

**May 31, 1984**

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**July 11, 1984**

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**THIRD SPECIAL SESSION**

**September 4, 1984 to September 11, 1984**

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MASTERTON of Cape Elizabeth  
BELL of Paris  
ARMSTRONG of Wilton

Which Reports were READ.  
The Majority OUGHT TO PASS as Amended  
Report was ACCEPTED.

The Bill READ ONCE.  
Committee Amendment "A" (S-400) was  
READ and ADOPTED.

THE PRESIDENT: Is it the pleasure of the  
Senate that under suspension of the rules this  
Bill be given its Second Reading at this time by  
Title Only?

It is a vote.

Under suspension of the rules the Bill READ  
A SECOND TIME and PASSED TO BE EN-  
GROSSED as Amended.

Sent down for concurrence.

#### Divided Report

The Majority of the Committee on APPRO-  
PRIATIONS AND FINANCIAL AFFAIRS on Bill  
"An Act to Authorize a General Fund Bond  
Issue in the Amount of \$10,035,000 for Con-  
struction and Renovation of Correctional Facil-  
ities" S. P. 827 L. D. 2213

Reported that the same Ought to Pass as  
Amended by Committee Amendment "A"  
(S-401).

Signed:

Senators:

BROWN of Washington  
NAJARIAN of Cumberland

Representatives:

JALBERT of Lewiston  
LISNIK of Presque Isle  
CHONKO of Topsham  
KELLEHER of Bangor  
CARTER of Winslow

The Minority of the same Committee on the  
same subject reported that the same Ought  
Not to Pass.

Signed:

Senator:

PERKINS of Hancock

Representatives:

SMITH of Mars Hill  
MASTERTON of Cape Elizabeth  
BELL of Paris  
ARMSTRONG of Wilton  
CONNOLLY of Portland

Which Reports were READ.

The Majority OUGHT TO PASS as Amended  
Report ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-401) was  
READ and ADOPTED.

THE PRESIDENT: Is it the pleasure of the  
Senate that under suspension of the rules this  
Bill be given its Second Reading at this time by  
Title Only?

It is a vote.

Under suspension of the rules the Bill READ  
A SECOND TIME and PASSED TO BE EN-  
GROSSED as Amended.

Sent down for concurrence.

On motion by Senator CARPENTER of  
Aroostook, the Senate removed from the  
TABLE:

AN ACT to Establish a Right of Action for  
Wrongful Imprisonment. H. P. 761 L. D. 992  
(H. "A" H-664 to H. "A" H-591)

Tabled earlier in today's session, on motion  
by Senator CARPENTER of Aroostook.

Pending ENACTMENT.

On motion by Senator NAJARIAN of Cum-  
berland, placed on the SPECIAL APPROPRIA-  
TIONS TABLE pending ENACTMENT.

The President laid before the Senate:

AN ACT to Exclude Social Security Benefits  
from Taxation. H. P. 1708 L. D. 2257 (C. "A"  
H-659)

Tabled earlier in today's session, pending  
RULING OF THE CHAIR.

THE PRESIDENT: The Chair would respond  
that there is no loss in revenue because the

State presently does not tax these benefits,  
therefore, there would on be a loss if we were in  
conformity.

I'm sure this responds to the question posed  
by the Senator from Knox.

The Chair recognizes the Senator from Knox,  
Senator Collins.

SENATOR COLLINS: I request a Division.

THE PRESIDENT: A Division has been  
requested.

The Chair recognizes the Senator from Pe-  
nobscoot, Senator Pray.

SENATOR PRAY: Mr. President, I request a  
Roll Call.

THE PRESIDENT: A Roll Call has been re-  
quested. Under the Constitution, in order for  
the Chair to order a Roll Call it requires the af-  
firmative vote of at least one-fifth of those Sen-  
ators present and voting.

Will all those Senators in favor of ordering a  
Roll Call, please rise and remain standing until  
counted.

Obviously more than one-fifth having arisen  
a Roll Call is ordered.

The pending question before the Senate is  
the Enactment of L. D. 2257.

A Yes vote will be in favor of Enactment.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the roll.

#### ROLL CALL

YEAS—Senators, Baldacci, Brown, Bustin,  
Carpenter, Charette, Clark, Danton, Diamond,  
Dow, Dutremble, Erwin, Gill, Hayes, Hichens,  
Kany, McBreairty, Minkowsky, Najarian, Pear-  
son, Pray, Sewall, Shute, Trafton, Twitchell,  
Usher, Violette, Wood.

NAYS—Senators, Collins, Redmond, The  
President—Gerard P. Conley.

ABSENT—Senators, Emerson, Perkins,  
Teague.

27 Senators having voted in the affirmative  
and 3 Senators having voted in the negative,  
with 3 Senators being absent, the Bill was  
PASSED TO BE ENACTED and having been  
signed by the President, was presented by the  
Secretary to the Governor for his approval.

Out of order and under suspension of the  
rules the Senate voted to consider the  
following:

#### COMMITTEE REPORTS

##### Senate

#### Divided Report

The Majority of the Committee on APPRO-  
PRIATIONS AND FINANCIAL AFFAIRS on Bill  
"An Act to Reallocate Unsold Bonds as Pre-  
viously Authorized by Private and Special Laws  
of 1971, Chapter 140, for the Development and  
Improvement of State Park Facilities" (Emer-  
gency) S. P. 814 L. D. 2191

Reported that the same Ought to Pass as  
Amended by Committee Amendment "A"  
(S-402).

Signed:

Senators:

NAJARIAN of Cumberland  
BROWN of Washington

Representatives:

JALBERT of Lewiston  
LISNIK of Presque Isle  
CONNOLLY of Portland  
CHONKO of Topsham  
KELLEHER of Bangor  
CARTER of Winslow

The Minority of the same Committee on the  
same subject reported that the same Ought  
Not to Pass.

Signed:

Senator:

PERKINS of Hancock

Representatives:

SMITH of Mars Hill  
MASTERTON of Cape Elizabeth  
BELL of Paris  
ARMSTRONG of Wilton

Which Reports were READ.

The Majority OUGHT TO PASS as Amended

Report ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-402) was  
READ and ADOPTED.

THE PRESIDENT: Is it the pleasure of the  
Senate that under suspension of the rules this  
Bill be given its Second Reading at this time by  
Title Only?

It is a vote.

Under suspension of the rules the Bill READ  
A SECOND TIME and PASSED TO BE EN-  
GROSSED as Amended.

Sent down for concurrence.

#### ORDERS OF THE DAY

The President laid before the Senate:

Bill "An Act to Amend Certain Motor Vehicle  
Laws" H. P. 1444 L. D. 1889

Tabled—April 11, 1984 by Senator PRAY of  
Penobscot.

Pending—FURTHER CONSIDERATION.

(In House April 3, 1984 the Minority Ought to  
Pass in New Draft under same title (Emer-  
gency) (H. P. 1820) (L. D. 2412) report READ  
and ACCEPTED and the Bill in NEW DRAFT  
PASSED TO BE ENGROSSED)

(In Senate April 3, 1984 the Majority Ought  
to Pass in New Draft under same title (Emer-  
gency) (H. P. 1819) (L. D. 2411) report READ  
and ACCEPTED and the Bill in NEW DRAFT  
PASSED TO BE ENGROSSED in NON-CONCUR-  
RENCE)

(In House April 10, 1984 NEW DRAFT (H. P.  
1820) (L. D. 2412) PASSED TO BE EN-  
GROSSED AS AMENDED BY HOUSE AMEND-  
MENT "C" (H-685) in NON-CONCURRENCE)

THE PRESIDENT: The Chair recognizes the  
Senator from Aroostook, Senator Carpenter.

SENATOR CARPENTER: Mr. President, it's  
my intention to offer an amendment to this  
Bill, (I feel like the guy carrying coals to New-  
castle here), but in order to do that I have to, in  
order to get to a position where the amend-  
ment could be properly offered I have to back  
the Bill up.

Therefore, Mr. President, I move that the Sen-  
ate Recede from Passage to be Engrossed.

On motion by Senator CARPENTER of  
Aroostook, the Senate RECEDED from its ac-  
tion whereby the Bill was PASSED TO BE  
ENGROSSED.

On further motion of the same Senator, the  
Senate RECEDED from its action whereby it  
ACCEPTED the Majority OUGHT TO PASS IN  
NEW DRAFT (H. P. 1819) (L. D. 2411) Report.

On further motion by the same Senator, the  
Minority OUGHT TO PASS IN NEW DRAFT (H.  
P. 1820) (L. D. 2412) Report of the Committee  
was ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

House Amendment "C" (H-685) was READ  
and ADOPTED, in concurrence.

THE PRESIDENT: Is it the pleasure of the  
Senate that under suspension of the rules this  
Bill be given its Second Reading at this time by  
Title Only?

It is a vote.

Under suspension of the rules the Bill in  
NEW DRAFT (H. P. 1820) (L. D. 2412) READ A  
SECOND TIME.

THE PRESIDENT: The Chair recognizes the  
Senator from Aroostook, Senator Carpenter.

SENATOR CARPENTER: Mr. President, I  
offer Senate Amendment "B" to H. P. 1820, L. D.  
2412, under Filing Number S-408, and move its  
adoption, and would speak briefly to the  
motion.

THE PRESIDENT: The Senator from Aroos-  
took, Senator Carpenter, presents Senate  
Amendment "B" and moves its Adoption.

Senate Amendment "B" (S-408) was READ.

THE PRESIDENT: The Senator has the floor.  
SENATOR CARPENTER: Mr. President and  
Ladies and Gentlemen of the Senate, I probably  
just came closer to getting this Amendment  
adopted that I ever am going to get again, but  
nevertheless, I must say that I, the last time I  
carried one of these things up here I was told

that I had so many votes behind me and this time I have no delusions as to how many votes there are here.

Mr. President, it is my understanding that there may be a Constitutional problem with the Bill as it is presently construed, and I would read for the Record and for your edification, a letter that I received today from the Department of the Attorney General.

If you remember back a couple of years ago, I believe that this, virtually the same issue was litigated relative to the "Live Free or Die" motto in New Hampshire, and in fact, I believe that that was ruled to be an unconstitutional issue.

The letter reads as follows: "Dear Senator Carpenter: It is the opinion of this Office (meaning the Attorney General's Office) that the language of the above listed proposal, L. D. 2412, sections 11 and 18, presents a close question of Constitutional Law, in the light of Woolley vs. Maynard. Final resolution of that closed question may be reached only after protracted and costly litigation.

It is also possible, that pursuant to 42 United States Code, Section 1983 and 1988, the State could be required to bear the cost of a court challenge to this language.

I hope this information is helpful. Very truly yours, James M. Bowie, Assistant Attorney General."

If you look at the amendment, under filing of S-408, basically, what it does, it leaves moot, I would disagree with the Statement of Fact, it does not say that you can't change the letters on the bottom of the plate, but what it does do, it leaves that issue moot. It says you must have a license plate attached to the front and rear, and that the letters and numbers on that license plate, registration plate, may not be obscured, must be kept clean with identifying marks and letters.

I do understand there's significant opposition to this amendment, but I thought that, in the spirit of fairness, there were persons in government who thought that it should be offered. I would hope that the amendment was adopted, I'm not one to stand-up here and ask the Legislature consider something that's going to cost a great deal in lawyers' fees, Lord knows, we have enough lawyers out there and we don't need them to get paid any more money, but nevertheless, I think there is a very good chance of this issue going to the United States Supreme Court if we do not clarify it and the adoption of this amendment, would clarify the language as I understand it.

I would, therefore, move the adoption of Senate Amendment "B".

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

SENATOR DANTON: Mr. President, I oppose the amendment and request a Division and I'd like to speak in my opposition to this amendment.

Mr. President, the good Senator from Aroostook is right. The language in this Bill that he's trying to amend today is really to take care of a problem that Judge Alexander had with that number plate that had to do with a person taking out "Vacationland" and putting "Radiationland" on.

Now, I don't think any of us here are really against freedom of speech, that I sincerely believe, but many years ago, I've been told, and I know some of you in here think I should remember, but I've been told when they debated the number plates, at no time did they ever discuss anything but altering the numbers on the plates. What the Transportation Committee has tried to do, it has tried to correct that law, in that now we do issue number plates with numbers and letters, and we don't want those being altered.

Years ago, and I've been told as of this morning, that it's still on the statutes that when you're issued a registration plate, when you're through with that registration plate, you should return it to the Motor Vehicle Registry. I

know many of us, perhaps if we look around in our garages or the trunks of our cars, will probably find plenty of them, but they're supposed to be returned.

That leaves a little gray area as to whether those plates are yours or do they belong to the State. If they do belong to the State, can anyone take and write anything they want on that plate? This is the issue in this case here. Are you supposed to have your family in a car with you, behind another automobile and have that person have anything he wants on his number plate where it says "Vacationland," have it marked off with a tape with any obscene remark he may want to give to anyone? I think not.

Now, I know the Attorney General is making his case about costing money to take this to court. Well, the Attorney General would think nothing of taking anyone else to court be it a businessman or a person, just to prove his case. I want the Attorney General, if he has to, to take this matter to court. I think we, as Legislators, I know there is a question in my mind, and if someone else in this Senate can get up and tell me differently, and convince me, I'll go along with them, but there's a question in my mind as to whether a person can take a registration plate and put anything they want, cover it over with a tape and put whatever they want on there and you can just imagine what some of them could put on there.

So, for that reason, I take and oppose this. I think we should let this Bill go along as it is. If there is a challenge to it, the Attorney General should take this challenge. If it's going to cost money, we just raised a million, eight today. We'll spend a little bit of that money, and I'm no big spender, but you know, there's some things that we just have to take and face head on and I oppose this amendment, and I request a Division.

THE PRESIDENT: A Division has been requested.

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

SENATOR CARPENTER: Mr. President, just two comments, one serious and one not so serious.

The serious comment is, I don't see the purpose of going forward with this issue just to prove a point, if in fact, the issue is closed to that other issue that I mentioned.

The second point, I would make a point and I would correct something the good Senator from York, Senator Danton, said. I didn't think I'd ever see the day when I would stand here on the Floor of the Senate and offer an amendment which calls for two registration plates to be affixed, one front and one rear, and I would just correct the good Senator when he was discussing a plate being issued, you're issued two plates.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Diamond.

SENATOR DIAMOND: Thank you, Mr. President, and Ladies and Gentlemen of the Senate. Just very briefly, in response to the good Senator from Aroostook, Senator Carpenter, the purpose is clear. The purpose is clear. The purpose is there is a doubt and the only question before us is, that the Attorney General thinks that probably, probably, he might lose this or the State might lose this.

Well, this issue is important enough, certainly, to all of us who might be offended by someone else's free speech, if we're going to use that as the argument. Free speech, even as we know it today, is limited and we can't go into a movie theater and yell fire, and nor should we let go undiscussed and undebated and unscrutinized, by our courts the ability for somebody to truly gross us out with their license plate. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the adoption of Senate Amendment "B" (S-408).

Will all those in favor of the Adoption of

Senate Amendment "B" (S-408), please rise in their places to be counted.

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

7 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion to ADOPT Senate Amendment "B" (S-408) FAILED.

Is it now the pleasure of the Senate to RECEDE and CONCUR with the House?

The Chair recognizes the Senator from Cumberland, Senator Diamond.

SENATOR DIAMOND: Mr. President, I submit Senate Amendment "C" (S-411) to L. D. 2412 and move its adoption.

THE PRESIDENT: The Senator from Cumberland, Senator Diamond, presents Senate Amendment "C" and moves it adoption.

Senate Amendment "C" (S-411) was READ.

THE PRESIDENT: The Senator has the Floor.

SENATOR DIAMOND: Thank you, Mr. President. Ladies and Gentlemen of the Senate, just very quickly, as you may recall the debate last week over the two thousand pound variance and those truckers who felt that some people got their two thousand pound variance and others didn't, this simply takes care of that problem, it allows those folks who buy the ten percent commodity to also have the two thousand pound variance as well as those who do not.

The second thing that it does, it says that if anyone who has a ten percent commodity, and is overweight from that and they're fined, currently, they're fined the same amount of money as a person who never bothered to buy that commodity. So, it simply says the person who did not buy the commodity knew what he was hauling, would pay that commodity price as well as a fine. It seems to be a compromise that everyone, at least we've talked to, agrees with and therefore, I would endorse your support.

Senate Amendment "C" (S-411) was ADOPTED.

The Bill in NEW DRAFT was PASSED TO BE ENGROSSED as Amended in NON-CONCURRENCE.

Sent down for concurrence.

The President laid before the Senate:

AN ACT to Clarify and Make Corrections in the Inland Fisheries and Wildlife Laws. S. P. 908 L. D. 2446

Tabled—April 11, 1984 by Senator CONLEY of Cumberland.

Pending—ENACTMENT.

(In House April 10, 1984 PASSED TO BE ENACTED)

(In Senate April 9, 1984 PASSED TO BE ENGROSSED without Reference to a Committee in concurrence)

On motion by Senator USHER of Cumberland, the Senate SUSPENDED THE RULES.

On further motion by the same Senator, the Senate RECONSIDERED its action whereby the Bill was PASSED TO BE ENGROSSED.

THE PRESIDENT: The Senator has the floor.

SENATOR USHER: Mr. President, I offer Senate Amendment "A" (S-404) and move its Adoption.

THE PRESIDENT: The Senator from Cumberland, Senator Usher, presents Senate Amendment "A" and moves its Adoption.

Senate Amendment "A" (S-404) was READ.

THE PRESIDENT: The Senator has the floor.

SENATOR USHER: Thank you, Mr. President. This problem was pointed out by the Legislative Research Office and it was explained to our Committee yesterday, and, due to the conflict between the two bills, one between the Audit and Program Review and the Bill that we passed this morning, we wanted to correct this measure and we put it in this amended form in the Errors Bill.

Senate Amendment "A" (S-404) was ADOPTED.

The Bill was PASSED TO BE ENGROSSED as Amended in NON-CONCURRENCE.