

# 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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hearing on this piece of legislation on Wednesday at 10:00 in the Taxation Committee Room.

We have made sure that there have been copies of this reprinted in case you want to share it with your constituents and notify them of that. There will be appropriate advertising and all that, but I thought that you would want to know.

This will be next Wednesday and we're also having a memo prepared that will sort of put this in a little more condensed size, if anyone is interested.

#### OFF RECORD REMARKS

On motion by Senator CARPENTER of Aroostook

RECESSED until the sound of the Bell.

RECESS

AFTER RECESS

The Senate called to order by the President.

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

#### OFF RECORD REMARKS

#### PAPERS FROM THE HOUSE

##### House Papers

Resolve, to Amend the Law Concerning Authorization for the Public Advocate to Intervene in Workers' Compensation Proceedings Before the Superintendent of Insurance (Emergency) H. P. 1868 L. D. 2470

Committee on STATE GOVERNMENT suggested and Ordered Printed

Comes from the House Under Suspension of the Rules READ TWICE and PASSED TO BE ENGROSSED WITHOUT REFERENCE TO A COMMITTEE

THE PRESIDENT: Is it the pleasure of the Senate that Under Suspension of the Rules, this Resolve be given its First Reading at this time without Reference to Committee?

It is a vote.

Under suspension of the rules the Resolve READ ONCE without reference to Committee and ORDERED PRINTED.

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

It is a vote.

Under further suspension of the rules, the Resolve READ A SECOND TIME and PASSED TO BE ENGROSSED without reference to Committee, in concurrence.

Sent forthwith to the Engrossing Department.

#### COMMITTEE REPORTS

##### House

##### Ought to Pass As Amended

The Committee on TAXATION on Bill "An Act to Establish a Regional Fuel Tax Agreement" H. P. 1799 L. D. 2380

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H 729).

Comes from the House, with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-729).

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE

Committee Amendment "A" (H-729) 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 READ A SECOND TIME and PASSED TO BE ENGROSSED as Amended, in concurrence.

Sent forthwith to the Engrossing Department

#### ENACTOR

The Committee on ENGROSSED BILLS reported as truly and strictly engrossed the following:

##### Emergency

AN ACT to Reduce Minimum Fees and Provide for Implementation of the Chemical Substances Identification Law S. P. 915 L. D. 2463

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

SENATOR USHER: Mr. President, I still have concern about the training aspects of this Bill, and I wish that someone for the Committee would explain, "On the Record", what the training program will encompass because I'm concerned about the place where I work, and other places throughout the State where people who are not involved with the chemicals and I still feel that it is not necessary they be trained under the program.

THE PRESIDENT: The Senator from Cumberland, Senator Usher, has posed a question through the Chair to any member of the Committee who may respond if they so desire.

The Chair recognizes the Senator from Kennebec, Senator Kany.

SENATOR KANY: Mr. President and Fellow Senators, in answer to the Senator from Cumberland's question, the law since 1979 has required annual training, really, of all employees.

The new law which is before us in Emergency Enactment now would require only training to those who are exposed to hazardous chemicals in their work areas, prior to the employees initial assignment. Additional instructions shall be provided whenever chemicals or processes change, or newly acquired information indicates a need for additional protective measures. So, actually, the training requirement has lessened.

Secondly, the Director could require, by rule, a minimum training program including refresher training where necessary to be provided to employees who are exposed to specific hazardous chemicals. So, in other words in unusual situations, more than the single once in a lifetime training could be required.

I'd like to point out to the Senator from Cumberland, once again, that his particular employer, and all other manufacturing employers, are scheduled to come under the Federal rule regarding training beginning in 1986.

This being an emergency measure and having received the affirmative vote of 28 Members of the Senate, with 2 Senators having voted in negative 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:

#### PAPERS FROM THE HOUSE

##### Non-concurrent Matter

Bill "An Act to Amend Certain Motor Vehicle Laws" (Emergency) H. P. 1820 L. D. 2412

In Senate April 12, 1984 PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "C" (H-685) AS AMENDED BY HOUSE AMENDMENT "B" (H-725) THERETO AND HOUSE AMENDMENT "D" (H-722) in concurrence

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "C" (H-685) AS AMENDED BY HOUSE AMENDMENT "B" (H-725) THERETO in NON CONCURRENCE

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

SENATOR CARPENTER: I move the Senate Recede and Concur.

THE PRESIDENT: The Senator from Aroostook, Senator Carpenter, now moves that the Senate Recede and Concur with the House. Is this the pleasure of the Senate?

The Chair recognizes the Senator from York, Senator Danton (Wood).

SENATOR DANTON: I want you to know, Mr.

President, it's a compliment to be called Senator Wood.

Mr. President and Members of the Senate. This Bill has had a rough road between the House and the Senate. We put a little amendment on here and there's been some accusations made about: first, the Transportation Committee as a whole; secondly, about my counterpart in the House about having a sneaky amendment that was put on the last minute. I listened to some of the debate in the other Body, they talked about dust and diamonds and God help me, I don't know what they were talking about, but let me just try to explain what the Transportation Committee tried to do with the amendment.

The Motor Vehicle Department presently has three attorneys that take and work for the Department. The Department today is a very busy, complicated Department, besides which it raises millions of dollars for the State of Maine. All this little amendment was trying to do was to allow the attorneys that are presently there, that are presently being paid, that in the event they had to go to court and prosecute, they would be able to do so, but no there's opposition to something like that because it's simply too simple. What we have to do is this: we have our three attorneys that take and go over the cases that are brought in by the investigators that are out there finding car dealers, or whatever it might be, that turn back speedometers, and after they take and get the cases in proper form, they call the Attorney General's Office, and I hope his window is open so he can hear me, and the Attorney General sends an attorney there and his attorney sits down with our attorney at Motor Vehicle, and our attorney explains to the Attorney General what the case is all about and how to handle it in court.

Now, it's a pretty good piece of work. The Attorney General then takes that paperwork and he comes over here to the Capitol Office Building and he sits on that case, and he goes over it for three, four, five weeks, maybe six weeks, two months, it doesn't make any difference, he's got plenty of time. You know, that's the largest law practice in the State of Maine, they've got plenty of time. They can take and harass business people and citizens all they want because it costs them nothing. They take cases and stretch them out five, six, seven, eight weeks, two months, three months, it doesn't make any difference, cases that the Department could dispose of almost immediately, once they find someone being guilty of whatever the charge may be, they sign a consent decree, take them to court, prosecute it, it's all over. But no, we can't do that. The Attorney General doesn't want that.

Many times I've heard, "Well Senator, what do you want to have, your own legal staff?" Now it becomes my legal staff. You know, I thought we were doing something that would expedite matters, but you know the Maine Legislature doesn't want to do those things. I've been around here long enough, I've seen it. The more complicated we can do things the better it is. I'm convinced of that.

So, I know when the road is rough and bumpy, and I know when the big deals and the big wheels are against the little Senator from Saco, and I know when I'm not going to take and win on an issue, but, I want you Senators to know that this amendment was not a last minute secret deal, it was something that I wish was thought up at the beginning of the Session so we could have had the time to really bring it forward and speak to you individually, I've tried.

I'd like to read the Statement of Fact, I know a lot of you didn't because you've made up your mind the amendment's no good, Danton has a motive for doing it. I see the Senator from Cumberland, Senator Usher, laughing at me, I guess we've served here together too long. Let me read the Statement of Fact, (and we might

as well speak a little while, we're going to be here until ten o'clock anyway), it goes on to say "The number and complexity of the matters which fall within the statutory responsibility of the Secretary of State have increased in recent years".

You know just a year ago, we passed a Highway Program and we changed the truck weights a lot and within this Bill, believe it or not, a year later those truck weights no longer stand as is, they've been changed, now there's new regulations all over again. In recent years particularly in the Motor Vehicle Division, because of the many pressing demands upon the offices of the Attorney General and the eight District Attorneys of the State, and you know it is totally almost impossible to get an Attorney General to do some work for you, it would be helpful to the overall enforcement effort if an attorney who is employed on the staff of the Secretary of State and who is familiar with the specific statutes relating to the duties of that office could be more fully utilized to carry out the responsibilities of the Secretary of State: in court trials, administrative hearings and such other functions as the Office demands. There would be no increase cost to the State for this amendment simply, because there's three attorneys there now.

Now, what do they compare this amendment with? They compare it with the bill that was put in for the Business Regulation Department. I guess Mr. DeVane wanted three attorneys. Well, there's a little difference between Mr. DeVane and the Secretary of State. The Secretary of State has to answer to us every two years, if he abuses that about having attorneys and being his own judge and jury, when he comes around and asks us for our votes, we can tell him "Sorry, but you're getting to be too much of a Czar, we don't need you any more, we're going to put someone else there".

Mr. DeVane was a totally different thing, he was appointed by the Governor, he's part of the Executive. I can understand not giving him his attorneys, he should use the Attorney General's Office. Let me just tell you that when the A.G.'s office goes down to Motor Vehicle, they have to sit down with our attorneys they have to be told what to do, what the charges are. I'm not saying that they ultimately aren't going to do the job, after all, I have the highest of respect for attorneys. We have three fine attorneys and two more coming along in this Chamber, believe me, I have all the respect in the world for attorneys but you know attorneys, and I can speak with a little bit of knowledge in this area having had one in my family once upon a time do not move with lightning speed.

I would like to tell you, that it wouldn't be a bad idea. I know this isn't going to go anywhere but I had to get it off my chest. I hope this is being piped in to the building across the way and downstairs so when we leave here at 7 or 8 o'clock at night they'll do like they usually do when we adjourn Sine Die they stand in the window and they thumb their noses at us and wave goodbye. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

SENATOR COLLINS: Mr. President, there's a lot of merit in what the Senator from York says and I wish this issue had surfaced at another day when we could have explored it, perhaps, better than we can at this hour. I have a couple of questions that perhaps would help me make a decision because I haven't made any decision yet on my vote.

In our structure the Governor has the right to appoint some attorneys to advise him and help him, who are not part of the Attorney General's staff. If the Governor has something that he wants to go to court, does he have any right to have the attorneys that he has appointed represent the State in court on his matters? That's a question I think I know the answer to, but I'm not sure. I would be inter-

ested whether the Senator from York knows the answers because if the Governor does not have the right to have his personal attorneys go to court on behalf of the State of Maine, because of either Constitution or statutory material, then there is a comparison to study and to look into the reasons for it.

The second thing that comes to my mind is this that there are a great many matters in the Secretary of State's Office and in the Department of Transportation, that are basically administrative law matters that involve the Administrative Procedure Act, that involve appearances before administrative agencies and the like, but as I read this amendment, it is so broad that the attorneys appointed by the Secretary of State could prosecute any kind of crime that relates itself to the Secretary of State and the Department of Transportation activities.

Now, the Secretary of State has as part of his duties some important responsibilities: in what we used to call a felony category, we now call it a Class A, B or C category in the Criminal Code having to do with the habitual offender; the scofflaws who commit several Class D or Class E crimes and create such a horrible record that they're denied a license but they keep on driving anyway and they keep violating the O.U.I. laws and so forth and so forth. Eventually, their record is so bad that they're an habitual offender and they have to be prosecuted as a Class C crime, for example.

When you get into that category of legal activity and responsibility, you cross a line between what the type of attorney does that is suggested here and what the attorney does who is in the Attorney General's Department or who is a District Attorney out in the field. This line in my mind as a legal practitioner is rather important. If this amendment were more carefully drawn to separate the duties somewhat, instead of being with such a broad brush that those attorneys can do anything the Attorney General can do, in effect, I would have some real sympathy for it because I think there's a lot in what the Senator from York has given us.

The attempt to do this in the Department of Business Regulation went down the drain, I understand, and whether it was for similar reasons or not I don't know, I think that there is a serious question about how much specialization and expertise there ought to be in the State's law firm. Our present Attorney General assessed that when he came in and he decided to try it differently than his predecessors, to bring all his legal staff family that he could into one geographical area and to mix up their assignments a little more, keep it more interesting and so on. He had some reasons to do that; it's an experiment, whether it has been enough time to assess it as an experiment, I don't know. I haven't discussed this with him and would like to have done so before making my judgment on this. That's why it seems to me that it's a little late in the Session to bring forward this important a policy-decision for us to act upon.

I give my commendation to the Senator from York for bringing the issue forward. I think that's something to be assessed, and if it were more carefully defined it might be a policy to be adopted in that Department. I'm not sure that I can go that far today but I would appreciate any answers to my concerns that the Senator from York, or anyone else, could provide at this time.

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

SENATOR DANTON: Mr. President and Members of the Senate. I don't think I could seriously and truthfully answer the good Senator Collins' questions because being an attorney I am sure he'd want them real technical.

Just quickly Senator Collins I can tell you this, that speaking with Mr. Dowling from the Motor Vehicle Department, he felt that they wouldn't be infringing in any area. They felt

that they could handle the cases, they could expedite cases, as I said before.

The thing that brought this about was the fact that just a short while ago they were in Bangor to prosecute a case, to help prosecute a case, the Attorney General's Office had not showed up to do it. Our attorney from the Motor Vehicle Department was there and when we called up the Attorney General's Office, he had to get permission for that attorney to prosecute the case. The answer was no. So we had to wait for the A.G. to leave Augusta and come up to Bangor or postpone it for another day.

These are some of the things, if you have noticed I haven't asked for a division because I want this Bill to sail along, but these are some of the things, and I'm not going to ask for a division, Mr. President, but these are some of the things that we should start looking into carefully. Now, I think that this building an empire and having all the attorneys in one room and under one rule, and no one getting any service, I think should be looked into because a lot of Departments are complaining. Thank you, Mr. President.

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

SENATOR USHER: Thank you, Mr. President. In response to the good Senator from York, probably one reason why I was smiling I was just thinking about just a few weeks ago that we attempted to keep our attorney on our staff down there at the Fish and Wildlife Department. The Audit and Program Review Committee recommended that we do away with this position. I understand he is all done June 30th, at the end of the fiscal year, and my good friend from York is now trying to get an attorney. We have similar problems spread out throughout the State, everybody likes to have their own staff attorney, but I was assured that all the times that we tried to reinstate this person to our Department that the Attorney General had an excellent staff and could take care of any Department in the State. So, I did have to accept that.

I think possibly the good Senator from York is correct, it should be looked into, but at this late date I don't think it is the proper time to look into it. Possibly in the next Legislature they could probably come up with better results than we have here today.

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

SENATOR DANTON: One quick comment to my good friend, the Senator from Cumberland, Senator Usher. Obviously, he has missed the entire session, he doesn't realize that Fisheries and Wildlife doesn't have any money.

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

It is a vote.

#### ENACTOR

The Committee on ENGROSSED BILLS reported as truly and strictly engrossed the following:

#### Emergency

AN ACT to Make Corrections of Errors and Inconsistencies in the Laws of Maine S.P. 911 L. D. 2462 (H "A" H-711; H "B" H-721)

This being an emergency measure and having received the affirmative vote of 31 Members of the Senate, with No Senators having voted in negative was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

#### OFF RECORD REMARKS

On motion by Senator CARPENTER of Aroostook

REECESSED until 7 o'clock this evening

RECESS

AFTER RECESS

The Senate called to order by the President