

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Seventeenth Legislature
OF THE
State Of Maine

VOLUME V

FIRST REGULAR SESSION

Senate

June 19, 1995 to June 30, 1995

FIRST CONFIRMATION SESSION

September 14, 1995

FIRST SPECIAL SESSION

House of Representatives

November 28, 1995 to November 30, 1995

Senate

November 28, 1995 to November 30, 1995

(In Senate, earlier in the day, **READ A SECOND TIME.**)

On motion by Senator **CARPENTER** of York, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (H-610), in concurrence.

On further motion by the same Senator, Senate Amendment "A" (S-345) to Committee Amendment "A" (H-610) **READ** and **ADOPTED**.

Committee Amendment "A" (H-610), as Amended by Senate Amendment "A" (S-345), thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Which was **PASSED TO BE ENGROSSED**, As Amended, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act to Ensure That Rulemaking by Agencies Does Not Exceed the Intent of Authorizing Legislation"

H.P. 806 L.D. 1123
(C "A" H-584)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook.

Pending - the motion by Senator **LONGLEY** of Waldo to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers, in **NON-CONCURRENCE**.

(In House, June 26, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-584).**)

(In Senate, earlier in the day, **READ A SECOND TIME.**)

The President requested the Sergeant-at-Arms to escort the Senator from Aroostook, Senator **KIEFFER** to the Rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the Floor of the Senate.

The Senate called to Order by the President Pro Tem.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you, Mr. President, Colleagues in the Senate. I rise just to go on Record with my thoughts on this bill. I think there might be a problem. I am quite sure what is before you is not the solution and I would like to quickly explain. It basically has to do with rule making. The Legislature passes a rule, the regulatory agency promulgates a regulation. As they do it, as is on the books now, a fact sheet comes back to the Executive Council, who then distributes this information to the committee of jurisdiction. The committee of jurisdiction has notice, in addition, of when these hearings are coming up, and there is plenty of oversight. What this bill does is say when we pass a law and the regulatory agency starts to develop a regulation, that we decide what category it fits in, procedural or substantive. Procedural, as far as I can figure, includes when the agency decides to develop a form, or when they decide something nonsubstantive, something procedural, not pivotal. In my opinion this means possibly a couple of extra hearings and definitely a couple of extra months of work for us. Basically, at a hearing we decide if it is procedural or substantive, it's the second bite of the apple, if you didn't like the law, you certainly aren't going to like the reg resulting and you get a second chance to show up at a hearing and argue that this is substantive. Substantive means that once the agency promulgates that rule, it is temporary until it is approved by the legislature. It doubles the workload. In addition, if it happens that the rule is ready when we are not, it enters what I call a dead zone. In my opinion this means a good rule, say on the regulating of hybrid wolves, or whatever issue out there that is a good rule, it enters a dead zone and cannot be enforced until the legislature re-reviews it. In my opinion, we have a full plate now, this doubles up on the full plate. More importantly, there are provisions on the books that allow us oversight and if we just do our job well, it's already on the books. But if you want to double up on the workload, be my guest. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you, Mr. President. I made some arguments about this the other day. I won't repeat those arguments. There is some information I would like the Senate to know about this situation of rules. As you may remember, the Governor signed an Executive Order earlier this year, when he first took office, to have all of the existing rules categorized and computerized so that we could understand them. The Governor has a strong feeling, as do some of the rest of us, that the rule making thing has run wild without much control. That will be done, he believes, this year, and we'll finally have the rules on computer so people can find out what they are. Right now, I believe, there are

thirteen volumes and each volume is about three inches thick of the existing rules in the State. Those will be categorized. This bill only deals with prospective legislation. The items that would naturally come back to the Committee are the substantial rules. Let me just read the legislation that describes what a substantial rule is. "Major substantive rules are rules that, in the judgement of this Legislature, require the exercise of significant agency discretion, or interpretation in drafting, or, because of their subject matter or anticipated impact, are reasonably expected to result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefit or services, the imposition of state mandates on units of local government as defined in the Constitution of Maine, or other serious burdens on the public or units of local government." Now, that is the conditions that the Legislative Committee should ask for those rules to come back to be reconsidered by the legislature. I think it's very responsible and I think it's an excellent bill and I hope you will vote against the motion to Indefinitely Postpone. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator CLEVELAND: Thank you, Mr. President, Men and Women of the Senate. I rise to ask you, as well, to consider the motion on the floor and to support the Indefinite Postponement of this bill and all of its accompanying papers. I'm going to be brief, but let me share with you two reasons, two concerns, that I have. The first involves what I think to be an extraordinary workload that will be put back on committees of jurisdiction. You all serve on those committees. We barely get done with the workload that we have on our regular bills that are submitted, and our nominations and confirmations if you have those responsibilities as well. Public hearings will have to be shortened. Notice will have to be suspended from public hearings because we will have bills that are rushed and we have to act on them at the last moment. It seems to me that when you pass laws, and you establish public policy, to have us come back and review all of those laws automatically, if they have made a major substantive change, is going to put a tremendous burden on the legislative process, not to mention, I think, stall or keep us from acting on important legislation because we won't be in session and therefore we won't be able to approve those laws. So, the first reason is I think it's going to be a major burden. Let me just remind you as well, my good friend from Lincoln County, knows well of this, we just passed last week L.D. 1348. L.D. 1348 is a reformed process of the periodic review of programs and agencies. We have not just delegated to the committees of jurisdiction that they are going to do audits and management reviews of all of the agencies under their area. No additional staff, no additional time, no additional resources. A process that used to be done by a separate committee and used to take all year. My concern is we are piling one requirement after another on committees and we are going to overburden them, slow down the legislative process and wind up with more difficulty, not less. Finally, let me say that I'm concerned, my second reason, is that often

times committees are split on the bills that are passed. They go out seven to six, or perhaps even a minority report, if this year is any example of what the future may hold, on a twelve to one report the minority of one seems to pass. It seems to me that this may be another opportunity for those who didn't agree with the policy or the action in the first place not to discuss the rule, but to rediscuss and redebate the policy and have another chance at defeating the purpose and intent of that. It seems to me that that is counterproductive to the legislative process. For those reasons, and many others, I would hope that you will support the prevailing motion. Thank you.

The President Pro Tem requested that the Sergeant-at-Arms escort the Senator from Cumberland, Senator **BUTLAND** to the Rostrum where he resumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Aroostook, Senator **KIEFFER** to his seat on the floor.

Senate called to Order by the President.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator HALL: Thank you, Mr. President, Ladies and Gentlemen of the Senate. This bill is probably the most important bill that has been worked on this year. Some years ago, when the legislature gave away their power by creating the Administrative Procedures Act, it was done so under the assumption that the departments then could take care of their little changes and so on and so forth, and the legislature wouldn't have to be bothered with it. It sounded good, I suppose, at the time. I can remember the department I worked for was supportive of it at the time. Well, it's been abused. It's been abused very bad. It's time now for us to take back some of that power. Not all of it, but some of it. Our citizens are unable to continue at the rate that the rules and regulations have been coming down upon them. We don't even know, until after the fact. Our citizens do not know. Yes, they are advertised in the local newspapers. Yes, there are public hearings. Yes, no one attends, until it comes down, passes, bang. We have created a monster and it's time to trim it down so that we can live with it. Please vote against the present motion.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator LONGLEY: Thank you, Mr. President, Colleagues in the Senate. If we don't know, we are not doing our job. Thank you.

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

Senator **LORD:** Thank you, Mr. President, my Learned Colleagues. For eight years I have been fighting with DEP because of the rules and regulations that have come out of there. I could give you examples, but I think what will happen if we pass this bill is this, they know if they overstep their bounds it will come back to us and we will make changes. I think there will be a lot more careful of what their rules and regulations are to make sure that they are within the parameters of what this legislature passed. I'm going to give you a good example. Back when Merrill Wass, down in Portland, was loading junk steel to go overseas, they were loading all night long. There was a bill that came in to limit their loading hours, and we did. When the rules and regulations came out, there was a paragraph in there that said every developer who has a development must have a noise pollution abatement plan. During our hearings this wasn't even mentioned, but there it was in there. So what did I have to do the next year, I had to put a bill in, we had to have a hearing. This takes time and it takes money. I think this can be avoided if we pass this law and I hope you will vote against the motion to Indefinitely Postpone. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **LONGLEY** of Waldo that the Senate **INDEFINITELY POSTPONE** the Bill and Accompanying papers, in **NON-CONCURRENCE**.

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

8 Senators having voted in the affirmative and 23 Senators having voted in the negative, the motion of Senator **LONGLEY** of Waldo to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers, in **NON-CONCURRENCE**, **FAILED**.

Which was **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act Relating to the Retirement Benefits for the Maine Warden Service"

S.P. 473 L.D. 1269
(C "A" S-327)

Tabled - earlier in the day by Senator **MICHAUD** of Penobscot.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**.

(In Senate, earlier in the day, **READ A SECOND TIME**.)

On motion by Senator **MICHAUD** of Penobscot, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-327).

On further motion by the same Senator, Senate Amendment "A" (S-346) to Committee Amendment "A" (S-327) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Michaud.

Senator **MICHAUD:** Thank you, Mr. President, Men and Women of the Senate. What this amendment does is treat the Baxter State Park Authority Rangers the same as it does the wardens and marine patrol. When I first checked with the staff they originally thought that they were included under the game wardens, because as Baxter Park Authority Rangers they have the same enforcement powers that game wardens do statewide, not only within the park. So this treats them the same as it does the game wardens. Thank you.

On further motion by the same Senator, Senate Amendment "A" (S-346) to Committee Amendment "A" (S-327) **ADOPTED**.

Committee Amendment "A" (S-327), as Amended by Senate Amendment "A" (S-346), thereto, **ADOPTED**.

Which was **PASSED TO BE ENGROSSED, As Amended**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted on, were ordered sent forthwith.

ORDERS OF THE DAY

The Chair laid before the Senate the first Tabled and Today Assigned matter:

Bill "An Act to Establish a Management Framework for the Lobster Fishery within State Waters"

H.P. 577 L.D. 782
(S "A" S-325 to C
"A" H-570)

Tabled - June 26, 1995, by Senator **KIEFFER** of Aroostook.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-570) AS AMENDED BY SENATE AMENDMENT "A" (S-325)**, in **NON-CONCURRENCE**.