

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

Senator Conley of Cumberland, was granted unanimous consent to address the Senate, Off the Record.

Senator Redmond of Somerset, was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed until the sound of the bell.

Recess

After Recess

The Senate called to order by the President.

Senate

Ought to Pass — As Amended

Senator Pierce for the Committee on Fisheries and Wildlife on, Bill, "An Act to Increase Compensation to Municipal Clerks and other Issuing Agents for the Issuance of Certain Fish and Game Licenses." (S. P. 682) (L. D. 1805)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-471).

Which Report was Read and Accepted and the Bill Read Once. Committee Amendment "A" Read.

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

Senator PRAY: Thank you Mr. President. Mr. President, and Members of the Senate, I notice in reading over the amendment that under agents, which have in the past been included as part of the price of the license, and that the agent or clerk was allowed to retain a fee, which was a part of that license. Now the amendment states that the agent or clerk will charge an additional fee over and above what the cost of the license is.

My concern would be in some municipalities around the State where you have several individuals that compete against each other to sell licenses basically to get clients into the store so that they may buy other goods as well, either a sporting goods store, or a groceries store, that under this change, that individual would not necessarily retain a fee of any sort if they so desire. Would that be correct? Would someone on the committee answer that?

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: Are we on L. D. 1805?

The PRESIDENT: The Chair would answer the Senator in the affirmative.

Senator REDMOND: Mr. President, and Members of the Senate: I rise just to mention that most of us here recall the UCC when that change was made it was to a disadvantage to some of these municipal clerks. They used to get their fees. At the time I'd also like to mention that at that time the State was charging \$1 to sell those licenses. Since that change was made, the clerks were allowed to get 50¢. Now they're asking for 1\$, which is only the same fee that they used to get when the State was paying 7 or 8 years ago.

I think that it's only reasonable that we get them back in line, because about half of those town clerks don't get paid full wages. Some of them, these fees are part of their earnings, and others, the municipality gets the fees. So one way or the other, it doesn't make any difference. It's the municipal clerks or the municipality. If the clerks don't get enough fees, the municipality has to increase their wages. This is all I would like to make sure, that you keep that in mind.

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

Senator CONLEY: Mr. President, and Members of the Senate, I would pose a question again to the Chairman of the Joint Standing Committee on Fisheries and Wildlife. I would only ask how long will it be before you'll be taking this money that you're setting aside for

the agents and incorporating it as part of the fee to go back to the Department of Fish and Game? I just see this as one step up front, where you're saying that it's really not the running of the department, it's for the agent. Knowing the Legislature and knowing the Fish and Game Joint Standing Committee, and knowing the department itself, it will only be a matter of time when they'll be coming bouncing in here saying let's absorb it all into one package and take it away from the agents and make it part of the function of the Fish and Game Department.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: In response to the good Senator from Cumberland, I would say that this question is double barreled to me. In the first place in the rural areas, it wouldn't be practical for the department to sell licenses, because in Augusta, here, sitting in an office they don't know the people establishing residency and so forth, it's kind of difficult.

Therefore, I believe that it has been debated. It was debated at the public hearing, and the committee was well satisfied that the licenses should be sold more specially in the rural areas where they are spread out, they should be sold by the municipal clerks.

The other part, if I understand right, has something to do with the monetary part. This will not give any more money to the Fish and Game Department. This money goes entirely to those who are selling the licenses. Is this satisfactory?

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

Senator PRAY: Mr. President, and Members of the Senate, some of you who are not aware of the present fee system, I'll just give you a couple of examples that are in the Committee Amendment. As the present law stands. A Resident Junior Hunting License presently is \$1.50, of which the department gets \$1 and 50¢ is retained by the agency that sells or makes out the license. Under the amendment that we have here, the license will be \$1 and the agent will charge a fee of an additional \$1. Now in the past 4 or 6 years that I'm familiar with, the Junior License is something that's always been left alone. At this time I see we're going to have an increase on these people of almost, of 50¢ on theirs. Also the Junior Non-resident License is presently \$15.50. It gives you the impression that it's going down 50¢ because in the law books it would now state that the cost of that license is \$15.50 but again the agent will charge another \$1 over and above that.

As I stated a few moments ago that most people who sell licenses, and it's very competitive for agents, other than town clerks, because they want individuals within their place of business. So either they will buy the sporting goods or whatever goods they will sell.

Now in reference to the town clerks and the fact that they get to keep theirs. Most of the town clerks sell only residential licenses, which is an extension of government providing first of all, we mandate that they have to have a license. The government at that point, then specifies who will be the individuals who will dispense these licenses. In essence then it's the town clerks and agents.

I think that to have the increase to these individuals is not in the best interest of the people of the State. Thus, I move the Indefinite Postponement of this bill and all it's accompanying papers.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: I request a Division.

The PRESIDENT: The Chair would advise the Senator from Penobscot, that we are in the process of amending which takes priority.

Is it the pleasure of the Senate to Adopt Committee Amendment "A"?

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President, I would pose a question through the Chair to anyone who may care to answer in reference to the difference between the Committee Amendment and the original bill which called for an increase in fees? Could someone tell us the difference?

The PRESIDENT: The Senator from Penobscot, Senator Pray, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: I cannot answer that immediately. I would have to look it up.

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

Senator PIERCE: Mr. President, and Members of the Senate: I think the basic difference is that originally the bill would have caused the fee increases to come from the department money, since this is dedicated revenue. Now under this new version it won't, there would be an increased fee to be paid by the public.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President, and Members of the Senate, I believe this is the same type of bill we debated last year. Of course, I guess I feel a little strongly towards municipal government and the amount of work we go through, in which to address collecting those fees, putting them into special accounts, saving up that money, then reverting it to the Department of Inland Fisheries and Wildlife.

I think it's perfectly justified for the municipal clerks to receive this additional 50¢ per license, but I disagree that the fee structure should be altered as the good Senator from Penobscot, brings out. Possibly it might be advisable, at least, during an interim period of time to table this particular bill so that that particular area can be rectified. Insofar as increasing those fees to the Junior Hunters or Fishermen in the State of Maine, that is unwarranted.

On Motion by Senator Pray of Penobscot, Tabled until later in today's session, pending Adoption of Committee Amendment "A".

Senator Trafton for the Committee on Judiciary on, Bill, "An Act to Revise the Small Claims Law." (S. P. 684) (L. D. 1807)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-470).

Which Report was Read and Accepted, and the Bill Read Once. Committee Amendment "A" Read and Adopted, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Judiciary on, RESOLUTION, Proposing an Amendment to the Constitution of Maine Repealing the Exclusion of Judges of Probate from the Governor's Authority to Appoint all Judicial Officers. (S. P. 778) (L. D. 1969)

Reported that the same Ought to Pass in New Draft under New Title: RESOLUTION, Proposing an Amendment to the Constitution Allowing Either the Constitution or Statutes to Determine the Manner of Selection of Judges of Probate and Justices of the Peace. (S. P. 804) (L. D. 2007)

Signed:
Senators:

COLLINS of Knox
DEVOE of Penobscot
TRAFTON of Androscoggin

Representatives:

SEWALL of Newcastle
SILSBY of Ellsworth
LAFFIN of Westbrook
HOBBINS of Saco
STETSON of Wiscasset
JOYCE of Portland

SIMON of Lewiston

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

Signed:

Representatives:

CARRIER of Westbrook
GRAY of Thomaston

Which Reports were Read

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

Senator CONLEY: Mr. President, before I make a motion on this I would like to pose a question through the Chair to anyone who may answer. Is this the bill that was allegedly not supposed to come before us during this session?

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

Senator COLLINS: Mr. President, I think the good Senator from Cumberland refers to a bill which will be heard tomorrow by the Committee on Judiciary. A bill that would transfer the functions of the Probate Court to the Superior Court. I anticipate that after that hearing that bill may very likely be withdrawn.

However, this particular measure that is now before this body relates to cleaning up the Constitution, vis-a-vis the half a job that was done in 1967. In 1967 the amendment then passed, dealt with only one part of the Constitution, with respect to Probate Judges. It said that "at such time as we establish full-time Probate Judges they would be appointed rather than elected."

For the second part of the Constitution that dealt with appointment of judges was not touched, and therefore created the very great ambiguity in the Constitution.

So in trying to clean that up the Judiciary Committee decided the best way to do it was to leave the question of election vs. appointment an open question, one that can be decided by the Legislature at such time as it may decide to establish full-time Probate Courts or any other type of Probate Court if it ever decides to do that. If it does not ever decide to do it, then they will remain elected as they are now.

At the same time, since this particular section deals with Justices of the Peace, and there was a conflicting Constitutional Amendment around on that, we put the whole thing into the same package, so that in the future, if the Legislature decides that it wants Justices of Peace appointed by the Secretary of State rather than by the Governor, or vice versa, it may make that determination.

So the general purpose is to clean up the Constitution, but to leave the doors open about the choices as to whether there will be appointed or elected Judges of Probate.

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

Senator CONLEY: Mr. President, I wish to thank the good Senator from Knox, Senator Collins, for his explanations. I have always marvelled at his explanations dealing with legal matters. I want to make sure, being a lay person, I want to understand this very, very, clearly.

As I understand the Constitution right now, it prohibits anything but the election of Probate Judges. Secondly, cleaning up the Constitution, does that mean that we're removing that from elective office as far as the Constitution is concerned and going to allow the Legislature to write statutory language as to whether or not in the future they should be elected or appointed?

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

Senator COLLINS: Thank you Mr. President. The answer is yes, but I need to qualify a little bit because the present Constitution has a very peculiar thing in it. In 1967 when the voters passed the amendment that the Legislature sent out, it said that the amendment that was then approved by the voters should become ef-

fective only when the Legislature established a new system of full-time Probate Judges.

The commission has been working on this matter for the past 7 years, came in with the recommendation. Many of us feel that it is too late in the session to deal with that recommendation because it is very far reaching. Therefore, I think the Committee on Judiciary is going to recommend that that bill be withdrawn.

We did feel that we ought to at least take step #1 in clarifying the Constitution. Because the Constitution now has 1 section hanging ready to become effective at such time as the Legislature acts, in a way that would then require that judges be appointed. Another section of the same Constitution that says that Probate Judges, in effect, must be elected. For us to sit here and not to take notice of a Constitution that has that great ambiguity, when we're spending a great deal of money and a great deal of time trying to decide what we ought to do about our Probate Courts in the future, seemed to us to be a rather negligent way to go. So we presented this amendment keeping the doors open on that controversial question of whether they shall be elected or appointed, but getting the Constitution all in one frame so that half of it won't say one thing and half the other.

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

Senator CONLEY: Mr. President, I again wish to express my thanks to the good Senator from Knox, for his explanation. I guess from what I hear from my constituents and a lot of them, many of them are concerned about the appointed powers of the Chief Justice, giving them that type of political power of appointing every Probate Justice or Probate Judge in the State.

I'm not absolutely sure if I'm ready to recommend a change in the Constitution at this time to do that. However, I think it's something that should be talked about within the next few days before this bill gets down the road too far. In order to keep it moving along I would move that the Majority Report be accepted at this time.

On Motion by Senator Conley of Cumberland, the Majority Ought to Pass, in New Draft, Report of the Committee Accepted, and the Resolution, in New Draft, Read Once. The Resolution, in New Draft, Tomorrow Assigned for Second Reading.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House — As Amended

Bill, "An Act Relating to the Administration of the State Employees Group Accident and Sickness or Health Insurance Plan." (H. P. 1765) (L. D. 1897)

Bill, "An Act to Increase Trapping Fees." (H. P. 1833) (L. D. 1937)

Bill, "An Act to Appropriate Operational Moneys for the Mattawamkeag Wilderness Park." (Emergency) (H. P. 1845) (L. D. 1950)

Bill, "An Act to Increase Interest Rates on Judgment Debts." (H. P. 1836) (L. D. 1940)

Which were Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

Bill, "An Act to Permit the Department of Inland Fisheries and Wildlife to Borrow in Anticipation of Revenues." (H. P. 1836) (L. D. 1940)

Which was Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

(See Action Later Today)

Bill, "An Act to Create a Combination Nonresident Hunting and Fishing License." (H. P. 1832) (L. D. 1936)

Which was Read a Second Time.

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

Senator PRAY: Mr. President, and Members of the Senate: Looking at the bill that's presently before us and the one that we just debated on the other page, and noticing that the 2 committee amendments contradict each other. The bill that we are presently addressing states that it creates a combination of hunting and fishing license. But also goes on to create several new licenses for the Fish and Game Department. It creates an alien small game license, an alien archery license, an alien fishing license, and an alien combination license, and it creates the combination license for non-residents of this country as well.

Looking at the figures that we have down here, for example, an alien big game hunting license goes from \$105 to \$105.50. I would suspect that it's the intention of the committee that the 50¢ be retained by the agent. On the proposal that's been tabled until later in the day, we have a bill that says it's going to be \$1 above the \$105. So if we adopt both bills I think we'd be taking the alien big game license and making it \$105.50 plus an agent's fee of \$1 above that. I wish somebody on the committee would take a look at the contradictions of the 2 amendments and decide whether or not if we're going to be increasing these fees by \$1.50, or by a \$1 in the version of the other bill.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: Mr. President, it's my understanding that the good Senator from Penobscot, Senator Pray, has a problem with this 50¢. The intent of the committee is not to charge, to increase the licenses by any more than what the actual figures are. What it amounts to is that he mentioned the previous bill that was tabled until later in the day did not read the same as the amendment.

These bills don't read the same as the amendments because the amendments were designed to make changes, to make specific changes in the bill. What it amounts to, we have a Legislative Aide; he checks these out. I have been assured that the 50¢; this is why they changed the wording. In the old wording it said clerks or other agents appointed by the commissioner to issue licenses and permits shall retain a fee of 50¢. This is crossed off in the amendment, then underlined, charge a fee of \$1 for each hunting license issued.

I don't know what other question there could be to that. I don't know what it has to be with L. D. 1936, "An Act to Create a Combination Nonresident Hunting and Fishing License." I just don't understand what the problem is.

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

Senator PRAY: Mr. President, and Members of the Senate, for the benefit of the Senator from Somerset, Senator Redmond, I'll try to be a little bit more specific.

On Committee Amendment Filing Number H-891, Section 1, paragraph H of the bill, it states that an alien big game hunting license, which is now in existence, will be changed from \$105 to \$105.50. On the bill which was tabled until later in the day, under Senate Amendment S-471, and Section 2 of the bill, again paragraph H, alien big game license is \$105, but the change of course, to that amendment is the fact that the agent shall charge a fee of \$1. On the other bill we're increasing the license by 50¢ which I suspect is to be retained by the agent. I noticed in reading the committee amendment there is no fiscal note, attached to the bill, I stand corrected. I see that they estimate that they will increase their revenues by approximately \$2,000 by increasing all of these licenses.

I remember not too long ago when I served on the Fisheries and Wildlife that the cost of licenses, I was wondering if the department may also have any idea as to the number of alien fishing licenses, alien small game licenses, that would be sold if this bill does go through, as to how much money the department will be