

# MAINE STATE LEGISLATURE

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**Legislative Record**

**OF THE**

**One Hundred and Seventh Legislature**

**(First Special Session)**

**OF THE**

**STATE OF MAINE**

**1976**

**KENNEBEC JOURNAL**

**AUGUSTA, MAINE**

## SENATE

Monday, March 29, 1976

Senate called to order by the President.

Prayer by The Honorable Charles P. Pray of Millinocket:

Lord, help us be successful today in our actions, and let those actions be beneficial to the people of this great state. Amen.

Reading of the Journal of Friday, March 26, 1976.

**Papers from the House  
Non-concurrent Matter**

Bill, "An Act Relating to the Effective Date of Each Individual Establishing a Benefit Year under the Unemployment Law." (H. P. 2145) (L. D. 2285)

In the House March 25, 1976, the Minority report Read and Accepted and the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-1007).

In the Senate March 25, 1976, the Majority Ought Not to Pass report Read and Accepted, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

Mr. Roberts of York moved that the Senate Adhere, and Mr. Conley of Cumberland subsequently moved that the Senate Insist and Join in a Committee of Conference.

On motion by Mr. Pray of Penobscot, a division was had. Seven having voted in the affirmative, and 19 having voted in the negative, the motion did not prevail.

Thereupon, the Senate voted to Adhere.

**Non-Concurrent Matter**

Bill, "An Act to Amend the Employment Security Law." (S. P. 691) (L. D. 2210)

In the Senate March 23, 1976, Passed to be Engrossed as Amended by Committee Amendment "A" (S-453).

Comes from the House, Passed to be Engrossed as Amended by Committee Amendment "A" and House Amendment "B" (H-1117), in non-concurrence.

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

Mr. SPEERS: Mr. President, I would like to ask a question through the Chair to any Senator who may be able to answer this. I note that House Amendment "B", under Filing No. H-1117, has to do with members of the legislature, and on a quick reading of this amendment, without being able to correlate it with the law, I am wondering whether or not this allows members of the legislature to collect unemployment during the time that the legislature is not in session.

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

The Chair recognizes the Senator from York, Senator Roberts.

Thereupon, on motion by Mr. Roberts of York, tabled until later in today's session, pending Consideration.

**Senate Papers**

Mr. Collins of Knox presented, Bill, "An Act Delaying the Effective Date of the Maine Criminal Code in Order to Allow Sufficient Time to Make Certain Necessary Revisions." (S. P. 776)

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

Mr. COLLINS: Mr. President and Members of the Senate: The bill containing the revisions of the criminal code will be on the Senate calendar this afternoon. The present effective date of the criminal code is April 1st, however, because we anticipate that it will take a few days to move the revision bill through the legislative process, and because we think it is necessary

that there be a little time elapse to get these revisions out to the courts, the prosecutors, and the enforcement officials, we are submitting this bill to delay the effective date until May 1st. We do not feel that this bill needs a public hearing and, therefore, I would move that this bill be passed to be engrossed without reference to committee and sent forthwith to the House.

The PRESIDENT: Is it now the pleasure of the Senate that the rules be suspended in order that this bill, without reference to committee, be given its first reading at this time?

Thereupon, under suspension of the rules, the Bill was given its First and Second Readings and Passed to be Engrossed.

Under further suspension of the rules, sent down forthwith for concurrence.

**Committee Reports  
House**

**Ought to Pass — As Amended**

The Committee on Education on, Bill, "An Act Relating to Exceptional Children." (H. P. 1797) (L. D. 1956)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-1083).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A", as Amended by House Amendment "A" Thereto (H-1104).

Which report was Read and Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read. House Amendment "A" to Committee Amendment "A" was Read and Adopted in concurrence.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Gahagan.

Mr. GAHAGAN: Mr. President, I would like to pose a question through the Chair. Is it the intent of Committee Amendment "A" to prevent a parent of an exceptional child from going outside of the State of Maine to seek educational opportunities for an exceptional child, or is it the intent to bring this completely in the control of the Commissioner of Education? I am trying to establish whether or not a parent would have the discretion to go outside of the State of Maine and have the state assist in any exceptional programs of the child.

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

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, the wording of this bill as it pertains particularly to the Baxter School is confusing, but neither this bill nor the amendment makes a substantive change in the procedures. When it comes to tuitioning a child out of state for a unique program not available in the state or to a program which serves the needs of a child better, under existing law, as under this proposed change, the Commissioner of Education must approve every contract of such a nature.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Committee Amendment "A" as amended by House Amendment "A"?

It is a vote.

Thereupon, under suspension of the rules, the Bill, as Amended, was Read a Second Time.

Mr. Katz of Kennebec then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-482, was Read.

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

Mr. KATZ: Mr. President, this is the first legislative action to make any changes at all in what was originally L.D. 965, and because it is major legislation, I am sure that many of you will be getting queries on it.

Along with this bill is the requirement that the department promulgate regulations, and in

this particular case the promulgation of the regulations is going to be just as important as the bill itself. Senate Amendment "A" will require that the department, having formulated regulations, must present them to the next legislature prior to January 15th for our approval.

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

Mr. SPEERS: Mr. President, this is the first that I have seen this particular amendment, and I have to agree with the intent of the amendment very strongly. I would take issue with the comments that were made by the good Senator from Kennebec, Senator Katz, in that he explained that this would require the department to submit rules and regulations to the legislature for approval. I think, if you will read the amendment, you will find no such language whatever in that amendment. And for that reason, I am afraid that I find the amendment objectionable as it has been drawn.

We faced this issue a little earlier in this session when we were faced with an order requesting or ordering the Committee on State Government to report out a bill which would require that all rules and regulations be approved or reviewed by the legislature before they go into effect, and again I cannot state strongly enough that I fully agreed with that intent. But we did have a rather lengthy discussion at that time over the problems of doing this piecemeal or doing it too quickly, and we do have an order on the table that will direct the State Government Committee to go into this matter during the interim and come out with a bill which hopefully will cover all departments and cover the procedures which should be followed very carefully before rules and regulations can go into effect to make sure that they are reviewed by the appropriate committees in the legislature before being taken into effect.

Now, as to this particular amendment, there are a couple of very real and serious problems, I feel. No. 1, the amendment states that regulations and guidelines shall be presented to the legislature for review. Now, what is meant by review? The good Senator from Kennebec mentioned that the legislature would have to approve these rules and regulations before they go into effect, but that is not really what the amendment says. The amendment simply states "for review". And as I suggested when we were discussing this whole question of legislative review of rules and regulations, there are some very serious constitutional questions involved that will take some very careful drafting. I feel, to avoid. The word "review" is extremely vague in this case, and we really have no guideline from this amendment as to whether or not the legislature must approve or disapprove, or what happens if the legislature disapproves of the rules and regulations that are suggested. So that is a very vague term, and I feel that by adopting this at this time it would create more problems than it would alleviate.

The second question, of course, is the wording in the amendment "by the appropriate committee". Now, what is the appropriate committee? and here again we have a very basic policy question involved: in submitting to the legislature suggested rules and regulations, should they be submitted to the various committees in the area of the various departments: for example, education to the Education Committee, or transportation to the Transportation Committee, judicial matters to the Judiciary Committee, etc., or should there be one separate committee set up by the legislature, perhaps Performance Audit, perhaps something else, that would be charged with looking at all of these rules and regulations. I think these are very basic policy questions that deserve to have some very careful consideration given to them.

So very reluctantly, Mr. President, and only