

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**

either supportive or to reject this proposal upon enactment which will come later.

I believe there are a number of questions that have been asked and it would only serve the public good at this time to get the bill in a posture where amendments could be offered. It's my understanding the Senator from Penobscot, Senator Trotzky has one. To allow the debate to continue for a while. So at this time I will be supporting the Committee Report.

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

Senator CONLEY: Mr. President and Members of the Senate: I know this is an extremely important issue before us. It would be my hope to try to expedite matters in a sense with respect to the Attorney General's Office. So perhaps we might have a joint caucus of both Republicans and Democrats in the event that there are questions from our side of the aisle. I'm sure that it won't be redundant in that manner.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty. Senator MCBREAIRTY: Mr. President, I'm going to vote for this first move to put it in the position for the referendum. That's the only reason that I'll vote this time.

The PRESIDENT: The pending question before the Senate is the Motion by Senator Collins of Knox that the Senate accept the Majority Ought to Pass, as amended, Report of the Committee.

A Yes vote will be in favor of accepting the Majority Ought to Pass, as amended, Report of the Committee.

A No vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEA — Carpenter, Chapman, Clark, Collins, Conley, Devoe, Hichens, Huber, Katz, McBreairty, Najarian, O'Leary, Pierce, Pray, Sutton, Trafton, Trotzky, Usher, Sewall.

NAY — Ault, Cote, Emerson, Gill, Minkowsky, Perkins, Redmond, Shute, Teague.

ABSENT — Danton, Farley, Lovell, Martin, Silverman.

19 Senators having voted in the affirmative, and 9 Senators in the negative, with 5 Senators being absent, the Motion to Accept the Majority Ought to Pass, as amended, Report of the Committee does prevail.

The Bill Read Once.

Committee Amendment "A" Read and Adopted. The Bill, as amended, Assigned for Second Reading later in today's session.

Senator Pierce of Kennebec, was granted unanimous consent to address the Senate, Off the Record.

On Motion by Senator Pierce of Kennebec, Recessed for 90 minutes, pending 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:

Communication

Department of Audit

TO GOVERNOR JOSEPH E. BRENNAN AND MEMBERS OF THE ONE HUNDRED AND NINTH LEGISLATURE

In compliance with statutory requirement, I submit herewith the 60th Annual Report of the State Auditor for the fiscal year ended June 30, 1979.

We have made extensive examination of major pertinent transactions. We do not make a detailed examination of all recorded transactions on the general books of the State for the

year. We did, however, make a detailed examination of accounting records, procedures and internal controls, and verified financial transactions on a selective basis in our post audits of the activities of the various State Departments, Agencies, Boards, etc. during the year. The results of these audits, together with comments, observations and audit findings and recommendations are contained in our individual audit reports submitted to the respective State Departments, Agencies, Boards, etc.

Based on the scope of our examination, it is our opinion that, except for the exclusion of certain trust and operating fund transactions and balances recorded and controlled locally by State agencies and not reflected herein, the financial position and operating results of the various State Departments, Agencies, Boards, etc., of the State of Maine for the fiscal year ended June 30, 1979 has been fairly presented in conformity and with generally accepted accounting principles applied on a consistent basis.

Statements and schedules pertaining to the financial position of the various operating funds of the State of Maine at June 30, 1979 may be found in the Annual Report of the State Controller.

I would like to express my special appreciation to the Staff of the Department of Audit for their continued loyalty and devotion to duty and to the State Officials for their cooperation with this department.

Respectfully submitted,
GEORGE J. RAINVILLE
State Auditor

Read and, with accompanying papers, Ordered Placed on File.

Orders

Expressions of Legislative Sentiment recognizing:

Hollis Tapley for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 826)

Raymond Burge for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 828)

Steven Tapley for his part in rescuing a woman and her child from the Piscataqua River. (S. P. 829) as presented by Senator Hichens of York (Cosponsor: Representative Lancaster of Kittery).

Which were Read and Passed.

Sent down forthwith for concurrence.

Second Reader

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

Senate — As Amended

Bill, "An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." (S. P. 827) (L. D. 2037)

Which was Read a Second Time.

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

Senator TROTZKY: Mr. President, I move the Senate Reconsider the adoption of Committee Amendment "A" for the purpose of amendment. I'd like to present Senate Amendment "B" Filing Number S-538 which would put a referendum on this bill for the June 10th Primary Election.

The PRESIDENT: The Senator from Penobscot, Senator Trotzky, moves that the Senate Reconsider its action whereby it adopted Committee Amendment "A" to L. D. 2037.

Is this the pleasure of the Senate?

It is a vote.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Senator TROTZKY: Mr. President, I present Senate Amendment "B" to Committee Amendment "A", Filing Number S-538 and move its adoption.

The PRESIDENT: The Senator from Penob-

scot, Senator Trotzky, now offers Senate Amendment "B" to Committee Amendment "A" and moves its adoption.

Senate Amendment "B" (S-538) to Committee Amendment "A" Read.

The PRESIDENT: The Senator has the floor. Senator TROTZKY: Mr. President and Members of the Senate: what this bill does, it sets up large Indian Territories within the State of Maine, which eventually could become parts of the reservation proper. I feel this is of momentous consequence to the State of Maine, not only now but possibly in the indefinite future, and therefore feel that the people of the State of Maine should have a chance to vote on this.

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

Senator COLLINS: Mr. President, if there were plenty of time to accomplish all that is best for the State by having a referendum I would certainly have no objection to it.

I think the Senator from Penobscot is not fully aware of the dangers of delay in the process of settling a law suit. He thinks of this, perhaps as conventional Legislation which it is certainly not. I agree with him about its great importance to the State, but the fact is that this will delay the matter beyond June 10th. We have just been told in a bi-partisan general caucus that it is essential that the ingredients of this settlement begin the process in the Congress in the month of May. So I wonder if this is simply a way to scuttle the bill and say well, to the home folks, we put it in your lap.

I recognize that this has a great deal of political appeal. Send it to the voters, it's an election year. I would like to think that this Senate has the guts, the guts to stand up and make this decision. This morning I likened our position to the position of a patient, of a physician where there is a bursting appendix. The question is shall there be an operation or not? The doctor says there is a 60% chance that you will survive without the operation. I wonder how many of us would take the 40% chance that we would die without the operation. I think it's a matter that's that serious, I think we are in time constraints through no fault of our own, but we have to deal with them, and we can't wish it away.

So I hope that we'll bite the bullet, and decide that we have the intelligence to make this decision, that we have the intelligence to consult the best brains that are available, and to pass judgment after we have heard those opinions. The patient can refuse treatment. Maybe that's what the Senate wants to do, refuse the advice of its legal advisors. I submit that that's a risk that I'm not willing to run.

If this was my child and I feel very strongly that the State is my child in this situation, that I tried to analyze for you, I'm going to order that operation done. I think it's just as serious as that for this State. I would urge you to defeat the motion for the referendum.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Mr. President, and Ladies and Gentlemen of the Senate, I find it rather nerve-racking and uncomfortable to be debating my good friend and colleague from Knox County. He has made a very interesting analogy, that of the doctor and patient. But I would like to take it just a step further and suggest that I don't think we're talking about a burst appendix, or a life and death situation. I'd like to suggest though that we are talking about major surgery. Yes, major surgery! It seems to me that in this day and age when one is faced with major surgery for their child, that they very often, and would be well advised to, seek another opinion, before taking that of their doctors.

I would like to suggest in all humility to the very learned minds that have put their best that they possibly could to this subject that I would like to see a second opinion of the people who are going to be most affected by this.

That's the people of the State of Maine. I would suggest that we get that second opinion in a referendum and that the world is not going to come to an end in the meantime.

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

Senator CONLEY: Mr. President and Members of the Senate: what we're voting on with respect to the proposed referendum is one that I'm sure everyone would recognize, could become extremely emotional throughout the State.

What is being recommended to us today is a settlement by some of the people, I feel anyway, who have the best legal minds of the State. The fact that the Attorney General's Office stepped outside of its own bounds to employ perhaps one of the most brilliant lawyers in Mr. James Sinclair to analyze and review the document before us today, and to review the case itself. I'm sure Mr. Sinclair as a trial attorney would love to have the opportunity of going before the courts from now on to the next 10 years to prove a point. But he agrees himself that no one can guarantee that we are going to win. We are presently in court.

The document before us is not a document of the Attorney General and his aids sat in a dark room behind closed doors and put together and brought it before a Joint Select Committee. As I stated this morning, there has been 13 months of negotiations going on between the tribes and the State. The Attorney General himself stated there are things in this bill that he doesn't like necessarily, but in order to gain something we had to give something. That's what negotiations are all about. You have to give as well as receive.

It would seem to me if we can just recall a few months ago when the president came to this State up in the Bangor auditorium and he revealed what he was going to do with respect to the Indians land claims, people became aroused because of the fact that, one, they didn't want Maine money going into this, and they didn't want lands being taken from Maine citizens.

What we're voting on again are negotiated settlement. Willing buyers and sellers. The money again has to be appropriated by the Congress. There is no guarantee that that's going to happen. I would suggest that if anyone has been involved in negotiations over the years, whether it's in labor contracts or what else, one knows that you have to bend somewhere. Personally this bill before us, if it's denied, or if the claims are successful, I don't know what the ramifications would be. I do know though that there are many Maine citizens in this State whose property is going to be in jeopardy.

Secondly, I think that there is some moral obligation on the part of this Legislature. I would urge the Senate to vote against the pending motion.

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

Senator McBREAIRTY: Mr. President, Honorable Members of the Senate, I don't pretend to be any match in a debate with Senator Collins. I guess I never have been. Very seldom have I voted against anything that he's proposed.

I don't agree that it takes guts to vote for this. I think it takes some guts to ask that it go to referendum. The only time I've felt that I haven't shown any guts here is when I agreed and went along with everybody. That's the easy way. That doesn't take guts.

I would like to talk about an operation. I saw in the paper the other day where they hurried one and they got the wrong woman and they operated on somebody's back when it was the thyroid gland or something like that.

I think that maybe if we're going to have a real serious operation we better take a real look at it and take time to diagnose the case, and let the people in on it.

The PRESIDENT: The Chair recognizes the

Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: Mr. President, and Members of the Senate, I would concur with the Senator from Aroostook, Senator McBreairey. I think it does take guts to take another look and take a further look and not just accept things as they are presented to us. By no means do I feel that I'm copping out. I feel that the simile the Senator from Knox, perhaps isn't quite accurate. The appendix is out of human control. This matter is within the human control of interested and I hope serious and understanding people, that realize the tremendous magnitude of this decision we're making.

Whenever we rush things, it seems more often than not that when upon reflection we find that we wish we had taken more time and perhaps done a few things differently. We all agree that this is momentous, with huge ramifications.

In my discussions with many people in my district I find that most don't really know too much about this matter. When we discuss it quite often they are not all that favorably disposed.

The tribes granted their members of the opportunity to vote on this issue and should we not also give our constituents that same opportunity? It seems to me that anything so momentous and so permanent has to be better resolved, so all the people truly are satisfied that is the right decision. So I would urge that we support the referendum amendment.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the adoption of Senate Amendment "B" please rise in their places to be counted.

The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: I request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators 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 motion of Senator Trotzky of Penobscot, that the Senate adopt Senate Amendment "B" to Committee Amendment "A".

A Yes vote will be in favor of the motion to adopt Senate Amendment "B" to Committee Amendment "A".

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Ault, Chapman, Emerson, Gill, Hichens, McBreairey, Minkowsky, Perkins, Pray, Redmond, Shute, Sutton, Trotzky.

NAY — Carpenter, Clark, Collins, Conley, Cote, Devoe, Farley, Huber, Katz, Najarian, O'Leary, Pierce, Teague, Trafton, Usher, Sewall.

ABSENT — Danton, Lovell, Martin, Silverman.

13 Senators having voted in the affirmative, and 16 Senators in the negative with 4 Senators being absent, the Motion to Adopt Senate Amendment "B" does not prevail.

Committee Amendment "A" Adopted.

The PRESIDENT: Is it now the pleasure of the Senate that this bill, as amended, be Passed to be Engrossed.

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Passage to be Engrossed of L. D. 2037, please rise

in their places to be counted.

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

16 Senators having voted in the affirmative, and 13 Senators in the negative, the Bill as amended Passed to be Engrossed.

Sent down forthwith for concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Committee Report

House

Committee of Conference Report

The Committee of Conference on the disagreeing action of the two branches of the Legislature on, Joint Order introducing Bill, "An Act Converting Lakeville Plantation into the Town of Lakeville and Removing Lakeville Plantation from the Maine Forestry District." (H. P. 1811) have had the same under consideration, and ask leave to report: that they are unable to agree

On the part of the House:

Representatives:

DUDLEY of Enfield

PEARSON of Old Town

On the part of the Senate:

Senators:

McBREAIRTY of Aroostook

TEAGUE of Somerset

CLARK of Cumberland

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted, in concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Paper from the House

House Paper

Bill, "An Act to Revise Allocations from the Highway Fund for the Fiscal Years from July 1, 1979 to June 30, 1981, and to Provide Increased Revenues to the Highway Fund." (H. P. 2053) (L. D. 2039)

Reference to the Committee on Transportation suggested.

Comes from the House, Passed to be Engrossed without reference to Committee.

Senate at Ease

The Senate called to Order by the President.

Senator Katz of Kennebec 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.

Under Suspension of the Rules, the Bill Read Twice, and Passed to be Engrossed, in concurrence, without Reference to Committee. Sent forthwith.

Enactor

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

AN ACT Relating to Games of Chance at Agricultural Fairs. (H. P. 1797) (L. D. 1919)

Which was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Senator Pierce of Kennebec was granted unanimous consent to address the Senate, Off the Record.