

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Tenth
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

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FOURTH SPECIAL SESSION

April 28, 1982 and April 29, 1982

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FIFTH SPECIAL SESSION

May 13, 1982

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SECOND CONFIRMATION SESSION

July 16, 1982

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Recognizing:

Dora Michaud, of Millinocket, chosen President of the Fifth American Legion District of Maine; (S. P. 989)

Tony Tammaro, of Woodland, who has been selected as the sportswriters and college coaches' "Man of the Year;" (H. P. 2354) by Representative Moholland of Princeton. (Co-sponsor: Senator Brown of Washington)

There being no objections, the above items were considered passed in concurrence or sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Carrier of Westbrook,
Recessed until the sound of the gong.

After Recess

3:45 p.m.

The House was called to order by the Speaker.

The Chair laid before the House the following matter: An Act to Amend the Maine Implementing Act with Respect to the Houlton Band of Maliseet Indians (S. P. 931) (L. D. 2076) (C. "A" S-463) which was tabled earlier in the day pending the motion of the gentleman from Bangor, Mr. Kelleher, that the Bill be recommitted to the Committee on Taxation and later table assigned.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the gentleman from Bangor, Mr. Kelleher, that the Bill be recommitted to the Committee on Taxation. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Kelleher of Bangor requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: The Taxation Committee and the Judiciary Committee met up in the Judiciary Committee room. I was not there for the entire meeting but was there for a portion of it and got the gist that the Taxation Committee, in a very cautious fashion, didn't seem to want to make any—I hope I say this correctly, I don't want to misrepresent their thoughts—but didn't seem extremely forceful in any changes in the bill at the moment. Some may have been, others may have been, but nobody seemed to want to be at that time. I am just as skeptical now of the inconsistencies, the reasons which they met for, as I was earlier this morning.

Some individuals seemed to think that if we recommit the bill it is dead in the lateness of the session. I really don't know what is going to happen today, only the President of the Senate and the Speaker of the House do and I am sure that sometime they are going to indicate to us, they may have already chatted with the leadership, the other leaders in this House, on whether we are going to extend or adjourn or whatever, but there is a great deal of business left before this body, and if this bill is recommitted back to the Taxation Committee, it won't be the end of the world.

I really don't know how to get out of the quandary because I don't want to kill the bill, but I want to exercise my right as an individual legislator to question it. So I think at the moment it would be wise for us to recommit the bill to the Committee on Taxation.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I guess I want to be as cautious

as Representative Kelleher has been also, but I am not sure that I see any good purpose in recommitting this bill, not recommitting, I would say referring it to the Committee on Taxation.

Trying to speak only to the issue, some of the questions that have been raised, I believe as a member of the Judiciary Committee, have been addressed by the Governor's Office, the Attorney General's Office. We had an Attorney General's opinion, which we can all agree with or disagree with, we aren't going to resolve it though. The Bureau of Taxation has also been asked their opinion. I think at this point the issue that has been raised may be a matter of interpretation which you, Representative Kelleher, Representative Post and myself could argue forever and perhaps not be able to solve here in this body.

I guess I would argue against referring to the Committee on Taxation so we can debate the bill today. At that point, I suppose we could either accept it or reject it, and if we reject, I would think we would be back to the same position we are in now except it probably would have to go back for negotiations and I don't think that is a good thing to happen either.

The SPEAKER: A roll call has been ordered. The pending question before the House is on the motion of the gentleman from Bangor, Mr. Kelleher, that the Bill be recommitted to the Committee on Taxation. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Carter, Clark, Conary, Damren, Davis, Dexter, Dudley, Gavett, Gillis, Hickey, Huber, Jackson, P.T.; Jackson, P.C.; Jacques, Kelleher, Kiesman, Lancaster, Lisnik, MacBride, Mahany, Masterman, McCollister, McGowan, McHenry, McPherson, Michaud, Mitchell, J.; Moholland, Murphy, Nadeau, Norton, Post, Pouliot, Ridley, Sherburne, Small, Smith, C.B.; Smith, C.W.; Stover, Strout, Theriault, Webster, Wentworth.

NAY—Aloupis, Armstrong, Austin, Baker, Bell, Benoit, Bordeaux, Boyce, Brannigan, Brenerman, Brodeur, Brown, D.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, Conners, Connolly, Cox, Crowley, Curtis, Davies, Day, Diamond, G.W.; Diamond, J.N.; Dillenback, Drinkwater, Erwin, Fitzgerald, Foster, Gowen, Gwadosky, Hall, Hanson, Hayden, Higgins, L.M.; Hobbins, Holloway, Ingraham, Jordan, Joyce, Kane, Kany, Ketover, Kilcoyne, LaPlante, Lewis, Livesay, Locke, Lund, MacEachern, Macomber, Manning, Martin, H.C.; Masterton, Matthews, McSweeney, Michael, Mitchell, E.H.; Nelson, A.; Nelson, M.; Paradis, E.; Paradis, P.; Paul, Pearson, Perkins, Perry, Peterson, Pines, Racine, Reeves, J.; Reeves, P.; Richard, Roberts, Salsbury, Soule, Stevenson, Studley, Swazey, Telow, Thompson, Treadwell, Twitchell, Vose, Walker, Willey, The Speaker.

ABSENT—Berube, Boisvert, Brown, A.; Chonko, Cunningham, Fowlie, Higgins, H.C.; Hunter, Hutchings, Jalbert, Laverriere, Martin, A.; O'Rourke, Randall, Rolde, Soulas, Tarbell, Tuttle, Weymouth.

Yes, 43; No, 89; Absent, 19.

The SPEAKER: Forty-three having voted in the affirmative and eighty-nine in the negative with nineteen being absent, the motion does not prevail.

The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, I would like to pose a question through the Chair to our in-house expert on taxation, the gentlelady from Owl's Head, Mrs. Post.

In response to the questions raised by me earlier this morning, Representative Hobbins read an answer from an Attorney General, I think his name is Janelle. Because I trust the expertise of the gentlelady and the Taxation Committee, I would ask, do you agree with every single answer that was read here today in regards to any tax questions on this document?

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, has posed a question through the Chair to the gentlewoman from Owl's Head, Mrs. Post, who may respond if she so desires.

The Chair recognizes that gentlewoman.

Mrs. POST: Mr. Speaker, Men and Women of the House: Unfortunately I guess, my recollection is not as good as Representative Kelleher's because I, frankly, can't remember all the issues that were addressed in the memo from Mr. Janelle that Representative Hobbins read. I, frankly, at the time, was trying to think about how to answer another question that was being asked and we are all more worried about what we are going to say than we are about what somebody else has said.

I am not an attorney and Mr. Janelle is a representative of the Attorney General's Office who gives out legal advice, and we have choices on whether we take or we don't take it. I think that for my own part on those issues where I may have differences of opinions with the Attorney General's Office, there is no way those issues are going to be resolved unless they happen to be taken to court, at least no way that I can think of. On those particular instances where I think I might have disagreements, I am satisfied to have established legislative intent and to let the issue, if it arises, be satisfied in the courts.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Thank you Mrs. Post. Section 4 of the bill provides for payment in lieu of taxes; however, it does not include personal property but is limited to real property. In a memo I read this morning it said, this is not consistent with provisions with the Penobscot and the Passamaquoddy. I think my question to the gentlelady is, did we make an error in the document that we passed here a few years ago by the inclusion of this and is this document that is before us today a much sounder and better legal document than the one we passed a few years ago?

The SPEAKER: The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: I think that we cannot always compare the situations between the Maliseet Band, the Houlton Band, and the Passamaquoddy and the Penobscots. The way the property is treated as far as tax purposes goes is different but there are reasons for that.

The property in the Indian territories, the Passamaquoddy and the Penobscots, they make payments in lieu of taxes, but that Indian territory is in the Unorganized Territory. We specified that in the legislation which we enacted. The payment in lieu of taxes that they would make would essentially be either for their own governmental purposes, which we have allowed them to set up, or there would be payment in lieu of taxes to counties, in some instances, for the forestry district.

The Passamaquoddy and the Penobscots, if they have land in municipalities that is used for governmental purposes, that is tax exempt, that is consistent with other municipalities because, as you remember, we essentially allowed the Passamaquoddy and the Penobscots to have governmental powers and for many intents and purposes they are treated as other municipalities with the same rights and the same responsibilities. So that is consistent with how we treated other municipalities.

If the Passamaquoddy and Penobscots own non-trust land in the municipalities for business purposes, they are taxable. In this instance, we have not given governmental powers to the Houlton Band and there is certainly no commitment to do that.

If we have allowed them to make choices as to whether the trust land that is purchased for them is purchased in either the unorganized territories or in municipalities, it is essentially

that the land itself or the land and real estate which may have buildings on it which will be purchased with that money and because it is purchased with trust money, the agreement was that it cannot be taxable and therefore cannot be given up for lack of paying taxes. The same is true with the Passamaquoddies and the Penobscots. The land that is purchased for them with the trust money is not taxable, so we are not being inconsistent in that instance and the situation between the Passamaquoddies and the Penobscots and the Maliseets with the Maliseet issue before us today is different in many respects because we have not given them governmental powers.

The SPEAKER: The Chair recognizes the gentleman from Houlton, Mrs. Ingraham.

Mrs. INGRAHAM: Mr. Speaker, Ladies and Gentlemen of the House: Obviously, I have a great interest in this bill. This is my town and I am cosponsor of the bill.

One thing that concerned me was the acquisition of land within my town and that question has been addressed to my satisfaction on Page 2, Paragraph C of the bill, which says, "No land in natural resources located within a city, town village or plantation may be acquired by the Secretary," meaning the Secretary of Interior, "for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village, or plantation." To me, this gives a protection that I am very pleased to see there.

The whole bill has been through the process of negotiation. It is a mutual agreement. The jeopardy of putting off the vote on this bill until a later date is that perhaps the government, instead of asking that Maine be able to make the decision, perhaps Congress will write the rules for this and they may not include that particular paragraph which is a particular interest of mine.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: When I first came to this body, there was a gentleman sitting where Mrs. Ketover is sitting right today and his name was Harry Williams from Hodgdon, he spent 20 odd years here. If there was one thing I learned from the gentleman, I learned a great many things, but one was, if you feel you are in doubt and you feel uncomfortable on an issue, the best thing you can do is to protect your constituents and your own vote is to vote no.

Now, this document here today hasn't been laying around for us to consider since January. This is a major piece of legislation. I am sure that the Judiciary Committee worked hard on it for the fields that they have their limitations in working in, but there are some uncomfortable individuals inside the halls of this House and outside that are not completely satisfied with the area dealing with taxation, for whatever reason it might be.

I don't have any idea other than it will probably pass this afternoon but it won't pass with my vote. For me to vote for this bill, I would have to hold my nose and vote for it and I shall not do it. I will not subject myself to that because I think the doubts are too high in this House.

There were attempts made here today to try to work out some agreement if it was possible through the Judiciary Committee and the Taxation Committee. We officially met; we unofficially met, and their concerns may have been addressed but mine have not been, not that I am any different than the rest of you but I like to feel comfortable in what I am doing. If we do not pass this bill today, it doesn't mean that the Maliseet Indians will not be duly compensated for whatever is owed them, wherever it is owed them.

So as one legislator, I shall not vote for it because I think we are buying a pig in a poke without question, without question, and I request the yeas and nays, Mr. Speaker, when we

act on this bill.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, Members of the House: I would pose a question through the Chair. Basically my question is, can the agreement be amended in the future as long as Congress ratifies any such agreement?

The SPEAKER: The gentleman from Waterville, Mrs. Kany, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentleman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker, Men and Women of the House: It can be amended in the future with the agreement of the legislature and whichever tribe might be affected. In fact, that is essentially what is happening now.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on passage to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Armstrong, Baker, Beaulieu, Bell, Benoit, Brannigan, Brenerman, Brodeur, Brown, D.; Cahill, Callahan, Carrier, Carroll, Connolly, Cox, Crowley, Curtis, Davies, Day, Diamond, G.W.; Diamond, J.N.; Dillenback, Drinkwater, Erwin, Fitzgerald, Foster, Gillis, Gowen, Gwadosky, Hall, Hanson, Hayden, Hobbins, Huber, Ingraham, Jordan, Joyce, Kane, Kany, Ketover, Kilcoyne, Lisnik, Live-say, Locke, Lund, MacBride, Macomber, Manning, Martin, A.; Martin, H.C.; Masterton, Matthews, McSweeney, Michael, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Nadeau, Nelson, M.; Paradis, E.; Paradis, P.; Pearson, Perkins, Perry, Pines, Post, Racine, Reeves, J.; Reeves, P.; Richard, Roberts, Salisbury, Sherburne, Small, Smith, C.B.; Soule, Stevenson, Studley, Swazey, Tarbell, Theriault, Thompson, Treadwell, Vose, Walker, Wentworth, Willey, The Speaker.

NAY—Austin, Boyce, Brown, K.L.; Carter, Clark, Conary, Connors, Damren, Davis, Dexter, Dudley, Gavett, Hickey, Holloway, Jackson, P.T.; Jackson, P.C.; Jacques, Kelleher, Kiesman, Lancaster, LaPlante, Lewis, MacEachern, Mahany, Masterman, McCollister, McGowan, McHenry, McPherson, Michaud, Nelson, A.; Norton, Paul, Peterson, Pouliot, Ridley, Smith, C.W.; Stover, Strout, Telow, Twitchell, Webster.

ABSENT—Berube, Boisvert, Bordeaux, Brown, A.; Chonko, Cunningham, Fowlie, Higgins, H.C.; Higgins, L.M.; Hunter, Hutchings, Jalbert, Laverriere, O'Rourke, Randall, Rolde, Soulas, Tuttle, Weymouth.

Yes, 90; No, 42; Absent, 19.

The SPEAKER: Ninety having voted in the affirmative and forty-two in the negative with nineteen being absent, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith.

The following matter were taken up out of order by unanimous consent:

The Following items:

Recognizing:

Heather D. Larlee, daughter of Mr. and Mrs. George Larlee of Oakfield, who has been chosen valedictorian of Southern Aroostook School District for 1982; (H. P. 2355) by Representative Smith of Island Falls. (Cosponsor: Senator Carpenter of Aroostook)

Lynn Miller, of Jay, a member and past chief of the Jay Fire Department, for his contribu-

tion to the community as a veteran fireman and life-long resident of Jay; (H. P. 2356) by Representative McCollister of Canton.

Neil Kevin Benar, of East Millinocket, as valedictorian of Schenck High School for 1982; (H. P. 2357) by Representative Michaud of East Millinocket. (Cosponsor: Senator Pray of Penobscot)

Laura Jane Shea, of East Millinocket, as salutatorian of Schenck High School for 1982; (H. P. 2358) by Representative Michaud of East Millinocket. (Cosponsor: Senator Pray of Penobscot)

Thomas Giffiths, of Monmouth, a former Maine State Historian from 1940 to 1955, who celebrated his 94th birthday on April 6, 1982; (H. P. 2359) by Representative Davis Monmouth. (Cosponsor: Senator Ault of Kennebec)

There being no objections, these items were considered passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

On motion of Mrs. Ketover of Portland, recessed until the sound of the gong.

After Recess
4:50 p.m.

The House was called to order by the Speaker.

(Off Record Remarks)

On motion of Mr. Martin of Eagle Lake, Recessed until the sound of the gong.

After Recess
7:20 p.m.

The House was called to order by the Speaker.

The following paper appearing on Supplement No. 9 was taken up out of order by unanimous consent:

On motion of Representative Mitchell of Vassboro, the following Joint Orders: (H. P. 2360) (Cosponsor: Representative Higgins of Scarborough)

ORDERED, the Senate concurring, that in accordance with emergency authority granted under Title 3, Section 2 of the Maine Revised Statutes, the 2nd Regular Session of the 110th Legislature shall be extended by one additional legislative day to be held on April 13, 1982.

The Order was read.

The SPEAKER: Pursuant to Title 3, Section 2, this requires a two-thirds vote of the members present and voting. All those in favor of this order receiving passage will vote yes; those opposed will vote no.

A vote of the House was taken.

101 having voted in the affirmative and 16 having voted in the negative, the Order received passage.

Sent up for concurrence.

The following paper appearing on Supplement No. 6 was taken up out of order by unanimous consent:

Passed to be Enacted

An Act to Create the Maine Condominium Act (S. P. 870) (L. D. 2019) (H. "A" H-743; H. "B" H-756; and S. "A" S-451 to C. "A" S-447)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

The following paper appearing on Supplement No. 7 was taken up out of order by unanimous consent:

Passed to Be Enacted
Emergency Measure

An Act to Establish Municipal Cost Components for Services to be Rendered in Fiscal Year 1982-83 (H. P. 1845) (L. D. 1841) (C. "A" H-766)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.