

# 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**

**INDEX**

**FOURTH SPECIAL SESSION**

**April 28, 1982 and April 29, 1982**

**INDEX**

**FIFTH SPECIAL SESSION**

**May 13, 1982**

**INDEX**

**SECOND CONFIRMATION SESSION**

**July 16, 1982**

**INDEX**

Total Number of bills received in Committee	17
Unanimous Reports	15
Ought to Pass as Amended	9
Ought to Pass in New Draft	2
Leave to Withdraw	4
Divided Reports:	2
Respectfully submitted,	
S/JEROME A. EMERSON	
Senate Chairman	
Which was Read and Ordered Placed on File.	

#### Order

An Expression of Legislative Sentiment recognizing:

Marcella O'Halloran, of Waterville, who has received the Waterville Elks Lodge #905 Citizen of the Year Award. (S. P. 998) presented by Senator PIERCE of Kennebec (Cosponsors: Representative FITZGERALD of Waterville, Representative KANY of Waterville and Representative JACQUES of Waterville).

Which was Read and Passed.

Sent down forthwith for concurrence.

At this point the Senate retired to the Hall of the House, where a Joint Convention was formed.

(For proceedings of Joint Convention, see House Report)

#### After Joint Convention In Senate

The Senate called to order by the President.

#### Orders

Out of Order and Under Suspension of the Rules, on motion by Senator REDMOND of Somerset,

ORDERED, the House concurring, that "AN ACT to Amend the Maine Implementing Act with Respect to the Houlton Band of Maliseet Indians," (S. P. 931) (L. D. 2076) be recalled from the Governor's desk to the Senate. (S. P. 995)

Which was Read.

The PRESIDENT: The Senator has the floor. Senator REDMOND: Mr. President and Members of the Senate, I fear that in the future, some of the agents for the Maliseets might abuse their powers we are giving away in this Bill, and become Czars to the citizens and property owners in unorganized townships. The Bill, 2076, which is an amendment to the Indian Land Claims Settlement of 1980, allows the federal government to purchase and hold land in Maine in trust for the Houlton Band of Maliseet Indians, with \$900,000 of money already allocated for this purpose.

The unequal treatment occurs in the provisions for the location of such land in trust. The Bill would allow for review and approval of the governing body of any city, town, village, or plantation, before the land trust could be established within their boundaries, but does not provide for any similar review and approval within the unorganized townships of Maine.

This is a clear case of discrimination against the thousands of citizens and landowners in unorganized townships. We're talking about establishing permanent government land trusts, which could only be altered in the future by an act of Congress. We're not providing for any means of public hearing or input.

My amendment to this Bill requires approval by the Legislature or the county commissioners, which are both governing bodies of the unorganized townships, before they can establish these trusts in those areas. Unless such a procedure is adopted, there is a risk of civil action against the State for failing to extend equal protection to the citizens and landowners of unorganized townships.

The decision we have to make today on this Legislation is whether we disrupt the process and strategy, which was used to ram it through at the eleventh hour, in order to assure our

posterity their equal rights. We must take the time and do our very best.

We've spent many hours in this session. We are accused of not accomplishing very much. Our form of government demands very much of us. We must correct the flaw in this piece of legislation, and we must do it responsibly.

In the first settlement, the legislators accepted their responsibility. We must continue to take precautions to avoid the injustices handed down to us by our predecessors and we must not repeat the same mistakes that were made.

What is leadership in our free enterprise society? Leadership, Ladies and Gentlemen, in this Chamber, all of us, collectively we are the leaders. As leaders, we must exercise our duties, without prejudice to any race, color, or creed. We must assure everyone equal protection of property rights.

We in the Legislature spend many hours and days working hard, using up taxpayers' money on items called emergencies that do not begin to measure or have the impact this Bill could have on communities. I'm asking you to bear in mind that we do not reject this Bill, and I repeat, we are not rejecting this Bill by placing that amendment on it. We're only asking that it be made a better Bill by voting for this amendment. In the end, it will help all of us.

Ladies and Gentlemen of the Senate, I'd like to point to you, when this came before the Committee on Judiciary, I did not attend that public hearing, however, I've done a little bit of work, because I couldn't understand this unanimous Ought to Pass Report. I would like to point to you a memorandum that was presented by Jon Hull to the Committee, subject LD 2076, Maliseet Indians Bill.

He goes, number one, two, three, four, five, are some of the items that he had some concern about. Five is identification of location of these lands. Ladies and Gentlemen, the location of these lands is very, very important. We are asking in the cities, towns, municipalities, and plantations, that they give their approval before locating these lands. We have left out the unorganized townships.

Another memorandum dated March 31, which was presented to the Committee on Judiciary. This one is from Thomas Tureen and Andy Janelle regarding the same public hearing. I point to you, and I would like to read from this memorandum, item three on page two. "It is suggested that LD 2076 must specify the general location of the future Maliseet lands. The LD deals with this question by indicating that the Houlton Band may acquire trust land anywhere within the State of Maine, providing the legislative body of any organized area gives, its prior consent to acquisition of land within any such organized area."

Section 5D, 4D of the federal act merely requires that the agreement between the Houlton Band and the State of Maine make provisions on the location of lands to be acquired in trust for the Houlton Band. There is no requirement that the agreement between the Houlton Band and the State specify location. The taxation issue was discussed by the Band and the State, the provision which appears in LD 2076 is the product of those negotiations."

Ladies and Gentlemen, what kind of mumbo jumbo is this? I don't, I can't make it out. I don't, I'm not satisfied. I would like to pose a question to the members of the Committee on Judiciary. I would like to hear from them whether they are satisfied to this alert that was brought up by Jon Hull and the answer given by Andy Janelle and Tom Tureen? I pose that question.

The PRESIDENT: The Senator from Somerset, Senator Redmond, has posed a question.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. Members of the Senate, I respectfully urge the Members of the Senate to vote against this

Joint Order. To specifically answer the question posed by the Senator from Somerset, Senator Redmond, the work session that we had on this Bill, after the hearing, at which time we had both the memorandum from Mr. Jon Hull and the reply memorandum from Mr. Janelle and Tom Tureen we were very much satisfied as to the response provided by Mr. Janelle and Mr. Tureen and decided, finally, that the Bill, in its drafted form, with one slight exception which the Committee amended, was perfectly proper.

I would like to point out that this Bill is the product of long and hard negotiations by the State. We have to keep in mind that it complies with the mandates of the federal law, the federal implementing act, which simply provided that any State legislation had to make provisions for the location of the land, but it did not, the federal implementing act did not have to state exactly what those provisions were.

Now in the original bill, with the Passamaquoddy and Penobscot Indians that we passed in 1980, there were specific parcels of land that were identified in the bill, from which, or within which, the Indians must purchase the acreage with the money that they had available to them. The bill did not specify exactly which parcels of land or portions of which parcels of land had to be purchased. They simply identified the parcels within which the land must be located.

We have to keep in mind that this Bill provides for no State money to be used in funding this, there is no governmental status accorded the Maliseet Indian Band. They are completely within and covered by State of Maine law at all times. They have no governmental powers.

Finally, there is a \$100,000 guarantee fund, which can be used by the Secretary of the Interior, if need be, to pay municipal taxes and to make payments in lieu of taxes for the land which constitutes the Maliseet Indian land that is ultimately purchased.

For these reasons, Mr. President, I respectfully urge the Members of this Body to vote against the adoption of this Joint Order. Thank you very much.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, I can't add anything to the words of the good Senator from Penobscot, Senator Devoe. This is, with the exception of three words, "or county commissioners", identical to the amendment that was defeated overwhelmingly in this Body the other day, or the amendment that would be proposed if this Order were passed.

I would simply ask that you would vote against passage of the Order. I think the issue has been very well discussed. I think the good Senator from Penobscot, Senator Devoe, has very clearly delineated what the opinion of the Judiciary Committee has been. I would simply ask that you vote against the pending motion, and Mr. President, I would request a Division on Adoption.

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

Senator REDMOND: Mr. President and Members of the Senate, I would like to again bring to your attention the question that I posed. I really appreciate the fine speech by the Senator from Penobscot, Senator Devoe, and this report by the proponent of the Bill, the good Senator from Aroostook, Senator Carpenter, but I don't see where they have answered my question.

My question keeps revolving around the equal protection clause of the United States and the Maine Constitutions. This is what my question revolves around, not some mumbo jumbo legal talk. It's very, very simple. It is equal protection of property that I am seeking for the people who live in unorganized townships, Ladies and Gentlemen, it seems that's simple enough.

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

Senator DEVOE: Thank you, Mr. President. I will try not to use much legal mumbo jumbo, but some of it may be necessary in order to respond directly to what the Senator from Somerset had posed as a question.

We have to keep in mind here is that this Bill gives a municipality the right to reject the purchase by the Secretary of the Interior of land within a municipality to be held in trust by the Secretary for the tribe.

At the present time, if this Bill passes, we will have a fund from which payments in lieu of taxes may be made. Now the key issue is payment in lieu of taxes. There is a fund, or there will be a fund, when this Bill is finally signed by the Governor, that will protect not only municipalities, but this State, in the event the Maliseet Indians were to fail to make payments in lieu of taxes. This Bill provides a mechanism by which those payments will come from a guaranteed fund.

So the Indians, when they purchase land, were they to fail to make payments in lieu of taxes voluntarily, are not going to be able to get any advantage that you, or I, or any other landowner in unorganized territory would have. We'd be subject to the duty to pay our taxes. If we were to choose not to pay the taxes, then the State could place a tax lien on the property and take away, ultimately, divest us of our legal title to the property for our failure to make payments of the taxes.

Now, I should think that the good Senator from Somerset, rather than being opposed to this Bill, would in fact be very pleased with this Bill, because if he opposes this, if this Bill were to get recalled from the Governor's desk, if in the process of tinkering around with it, some other Member of this Body or the Body at the other end of the hall were to tuck an amendment on to remove this \$100,000 fund that is available for payment of monies in lieu of taxes, then in fact, the Indian landowners would have an advantage over other landowners. That is, the present statute does not give the State, as I read it, the power to place a tax lien, because of the fact that there is this \$100,000 guarantee fund.

This Bill, in its present form, Members of this Chamber, assures the State of Maine as the taxing authority in unorganized territory, that payments that are due the State for ownership of land in the unorganized territory are in fact going to be made.

Now the good Senator from Somerset also raised the question, the specter of whether the Houlton Band, if it were the owner of land in unorganized territory, was going to become a czar and coerce adjoining private landowners. I submit to the Members of this Body that the exact opposite is going to happen. That cannot happen under this Bill, as I read it, because this Bill gives no governmental jurisdiction to the Maliseets. It says that they are subject to all the laws of the State of Maine. There are no tribal courts. There are no Indian judges going to be appointed under this Bill. There are no special fishing or hunting privileges that the Maliseets will enjoy that you or I would not enjoy by virtue of hunting or fishing within the boundaries of their land.

The Maliseets are going to be treated just the same way that you or I would be treated, were we the owners of land within the unorganized territory. The additional protection which the State enjoys, as a result of the Bill in its present form, is that there is a guarantee fund from which payments in lieu of taxes will be made if the Indians do not voluntarily make them. Imagine what it would be like, if you or I, as private landowners, wishing to buy land in unorganized territory, had to post a bond of \$10,000 or \$20,000 to cover the possible default by us, after our purchase of land, if we were to fail in making payments of real estate taxes due the State of Maine. What a hue and cry

there would be around the State.

I submit to you, Members of the Senate, that this provision has been negotiated into this Bill in its present form, so we have a protection which the State enjoys, which we all represent, which the State does not enjoy with the private landowners who own land, who get tax bills from the State.

Finally, you think of the possible pressures that could be brought onto individuals who happen to occupy the office of county commissioner. Think of it for a minute. The three county commissioners of any county, who had to approve the purchase of land by the Maliseet Band of Indians, think of the tremendous pressures that could be brought on them. Think of the pressure that would be, could be brought on them that might end up in their frustrating the intent of the State, that the Maliseets be able to use the \$900,000 they got as a result of the other litigation, and be prevented from making a legitimate market price purchase of land that they wanted to buy for the benefit of the Indians. Any way, any number of ways, that tremendous pressure could be brought on two individuals to frustrate a legitimate desire by the Band of Maliseets to purchase land.

I submit to you, Members of the Senate, that this Bill is a very good bill in its present form. This Bill has something in it that no private landowner is subject to. That is, it has a \$100,000 fund that can be available for the payment of monies due the State in lieu of real estate taxes.

For these reasons, again, Members of the Senate, I urge you to vote against the adoption of this Order. Thank you very much, Mr. President.

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

Senator SUTTON: Mr. President, to belabor this subject just a teeny bit further, my good friend and associate from Penobscot, Senator Devoe, and his Committee, have labored long and hard on this subject. As my good friend from Androscoggin has said so many times, for the record, I'd just like to tell you why I'm going to vote for the good Senator from Somerset, Senator Redmond.

It's a very simple matter. It's called fairness. Regardless of all the good faith that went into this negotiation, there was one group of people in the State of Maine have got the opportunity to go through a legal entity to have justice brought before them except those in the unorganized territories, some of whom I represent.

So it's just basically a matter of fairness that they be included. Pressure on the county on the county commissioners? How about pressure on the selectmen? How about pressure on the council of the towns and cities that have this opportunity? It's no different.

So, Ladies and Gentlemen of the Senate, strictly in the manner of fairness, nothing more, nothing less, so that every citizen of the State of Maine has the same opportunity, which they do not have in the present form of this Bill, I urge you to support the recall of this Bill, so that it can be amended so that the people of the unorganized territories have exactly, nothing more, nothing less, exactly the same opportunity of the people of the towns and cities in the organized municipalities of the State of Maine. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: Mr. President, I request a Roll Call on the motion.

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 Passage of S. P. 995.

A Yes vote will be in favor of the Passage of S. P. 995.

A No vote will be opposed.

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

#### ROLL CALL

YEA—Ault, Emerson, Gill, Hichens, McBreairty, Perkins, Pierce, Pray, Redmond, Shute, Sutton, Teague, Troitzky.

NAY—Brown, Bustin, Carpenter, Charette, Clark, Collins, Conley, Devoe, Dutremble, Huber, Kerry, Minkowsky, Najarian, O'Leary, Trafton, Usher, Violette, Wood.

ABSENT—Sewall, C.

A Roll Call was had.

13 Senators having voted in the affirmative and 18 Senators in the negative, with 1 Senator being absent, SP 995 Fails of Passage.

On motion by Senator TEAGUE of Somerset (Cosponsor: Senator WOOD of York),

In Senate April 13, 1982

WHEREAS, the Legislature has considered 2 legislative documents relating to an excise tax on mining; and

WHEREAS, the legislation contained in Legislative Document 1621 and Legislative Document 2043 of the 110th Legislature is in need of further consideration; and

WHEREAS, this Joint Standing Committee on Taxation is prepared to study this matter further and report back a compromise bill at the next special session of the 110th Legislature convening after May 8, 1982; now, therefore, be it

ORDERED, the House concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Taxation shall study the subject matter of the Legislative Document 1621 and Legislative Document 2043 pertaining to the excise tax on mining to determine whether or not the best interests of the State would be served by enactment of a compromise version of this or similar legislation; and be it further

ORDERED, the Joint Standing Committee on Taxation shall study mining excise taxation and report its recommendations, along with any accompanying legislation to the next special session of the 110th Legislature convening after May 8, 1982; and be it further

ORDERED, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purpose is within the best interests of the State; and be it further

ORDERED, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee. (S.P. 999)

Which was Read.

The PRESIDENT: The Senator has the floor.

Senator TEAGUE: Mr. President and Members of the Senate: the Committee on Taxation had two bills, LD 1621 and LD 2043, that are still in Committee that are studying the excise tax on mining. We have asked that the Taxation Committee have a study order and report back to the special session of the 110th convening after May 8, 1982, to give us another month to come out with a Bill.

Which was Passed.

Sent down forthwith for concurrence.

Senator Collins of Knox was granted unanimous consent to address the Senate, Off the Record.