

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

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FOURTH CONFIRMATION SESSION

(FIRST CONFIRMATION SESSION – SECOND REGULAR SESSION)

May 31, 1984

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FIFTH CONFIRMATION SESSION

(SECOND CONFIRMATION SESSION – SECOND REGULAR SESSION)

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THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

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of a town within a congested part of a municipality they might wish to prohibit the burning of leaves; and yet in the vast areas and outside of the congested area of the town probably open burning of leaves would not be any problem as far as the particulates that would be spread throughout the area; consequently, what we did was devise what we thought was law which would reflect Maine's values, giving local control really. Not prohibiting burning of leaves any place in the unorganized territories at all, but prohibiting it in town unless a town decided by ordinance to choose to allow it; either in the entire town or in the congested part. At the same time, after conferring with the people from the EPA, we do believe that this law would then allow us to be in compliance on this issue under the Clean Air Act.

I hope that you do go along with it. I think that if we want to have waters cleaned up, if we want to make certain our hazardous waste dumps are cleaned up, and we're asking the EPA to do that, then we should attempt to have law that does not keep us in non-compliance with the Clean Air Act.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator McBreairty.

SENATOR McBREAIRTY: Mr. President, Honorable Members of the Senate, regardless of which Bill we pass, if you want to burn your leaves in your stove you still can. You can burn them in your stove, you can have a fireplace in your back yard, you can have cookouts all summer, you can burn charcoal.

My problem is forcing all these little towns where there's absolutely no problem and houses are a mile apart to go through the problem of having a town meeting to pass an ordinance saying they can burn. What will happen in most cases, they may not even know about the law and they'll be illegally burning anyway.

Now we did have a lady from EPA before the Committee and she said, they didn't have any intent of outlawing the burning of leaves. Passage of a bill to prohibit burning of leaves is a very, very low priority as far as DEP is concerned.

So I would hope that we would adopt the Minority Report then any town that doesn't want burning can pass an ordinance and prevent it for all of their town or one section of their town or their built-up section, which ever they want to do.

THE PRESIDENT: Is it now the pleasure of the Senate to Accept the Majority Ought to Pass in New Draft under same title Report of the Committee?

The Chair recognizes the Senator from Aroostook, Senator McBreairty.

SENATOR McBREAIRTY: I would ask for 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 ACCEPTANCE of the Majority Ought to Pass in New Draft under same title Report of the Committee.

A Yes will be in favor of Accepting the Ought to Pass in New Draft Report of the Committee.

A No will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS—Senators, Baldacci, Carpenter, Charrette, Clark, Danton, Diamond, Hichens, Kany, Najarian, Pearson, Pray, Trafton, Wood, The President—Gerard P. Conley.

NAYS—Senators, Brown, Bustin, Collins, Dow, Dutremble, Emerson, Erwin, Gill, Hayes, McBreairty, Perkins, Redmond, Sewall, Shute,

Teague, Twitchell, Usher.

ABSENT—Senators, Minkowsky, Violette.

14 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators being absent, the motion to ACCEPT the Majority OUGHT TO PASS in NEW DRAFT Report of the Committee FAILED.

The Minority OUGHT TO PASS Report was ACCEPTED in concurrence.

The Bill READ ONCE.

House Amendment "A" (H-508) was READ and ADOPTED, in concurrence.

The Bill as Amended TOMORROW ASSIGNED FOR SECOND READING.

ENACTORS

The Committee on ENGROSSED BILLS reported as truly and strictly engrossed the following:

AN ACT Concerning the Use or Disposition of Fort Gorges in Casco Bay. H. P. 1520 L. D. 2002 (S. "B" S-294)

AN ACT Concerning Municipal Snowmobile Registration. H. P. 687 L. D. 1894

Which were PASSED TO BE ENACTED and having been signed by the President, were presented by the Secretary to the Governor for his approval.

Emergency

AN ACT Providing for the Termination of Stale or Abandoned Securities Registrations. H. P. 1634 L. D. 2157

This being an emergency measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, Establishing a Food Policy for Maine. H. P. 1541 L. D. 2028

This being an emergency measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative was FINALLY PASSED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Out of order and under suspension of the Rules, the Senate voted to consider the following:

SENATE PAPERS

Bill "An Act Encouraging an Alternative to Landfill Disposal of Solid Waste" S. P. 833

Presented by Senator KANY of Kennebec.

Cosponsors: Representative CARTER of Winslow, Representative JOSEPH of Waterville, Representative Z. MATTHEWS of Winslow.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Which was referred to the Committee on ENERGY AND NATURAL RESOURCES and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Provide Immunity to Persons and Institutions who Act as Depositories for Wills" S. P. 834

Presented by Senator COLLINS of Knox.

Approved for introduction by the Legislative Council pursuant to Joint Rule 26.

Which was referred to the Committee on JUDICIARY and ORDERED PRINTED.

Sent down for concurrence.

Bill "An Act to Increase the Minimum Wage to \$3.55" S. P. 835

Presented by Senator CONLEY of Cumberland.

Cosponsors: Representative CONNOLLY of Portland, Representative KELLEHER of Bangor, Senator HAYES of Penobscot.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule

27.

Committee on LABOR suggested.

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

SENATOR COLLINS: Mr. President, I wish to draw the attention of the Chair to certain infirmities in this Bill which I think would be sufficient to warrant a ruling that it were not properly before this Body. The first thing that I observed is that on June 15, 1983, this Body had before it L. D. 1138, a Bill entitled "AN ACT to Increase the Minimum Wage." On that date, that bill was finally rejected in this Body.

The Constitution of our State was amended in 1975, at which time we established the rules for two legislative sessions in each biennium, whereas before that there had been one session and various special sessions. The debate which occurred on July 2, 1975, dealt with some of the material that I am concerned about today, and if anyone should be interested in the historical research, I would invite their attention to the Legislative Record of that date, and particularly to the remarks of the Senator from Androscoggin, Senator Clifford, who was a member of the special committee that devised the Constitutional Amendment which we adopted and which the people of our State went on to ratify. The section involved is this: that in the Second Regular Session there may be admitted "Legislation of an emergency nature admitted by the Legislature."

We all recognize, I'm sure, that the word "emergency" has different meanings to different people. We view urgency according to our respective perspectives, but if the word is to mean anything, it has to have some context of urgency. We sit in our ten member Legislative Council representing both Bodies of this Legislature and make decisions time after time about what is urgent and what is not urgent. We ask the question, and I have heard the Senator from Aroostook, Senator Carpenter, ask it a hundred times, "what is there about this bill that makes us deal with it now rather than next year?" The answers are many and varied, but I submit that this is a bill that we dealt with last June the 15th. There has not been a change in the minimum wage for some years, although the matter has been considered in each session of the Legislature that I have been here. So, this question of "emergency," is one that the Chair, I would ask, might construe in this particular context.

Now sometimes when we have a bill come before us, there is an elaborate preamble which recites a great many facts that are designed to lay the base for a decision that something is an emergency. This Bill as submitted, contains no recitation of any facts whatsoever, that would constitute an emergency. It does not contain any emergency clause that would put it into affect upon enactment and signature by the Governor. I submit to the Chair that, therefore, it does not qualify under our Constitution as an "emergency nature" measure for this Second Regular Session of the Legislature.

The second ground of infirmity that I would call to the attention of the Chair relates, of course, to Rule 37. Rule 37 adopted the beginning of our First Regular Session, reads "no measure which has been introduced and finally rejected in any First Regular Session shall be introduced at any Second Regular Session or any Special Session of the same Legislature except by vote of two-thirds of both Houses." And I would submit that if this Bill is to be allowed in, in any fashion, it would have to meet that test of two-thirds vote of both Houses. I refer to the Bill, L. D. 1138, that we considered in the First Regular Session. That bill had within its context a provision that the minimum wage be increased to \$3.50 in 1983, \$3.70 on January 1, 1984, and \$3.90 as of January 1, 1985. That bill was amended and the bill that finally came to the floor and went between both Bodies, a number of times, was of course a bill limited to \$3.50 an hour. I submit that what

was rejected was the bill that encompassed figures from \$3.50 to \$3.90 per hour. I submit that we are therefore looking at the question for the first time since this rule was adopted by this Legislature, of whether we shall adopt the "small slices" principle or not. How small do the slices have to be before something is substantially the same as what was considered before?

I have served in this Body for ten years, I have read every decision of the Chair in this Body and every decision of the Chair in the other Body concerning the rules on this question. I recall very well the rulings in this Chamber on a bill involving similar principles, (not a wage bill but similar principles), in which the now President of the Senate was concerned, as I was; it concerned truancy in our schools at the time. The matter was set aside and discussed at length between the President and the Parliamentarian, the Minority Leader, myself and others, and a few words had been changed in that bill, in the amendment offered and the question was "had it been rejected at the previous session?" The decision, which is not in the printed Record, because it was made at the side bar and agreed upon by all concerned was that, in substance, even though a few words had been changed that we were looking at the same thing and that it ought not to be considered in a Second Regular Session.

The standard authorities in the area, Masons for example, of course do not deal with specific State rules but it is an ancient rule of parliamentary practice, that when a bill has once been passed or rejected, another of the same substance could not be brought in again during the same session.

I submit that not only on the basis of Rule 37 but on the basis of general parliamentary practice in many of the Bodies in our country that this bill ought not to be here because the material within it, is within the ambit of that which was considered and rejected last June 15th, 1983.

Mr. President, in today's society there is a great tendency to consider that integrity involves what you can get away with. Happily, that is not the case in the Maine Legislature and in Maine Government, as a rule, I have seen by the decisions of our Governor, by the decisions of Leaders of this Body, including the present leadership, decisions that were based on integrity and principle rather than on who had the votes. I submit, Mr. President, that this is one of those knotty, difficult occasions and I note, Mr. President, that the sponsor of this Bill is the President of the Senate and I assume that standard parliamentary practice will, also, require some attention to the propriety of who rules on this question. Thank you, Mr. President.

THE PRESIDENT: The Senator from Knox, Senator Collins, has posed a Parliamentary Inquiry through the Chair with respect to whether or not Senate Paper 835 is properly before this Body. He has made reference to the fact of bills of an emergency measure.

The Chair would call the Senate's attention to the Calendar where it states very clearly: "approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27," and it would always state regarding emergency, the Legislative Council, by allowing the bill in, has already ruled that it is an emergency. The Constitution states "Legislation of an Emergency nature admitted by the Legislature."

I would like to point out that the Bill presently before this Senate in no way copies or does it resemble the measure previously defeated by the Legislature. L. D. 1138, as pointed out by the good Senator from Knox, Senator Collins, which was defeated on June 15th, first changed the State minimum wage and the level when the Federal minimum wage overrides the State from \$2.90 to \$3.35.

Secondly, it then implemented a three step

increase in the State Minimum wage: as of October 1st, 1983, it rose to \$3.50 an hour, as of January 1, 1984, it rose to \$3.70 an hour and as of January 1, 1985, it rose to \$3.90 an hour. The affect raised the minimum wage to \$3.50 on October 1, 1983, with two automatic raises later.

The Bill that is submitted and before the Senate today does the same thing except it changes from \$2.90 an hour the present State minimum wage, raises it to \$3, or proposes to raise it to \$3.55 an hour. There is no comparative provision within our Bill and the effect of the Bill before the Senate to be considered if referred to the Joint Standing Committee on Labor would be the raising of the minimum wage to \$3.55 when the Bill becomes effective ninety days after adjournment.

The Chair would rule that the Bill is properly before this Body.

Which was referred to the Committee on LABOR and ORDERED PRINTED.

Sent down for concurrence.

ORDERS

JOINT RESOLUTION

On Motion by Senator VIOLETTE of Aroostook, (Cosponsors: Speaker MARTIN of Eagle Lake, Representative MCHENRY of Madawaska, Representative MARTIN of Van Buren, Representative THERIAULT of Fort Kent) the following Joint Resolution (S. P. 832)

JOINT RESOLUTION MEMORIALIZING THE HONORABLE WILLIAM F. BOLGER, POSTMASTER GENERAL OF THE UNITED STATES, TO ORDER THE ISSUANCE OF A SPECIAL STAMP COMMEMORATING THE ACADIANS OF ST. JOHN VALLEY

WE, your Memorialists, the Senate and House of Representatives of the State of Maine in the Second Regular Session of the One Hundred and Eleventh Legislature now assembled, most respectfully present and petition the Honorable William F. Bolger, as follows:

WHEREAS, there is a deep and meaningful pride in the Acadian cultural heritage that descends from the valley of the mighty St. John, the grandest river of the north; and

WHEREAS, this Nation and this State have been truly enriched by a small group of French Acadians, who pioneered the broad and fertile banks of a new world in June of 1785; and

WHEREAS, history recalls Jean Baptiste Sire as founder of the movement which led to settlement and inevitably to a treaty establishing the northern border of Maine and our great Nation along the southern banks of the St. John River; and

WHEREAS, within the scenic splendor of this beautiful valley, communities sprang up of Acadian ancestry which have reached out across the land providing outstanding contributions and leadership; and

WHEREAS, it would be a fitting tribute to the architect Jean Baptiste Sire and the French Acadian founders of the new world on the 200th anniversary of their historic settlement of the St. John Valley to issue a special stamp commemorating the French Acadians of St. John Valley; and be it

RESOLVED: That we, Your Memorialists, in view of these historic pioneers of the New World and their record of accomplishments, recommend and urge the Honorable William F. Bolger, Postmaster General of the United States, to take appropriate action by ordering the issuance of a special stamp commemorating the Acadians of St. John Valley; and be it further

RESOLVED: That copies of this Memorial, duly authenticated by the Secretary of State, be immediately transmitted by the Secretary of State to the Honorable William F. Bolger, Postmaster General of the United States, the Vice President of the United States, the Speaker of the House of Representatives and the President of the Senate of the United States Congress and

to each Member of the Maine Congressional Delegation.

Which was READ and ADOPTED.
Sent down for concurrence.

Out of order and under suspension of the Rules, the Senate voted to consider the following:

SECOND READERS

The Committee on BILLS IN THE SECOND READING reported the following:

House

Bill "An Act to Amend the Medical Radiation Health and Safety Act" H. P. 1567 L. D. 2076
Which was READ A SECOND TIME.

On motion by Senator PRAY of Penobscot, TABLED until later in today's session pending PASSAGE TO BE ENGROSSED.

Resolve, for Laying of the County Taxes and Authorizing Expenditures of Oxford County for the Year 1984. (Emergency) H. P. 1676 L. D. 2205

Which was READ A SECOND TIME and PASSED TO BE ENGROSSED in concurrence.

House As Amended

Bill "An Act to Clarify the Licensing Authority of the Board of Registration in Medicine" H. P. 1665 L. D. 2197

(H. "A" H-512)

Which was READ A SECOND TIME.

On motion by Senator BUSTIN of Kennebec the Senate RECONSIDERED its action whereby it ADOPTED House Amendment "A" (H-512).

THE PRESIDENT: The Senator has the floor. SENATOR BUSTIN: I now offer Senate Amendment "A" to House Amendment "A" and move its Adoption.

Senate Amendment "A" (S-309) to House Amendment "A" (H-512) was READ and ADOPTED.

House Amendment "A" (H-512) as Amended by Senate Amendment "A" (S-309) thereto was ADOPTED in NON-CONCURRENCE.

Which was PASSED TO BE ENGROSSED, as Amended, in NON-CONCURRENCE.
Sent down for concurrence.

Senate

Bill "An Act Concerning Terms of Office of Certain County Commissioners whose Districts are Affected by Reapportionment" (Emergency) S. P. 831 L. D. 2222

Which was READ A SECOND TIME.

On motion of Senator PRAY of Penobscot, TABLED for 1 Legislative Day, pending PASSAGE TO BE ENGROSSED.

On motion by Senator PRAY of Penobscot the Senate voted to remove from the Table:

Bill "An Act to Amend the Medical Radiation Health and Safety Act" H. P. 1567 L. D. 2076 Tabled earlier in today's session by Senator PRAY of Penobscot.

Pending—PASSAGE TO BE ENGROSSED.
The Bill PASSED TO BE ENGROSSED, as Amended, in concurrence.

ORDERS OF THE DAY

On motion by Senator PRAY of Penobscot the Senate voted to remove from the Table:

Bill "An Act to Amend the Liquor Laws to Permit the sale of Beer and Wine at Outdoor Stadiums" (Emergency) S. P. 752 L. D. 2055 (S. "A" S-287)

Tabled—March 13, 1984 by Senator PRAY of Penobscot.

Pending—PASSAGE TO BE ENGROSSED AS AMENDED.

(In House March 5, 1984 FAILED OF ENACTMENT)

(In Senate March 13, 1984 RECONSIDERED ENGROSSMENT)

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

SENATOR PRAY: Mr. President, I offer Sen-