

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eighth  
Legislature***

OF THE

STATE OF MAINE

**Volume I**

**January 5, 1977 to May 25, 1977**

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Legal Affairs — Bill, "An Act to Require Subcommittees of the Board of Trustees of the University of Maine and of the Maine Maritime Academy to hold open meetings. (S. P. 157) (L. D. 397) Majority Report — Ought to Pass in New Draft under New Title, "An Act to Require Committees and Subcommittees of the Board of Trustees of the University of Maine and of the Maine Maritime Academy to Hold Open Meetings. (S. P. 469) (L. D. 1681); Minority Report — Ought Not to Pass

Tabled — April 22, 1977 by Senator Hewes of Cumberland

Pending — Motion of Senator Carpenter of Aroostook to accept Majority Report

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

Mr. HEWES: Mr. President, and Members of the Senate, I apologize for being on my feet so much today, and again perhaps I am on the wrong side of this Bill as well.

The present law requires that Board of Trustees meetings at the University of Maine and the Maine Maritime Academy be open to the public. This Bill would enlarge that so that all sub-committee meetings of the Board of Trustees of the University of Maine and the Maine Maritime Academy, including meetings of the Chancellor of the University of Maine and the Presidents of the various campuses would also be open to the public.

This was pushed primarily by the group that has to negotiate with the Trustees of the University of Maine, by the newspapers and by the students.

I personally feel that others schools, Colby, Bowdoin or Bates, private schools who do not have to have all of their sub-committee meetings open to the public, perhaps will get ideas presented at the sub-committee meetings that will be beneficial to their respective colleges. I think that you inhibit discussion when the meetings are at every stage of discussion open to the public.

Now we in the Legislature perhaps have thicker skins than some of the Trustees. I know a gentleman that has given a great deal of money for a new hockey rink at Orono at the University of Maine. Men like that perhaps would be on the Trustees, and yet would not like to have everything that they say be open to the public, to second guessing or to something that you can take out of context.

I think you inhibit the University of Maine if you allow the passage of this Bill. If a Committee wants to have an open hearing, they may. You know, the University of Maine is for the students. It is to teach the students so that they will be better prepared to face life later on. I do not think that this Bill which requires subcommittees to be open to the public is going to assist to make the University a better place to teach the students.

I, therefore, ask for a Division on this Motion.

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

Mr. CURTIS: Mr. President, I sponsored this piece of legislation, because there has been a difference of opinion as to whether or not the meetings of subcommittees of the University of Maine Board of Trustees are now governed by the provisions of Maine's Freedom of Access Law, Title I, Section 401, or whether they are not governed.

Now the two positions are, one, taken by the Board of Trustees of the University of Maine, through its actions in excluding press and public from some sub-committee meetings, and is a position which is supported by the legal opinion of its counsel, Mr. Barnett I. Shur.

The second position is an opinion of the office of the Maine Attorney General, signed by Deputy Attorney General Donald Alexander, which states that the Right to Know Law applies to the subcommittees of the University of Maine Board of Trustees. That opinion was

written at my request, when last September I asked for an opinion, because of the actions of the Board of Trustees sub-committee.

Now Deputy Attorney General Alexander suggests that the Legislature might review its position and clarify the question. I think it would be helpful right now if we all reviewed exactly what the present law is regarding the Freedom of Access provision of the Maine Statutes as they apply to the University of Maine. Under the definition is the following description: "Public proceedings, the term public proceedings as used in this sub-chapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following: (1) the Legislature of Maine and its committees and subcommittees, (2) any Board or Commission of any state agency or authority, the Board of Trustees of the University of Maine, and the Board of Trustees of the Maine Maritime Academy, and (3) any Board, Commission, Agency or Authority of any County, Municipality, School District or any other political or administrative subdistrict."

The piece of legislation which I proposed and which has been approved by the Majority Report from the Legal Affairs Committee would clarify exactly what the status is of the subcommittees of the Board of Trustees of the University. Subcommittees are committees which operate for the Board, which include members of the Board of Trustees, and which also include students and faculty members, or people who are involved with the University. I know of no student or faculty members on the full Board of Trustees, but they do serve on the very important subcommittees of the Board, such as the Finance Committee.

Now I think that it is important that the University of Maine, which is a State University, and is financed in large part by public tax dollars, should have meetings as much as possible of its committees of the Board and of its subcommittees of the Board, open to the public. Important decisions are being made by the Trustees, decision which involve the expenditure of millions of dollars of State appropriations, and which will affect the future of generations of students and citizens who turn to the University for education and leadership. Now the basic decisions are frequently made in subcommittees of the Board.

It seems to me that the more attention that is paid to the problems of the University, the better it would be for the University, its students, faculty and other employees, as well as to the people of the State, who turn to our State University for many types of assistance.

I would like to clarify one thing. The gentleman who was referred to, I believe, as being a great benefactor of the University, and that is true, because he provided many of the dollars that were essential to the construction of the arena now named after him, the Alford Arena at the University of Maine in Orono, is not a Trustee of the University of Maine.

I have discussed this Bill and its concept with Members of the Board of Trustees, although not all of them, and I have found them, those that I have discussed it with, to be in agreement with the general concept, especially when I assured them that although the terms of the Freedom of Access Law would apply under this Bill clearly to the subcommittees of the Board of Trustees, so would the exceptions which are provided. Those same exceptions are the ones that are frequently used in particular by municipalities, and other groups, and those are exceptions which permit executive sessions of any committee for certain purposes, and those purposes you may recall from the Statutes include such things as discussion of collective bargaining. They include such things as consultation with the attorney for the organization, discussion of legal matters. They include such things as discussion of personalities and the question of hiring and firing

of people who work for the organization. So those same protections would be immediately available.

Again the reason that I brought the Bill before the Maine Legislature was because it is not now clear whether or not the Law presently applies to subcommittees of the Board of Trustees. If we leave this unclear situation in existence, what may very well happen is that there will be a Court case, and I would suggest that would be an unnecessary result, because all we have to do is take action one way or the other, and I would suggest openness is the more appropriate direction to go in order to clarify the situation.

I would like to bring the Senate's attention to a couple of presentations which have been made in the newspapers in this State, because I think they help us to understand the importance of a liberal interpretation of the Right to Know Law.

The first one is an editorial from the Bangor Daily News of March 25th of this year, and it is entitled "Those Committees". The Right to Know Law is itself an imperfect document, but the 108th Legislature will have an opportunity to shore up one of its more glaring weaknesses. L. D. 397, which is the Bill before us now, would open the activities of the Committees and subcommittees of the University of Maine and Maine Maritime Academy Board of Trustees to the press and to public scrutiny. Currently the bulk of the nuts and bolts discussions and basic policy decisions are made in the committees of these two Boards. The Committee discusses an issue, reaches accord and a course of action, and then reports its recommendations to the full Board. The Board then votes, with a minimum of discussion. The upshot of this type of operation is the true debates and issues are never publicly heard, and the public thus has no understanding of the thinking that moulded the decisions. It is time that the committees were opened up to the public, and their discussions exposed to public scrutiny. The public has a right to know, not only the policies of these institutions, but how the policies were arrived at."

The second editorial was one from the Portland Press Herald, and I will not read it all, but excerpts, in which the editor writes: "The belief that meetings of subcommittees of the Trustees of the University of Maine and the Maine Maritime Academy ought to be open to public seems reasonable. At the moment the State's Right to Know Law applies to the Board of Trustees, but not to any of their operating subcommittees". And the editor concludes, "Indeed, the Right to Know Law currently applies to committees of the Maine Legislature. That being the case, there is no reason why it should not apply to other public institutions as well."

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

Mr. CAREPENTER: Mr. President and Ladies and Gentlemen of the Senate, I will be brief.

As the lone signer of the Majority Ought to Pass Report from this Body, I would just like to give you my reasons why. I would point out, to begin with, that the meetings of many of the committees and subcommittees of the University of Maine Board of Trustees are presently open to the public, but this is University policy and they can close them at any time.

I would call your attention to L. D. 1681 and the words "administrative council". Now many of you may not know what the administrative council is, and I did not until it was brought out at the committee hearing. The administrative council is the organization that cuts the pie, if you will. It is a council made up of the Presidents of the various campuses of the University of Maine, as well as the Chancellor, and they hold private sessions to decide what percentage of the total University budget goes to which campus.

Now we have heard a great deal of discussion. I have heard from students in the back of the chamber in this Body about why is the Portland-Gorham's percentage down this year, and some other campuses up, and we do not know why.

All we can do is speculate. And this is something personally that I would like to be able to go and sit and hear the reasoning why the University of Maine at Presque Isle's budget or percentage was cut back, why Portland-Gorham's was cut back, and why Orono's was raised, or vice versa.

I would point out to you that this would open that up to public scrutiny, and the second point that I would like to bring out is the argument was put before the committee that, you know, these sub-committees really do not have any power. They make a recommendation to the full board. I would ask you to just go back to the Senate Calendar this morning of Committee Reports, and how often are the Committee Reports accepted under the hammer in this Chamber, with very little discussion. We put a great deal of faith in the people that we put on these committees, the Senator from Knox, Senator Collins, and the Judiciary Committee. We put a great deal of trust and faith and power into these committees, so that when they report a Bill out, quite often we will accept the argument that they put forth. I submit to you the same holds true for the sub-committees of the University of Maine.

I would also like to bring to your attention, what about a negative vote. If the sub-committee of the University votes not to do something, then that issue never does come before the full Board. The argument being that if a member disagrees or person disagrees with the decision of the sub-committee, they still have the recourse to go to the full Board, but if the sub-committee votes to kill that particular project or not to do something, that particular issue does not come before the full Board of Trustees.

As the Senator points out, I think this is key-essential, the Senator from Penobscot, Senator Curtis, points out. The sub-committees, committees and the executive council of the University of Maine would still have the provision to hold executive session. This would take care of problems in labor negotiations, in personality discussions. These provisions are built into the present law, and they would also apply to the University of Maine at its committees and sub-committees.

The other point I would like to bring out, and the last point, I would like to rebut my seat-mate, the Senator from Cumberland, Senator Hewes. I do not feel that public discussion inhibits discussion. I feel that when we close something up, and we allow the press in particular to speculate what is going on behind those closed doors, I feel that we get ourselves into more uncomfortable situations than when we go public with it.

Now we have all been to committee hearings, we have all been in this Chamber, and in my case the other Chamber, and seen things written about what transpired in that Body that did not coincide with our interpretation of what had transpired in that Body. But I think there is less of danger when the proceeding is public.

I would point out to you, going back to the administrative council, where the percentage of a dollar is decided. We start out in the whole process downstairs in 228, the Appropriations Committee, the public hearing, and it goes all the way down through, so that each campus gets their full public hearing, or the University Board of Trustees has a full public hearing on where the dollars are going, except for this one broken link in the chain, where the decision, I submit to you, is really made, in the administrative council. I think very little public discussion can take place after this.

I do not feel that because the press is in the back of the room this morning, that my ability to speak in this Chamber or ability to bring up any point, controversial point, touchy points, I would submit to you I do not think that is inhibited in the least. I would just refer you back to a couple of minutes ago when we were discussing a very delicate issue in many of our lives, many of our constituencies, and the issue of prostitution. I did not see that the public discussion of that very sensitive subject inhibited the discussion, although the people from the press were in the back of the room taking copious notes.

I would hope that you do follow the lead of the good Senator from Penobscot, Senator Curtis, the sponsor of this Bill, and go along with my Motion to Accept the Majority Ought to Pass Report.

Thank you.

(Off record remarks.)

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Mr. MINKOWSKY: Mr. President, I concur wholeheartedly with the remarks made by Senator Carpenter and Senator Curtis in reference to this L. D., and, of course, I get a little more clarification on this insofar as the administrative council is concerned. Since in a municipality we are compelled to have open sessions, and to discuss everything except personnel or legal matters, and since this was brought out by Senator Carpenter, they have a policy decision at the present time which allows this to materialize, my question to anybody on the Committee or to the sponsor of the Bill, are they aware at the present time that the policy decisions of the sub-committee of the administrative council posts a date and time of their sub-committee hearings, are they posting it in advance presently?

The PRESIDENT: The Senator from Androscoggin, Senator Minkowsky, has posed a question through the Chair.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to respond to the question regarding the sub-committees of the Board of Trustees of the University. Those meetings are notified to the members of the committees and other people interested in advance. Regarding the meetings of the administrative council, I understand those are not generally notified and public information made known about them.

I think it might be helpful, because the administrative council is something of a new concept for those of us who have not followed the Legislation which created the University too closely, if I read one paragraph from the present Private and Special Law which was enacted in 1967, actually enacted in the Special Session in 1968, and revised by Chapter 238 of the Laws of 1970. The administrative council is described. "The administrative council shall decide the following responsibilities. To make to the Board of Trustees, through the Chancellor, recommendations which require Board action or pertain to policy development; to serve as a clearing house for matters referred to it by appropriate officers of individual institutions; act on matters referred to the Council by the Chancellor for the Board of Trustees." That is the paragraph which describes the duties of the administrative council, and I think it is that situation which has developed in the reference of some matters to the administrative council for their final decision.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Aroostook, Senator Carpenter, that the Senate accept the Majority Ought to Pass in New Draft Report of the Committee.

A Division has been requested.

Will all those Senators in favor of accepting the Majority Ought to Pass Report, please rise in their places to be counted.

Will all those Senators opposed to accepting the Majority Ought to Pass Report, please rise in their places to be counted.

26 Senators having voted in the affirmative, and 2 Senators in the negative, the Motion to Accept the Majority Ought to Pass Report does prevail.

The Bill, in new draft, Read Once and Tomorrow Assigned for Second reading.

The President laid before the Senate:

Bill, "An Act to Establish a Presidential Primary in the State of Maine." (H. P. 187) (L. D. 249)

Tabled — April 22, 1977 by Senator Speers of Kennebec

Pending — Enactment

On Motion of Mr. Katz of Kennebec, retabled for two legislative days.

The President laid before the Senate:

Bill, "An Act to Provide that the Position on the Primary Election Ballot and on the General Election Ballot of the Names of Candidates for Major Offices shall be Determined by Lot." (H. P. 479) (L. D. 594)

Tabled — April 22, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

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

Mr. KATZ: Mr. President, in order to clarify the stand of the Senate on this legislation, I move indefinite postponement.

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

Mr. MERRILL: Mr. President and Members of the Senate, the description of his actions by the Senator from Kennebec, Senator Katz, is as accurate as the title he often puts on his Bills. I think it does a little bit more than clarify the position of the Senate. We debated this so many times, so I guess the greatest way to kill a relatively minor Bill is to debate it enough so everybody gets the feeling they do not want to talk about it any more.

I would ask for a Division on this issue and I would hope that we do not clarify our position by changing it.

The PRESIDENT: A Division has been requested. Is the Senate ready for the question? The Pending Motion before the Senate is the Motion by the Senator from Kennebec, Senator Katz, that L. D. 594 and all its accompanying papers be indefinitely postponed.

Will all those Senators in favor of indefinite postponement, please rise in their places to be counted?

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

16 Senators having voted in the affirmative and 11 in the negative, the motion to indefinitely postpone does prevail.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I move for reconsideration.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves the Senate reconsider its action whereby it indefinitely postponed L. D. 594.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate, in watching the recent vote, I am reminded of one of my colleagues who has a name that is low in the alphabet. He told me earlier on that voting for this was one act of statesmanship in the whole Session. I noticed he just voted against it.

The PRESIDENT: The pending question before the Senate is the Motion by the Senator from Kennebec, Senator Katz, that the Senate