

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twenty-Fifth Legislature  
State of Maine

Daily Edition

Second Regular Session  
January 4, 2012 to May 31, 2012

Pages 1594 - 2357

On motion by Senator **ROSEN** of Hancock, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

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**Resolve**

Resolve, To Require Rulemaking Regarding Standing To Appeal in Proceedings before the Board of Environmental Protection and the Maine Land Use Regulation Commission

S.P. 546 L.D. 1647  
(C "A" S-464)

**FINALLY PASSED** and having been signed by the President Pro Tem was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

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**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (3/15/12) Assigned matter:

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Ensure Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law"

S.P. 459 L.D. 1470

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-441)** (11 members)

Minority - **Ought Not to Pass** (1 member)

Tabled - March 15, 2012, by Senator **ALFOND** of Cumberland

Pending - motion by Senator **COURTNEY** of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report

(In Senate, March 15, 2012, Reports **READ**.)

On motion by Senator **COURTNEY** of York, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-441) **READ**.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441) **READ**.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, we've heard a lot of discussion about Tree Growth currently and of course I've had a lot of interest in Tree Growth plans for a long time myself. I tried to attach labor issues to Tree Growth. Part of my concern with Tree Growth is the fact that I live in a town that has the most Tree Growth acreage of any town in the state of Maine. I think, for the most part, the people that have Tree Growth in my town are doing it under what we all think is possibly the intent of the program. That's not the case all the time. An article that was written recently titled "Is Tree Growth Tax Break A Scam?" Some of the people that spoke in there talked about exactly why I think this amendment that I'm presenting would help. It says, "The requirement is that the primary use of the property has to be for the growing of trees for commercial forest products, says Don Mansius, Director of Forest Policy Management for the Maine Forest Service. Realistically, at some point in the course of that forest's life the forest is going to get cut, but the management plans are secret which Mansius says is a provision that protects proprietary information that a forester wouldn't want his competitors or customers to know. Some say that leaves municipalities with no way to determine if a plan is being followed or if a property owner is simply dodging taxes." I think this amendment cuts right to the heart of what was stated in that article. I listened quite intently during the hearing and the work session on this bill and I took what was said in that work session to heart and tried to craft an amendment that got at the problem that we're talking about but also took care of people that were in Tree Growth and that had actual concerns with proprietary information. My amendment says that the amendment would begin January 1, 2014 and requires a landowner who participates in the Maine Tree Growth Tax Law Program to file a copy of the plan instead of sworn statement with the municipal assessor for the municipality in which the land is located or the State tax assessor for the property located in the Unorganized Territory. The plan becomes public upon filing, except for proprietary information, which is what we heard from some of the major opponents to this. They were afraid of proprietary information being divulged. I'm fine with that being redacted from the plan or whatever needs to happen. I also had discussions with a forester for the Irving Company, which is the largest land owners in the state and owns all the Tree Growth in the town I live in. They said that they don't understand what the problem is with not having Tree Growth plans public. They don't feel that there is any proprietary information in their plans that they are really worried about getting out. For all the discussion about how this plan shouldn't be public because of proprietary information, the largest landowner in the state doesn't feel that that's a problem. Even if it was, this amendment takes care of that issue because they don't have to give their proprietary information if they do feel there is any in there. What it all comes down to, in this climate of transparency and making sure that people actually know what's going on. I think that it is very, very appropriate for a tax program that people in the state of Maine, who make up the difference for, and it's significant, have the opportunity to at least look at the plan and see if there is going to be any benefit to what they are spending their tax dollars making up. I just can't see why anyone would be against allowing this transparency, especially whenever it's coming out of everyone else's pocket. I think that there is

obviously a cure for this. If the people that are in Tree Growth don't want to show the plans to the public then they shouldn't be taking the public's money whenever they are getting their taxes reduced. If anyone wants to go back home and say that it's okay that we take your tax dollars but we show you absolutely no benefit to the program because you can't ever see the plan, that's fine. Go ahead and go back home and campaign on that. Thank you very much.

Senator **COURTNEY** of York moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441).

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from York, Senator Courtney.

Senator **COURTNEY:** Thank you Mr. President. Men and women of the Senate, this bill is created to quantify the abuses, or potential abuses, in the Tree Growth Law. I think what the good Senator has put forward is somewhat of a presumption, so I think it's getting out in front of the process a little bit. I think that I'm disappointed because I think that there's going to be a vehicle that would work better to address these concerns coming later on. I think, at least prior to the good Senator getting up with his comments, there was an interest on our side of the aisle to work with him on that.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Franklin, Senator Saviello.

Senator **SAVIELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I just want to concur with my leader. I will offer to the good Senator that I will work with him because I do have some agreement on the two issues that I think are of concern to him. I just don't think it fits here. Thank you very much.

On motion by Senator **BARTLETT** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Oxford, Senator Patrick.

Senator **PATRICK:** Thank you Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, I'm going to be standing here in opposition to this Indefinite Postponement. I think my colleague from Aroostook actually laid it out really well. In a recent article in the newspapers it said that Maine was 46<sup>th</sup> in the nation in transparency. We have a tax problem in the state of Maine. We have a revenue problem in the state of Maine. If it can bring fairness, I will take transparency each and every time. With that, I'll be voting in opposition to the Indefinite Postponement. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Schneider.

Senator **SCHNEIDER:** Thank you Mr. President. Men and women of the Senate, I'm just a little bit perplexed at the motion that was made. I'd like to pose a question through the Chair.

**THE PRESIDENT PRO TEM:** The Senator may pose her question.

Senator **SCHNEIDER:** Thank you Mr. President. What I'm confused about, or what I need more explicit information on, is if this is not the right time, right now, then how could we later on be having another vehicle for the very same thing that we're trying to do here? That would be my question. It just doesn't make sense to me. It's not the right time yet we're willing to work to get to the right time this session? I don't understand that and I'd like to just continue and say that we know there's a problem with the Tree Growth because there has been a lot of discussion on it. We know that there are abuses. How do we address those? It seems to me that this is a perfect time to address with this amendment. I'm a little bit confused about why. If not now, then when?

**THE PRESIDENT PRO TEM:** The Senator from Penobscot, Senator Schneider poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from York, Senator Courtney.

Senator **COURTNEY:** Thank you Mr. President. Men and women of the Senate, as I mentioned earlier and as I mentioned to the good Senator from Aroostook in the well, there is another bill coming forward and I think that that would be more appropriate to have that amendment on that. I think there has been a positive response for the Senator's amendment from this side of the aisle. I think there is genuine interest in trying to find a way to do something going forward. This bill, from our perspective, is not the bill to do it. This bill is clearly a very strong report. The next one is quite strong as well. This bill really deals with identifying the existence of a problem or the existence of things that are going on that shouldn't be within the Tree Growth Program. I hope that answers your question.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Washington, Senator Raye.

Senator **RAYE:** Thank you Mr. President. I rise as the sponsor of this bill. I believe that I can also help to address the question of the Senator from Penobscot. The measure before us, as amended by the Committee Amendment, calls for an evaluation of the program. The reason that I brought this bill forward is that I have some very grave concerns about the Tree Growth Program. At the same time, I recognize that it is an extremely valuable tool that is important to many Maine forest product manufacturers. It does create an important supply of lumber and fiber that keep Maine people working. We want to be certain we don't throw the baby out with the bath water. What we have reached, in terms of this Committee Amendment with a very strong report, I believe it was a 12-1 report, is to proceed with an evaluation. This will require a random sampling of some of those properties that have raised the greatest questions. In my area, the reason that the Tree Growth Program has become very controversial is that we have many folks who live on either the ocean or inland lakes who have property that is very valuable who are in Tree Growth and there is a perception, right or wrong. That's what this is all about, to do this evaluation to get to the bottom of what is really happening. Are the perceptions correct? Are there explanations? Are there problems that need to be corrected? We'll get to the bottom of it. It was something that had a great deal of discussion

with the stakeholders and the small woodlot owners of Maine, Maine Forest Products folks, and the Maine Municipal Association who worked very hard to come up with something that they, as well as the Maine Forest Service, could all get behind and are in agreement that we want to understand. Are these perceptions are correct? Is there a significant problem? Is so, what should we do about it? The difficulty that I have with the amendment from the Senator from Aroostook is that it leaps ahead of that process and putting it into this bill, which is simply a bill to require an audit. I am not unsympathetic, as the good Senator knows from our discussion off the floor. I am not unsympathetic to what he is getting at. A couple of my concerns around the Tree Growth Program have to do with the secrecy of these plans. There may be a vehicle that would be appropriate for this. I don't think it is this vehicle for the simple reason that this is asking for an evaluation, directing an audit occur, and in my mind this is not an appropriate vehicle to make the sort of change that this amendment would make. I support the motion before us and urge members to Indefinitely Postpone this amendment, knowing that there can be another discussion on a vehicle that we know will be before us.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you Mr. President. I've heard some good points on both sides of this issue. I am particularly pleased by a couple of members who have expressed a willingness to continue working on this issue through another bill. It occurs to me, though, that we're making decisions here without the full information. We know that there is an effort to bring forward other legislation that might address these concerns. It just seems to me that before we vote on this we should get that other bill up here to see it. I can't make a motion, having spoken, but it seems to me that tabling this matter so that we can deal with this together and have full information. I would hate to Indefinitely Postpone an amendment only to find out that the other effort didn't come before us for whatever reason. Thank you, Mr. President.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Sagadahoc, Senator Goodall.

Senator **GOODALL:** Thank you Mr. President. Men and women of the Senate, I just rise to clarify a couple of issues on the amendment here. I've heard very valid arguments from both sides of the aisle. This is a very tense issue in my district as well. This amendment is prospective. It makes accommodations for reports being filed in the future. It's not talking about in the past. It's not about penalties. I think it corrects it going forward. I think that is the position that the Legislature should be in. I also join with the Senator from Cumberland and his remarks. He recognizes that he is unable to make the tabling motion, so am I now since I've been debating it. The point is that this amendment is not about an audit. It's not about going after people. It's about in the future they would have to file a report after 2014, or update a report, and at that point it would become public information. That is the approach we should be taking on these issues, in my opinion, and that's all this amendment does. Thank you, Mr. President.

Senator **BARTLETT** of Cumberland moved to **TABLE** until Later in Today's Session pending the motion by Senator **COURTNEY** of York to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441).

On motion by Senator **COURTNEY** of York, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### ROLL CALL (#404)

**YEAS:** Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFISKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, WOODBURY

**NAYS:** Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, KATZ, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, RECTOR, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - BRIAN D. LANGLEY

**ABSENT:** Senator: SULLIVAN

15 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BARTLETT** of Cumberland to **TABLE** until Later in Today's Session pending the motion by Senator **COURTNEY** of York to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441), **FAILED**.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you Mr. President. Ladies and gentlemen of the Senate, I would just say that I appreciate the opportunity to possibly look at this down the road. From what I understand, the other bill in question is even more contentious than this one. Not being on that committee but knowing how bills can seem to fold up whenever more people start opening them up, I just think that it's appropriate for this one. I guess it just comes down to the fact that by taking away all proprietary information it is appropriate that taxpayers, who are footing the bill for this, have the opportunity to look at it every once in a while. That's why I support the amendment and I hope the rest of us will too for the taxpayers of the state of Maine.

**THE PRESIDENT PRO TEM:** The pending question before the Senate is the motion by the Senator from York, Senator Courtney to Indefinitely Postpone Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#405)**

YEAS: Senators: COLLINS, COURTNEY, FARNHAM, HASTINGS, KATZ, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, RECTOR, ROSEN, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, THE PRESIDENT PRO TEM - BRIAN D. LANGLEY

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, GERZOFKY, GOODALL, HILL, HOBBS, JACKSON, JOHNSON, PATRICK, SCHNEIDER, WOODBURY

ABSENT: Senator: SULLIVAN

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **COURTNEY** of York to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-458) to Committee Amendment "A" (S-441), **PREVAILED**.

Committee Amendment "A" (S-441) **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later (3/28/12) Assigned matter:

SENATE REPORTS - from the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Resolve, To Amend the Pilot Project for Independent Practice Dental Hygienists To Process Radiographs in Underserved Areas of the State (EMERGENCY)

S.P. 669 L.D. 1891

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-489)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-490)** (4 members)

Tabled - March 28, 2012, by Senator **THOMAS** of Somerset

Pending - motion by Senator **RECTOR** of Knox to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-490)** Report (Roll Call Ordered)

(In Senate, March 28, 2012, Reports **READ**.)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#406)**

YEAS: Senators: ALFOND, COLLINS, COURTNEY, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, KATZ, MARTIN, PLOWMAN, RECTOR, ROSEN

NAYS: Senators: BARTLETT, BRANNIGAN, CRAVEN, DILL, FARNHAM, HASTINGS, HILL, JOHNSON, MASON, MCCORMICK, PATRICK, RAYE, SAVIELLO, SCHNEIDER, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WHITTEMORE, WOODBURY, THE PRESIDENT PRO TEM - BRIAN D. LANGLEY

ABSENT: Senator: SULLIVAN

13 Senators having voted in the affirmative and 21 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **RECTOR** of Knox to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-490)** Report, **FAILED**.

The Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-489)** Report **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-489) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-489)**.

Ordered sent down forthwith for concurrence.

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The Chair laid before the Senate the following Tabled and Later (3/28/12) Assigned matter:

HOUSE REPORT - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY**, pursuant to the Maine Revised Statutes, Title 5, section 8072, on Resolve, Regarding Legislative Review of Chapter 26: Producer Margins, a Major Substantive Rule of the Maine Milk Commission (EMERGENCY) H.P. 1341 L.D. 1819

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-841)**

Tabled - March 28, 2012, by Senator **SHERMAN** of Aroostook

Pending - **ACCEPTANCE OF REPORT**, in concurrence

(In House, March 27, 2012, Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-841)**.)

(In Senate, March 28, 2012, Report **READ**.)

Report **ACCEPTED**, in concurrence.