

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Tenth  
Legislature***

OF THE

STATE OF MAINE

***Volume II***

**FIRST REGULAR SESSION**

**MAY 4, 1981 to JUNE 19, 1981**

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to any persons who may have filled in lands in violation of the Wetlands Act. I should also point out what LD 1594 does not do. It does not affect the public trust in submerged and intertidal lands that are still submerged or intertidal lands as of the effective date of the 1975 legislation. The public trust in these lands is preserved because they are still usable for the trust purposes, unlike lands that have been solid ground for years.

We have specifically preserved the public trust in lands that are still submerged and intertidal, leaving the State to use and regulate those lands under existing law. During our deliberations of LD 1594, we were keenly aware of the State's role as trustee of submerged lands for the public.

Where the present situation is concerned, however, I think the members of the Legislature have to ask themselves whether the reason for the public trust doctrine is really being served by the State's claim. What public purpose can be served by the State's claim to ownership of one acre, or one quarter of a parcel of land, otherwise in private ownership?

These lands, having been filled, are valueless for fishing and navigation. The purposes historically associated with the public trust. In fact, in many instances, the public benefit was promoted by the filling of these lands so that wharves and structures could be built to promote commerce and the development of the State.

The Committee was also aware of the argument that it is beyond the power of the Legislature under the Constitution, to release State rights in lands that were once submerged. The Judiciary Committee carefully considered those arguments and reviewed various cases and extensive legal materials. After careful consideration, the Majority of the Committee has accepted the views of legal authority that the Legislature is not powerless to remedy the problem with which we are confronted today.

The Legislature is today faced with a prospect of stifled development and years of confusion and bitter litigation. As private parties, municipalities and the State try to sort out when certain lands were filled during the State's history, because these lands are now and have been for years, valueless for public trust purposes, because the State, in fact, encouraged people to fill some of these lands from time to time, because the State has done nothing to assert its ownership for decades, and because the failure to take action now will result in the serious problems I've described.

The Legislature is not powerless to discharge its responsibility to the people of the State by resolving the problem now, once and for all. Let us now start with a clean slate.

Mr. President and Members of the Senate, for these reasons I strongly urge that LD 1594 be Enacted. Thank you.

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

Senator MINKOWSKY: Mr. President and Members of the Senate, I was in the other Body when this particular thing came up insofar as House Amendment 573. It was sort of bewildering in one respect, to listen to the debate over there, especially by some of the sponsors of the Bill, as well as members of the Judiciary Committee.

It left me with the impression that we were not doing this on behalf of the people of the State of Maine, as much as we were doing it for some prestigious law firm located in the City of Portland. If there is any relevancy to what the good Senator from Portland said earlier, that the lease runs out in 24 years insofar as the grandfather clause, then what's the emergency today in pushing this particular piece of legislation through?

The areas that I was concerned with at the particular time zeroed around one particular point, that the members in the other Body that

debated this particular issue were willing, right then and there, willing to send it back to Committee for further study. If the people who worked on this particular Bill, as they stated very clearly on the floor, were members of the third house, or the lobby, in a covert type operation which was the indication given to us, then again, it leads me to the point of wondering exactly all the window-dressing we're building up on this thing at the present time. Are we doing it for the people of the State of Maine? Are we doing it for some prestigious law firm, or the lobbying, the group behind this, because they might have their shingles tied up somewhere along the line, in some particular law suit? It doesn't make good sense.

I agree wholeheartedly with the testimony projected ethically, I assure you, by both Senator Devoe and Senator Conley, but there seems to be some type of hidden picture in this particular landscape that I don't quite see fully at the present time. Maybe these two gentlemen might clarify this at some other point.

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

Senator CONLEY: Mr. President and Members of the Senate, the allegations that have been raised by the good Senator from Androscoggin totally and completely escape me with respect to the third house. I can assure the good Senator from Androscoggin that when this Bill was first heard on the floor of this Senate, I made it emphatically clear as to what the problems were in my community. I did not single out any particular law firm. I talked about Commercial Street being three miles or three and a half miles long, being totally filled land.

The Back Bay of Portland is totally filled land. People have been paying property taxes down there for years. Now all of a sudden we're going to have the State come in and say that this land does not belong to these people. That is ludicrous. These people have been paying property taxes for the last 150 years. Now if that doesn't raise a question in somebody's mind as to whether or not, what the municipal fathers are going to be confronted with with respect to a tax rebate, if what the State says is true, it would throw total chaos in our entire State. It's not just Portland. It's the whole coastal area of Maine that these things have happened to.

In years gone by, I personally feel that the State gave away any title or ownership once they allowed communities or individuals to fill land and they didn't step in and say to them at any time that they were violating State law, or that they needed a permit, or they needed a lease for 30 years. That's what I'm concerned about. That's what every municipal official in this State that appeared before the Judiciary Committee the day this Bill was heard was concerned about.

1975 created a problem that no one ever anticipated. We want to set the Record straight. From my point of view, in representing the good citizens of Portland and the good citizens of the State of Maine, I feel that these municipalities and these businesses own that land.

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

Senator McBREAIRTY: Mr. President and Honorable Members of the Senate, no one realizes better than I how the people must presently feel who have property on the so-called "submerged lands." The Department of Conservation has been taking land from people who I represent for years through the power we have given them to promulgate rules and regulations. LURC has zoned thousands of acres of unorganized territory and plantations and towns organized after 1972, for special interest groups, land that we have no doubt who the owners are.

It amuses me to see people in the organized areas facing the same problems we have faced for many years through this Department. I'm going to vote for this Bill, because I don't be-

lieve any State agency should be allowed to take land from our people. I hope most of you will remember in the future, and maybe have some sympathy for the people I represent.

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

Senator CONLEY: Mr. President, when the vote is taken, I request it be taken by the Yeas and Nays.

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 Enactment of LD 1594.

A Yes vote will be in favor of Enactment of LD 1594.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA—Ault, Brown, Bustin, Carpenter, Charrette, Clark, Collins, Conley, Devoe, Dutremble, Emerson, Gill, Hichens, Huber, McBreairty, Najarian, O'Leary, Perkins, Pierce, Pray, Redmond, Sewall, C.; Shute, Sutton, Teague, Trotzky, Usher, Violette, Wood.

NAY—Kerry, Minkowsky.

ABSENT—Trafton.

A Roll Call was had.

29 Senators having voted in the affirmative, and 2 Senators in the negative, with 1 Senator being absent, LD 1594 was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

(Off Record Remarks)

On motion by Senator Pray of Penobscot, there being no objections all items previously acted upon, with the exception of those items previously held, were sent forthwith.

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

Senator PRAY: Directing the Senate's attention to Supplemental Journal dealing with the Highway Allocations Act, having voted on the majority side, I move Reconsideration.

The PRESIDENT: The Senator from Penobscot, Senator Pray, moves that the Senate Reconsider its action whereby An Act Relative to the Highway Allocations Act, for the Fiscal Years ending June 30, 1982 and June 30, 1983 was Passed to be Engrossed.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Inquiry. That is the LD introduced this morning dealing with the Highway Allocation Act?

The PRESIDENT: The Chair would advise the Senator that the Senate has acted upon 2 highway bills, this morning. One was the major bill, on Supplemental Journal Number 1, which was Passed to be Engrossed. The other was on Supplemental Journal Number 4, LD 1607 which was Indefinitely Postponed, in concurrence.

Senator PRAY: Thank you.

The PRESIDENT: Does the Senator from Penobscot, Senator Pray, intend to proceed with his motion to Reconsider?

Senator PRAY: Mr. President, I withdraw my motion.

The PRESIDENT: The Senator from Penobscot, Senator Pray requests leave of the Senate to withdraw his motion to Reconsider Passage to be Engrossed.

Is it the pleasure of the Senate to grant this leave?

It is a vote.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

**Committee Report**

**House**

**Divided Report**

The Majority of the Committee on Taxation on, Resolution, Proposing an Amendment to the Constitution of Maine to Undedicate the Highway Fund. (H. P. 733) (L. D. 833)

Reported that the same Ought Not to Pass. Signed:

Senators:

TEAGUE of Somerset  
EMERSON of Penobscot

Representatives:

MASTERMAN of Milo  
TWITCHELL of Norway  
DAY of Westbrook  
BROWN, of Bethel  
INGRAHAM of Houlton

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senator:

WOOD of York

Representatives:

POST of Owl's Head  
KILCOYNE of Gardiner  
KANE of South Portland  
HAYDEN of Durham  
HIGGINS of Portland

Comes from the House, the Bill and Papers Indefinitely Postponed.

Which Reports were Read.

On motion by Senator Collins of Knox, LD 833 and all its accompanying papers, Indefinitely Postponed, in concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

**Paper from the House  
Non-concurrent Matter**

Bill, "An Act to Create a Fuel Efficiency Adjustment Program and Other Highway Revenue Adjustments." (Emergency) (H. P. 1652) (L. D. 1689)

In the House, June 9, 1981, (H. P. 1653) (L. D. 1690) Passed to be Engrossed.

In the Senate, June 10, 1981, Passed to be Engrossed as amended by Senate Amendment "A" (S-363), in non-concurrence.

Comes from the House, that Body Having Adhered.

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

Senator COLLINS: Mr. President, I think that it is clear that this Bill is dead and the easiest way to dispose of it, therefore, would be for the Senate to Adhere. I move that the Senate Adhere.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate Adhere.

Is this the pleasure of the Senate?

The motion prevailed.

On motion by Senator Pierce of Kennebec, Recessed until 2:00 o'clock this afternoon.

**Recess**

**After Recess**

The Senate called to order by the President.

On motion by Senator Collins of Knox, there being no objections all items previously acted upon were sent forthwith.

On motion by Senator Collins of Knox, Recessed until the sound of the Bell.

**Recess**

**After Recess**

The Senate called to order by the President.

**(Off Record Remarks)**

**Orders of the Day**

On motion by Senator Huber of Cumberland, the Senate voted to remove from the Special Appropriations Table:

Bill, "An Act Establishing a National Guard Scholarship Program in Vocational-technical Institutes." (H. P. 452) (L. D. 499)

On motion by Senator Huber of Cumberland, the Senate voted to Suspend the Rules, for the purposes of Reconsideration.

On motion by Senator Huber of Cumberland, the Senate voted to Reconsider its action whereby LD 499 was Passed to be Engrossed.

The PRESIDENT: The Senator has the floor.

Senator HUBER: I present Senate Amendment "A" to LD 499 and move its adoption.

The PRESIDENT: The Senator from Cumberland, Senator Huber offers Senate Amendment "A" to LD 499 and moves its adoption.

Senate Amendment "A" (S-376) Read and Adopted. The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down forthwith for concurrence.

Senator Conley of Cumberland was granted unanimous consent to address the Senate, On the Record.

Senator CONLEY: Mr. President and Members of the Senate, perhaps the news is old hat, but I know that the Senate certainly wants to take this opportunity to congratulate Senator Frank Wood and his very lovely wife, Debby, upon their new arrival of Amanda Grace Wood, who weighed in at 7 pounds, 3 ounces, on Wednesday this past at 3:00 in the afternoon. I know we wish the three of them the best of happiness.

The PRESIDENT: The Chair would ask the Senate to rise and extend its greetings.

(Applause, the members rising.)

Senator Hichens of York was granted unanimous consent to address the Senate, On the Record.

Senator HICHENS: I was waiting until the Order had come up before us but the good Senator from Cumberland beat me to the punch. I have penned a few appropriate words as might be expected.

Amanda Grace — how sweet the sound — it makes one feel good

Especially the parents Frank and Debby Wood Who on the 17th of June — presented to the State

A bouncing baby daughter — and we all think that's great.

We've waited for the word to come — for she was overdue

And on one occasion I recall — debating soon was through

When Frank announced he had to leave — and hoped he'd get to vote

Before he headed down the road and have the chance to gloat

But that day passed and many more before the baby came

And Frank — Expectant father — will never be the same.

Yes all the waiting's ended and with him we are glad

For the future holds great promise — the best is to be had

So join with me this afternoon — put things in proper place

In Welcoming God's precious gift — sweet Amanda Grace.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

**Paper from the House  
Joint Order**

ORDERED, the Senate concurring that Bill, AN ACT to Continue the Maine Turnpike Authority," Senate Paper 650, Legislative Document 1676, be recalled from the Governor's desk to the House. (H.P. 1699)

Comes from the House, Read and Passed. Which was Read and Passed, in concurrence. Sent forthwith.

**Orders**

Expressions of Legislative Sentiment recognizing:

Mr. and Mrs. Vernon Haslam of Eastbrook, who are celebrating their 65th wedding anniversary. (S.P. 708) presented by Senator PERKINS of Hancock (Cosponsor: Representative CONNERS of Franklin).

Merrilee Monks-Paine, Brunswick Police Department youth aid officer, who was honored by the Kiwanis Club as "Police Officer of the Year" for the year 1981. (S.P. 709) presented by Senator CLARK of Cumberland (Cosponsors: Representative MARTIN of Brunswick and Representative LIVESAY of Brunswick).

Ann Sutherland Riley of Brunswick who received the Brunswick Kiwanis Club's Citizen of the Year award for the year 1981. (S.P. 710) presented by Senator CLARK of Cumberland (Cosponsors: Representative MARTIN of Brunswick and Representative LIVESAY of Brunswick).

The birth of Amanda Grace Wood, on June 17, 1981 at 3 p.m., weighing 7 lbs, 3 oz., daughter of the State Senator Frank P. Wood and Assistant Clerk of the House Deborah Bedard Wood. (S.P. 711) presented by Senator CLARK of Cumberland (Cosponsors: Senator KERRY of York, Senator HICHENS of York and Senator DUTREMBLE of York).

Which were Read and Passed.

Sent down forthwith for concurrence.

**Enactor**

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

**Emergency**

AN ACT to Make Allocations from the Highway Fund and Appropriations from the General Fund for the Fiscal Years Ending June 30, 1982, and June 30, 1983, to Establish a Local Road Assistance Program, to Continue the Maine Turnpike Authority and to Adjust Highway Fund Revenue. (H. P. 1696) (L. D. 1691)

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

Senator MINKOWSKY: Mr. President and Members of the Senate, the points have been very well debated on this particular issue this morning. The only thing of significant value to me this afternoon is just for the future Record, that a Roll Call vote be taken on this particular measure, on its Enactment.

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 Chair recognizes the Senator from Somerset, Senator Redmond.

Senator REDMOND: Mr. President, Members of the Senate, while we were debating this Highway Funding issue, I would like to impress on the Senate and the Department of Transportation the importance of good highways at the various ports of entry into our State. This factor, in our discussion, is particularly important at this time of year, when our economy is beginning to flourish with traffic from tourists.

My Senate District covers the Jackman port of entry. In recent months, I have been continually reminded by many of my constituents of