

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fifteenth Legislature
OF THE
State Of Maine

VOLUME I

FIRST REGULAR SESSION

House of Representatives
December 5, 1990 to May 16, 1991

ABSENT - Boutillier, Clark, M.; Dutremble, L.; Hepburn, Kerr, Kontos, LaPointe, Larrivee, Macomber, McKeen, Paradis, P.; Pines, Ricker, Rydell.

Yes, 86; No, 51; Absent, 14; Paired, 0; Excused, 0.

86 having voted in the affirmative and 51 in the negative with 14 being absent, the Majority "Ought to Pass" as amended Report was accepted, the Bill read once.

Committee Amendment "A" (H-6) was read by the Clerk and adopted and the Bill assigned for second reading later in today's session.

At this point, Representative Gwadosky of Fairfield was appointed to act as Speaker pro tem.

The House was called to order by the Speaker pro tem.

The following item appearing on Supplement No. 6 was taken up out of order by unanimous consent:

ORDERS

On motion of Speaker MARTIN of Eagle Lake, the following Joint Order: (H.P. 51)

WHEREAS, revenue forecasts have varied significantly during this fiscal year and present forecasts remain uncertain; and

WHEREAS, it is now clear that the State faces a major shortfall in revenues during this fiscal year and will be unable to meet present appropriated expenditures; and

WHEREAS, the Governor has not yet officially reported that anticipated income will not be sufficient to meet authorized expenditures nor instituted temporary allotment curtailments to meet that insufficiency; and

WHEREAS, the Governor has not provided a report to the Legislature and people of this State of his intended curtailments or reductions in expenditures to meet the revenue shortfall; and

WHEREAS, there is a clear and immediate need for detailed reliable information on revenue forecasts and on possible curtailments or reductions, which information is not presently available; and

WHEREAS, with the short period remaining in the fiscal year, the Legislature can no longer wait for the detailed reliable information it needs to act responsibly to be supplied by others; now, therefore, be it

Ordered, the Senate concurring, that the Joint Standing Committee on Appropriations and Financial Affairs shall convene at 10:00 a.m. on December 26, 1990, in Room 227 of the State House, Augusta, Maine, for the purpose of carrying out the duties of

this Joint Order; and be it further

Ordered, that the committee shall thoroughly study the anticipated revenues and incomes of State Government and all of its departments, agencies, authorities, bureaus, offices or other bodies or officials, whether independent agencies or departments, from any sources and all presently appropriated or anticipated expenditures; and be it further

Ordered, that the committee shall accept and review any information on this subject presented by the Governor; and be it further

Ordered, that the committee shall report to the Legislature its findings as a result of this study, together with any proposals and proposed legislation; and be it further

Ordered, that the committee shall have all of the authority and powers of an investigating committee provided in the Maine Revised Statutes, Title 3, chapter 21, and has the specific additional powers to administer oaths, issue subpoenas, compel attendance of witnesses and the production of any papers, books, accounts, documents and testimony and to cause the deposition of witnesses as provided in Title 3, section 165, subsection 7.

Was read by the Clerk in its entirety.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I agree with the Representative from Belfast, Representative Marsano, that it is no longer time for "business as usual." We have seen today where the Governor's proposal was rejected, not only by the Majority Party, but by all but three members of the Minority Party, who also abandoned the Governor's position making it clear that in both legislative bodies the members of both parties rejected the Governor's position. It made it clear that it was objectionable to all. That is the way I read the vote. I will not choose to say it was a political move on the part of the Republican Party because that really is beneath them, that they voted that way just because they didn't want to stand up and be counted. So, I am not going to make the accusation nor am I going to make the accusation that the reason we got into this situation as late as we did was because of an election but, men and women of this House, I know and I can prove that as early as February of last year, the Governor told his cabinet and members of the cabinet who were assembled there that there were three things he needed to do to be re-elected, (1) to get the legislature home quickly, (2) pass the budget and (3) make sure that the expenditures did not exceed the revenues prior to the election. Nine months later that was accomplished and the people of Maine are now seeing the results.

For most of the Fall, many of us (and you can go back and read the article) suggested that we, along with other states, were falling in the same line, like what was happening in Massachusetts and New York and all of the eastern coast, it was not a surprise. The decision was to postpone it. Let us

not try to say that that was political because what difference does it make? The election has come and gone, you and I are here, the Governor was re-elected and that is with whom we need to work, at least that is what I thought.

Some people have been amazed by the fact that I have been so quiet in the press up until now. I was because I had hoped that the Executive Branch of government would come clean, would give us the facts, but I now know that that is not possible.

This legislature begins its legislative session today and we are told that this is the plan and nothing else. A few minutes ago, we got a letter addressed to the ten members of leadership saying that we will meet in the cabinet room at 9:15 to hear your alternative plans on how we are going to fund the problem. It is difficult to be here one day, hearing the information provided to us today which is different from what was provided to me yesterday and the day before and the day before that, Tuesday — I stop there because there was nothing provided us prior to that time at all. Yet, I heard the Chief Executive tell the University of Maine students today that he had been talking to the legislature for 30 days. I don't know with whom he was speaking but it wasn't me. I know that it wasn't members of the Democratic Leadership and I know that it wasn't members of my party. I hope it was members of the Minority Party.

The Representative from Winslow, Representative Carter, pointed out, eloquently, the fact that we do not have the information available to us nor is it being provided nor was it provided. Frankly, I figured out that we are not going to get 101 votes (and I can count pretty well) to pass this bill that we had before us earlier, to get the necessary time to get the information upon which this legislature can perform its responsibility pursuant to the Constitution of this state. I am a realist but I also know that if the Chief Executive in the Executive Branch of government won't give us the available information, then we must get it.

This Order provides for the ability of the Committee on Appropriations and Financial Affairs to subpoena the records of this state of the various commissioners and force them to tell the truth, not what they have been told to say by the Executive or the Commissioner on Finance or the budget officer. That will provide the basis upon which this legislature can get the necessary information to put its program together because I see no other way.

Let me tell you just a couple of incidents that have come to life. The Representative from Winslow, Representative Carter, has already pointed out that there are ways to find about \$40 million without raising a penny. Has anyone asked where? Does the Governor know where it is? Can we trust the figures when they are provided? Frankly, because of the problems that face us in terms of respectability, honesty, integrity, and reliability of information, there is doubt. This will provide the ability to document.

I might point out another bit of information, the Commissioner on Education decided to take 600 positions, 600 slots I am told, teachers aides that were formerly under Social Security, and rolled them into the Teachers' Retirement Fund about a month ago. How many of you knew that? What is the potential liability to the state? What is the cost? Can you tell me why it was done and what the

potential liability to the Retirement Fund is in addition to the regular budget? Remember, the State of Maine pays the matching portion, the employer share, it is not paid at the local level and that is going to be substantially more than what Social Security would be.

I can go on and give you example after example but you know what? Ask the Commissioners — some of them, you will get an attorney's response, I can't figure out what it means after I have gotten it.

Consultation becomes important and information becomes important to our ability to put together a proposal. If this is not possible to get and we do not have a commitment from the Executive Branch, then we must figure out a way to do it.

We do not have an overall package, there is only one copy of the recommended cuts from the various departments and it is housed in the Bureau of the Budget. Ask what the positions are — we are not sure, we don't know where they are — can this legislature put together a package that will convince the people of Maine that it has acted responsibly? I do not believe so.

I don't know if you are aware of it but I'm told today (again) that we have not been appraised that this has happened but I have already received four phone calls from state employees who say the Governor signed an Executive Order today saying that state employees will not be paid for one day out of every pay period between now and June. The Governor raised that issue with us this morning and I said to him, "Do you have the authority to do that?" The contract says that you can do three days under an emergency situation." The response was, "As long as we do it one day at a time, we can do as many as we want to." I doubt that but let's assume that it is true. What does this do to the Pineland Decree, what does it do to the AMHI Decree that we are under because of federal court? What is the impact? Has anyone bothered to find out? I know the answer to that question and it is, no. I have been informed that the Governor wants to stop prefunding Workers' Compensation for state employees injured on the job and, basically, not establish money in the budget to pay claims. What and how would a private employer be treated if that were done?

The question we have is very simple. I heard it tonight from the Representative from Yarmouth, Representative Foss — "It is your responsibility now, you had the ability to make the decision this morning and now I wash my hands of it." Men and Women of the House, it is the responsibility of the entire legislature and the Chief Executive to solve the financial crisis that has been brought upon us without attempting to lay blame as to who did it. I would be happy to discuss that for the next hour if you want me to but it has happened, it is here, the time has come and we must deal with it. We can only do it with the material and information and documents that we need. This Order provides that mechanism and I would advise members of the Minority Party that it is one that they cannot block by a 101 votes nor can the Chief Executive block with a veto because it is a legislative order. It requires a majority vote in this body and a majority vote in the other body. To spell it out to the Freshman members and in particular to the minority, the time has come to deal with the problems of this state and get off the dime and make it clear that it is no longer "business as usual."

This legislature, at least the Majority Party, doesn't want any more lies, it doesn't want any more smoke and mirrors, it doesn't want any more threats, it doesn't want any more accusations — it wants facts and it wants to solve the problem. So tonight, I ask members of the Minority Party to join me as the presiding member in this body in providing leadership to lead this state out of the greatest financial crisis that this state has ever seen in its history.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, a parliamentary inquiry? I would like to ask if this Order is in order as a result of Rule 54? As I read Rule 54, one day's previous notice shall be given and it has not been given and I suggest that it is not properly before the body.

(At Ease)

At this point, Speaker Martin resumed the Chair.

The House was called to order by the Speaker.

The SPEAKER: In reference to the question posed by the Representative from Belfast, Representative Marsano, the Chair would advise the Representative that Rule 54 deals with suspension of rules and is not proper for this particular motion.

The SPEAKER: The Chair recognizes the Representative from West Gardiner, Representative Marsh.

Representative MARSH: Mr. Speaker, I would like to pose a question through the Chair.

Next to the last paragraph, it says the Committee shall report to the legislature its findings. My question is, due to the timeliness of this, is there an oversight that there is no date there as to when the report has to be back?

The SPEAKER: The Chair would advise the Representative that the Order is drafted in that fashion.

The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: It has been a long day for all of us I think and apparently it is the intent of some that this is the conclusion of the day. We have been informed that this is about to pass. We were informed earlier today that the potential for a solution to this problem was about to die before us at the hands of the Majority Party.

I guess the comments that I will make will be more of a general nature because it seems to me that this is no more than, again, an effort to divert our attention from the financial problem that we must deal with and deal with quickly. It appears to me that this is an attempt to send the whole legislature home, to put this matter in the hands of a committee that has a great interest in taking over the role of the Executive.

I have to question a couple of the comments that were made a few minutes ago about not knowing anything about the problem that we face because I was in on briefings the first day that we were here where the issue was outlined to us in terms as they were best known at that point in time. The point that we have tried to make, time and time again today, is that this problem is unlike any other that Maine government, or as we read the words of the Speaker that he was issuing from Washington when he was there during our first week of opportunity to work on this problem, that this is happening in state after state. I recall his words, "30 states." He suggested to us that the problem in Maine was one of the worst.

The point is being characterized here as something deliberate on the part of the administration but it is a factor of the times that we are in. Why would an administration try to create this kind of problem? There is no logic to that conclusion. This is not a creation, this is the best attempt that people with sound financial minds and responsibility have presented to us.

We have seen today several attempts to delay, to avert attention away from the problem, to suggest that this somehow can be solved in a normal course of action. Now we finally have an item before us to suggest that there is somehow a cover up here. We are being asked, well not being asked (for the Minority Party), we are being told, that this Order will pass with subpoena powers and other powers allowed in Maine statutes to force the administration to provide some secrets that they hold, some tactic that has been devised and a suggestion made as far back as February. Well, I wish you well. There are no secrets, these are honest men and women trying to handle a situation that they did not ask for, that we did not ask for, that we have got to deal with in a reasonable manner.

I was sitting down in the Executive Office a few minutes ago when someone said, "There is a letter laying out here." It was a request from the Joint Leadership of the Democratic Party that we have a meeting to talk about alternatives and of where we were going with the issue. The press, when I stepped outside, said the letter had been sitting there for an hour and a half. I don't know, it was found on a desk to be honest with you. So, we proceeded to initiate the contract. In fact, the Majority Floor Leader just asked me a few minutes ago when I told him that I thought it meant we were going to continue the discussion of where we were going from here. Apparently, it is a continuation of a rhetorical answer to a serious problem. It was not a question of where we are going from here, the Order was printed, it was up in front of us as he asked me that personal question. It is left in my mind if this whole day has been driven with this known conclusion.

We have been encouraged by the sponsor of this piece of legislation to all join him in this effort. This is one legislator that will have no part of it.

This legislature has the ability to work together when it finally settles down and deems that it is necessary. I would suggest that the passage of this Order does not achieve that objective. I urge the defeat of this Order before us.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative

Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: You have undoubtedly just heard the most pathetic excuse for not getting the truth out that I have ever heard. I mean that it is pathetic. In 16 years of political service, I have always done what I could to convince the people of this state that elected officials have integrity, honesty and will put their people above and beyond their personal gains and, in one fell swoop, the Governor of this state flushed that whole thing down the toilet. That is what I have got to deal with back home.

I sat here and listened to Sawin Millett today, and with all due respect, I didn't believe a word he said and I will tell you why. He has changed his tune as the sun rose and set in the State of Maine.

The good Representative says that there is no cover up — all you have is good, decent, hard-working people trying to do their job in a financial crisis. He wants us to afford those people that respect and that ability — what about us Representative Whitcomb? When is someone going to afford us the very same respect and ability to let us do our job by telling us the truth, once and for all? Is the Minority Party afraid of the truth? Believe me, I hope you all vote against this Order, you have been a Minority Party for 12 years that I have been here and if you keep going at the rate you are going, you are going to be the Minority Party for 12 more.

To even suggest that after six months of baloney that we come down here in one day (and we don't need to be reminded of how serious this problem is) — in one day listen to the gobbledygood that was fed this caucus and then solve this problem in one vote or a couple of votes in one day it just defies logic, imagination and even a semblance of saneness.

Unfortunately, it seems to me, as one Representative from Waterville, that the only way we are going to be able to find out what the real facts are is to go along with this Order. I really, sincerely hope that every member of the Republican Party votes against it. I really do. It will sure help me back home.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: I just want to respond to one comment from the good Representative from Waterville. It interests me that, immediately after the briefing that all legislative leadership had at the Blaine House on the first day we were here, that our caucus asked and immediately received, as would anybody who asked and received, the same briefing. I understand the frustration that maybe you and your caucus have by not receiving the information. Our caucus asked for it and got what was available for financial material at that point in time. I can't help that but I can tell you, in fact we kind of bragged to our caucus, the caucus will remember it, we said, "You are all receiving the same briefing that the joint leadership of both bodies in both parties just received over in the Blaine House", as the facts were known at that point in time. I think the Freshmen in our caucus were pleased to think that they were being brought into the situation as much as it was known at that point in time.

The Governor has indicated to me and to any number of individuals, commissioners have been in

the halls all day long as they have been available for close to a month and I am sorry that members of your caucus didn't have the opportunity to be brought up to date to the information that was available on the first day that we were here. That is not our fault.

I would still urge rejection of this Order.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: The hour continues to get later and later and the rhetoric exchanged is piled as high as I need to see it personally but one suggestion that was mentioned earlier about communications, honesty, and dealings with each other and what those circumstances are — Representative Whitcomb suggested that a letter that was sent jointly by Democratic leadership had been lying on a desk for an hour and a half in the Governor's Office before they noticed it and that was the explanation for the delay; in fact for the response. I have been advised that that letter was hand delivered by an officer of the Maine State Senate, there were three people in the Governor's Office at that point in time including Bob Moore and there should have been no doubt as to what that letter was and whom that letter was from. I guess my point is, if there is disagreement and there is dishonesty on these types of issues, what else can we expect from the big issues that confront us?

Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I don't know where this Order came from, I do know that it incorporates some provisions of Title 3, Chapter 21 and it also incorporates Title 3, Section 165 — it doesn't tell you what those are. I have been attempting to read quickly through the rules and these statutes. I have also been attempting to read through the Joint Rules and find no reference in the Joint Rules which we adopted with respect to Joint Orders. I do think, therefore, that Rule 54 applies which, as I read before, says and I read it into the Record "No rule or Order of the House shall be altered or repealed....."

The SPEAKER: The Representative is out of order. The Chair would advise the Representative that the matter was decided some time ago. If he wanted to challenge the Chair, he should have done so at the time. Does the Representative have anything further to add?

Representative MARSANO: The Representative does Mr. Speaker and I believe I have a right to read at least this language since it deals with Orders and that is all I am suggesting because it is relevant to the matter to which I am attempting to debate. I am attempting to debate it with reference to notice and nothing else. I recognize that you have already ruled without recognizing the language on which I relied and I am perfecting happy to accept your ruling Mr. Speaker.

On the other hand, I am entitled to debate with reference to rules.....

The SPEAKER: The Representative may continue to read.

Representative MARSANO: Thank you Mr. Speaker. "Nor shall any new standing rule or Order be adopted

unless one day's previous notice thereof be given each case and such notice shall be entered in the Journal." I haven't had enough time, Mr. Speaker, to evaluate what Title 3, Chapter 21 says and I haven't had time to really understand the input and significance of Title 3, Section 165. Yet, I am supposed to take this on faith though nobody else takes anything on faith around here. What bothers me about all of this is it seems to me as though this is in the order of a witch-hunt.

We have been told by the Majority Party that for months they recognized a problem — every time a problem arises in this House, I am attacked because I don't know something about the rules or the history or this or that. All of these learned long-time people know all about these things but then suddenly with a problem of the sort that this House is supposed to have had knowledge of, the Democrats in this House, for all this period of time, with all this expertise, all these years of tradition and knowledge about this House, they don't know anything about how to solve it. They don't know anything about how to read the figures and they don't know how to do anything with it. The question is, is the purpose of this to accomplish what we are talking about? If so, why is the first time I am confronted by it is when I get a copy of it and then see the Speaker of the House leave, call the Representative from Fairfield to the rostrum, and I am told that I should do it in the best interest of this House? I must tell you, Mr. Speaker, that I am surprised that you would ask me to vote for it under those circumstances and I would urge all members of this House to reject it until we have had an opportunity to think about it. I suggest that a day would be a proper amount of time.

The SPEAKER: The Chair would advise the Representative from Belfast, Representative Marsano, and members of the House that this issue is not new to the Representative from Belfast, Representative Marsano, since he and I discussed this on three separate occasions prior to this. He knows full-well the Title which is being referred to since he debated the issue at least twice before the members of the Legislative Council.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Carroll.

Representative CARROLL: Mr. Speaker, Men and Women of the House: I would say, in response to the fine Representative from Belfast, that yes, he may not have had time to digest this Order and I would say that this legislature has not had time to digest the numbers, the magnitude, and the scope of the problem to deal with it in an intelligent, reasonable and rational manner. I think we should put this forward so we can move ahead and solve this problem.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage of H.P. 51. Those in favor will vote yes; those opposed will vote no.

YEA - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Ketterer, Kilkelly, Lawrence, Lemke, Lord, Luther, Mahany, Manning, Martin, H.; Mayo, McHenry, Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paul, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Rotondi, Ruhlin, Saint Onge, Salisbury, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Heino, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, MacBride, Marsano, Marsh, Merrill, Murphy, Nash, Norton, Ott, Parent, Pendexter, Pendleton, Reed, G.; Reed, W.; Richards, Savage, Small, Spear, Stevens, A.; Stevenson, Tupper, Whitcomb.

ABSENT - Boutilier, Clark, M.; Dutremble, L.; Hepburn, Kerr, Kontos, LaPointe, Larrivee, Macomber, McKeen, Paradis, P.; Pines, Ricker, Rydell.

Yes, 89; No, 48; Absent, 14; Paired, 0; Excused, 0.

89 having voted in the affirmative and 48 in the negative with 14 being absent, Joint Order (H-51) was passed and sent up for concurrence.

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 7 was taken up out of order by unanimous consent:

SENATE PAPER

The following Joint Order: (S.P. 47)

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Thursday, January 3, 1991, at 4 o'clock in the afternoon or to the call of the President of the Senate and the Speaker of the House when there is need to conduct legislative business.

Came from the Senate, read and passed.

Was read and passed in concurrence.