

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

Volume II

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Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

1520) Ought to Pass as Amended by Committee Amendment "A" (H-449).

Tabled — May 27, 1975 by Senator Speers of Kennebec.

Pending — Acceptance of Report.

(In the House — Passed to be Engrossed as amended by Committee Amendment "A" (H-449).)

Thereupon, the Ought to Pass as Amended Report of the Committee was Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read.

Mr. Wyman of Washington then moved that Committee Amendment "A" be Indefinitely Postponed.

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

Mr. CURTIS: Mr. President and Members of the Senate: Committee Amendment "A", under Filing H-449, was added by the committee at the suggestion of one of the members of the State Government Committee because he was concerned with the situation in which a county commissioner ended up being judge and jury in the municipal evaluation appeals board procedure. The statement of facts explains the amendment and I think it ought not to be postponed, at least until we have had some explanation as to reasons why there is something wrong with it. So I would request a division.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: This particular amendment would disqualify all county commissioners and elective officials, and that would mean your county commissioners, your city councilmen, all these people would be prohibited from serving on the board. We have 500 municipalities in the state. If they all had selectmen, that would be 1500 people, and with your city councilors it would be more, and I think these people are some of the most knowledgeable people in regard to county affairs and county evaluations.

We do have a bill in Taxation which would provide for an appeal from the findings of the municipal evaluations appeal board. So if the worst happens and the board, due to some county commissioner or some city councilor who happens to be on the board, if they make a bad decision, it can be appealed to the courts. At present they can't, the municipal evaluation appeal board is final. So I don't think we should disqualify all these knowledgeable people, and I certainly hope this amendment will not be adopted.

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

Mr. CURTIS: Mr. President, it would be my understanding that there is presently an appeal provision anyway under Rule 80-B of the Maine Rules for Civil Procedure into the Superior Court. If somebody else who has worked on this piece of legislation from the Taxation Committee would like to correct me, I would be happy to stand corrected, but that is my understanding at the present time.

Another point I would like to make is that certainly municipal officials and county officials are cognizant and knowledgeable in this field, but for that very same reason they are the same ones that are likely to have a conflict of interest, and I would suggest that it is appropriate to

use other citizens as members of this appeals board.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion by the Senator from Washington, Senator Wyman, that Committee Amendment "A" to L. D. 1520 be indefinitely postponed.

A division has been requested. Will all those Senators in favor of the indefinite postponement of Committee Amendment "A" please rise in their places until counted.

A division was had, 17 having voted in the affirmative, and 15 having voted in the negative, Committee Amendment "A" was Indefinitely Postponed in non-concurrence and the Bill Tomorrow Assigned for Second Reading.

The President laid before the Senate the second tabled and Specially Assigned matter:

Bill, "An Act to Incorporate the Town of Rockwood." (H. P. 966) (L. D. 1218)

Tabled — May 28, 1975 by Senator Speers of Kennebec.

Pending — Passage to be Engrossed.

(In the House — Passed to be Engrossed as amended by Committee Amendment "A" (H-309).)

(In the Senate — Committee Amendment "A" Adopted.)

Thereupon, the Bill, as Amended, was Passed to be Engrossed in concurrence.

The President laid before the Senate the third tabled and Specially Assigned matter:

Senate Reports — from the Committee on Natural Resources — Bill, "An Act to Establish a Public Preserve in the Bigelow Mountain Area." (I. B. 1) (L. D. 1619). Majority Report — Ought Not to Pass; Minority Report — Ought to Pass.

Tabled — May 28, 1975 by Senator Speers of Kennebec.

Pending — Motion of Senator Trotzky of Penobscot to Accept the Minority Report.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, would you have the Secretary read the Committee Report, sir?

The PRESIDENT: The Secretary will read the committee report.

The SECRETARY: The Majority Report of the Committee on Natural Resources, to which was referred the bill entitled, "An Act to Establish a Public Preserve in the Bigelow Mountain Area", (I. B. 1) (L. D. 1619), have had the same under consideration and ask leave to report that the same Ought Not to Pass. Signed, Representatives Curran, McBreairey, Senator O'Leary, Representatives Ault, Churchill, Blodgett, Hall, Hutchings and Senator Wyman.

The Minority Report of the same Committee ask leave to report that the same Ought to Pass, and this is signed by Senator Trotzky, Representatives Peterson, Doak and Wilfong.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I remember when we were talking about this before, there was a question raised about how much money this may or may not cost the state. I wonder if anyone has information relating to the possible cost and in what form to the State of Maine.

The PRESIDENT: The Senator from Somerset, Senator Cianchette, has posed a

question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate: This is not a common bill. It is a bill that came to us through referendum. I have looked at the constitution on this bill and also requested an opinion from the Attorney General's Office concerning the bill and state funds and so on. I would like to read part of this letter to you.

"You have asked us to comment on the above bill, An Act to Establish a Public Preserve in the Bigelow Mountain Area. The questions and answers are set forth below.

"1. Is the Bill unconstitutional because it fails to carry a time limit for acquisition of the Bigelow Preserve?" The Attorney General's answer is no.

"We know of no constitutional requirement that a time limit be imposed on an Act directing the acquisition of land by the State. Indeed, the omission of a time limit provides the State with the flexibility necessary for negotiations for acquisition of such a large amount of property. The inclusion of a time limit would permit reluctant land owners to hold out for an exorbitant price and not negotiate in good faith, safe in the knowledge that the State was under a statutory mandate to acquire the land by a date certain. The bill, as drafted, provides the necessary flexibility to enable the State to acquire the land for a fair price.

"2. Does the bill need an appropriation from the Legislature?" The answer is no.

"The bill, as drafted, is merely a directive to the Departments of Conservation and Inland Fisheries and Game to acquire the Preserve, using such monies as are presently already available to those departments or which may be made available in the future. Both departments may use monies from previously authorized bonds issued and/or matching grants from the federal government to begin acquisition of the land. In the event that those sources of revenues are insufficient, the departments may seek additional appropriations in the future to complete acquisition.

"3. Does the bill grant the power of eminent domain to either the Department of Conservation or Inland Fisheries and Game?" This point was brought up by the majority leader the last time. The answer is no, the bill does not grant the power of eminent domain.

"The power of eminent domain cannot be inferred or implied from vague or doubtful language; it must be expressly conferred by statute." He does mention "The Bureau of Parks and Recreation has eminent domain power, limited to acquisition of only 200 acres in any one park."

"4. Is the bill unconstitutional because it does not include a maximum amount which may be spent in acquisition of the Preserve?" The answer to this one again is no. The Assistant Attorney General states, "We have been advised from inquiries to both Departments" — that is Fish and Game and Parks and Recreation — "that a combined total of approximately \$6,500,000, remains from previously authorized bond issues, which monies could be used for acquisition of this land."

Another issue that I brought up: "Does the bill require the State to acquire a fee interest in all lands designated to be in the Preserve?" In other words, does the State

have to buy the 40,000 acres outright in fee simple? And the answer to that is no.

The bill expressly provides that easements can be bought, that the property rights can be bought, instead of the land outright. Again, the reality of the situation is that we have 40,000 acres, 8,000 acres of which is owned by the Flagstaff Corporation. I have a letter here from the Parks and Recreation Department, and there were two appraisals done on the Flagstaff property, the 8,000 acres. One appraisal calls for about \$4,100,000, and the other one for approximately \$3,000,000, so it is between 3 and 4 million dollars, the appraisal.

Now, in the purchasing of park property the federal government will match the state. So assuming it is 3½ million dollars, if you take the average of the two appraisals, the State would have to come up with 1-¾ million dollars to purchase the 8,000 acres. Of course, if this was agreed to by the Flagstaff Corporation.

Now, the other land is owned by the J. M. Huber Corporation, Hudson Pulp and Paper Company, Scott Paper, and Oxford Paper Company, and it is possible to get easements from these companies.

Another alternative we have is that the Bureau of Public Lands can trade public lots, and they can acquire possibly somewhere between 15,000 and 18,000 acres by trade.

Now, I feel strongly on this that Bigelow Mountain should be preserved. It is a 17-mile mountain range and it is quite beautiful. I have a letter here from the United States Department of the Interior stating that the NRC was informed at its April semiannual meeting in Washington the National Park Service Advisory Board recommended to the Secretary of the Interior that he designate the upper portion, above 2,500 feet, of Bigelow Mountain a national landmark. It is recognized by many people through the State of Maine, as it is quite a beautiful mountain. It has two peaks over 4,000 feet, several lesser summits over 3,000 feet, two mountain ponds, a trail system, the Appalachian Trail which runs the entire length of the mountain. There is a Maine Forest Service fire tower on top of the mountain, lean-tos, shelters, and so on.

So I would urge the Senate to pass this bill. Over 43,000 people signed this referendum, and it in no way, do I believe, hurts the recreational development of the State of Maine. We have, again, Sugarloaf Mountain right across the way, which still can be more fully developed. We have Rangeley, we have Saddleback Mountain, which is half an hour to 45 minutes away. The State itself right now has Squaw Mountain, which can be more fully developed. So I feel it is Maine's second mountain and should be preserved for future generations to use in its natural state.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I am not opposed to Bigelow Mountain as is as a preserve. What I am concerned about is the cost. And I am not sure just which deputy attorney general it is that we have this opinion from. I should imagine it is John Paterson, so I would suspect, where he is an environmentalist, that this would be on the conservative side.

What I am concerned with is that this bill says the Department of Inland Fisheries and Game and the Department of Conservation are hereby authorized and directed to acquire approximately 40,000

acres. Now, you have heard him say that this is approximately 17 miles long. And from all the testimony that was taken at our committee hearing, there were very few proponents for this piece of legislation — I would say perhaps in the neighborhood of seven or eight. There were the Friends of Bigelow, one man from the Sierra Club, two from the Appalachian Mountain Trail Club, two from the Appalachian Club, and a few college students from around the state that belong to some outing clubs.

However, I am concerned about this 40,000 acres of land that this bill calls for. I think if it was just the purchase of this 8,000 acres of land that the committee could perhaps possibly have reported out a bill with a bond issue that would take care of this, but our committee estimation, after listening to the testimony, was that it would be between 10 and 12 million dollars. So that is why we signed the Ought Not to Pass Report of the Committee.

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

Mr. TROTZKY: Mr. President and Members of the Senate: I would like to correct the statement made by the good Senator from Oxford. The appraisals were not done by the Attorney General's Office. The appraisals were done by real estate concerns. They were appraised on highest and best use, and if any Senator would like to, these are public records and they can go up to see the Commissioner and take a look at these appraisals.

Secondly, at the hearing there were people, as I recall, from Portland, from Lewiston, they came from all over the state, and there were more than eight people. Most of the people there were for this bill.

The other thing, on the concern about 40,000 acres and the economy, again, it states specifically in the bill that timber harvesting will be allowed on the preserve in a manner approved by the Bureau of Forestry, so this bill in no way cuts into our forest resources.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I am, to say the least, confused about this bill and what we are talking about here. We have heard appraisals for 8,000 acres of land, somewhere between 3 and 4 million dollars, and that leaves another 32,000 acres that I am not sure what we are going to do with. Are we going to make a deal with some of the pulp and paper industries or interests that own the land there? Are we going to somehow acquire this land and let them use it for harvesting timber and so forth? I think they would probably consider that a pretty good deal. If they could handle all of their land that way they might consider that a pretty good deal.

I am not sure what kind of revenue the state would be getting from this 40,000 acres. I am not sure what the benefits would be. Certainly we don't know what we are talking about for total costs here, and under this bill there is no way of knowing.

It seems to me very strange that here is an area of our wilderness that has been picked out and suggested as a development area of several hundred acres, and all of a sudden we have got to save Bigelow Mountain. I don't know what we are going to save it from because I don't think a development up there of several hundred acres is going to hurt the mountain at all.

Now, I am for referendum by petition. It is part of our system and I believe in it. And I think this probably should go to referendum as the petitions require. I find no fault whatsoever with that. But I think it would be highly irresponsible for this Senate to vote in favor of this legislation when we don't even know and have no way of knowing what the costs and implications are. I think we could boil it down to one simple thing: it is an attempt to stop a private recreational development in favor of a state-owned wilderness recreation area. I think it boils down to that, simply. If this development were to be on another mountain in the same mountain range, we would be then having a petition to save that particular mountain and no one would be thinking about Bigelow Mountain. I think that is what the whole question is about, and I certainly hope we vote against the pending motion.

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

Mr. TROTZKY: Mr. President and Members of the Senate: I question whether in Governor Baxter's day the legislature would have approved setting a preserve in Baxter State Park, but today, many years later, we see how much the people of Maine appreciate that this was set aside as a natural preserve in its natural state.

Concerning responsibility here, there is a statement here which I went over quickly. This is from the Attorney General's opinion. "The Legislature is, of course, not committed to authorize such bonds or appropriations. This bill does not and cannot require future Legislatures to finance the Act."

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I would just like to make one more observation, and I apologize for not speaking to it the first time I was up.

I understand from the Senator from Penobscot, Senator Troitzky, that the department has something like 6½ million dollars in unused bond issue available to perhaps purchase this land. I have to raise the question of how in the world did the legislature vote that much money in the hands of the department over there without a specific use for that kind of money? I just find it very strange that there is that kind of money laying around for the department to use at their whim.

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

Mr. JOHNSTON: Mr. President and Members of the Senate: I might remind this body that some time back the State of Maine lured the corporation which is interested in developing this area to the State of Maine with promises of loans and one thing and another. They found that they don't need those loans, and I feel that that is no reason now to turn down their proposed plans for development.

With respect to the money and all of the things that this bill doesn't do, that the General's office tells us it doesn't do, the company involved here may or may not sell their land for 6 million dollars. They own 20 percent of the land involved. Let's carry that through — that is 30 million dollars. Now, this has been petitioned to referendum and that is where it is going to go if this bill fails of enactment. With respect to all of the things that it doesn't do, I certainly think that we should fail to enact it.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: I fully agree with the philosophy of this bill. I think it is tremendous that we could establish public reserves in the Bigelow Mountain area and other areas throughout the state. But we have been faced with a like problem on a smaller scale in York County, and it has been a very hot issue in the last three or four months when it was discovered all of a sudden that a young man from Oklahoma, a Mr. Zahn, had been purchasing up areas of property around Mount Agamenticus and suddenly came out with a systematic plan to develop that area as a recreational and a housing area in the Towns of York and South Berwick. Immediately the people rose up in alarm and took a vote, about three weeks ago in each town, prohibiting Mr. Zahn from establishing that development. He has given them the alternative of buying his property for \$1,400,000. For two little towns like York and South Berwick it is just an insurmountable fee.

If we should pass a bill like this, we know that the towns will immediately go to the state and say, well, if you are going to purchase Mount Bigelow, purchase Mount Agamenticus. And other areas in the state are going to do the same thing. So as much as I go along with the idea of state preserves of this beautiful property we have within our state, I would have to vote against this motion this morning.

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

Mr. SPEERS: Mr. President and Members of the Senate: I think the legislature has been criticized, possibly unjustly, in the past for enacting legislation that is inadequately funded, and I am sure that the legislature has not intended to do this in the past. But here we have a situation which clearly indicates and on which that very issue is clearly drawn. If we are to go ahead and pass this, it would be an intentional passing of an act for which there is no funding available. It would be simply like the legislature passing a bill and telling the Department of Health and Welfare you go ahead and you operate all of these functions, all of these programs, and we will enumerate them all right down the line; you are authorized and directed to operate these programs, and you are authorized to get funding from whatever sources you may be able to find them. Now, I don't think that is being very responsible. And regardless of the merits or demerits of the proposal itself, I don't feel it is very responsible for the legislature to pass legislation, which is obviously going to cost the State of Maine money, which directs a department of this state to spend money without insuring the appropriation and that the money is available.

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

Mr. BERRY: Mr. President and Members of the Senate: Not to take issue with the Majority Leader, the Senator from Kennebec, Senator Speers, but I think he raises a very invalid point when he talks about passing legislation with no funding.

Yesterday this body passed legislation which was reported by the Department of Health and Welfare could cost the State of Maine millions of dollars over the next

biennium, and we passed that legislation with a \$1 fiscal note on it.

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

Mr. JOHNSTON: Mr. President, I would like to inquire through the Chair of the Senator from Penobscot, Senator Trotzky, as to who signed the letter that he has been quoting from today from the Attorney General's Office.

The PRESIDENT: The Senator from Aroostook, Senator Johnston, has posed a question through the Chair to the Senator from Penobscot, Senator Trotzky, who may answer if he so desires.

The Chair recognizes that Senator.

Mr. TROTZKY: Mr. President and Members of the Senate: The letter was signed by John Paterson, Assistant Attorney General of the Environmental Protection Division. And I very much resent certain people impugning the integrity of our Assistant Attorney General.

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

Mr. JOHNSTON: Mr. President, might I inquire of the Senator from Penobscot, Senator Trotzky, who the certain people are?

The PRESIDENT: The Senator from Aroostook, Senator Johnston, has posed a question through the Chair to the Senator from Penobscot, Senator Trotzky, who may answer if he so desires.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I just must point out that this is one more chapter in the Bigelow saga. This started out as an intended rape of the State of Maine by out-of-state interests who paid \$7.50 an acre for the land that we are now talking about. The opposition originally was to the proposed development, which the good Senator from Somerset, Senator Cianchette, of course would be very much interested in. It involved airports and massive developments of roads and so forth, and, you may recall, provided for a formation of a town under extraordinary circumstances as to the number of voters required to implement the town procedure. And the story went on with bonds backed by the name of the State of Maine, not legally, but by implication; bonds, incidentally, of the type which Moody's referred to when they downgraded the State of Maine bonds, with a moral contingency on the part of the state to finance.

Events took place far beyond the control of the lobbyists and the developers; namely, the recession and high interest money, and only to this can we attribute the fact that we do not have the beginning of a sprawling, ugly development on Bigelow. One questions whether the financial picture has cleared enough for them to go ahead. Let's hope to God it hasn't and won't. Also, let's thank God for the provision of the Maine Constitution that can take the possibility of preserving this wonderful, wonderful area away from those people who can only see the buck.

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

Mr. CYR: Mr. President and Members of the Senate: I would like to ask the good Senator from Cumberland, Senator Berry,

if this area is being served by Rangeley Electric?

The PRESIDENT: The Senator from Aroostook, Senator Cyr, has posed a question through the Chair to the Senator from Cumberland, Senator Berry, who may answer if he so desires.

The Chair recognizes that Senator.

Mr. BERRY: Mr. President, I probably would have profited if this development had gone in, and it is amazing how some people find it impossible for me to take a position in opposition to this proposal.

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

Mr. TROTZKY: Mr. President, I request a roll call please.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

One-fifth having arisen, a roll call is ordered.

The Chair would like the record to show that the Chair has refrained and will refrain from voting on this issue due to the possible appearance of a conflict of interest due to the Chair's connection with Sugarloaf Mountain Corporation. Senator Huber has also been excused from voting previously.

The pending question before the Senate is the motion by the Senator from Penobscot, Senator Trotzky, that the Senate accept the Minority Ought to Pass Report of the Committee. A "Yes" vote will be in favor of accepting the Minority Ought to Pass Report; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, E.; Berry, R.; Collins, Conley, Corson, Cummings, Curtis, Gahagan, Graham, Merrill, Pray, Reeves, Trotzky.

NAYS: Senators Carbonneau, Cianchette, Clifford, Cyr, Danton, Graffam, Greeley, Hichens, Jackson, Johnston, Katz, Marcotte, McNally, O'Leary, Roberts, Speers, Thomas, Wyman.

A roll call was had. 13 Senators having voted in the affirmative, and 18 Senators having voted in the negative, with two Senators excused from voting, the motion did not prevail.

Thereupon, the Majority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

(See action later in today's session.)

The President laid before the Senate the fourth tabled and Specially Assigned matter:

Bill, "An Act to Authorize Bond Issue in the Amount of \$1,050,000 for Acquisition and Construction of Facilities for the Care and Treatment of the Severely and Profoundly Mentally Retarded." (S. P. 172) (L. D. 623)

Tabled — May 29, 1975 by Senator Danton of York.

Pending — Motion of Senator Hichens of York to recede and concur.

(In the Senate — Passed to be Engrossed.)

(In the House — Majority Ought Not to Pass Report Read and Accepted in Non-concurrence.)

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.