

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

May 26, 1977 to July 25, 1977

Index

**Senate Confirmation Session
September 16, 1977**

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KJ PRINTING
AUGUSTA, MAINE

Pending passage to be engrossed.
Bill, "An Act Concerning Confidential Financial Records." (S. P. 324 (L. D. 1084)

Which was Read a Second Time.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Kennebec, Senator Pierce.

Mr. PIERCE: Mr. President, I move we reconsider our action whereby we adopted Committee Amendment "A".

The PRESIDENT Pro Tem: The Senator from Kennebec, Senator Pierce, now moves that the Senate reconsider its action whereby it adopted Committee Amendment "A". Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Pierce.

Mr. PIERCE: Mr. President, I now offer Senate Amendment "A" (S-263) and move its adoption. This Amendment clarifies some language in the Committee Amendment which is necessary.

The PRESIDENT Pro Tem: The Senator from Kennebec, Senator Pierce, now offers Senate Amendment "A" and moves its adoption. The Secretary will read Senate Amendment "A".

Senate Amendment "A" Read and Adopted. Committee Amendment "A", as amended, Adopted, and the Bill, as amended, passed to be engrossed.

Sent down for concurrence.

Enactor

The Committee on Engrossed Bills reports as truly and strictly engrossed the following: "An Act Relating to the Practice of Real Estate Brokers and Salesmen." (H. P. 1631) (L. D. 1833)

Which was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

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

Mr. PRAY: Mr. President, in reference to Bill, "An Act to Expedite Court Handling of Fish and Wildlife Violations of a Misdemeanor Nature by a System of Convenient Payment." (H. P. 865) (L. D. 1053) I now move that it be taken from the table.

The PRESIDENT Pro Tem: The Senator from Penobscot, Senator Pray, now moves that L. D. 1053 be taken from the Table. Is this the pleasure of the Senate? It is a vote.

On motion of Mr. Conley of Cumberland, House Amendment "A" indefinitely postponed. The Bill Passed to be Engrossed in nonconcurrency.

Sent down for concurrence.

The President Pro Tem laid before the Senate: House Reports — from the Committee on Election Laws — Bill, "An Act Concerning Registration on Election Day." (H. P. 159) (L. D. 197) Majority Report — Ought to Pass in New Draft under same Title. (H. P. 1664) (L. D. 1864) Minority Report — Ought to Pass, in New Draft under same Title. (H. P. 1665) (L. D. 1865)

Tabled — June 15, 1977 by Senator Trotzky of Penobscot

Pending — Motion of Senator Danton of York to accept Majority Report

On Motion of Mr. Speers of Kennebec,
Retabled for One Legislative Day.

The President Pro Tem Laid before the Senate: House Reports — from the Committee on State Government — Bill, "An Act to Provide a Temporary Disability Plan for State Employees." (H. P. 1248) (L. D. 1470) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass

Tabled — June 15, 1977 by Senator Speers of Kennebec

Pending — Acceptance of Either Report
On Motion of Mr. Collins of Aroostook,
Majority Ought Not to Pass Report Accepted
in concurrence.

The President Pro Tem laid before the Senate: Senate Reports — from the Committee on Business Legislation — Bill, "An Act Requiring Average Net Cost Comparison of Life Insurance Companies." (S. P. 125) (L. D. 304) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass

Tabled — June 15, 1977 by Senator Speers of Kennebec

Pending — Acceptance of Either Report
On Motion of Mr. Speers of Kennebec,
Retabled until Monday next.

The President Pro Tem laid before the Senate: Resolution, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money and Retaining the Power Within the Legislature to Override such Item Vetoes. (H. P. 1287) (L. D. 1520)

Tabled — June 15, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed
The PRESIDENT Pro Tem: The Chair recognizes the Senator from York, Senator Farley.

Mr. FARLEY: Mr. President, I now offer Senate Amendment "A" to (S-264) and move its adoption.

The PRESIDENT Pro Tem: The Senator from York, Senator Farley, offers Senate Amendment "A" and moves its adoption. The Secretary will read Senate Amendment "A".

Senate Amendment "A" Read.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from York, Senator Farley.

Mr. FARLEY: Mr. President and Members of the Senate: The purpose of this amendment on the original bill is that it strikes out the words on the second line that says "or reduce" in regard to an item of veto, and in the fifth line of the L. D. by striking out the underlined words "or which he has reduced," and supposedly this is supposed to be acceptable to some people to help us get this bill passed.

Senate Amendment "A" Adopted.
The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President, I now move the indefinite postponement of this bill and all its accompanying papers.

The PRESIDENT Pro Tem: The Senator from Aroostook, Senator Martin now moves the indefinite postponement of this bill and all accompanying papers. Is this the pleasure of the Senate?

The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, I would remind the Senate that a few days ago the Senate voted by a vote of at least 20 in support of this measure. I am unaware of what may have happened to change the minds of the Senate, and I would oppose the motion by the Senator from Aroostook, Senator Martin.

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

Mr. MERRILL: Mr. President and Members of the Senate: I am certain of the fate of this, which is to ultimately die, as I am sure many of the people who are voting for it are, and probably vote for it a little easier with that knowledge, but I would like to say just a couple of things on the record, because everytime you read a paper on this issue, and that includes my own paper, and I respect the people who write

the editorials for that paper, but everytime we read an editorial they lead you to believe that the whole idea of not giving a Governor an item veto is so without merit, that the only reason that anybody would ever be for it is because they just want to jealously guard their powers.

Well let me say that I recently refreshed my memory of the argument that took place in the United States Constitutional Convention over the question of why a veto should be allowed the President or whether or not it should be, and the arguments are very interesting. The reason that the veto was allowed, and the States, of course, have followed suit, was there was considered to be an extraordinary power that would be given to the Chief Executive for the purpose of protecting himself from an overreaching Legislative Branch of Government.

Now I think when you go from that to this, which is really to make the Governor a super-legislator that has powers that individual legislators do not, you have gone too far, and I would point out that on over 20 occasions people have tried to amend the United States Constitution so as to allow the President to have an item veto, and on all occasions the Congress has deemed in its wisdom that that is not the proper approach to follow, and the Maine Legislature has taken a similar stance and I think it is to be commended for that.

Everyone here should understand, as I am sure you do, that the Governor has more input into the budget that is finally passed than any 10 Members of the Senate do. He presents the document. His people come and argue for each one of the items. When changes are made, the Appropriations Committee, out of courtesy and the thoroughness of its job, has the people from the Executive come back and make their arguments, and what is represented there to a great extent reflects the thinking of the Executive Department. To give him the power to pick out one item and defeat that item so that it has to come back and get an extraordinary vote in order to live again, I think is to go too far. No member of the legislature has that power, and let me say that I held the same position when we had a Democratic Governor and when this bill was sponsored by a very good friend of mine who is a Democratic legislator in the other body. We had many arguments on the question. It has nothing to do with the personality of the present Chief Executive, nothing to do with that at all, but I do think this is a power that we should not grant. It in essence would change the relationship between the Executive and the Legislature in a way that I do not think is commendable.

Now I do not, as I say, hold any great grief for what is going to happen today on this matter, because of everybody's comfortable position to be able to vote for this, and allow somebody else to do the dirty work later on. If this does get to the enactment stage, I just want you to all be aware that I might stand up and ask you to do some dirty work here.

(Off Record Remarks)

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

Mr. CURTIS: Mr. President, fortunately, I think, this is not the United States Congress and, fortunately also, the Governor is not a member of this Legislature.

The Governor does, however, have the power of veto under the State Constitution, and I think it might be worthwhile, as we think about this problem, to examine what other states do in a similar situation. Of the 50 States, 43 States now provide the Governor with an item veto. A few of those, namely eight, also provide a rather extraordinary provision that has just been eliminated from this Bill, and that is the Right to reduce a specific item as it might be vetoed.

I think that the key question that we are dealing with here is indeed one not of personalities, but of policy, and procedures which will survive we'll beyond the Membership of people who are serving in this Legislature, or will be incumbent in the Office of the Governor, and I am sure that after yesterday's discussion and communications and debate in my own particular constituency, there is nobody more familiar with the problems or aware of the difficulties which might occur if individual items as they are provided in the appropriations bill are spotlighted by the Governor, and are individually reduced or vetoed. In the case of the pending legislation now, it could only be vetoed.

I think that the item veto would be helpful to the people of this State and to the Legislature, so that they can review specific items before determining whether or not the Governor was right or wrong in wanting to veto that particular item. I can see no harm, and it seems to me there would be a great deal of benefit to be derived from the increased attention and consideration that would be given those individual items.

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President and Ladies and Gentlemen of the Senate: Just as soon, right now, or envision what could happen to the Appropriations Bill which is on the Governor's desk right now if he presently had this authority. We would be here until August 15th.

The PRESIDENT Pro Tem: Is the Senate ready for the question?

The Chair will order a Division.

The pending question is the motion of the Senator from Aroostook, Senator Martin, that L. D. 1520 and all accompanying papers be indefinitely postponed.

Will all those Senators in favor of the motion to indefinitely postpone, please rise in their places to be counted.

Will all those Senators opposed to the Motion to indefinitely postpone, please rise in their places to be counted.

7 Senators having voted in the affirmative, and 17 Senators in the negative, the motion to indefinitely postpone does not prevail.

Which Resolution, as amended, passed to be engrossed in non-concurrence.

Sent down for concurrence.

The President Pro Tem laid before the Senate: Resolution, Proposing an Amendment to the Constitution to Repeal the Section Concerning Appointment of Standby State and Local Government Officers in Case of Enemy Attack. (H. P. 15) (L. D. 24)

Tabled — June 15, 1977 by Senator Speers of Kennebec

Pending — Motion of Senator Collins of Aroostook to Recede and Concur

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

Mr. CONLEY: Mr. President, I wish to state a point of order.

The PRESIDENT Pro Tem: The Senator may state his point of order.

Mr. CONLEY: Mr. President, it is my understanding that we are sending out to the voters a Constitutional Amendment. There is a question in my mind as to whether or not we have to have a two-thirds vote of the Senate or just can it be gavelled through.

The PRESIDENT Pro Tem: The Chair thanks the Senator. The Chair concurs that this is for final passage, the House having finally passed it.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, this is an item which was debated at some length previously.

It is my understanding that the cost of including any additional item on the ballot, be it bond issue or Constitutional Amendment runs between \$0,000.00 and \$15,000.00 additional expense to the Secretary of State's office and other expenses involved with handling the election.

It would seem to me that this particular provision of the Constitution does no harm sitting right where it is. It does not need to be repealed. The objective parts of the existing situation result from the tortuous arrangements which are provided in the statutes and which have been explored in previous debates. It would seem to me that what is needed perhaps is a statutory change and not a Constitutional Amendment change, and, therefore, I will vote against this Constitutional Amendment.

The PRESIDENT Pro Tem: Is the Senate ready for the question? Is it now the pleasure of the Senate that this resolution be finally passed.

This being a Constitutional Amendment, it requires for passage the affirmative vote of two-thirds of those Senators present and voting.

Will all those in favor of the passage of this Resolution, please rise in their places to be counted.

Will all those opposed to the passage of this Resolution, please rise in their places to be counted.

12 Senators having voted in the affirmative and 14 Senators in the negative, and 12 being less than two-thirds of the Membership present and voting, this Resolution fails final passage.

The Senate adhered.

The President Pro Tem laid before the Senate: Bill, "An Act to Clarify Sex Discrimination in the Maine Human Rights Act." (S. P. 260) (L. D. 821)

Tabled — June 15, 1977 by Senator Speers of Kennebec.

Pending — Enactment

The PRESIDENT Pro Tem: The Chair recognizes the Senator from York, Senator Lovell.

Mr. LOVELL: Mr. President, since this Bill came out of Human Resources and the two sponsors of this bill, Senator Speers and Senator Katz, are not here, I would request it be tabled until later in Today's Session so that they may express their opinion on the bill.

The PRESIDENT Pro Tem: A Tabling Motion is not debatable. The pending motion is final enactment.

On Motion of Mr. Collins of Knox,

Retabled until later in Today's Session.

(See Action Later Today)

The President Pro Tem laid before the Senate: Bill, "An Act to Prohibit the Sale of Gasoline Below Cost to Destroy Competition." (H. P. 455) (L. D. 560)

Tabled — June 15, 1977 by Senator Hewes of Cumberland

Pending — Enactment

The PRESIDENT Pro Tem: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate: According to the calendar the motion to indefinitely postpone apparently passed away quietly, and what is before the Senate today is the motion for enactment. I would urge that when the vote is taken, it be taken by a Division, and I would simply lay before the Senate a couple of thoughts on this bill that have bothered me tremendously.

One of those is that we are again taking the Legislature as the father approach and advising all retailers and distributors of gasoline that they must charge the same price to everybody for gas. Now I personally have no interest in the gasoline area. However, I as a driver of an

automobile every so often like to go to Phillie's Gas Station, or the OK Gas, or the Corral Gas Station, and purchase gasoline for .03 or .04 less.

We are looking at a Bill that is intended to destroy anybody making a business out of running a business. If somebody can purchase gas for less, that is great. If they can sell it for less, that is great also. I am not looking at it from that point of view. I am looking at it from the point of view that the Legislature would have the audacity to mandate what price must be paid for what gas to who and how. I think that is basically wrong.

Secondly, it always appears, and I get back into this area of legislating what business practices can be upheld, and I feel very strongly that this is again another step in socialistic methods and I feel very strongly opposed to that.

Thirdly, what you are going to do, if this measure is enacted, is you are going to require all those independents to raise their prices to reflect the same prices as the major gas station owners, the Shells, the Texacos, the Sunocos, the Essos, and I feel that this is wrong also. If we are looking at the unfair competition and we recall back a couple of years ago that the majors fed their own gas stations first. There is an inherent danger in being an independent, because at that period of time when it came gas for gallon all of the independents lost most of their supplies. Many independents went down the drain. The majors kept their own gas stations well supplied.

I think that we are treading on very dangerous waters here, and I would urge the members of the Senate to oppose the enactment of this bill.

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

Mr. PRAY: Mr. President and Members of the Senate: I rise to point out a differing viewpoint than the previous speaker, and to clarify, as I view the bill, exactly what it does.

First of all, I would like to respond as to the reasoning perhaps sometimes that we have legislative action is usually what some individuals consider to be unfair practices in the business field which tends to eliminate a certain amount of competition. Every individual that is in business sells for a profit. He may buy for a different cost, but he sells for a profit.

It would be my contention that the larger dealers, that those individuals that are distributors plus furnish gasoline to their own stations, can afford to sell at a lesser profit, thus still keep the price down to consumers, and when you keep the price down you sell in a larger volume, and the volume makes up the difference of what you may have lost. It is a good business practice, and many businesses become very successful by that, but when you control both aspects of it from the independent dealers to a dealership that belongs to a distributorship, then you do have an unfair practice and an unfair advantage over those individuals which operate independently from any affiliation with any particular firm.

I would hope that we would enact this legislation today.

The PRESIDENT Pro Tem: The pending motion is final enactment.

A Division has been requested.

Will all those Senators in favor of final enactment, please rise in their places to be counted.

Will all those Senators opposed to final enactment, please rise in their places to be counted.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I request a Roll Call.

The PRESIDENT Pro Tem: The Senator from Penobscot, Senator Pray, requests a Roll Call. In order for the Chair to order a Roll