

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 17, 1993 to July 14, 1993

An Act Regarding County Contingent Account Limits (S.P. 286) (L.D. 856) (C. "A" S-116)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Representative Paradis of Augusta, tabled pending passage to be enacted and specially assigned for Monday, May 24, 1993.

PASSED TO BE ENACTED

An Act to Prohibit Commercial Hunting on Unlicensed Land (S.P. 210) (L.D. 681) (C. "A" S-133)

An Act Regarding the Credentialing of School Psychological Service Providers (S.P. 262) (L.D. 800) (C. "A" S-125)

An Act to Amend the Workers' Compensation Laws for Workers in Certain Marine Resources Industries (S.P. 290) (L.D. 860) (C. "A" S-134)

An Act Clarifying Certain Traffic Infraction Provisions of the Motor Vehicle Laws (S.P. 341) (L.D. 1038) (C. "A" S-131)

An Act to Create a Student Seat on the Board of Trustees of the Maine Maritime Academy (S.P. 359) (L.D. 1073) (S. "A" S-150 to C. "A" S-113)

An Act to Clarify Ambiguous Language and Correct Errors in Licensing Procedures and Requirements for Licensees Regulated by the Superintendent of Insurance (S.P. 361) (L.D. 1075) (C. "A" S-129)

An Act to Clarify and Amend the Law Regarding Open-end Mortgages (S.P. 380) (L.D. 1136) (C. "A" S-130)

An Act to Amend the Laws Governing Termination of Parental Rights and Placement of Children (H.P. 109) (L.D. 151) (C. "A" H-279)

An Act to Create a Cause of Action Against the State for Wrongful Imprisonment (H.P. 621) (L.D. 845) (C. "A" H-280)

An Act to Permit Owners of Property to Seek Indemnification from Parties Responsible for Violations of Clear-cutting Laws (H.P. 649) (L.D. 887) (C. "A" H-288)

An Act to Extend Criminal Sanctions to Certain Child Protective Orders (H.P. 654) (L.D. 892) (C. "A" H-287)

An Act to Increase the Number of Moose Permits and Make Other Changes in the Moose Hunting Laws (H.P. 758) (L.D. 1025) (C. "A" H-284)

An Act Repealing Advisory Boards on Education Matters (H.P. 803) (L.D. 1089) (C. "A" H-281)

An Act Repealing Advisory Boards on Transportation Matters (H.P. 811) (L.D. 1097) (H. "A" H-324 to C. "A" H-248)

An Act to Authorize State Agencies to Accept Funds for an Alternative-fueled Vehicle Demonstration Project (H.P. 819) (L.D. 1105) (C. "A" H-283)

An Act to Amend the Maine Pharmacy Act (H.P. 944) (L.D. 1273)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

ORDERS OF THE DAY

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

HOUSE DIVIDED REPORT - Majority (7) "Ought Not to Pass - Minority (6) "Ought to Pass" as amended by Committee Amendment "A" (H-338) - Committee on Appropriations and Financial Affairs on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide the Governor with a Line-item Veto (H.P. 948) (L.D. 1277) TABLED - May 20, 1993 (Till Later Today) by Representative KERR of Old Orchard Beach. PENDING - Motion of Representative CHONKO of Topsham to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, Men and Women of the House: Yesterday after our morning session, I spoke with Cab Howard, who is with the Attorney General's Office, to try to get some answers to some of the questions that were raised here on the floor. He believes that under no circumstances would the two-thirds provision of the Constitution apply to the line-item veto section because this provision would be a separate and distinct part of the Constitution. He said if you want to ensure that the Governor will have only one day in which to decide if he or she will exercise the line-item veto option, then you must so state. I have done this in an amendment which I hope to have the opportunity to present to you later on if I am given that opportunity.

If we reject the 7 to 6 Majority Report, a report which places the House Chair on one side, the Senate Chair on the other side, if we reject this report, we can go on to accept the Minority "Ought to Pass" Report and the amendments which would then address the concerns mentioned here yesterday.

Ultimately, it comes down really to one simple question, do you believe that adding a line-item veto would help us to create a more efficient and accountable budget process? I believe it will. Forty-four other states know that it does. I am told the U.S. House of Representatives just voted to give

this option to the President.

The time has come. Line-item veto will help all of us to be better participants in the democratic process, to be more effective, more accountable and more efficient public servants. Sometimes, even though we may not want it to, time marches on, things change.

This year, the legislature has considered many ideas which represent change. Some ideas have passed, some have failed, but the opportunity to make change for the better is here before us now. I hope that you will give it your most thoughtful consideration.

Mr. Speaker, I request that when the vote is taken, it be taken by the yeas and nays. I thank you all for your time.

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

Representative CARROLL: Mr. Speaker, Men and Women of the House: Throughout the debate yesterday, we heard all sorts of technical reasons why and the fine Representative wanted to know if there was some philosophical problems with this and why he hadn't heard that. Well, you are about to hear that.

Line-item veto is not a good idea. It is not a good idea with a Democrat, it is not a good idea with a Republican, it is not a good idea with an Independent in the Chief Executive's Office.

We have a process that has been good and worked very well for about 200 years. It requires two-thirds of this chamber, two-thirds of another chamber and the Chief Executive to okay and sign off to create a balanced budget for the people of the State of Maine. That process works very well.

The Chief Executive of any party has to be a player in the process. The Chief Executive can amend the bill through members of the party that he or she belongs to in either chamber. They have the ability to negotiate within any committee and, if the item is so objectionable, it shouldn't be in that document if it is the budget. Secondly, if it is that objectionable, then maybe the power of the veto which is a very, very strong tool for the Chief Executive, should be used.

All line-item veto does is erode the power of elective representatives of the people and shifts that to the Executive. A classic example was the debate we had here yesterday afternoon for the Department of Environmental Protection. What would stop the Chief Executive from zinging out one line in that bill shifting that money to some place else? After a long and tedious process of negotiations to put a delicate balance together on any piece of legislation that comes through here, that process should be honored. A line-item veto allows a Chief Executive one more bite of the apple. It is not a good idea, never has been, never will be, regardless of who is on the second floor.

I urge you to support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: What the good Representative just said to you, I must say at least in one part is not right. The Governor would not have the opportunity to shift funds from one place to another. He or she would have the opportunity to veto one section and oppose spending funds in one area, but the Governor would not have the right to

propose moving that money to another place and spending more than what would be proposed in the budget, only to propose a decrease in the appropriation is what he or she would be able to do.

The Representative said to you that the process works, that it has worked for a long time and he is correct. One of the questions you have to ask yourself is, can we make it work better or is it now perfect? I would suggest to you that there are always opportunities that will be available to us as we go forward and adapt ourselves to the changes which present themselves to us and that we will have the chance to improve upon the process as we go forward.

If there is something that is so objectionable, it should not be there, the Representative is right. He said, if there is something that we find objectionable, it should not be there, but is it worth it for the Governor to say, well, there is one thing in here or two things in here that really I don't like but is it worth it to veto the whole budget over those two maybe small insignificant things in comparison to the overall picture? Probably not. The Governor probably would let it go forward rather than single out those little things. But, if he or she had this option, they could create just a little bit, a little bit more efficiency in the process by saying, a great budget, you have done a fantastic job, but there are one or two little things in here which the Governor believes we could do without. And, he or she would have the opportunity to focus our attention and the public's attention on those little issues that otherwise would go unnoticed for just a moment of our time and ask whether or not the budget process should move forward without or without those items. Then, a majority, a simple majority of the members of this body would decide whether or not those items should remain in the budget or not. I don't see that as compromising the budget process. I see it as making us more accountable, more efficient and better at what it is we attempt to do. I hope that you will agree with that.

The SPEAKER: The Chair recognizes the Representative from China, Representative Chase.

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

The question is addressed to Representative Zirkilton. Could you please explain to me — I am referring to the amendment starting with line 25, the language of the amendment is "for any such disapproved item or items, the Governor shall replace the item with one that will not result in an increase in appropriation or allocation or decrease in a deappropriation or deallocation." That sounds to me like a situation that Representative Carroll was suggesting whereby the Governor would veto an appropriation on a given line and basically shift the funds, that is, replace that line with another item as stated in the amendment.

If I misunderstand, would you please correct me?

The SPEAKER: The question posed by the Representative from China is on an amendment which we may or never get to, the question will have to wait for an answer, if we get to the question.

The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: I believe the Representative is referring to the Committee Amendment.

The SPEAKER: If the Representative is referring to the Committee Amendment, the question is proper.

The Chair recognizes the Representative from Mount Desert who may respond to the question.

Representative ZIRNKILTON: Mr. Speaker, Men and Women of the House: Thank you for your question. I believe what the amendment would do is say that the Governor could not propose to spend an additional amount on an appropriation. He or she could propose to reduce that amount or eliminate that amount. With regard to deappropriations, the Governor could not propose a lesser deappropriation which would in fact be proposing a greater amount. In other words, if there was a deappropriation in the budget proposing to spend less money on something, the Governor could not propose to reduce the amount of the deappropriation. That would be a spending increase if he or she did that. Does the Representative follow my line of thinking?

The SPEAKER: The Chair recognizes the Representative from China, Representative Chase.

Representative CHASE: Mr. Speaker, Men and Women of the House: I followed your line of thinking, however, that wasn't the question I asked. Let me try it again. If the Governor can replace an item with another item, is that not a spending shift?

The SPEAKER: Representative Chase of China has posed another question through the Chair to Representative Zirkilton of Mount Desert who may respond if he so desires.

The Chair recognizes that Representative.

Representative ZIRNKILTON: Mr. Speaker, Men and Women of the House: If in fact the Governor could do that, then I suppose that would be the case, but that certainly is not the intention. The intention was to make it so the Governor would be confined to only being able to reduce or eliminate a specific line amount. If in fact what the Representative is saying is correct, then I would be more than happy to come forward with an amendment which would address that concern.

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 Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I would just like to point out to you that this bill does not just apply to the budget document. It says clearly that it applies to any legislative document that has an allocation in it. So, it is a far more sweeping proposal than has been debated so far. I think you ought to know that.

I do oppose this, not only in the specifics as how it is written, but simply because it is not a good idea in general.

I hope you will vote in favor of the "Ought Not to Pass" motion.

The SPEAKER: The pending question before the House is the motion of Representative Chonko of Topsham that the House accept the Majority "Ought Not to Pass" Report.

The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, pursuant to House Rule 7, I wish to pair my vote with the Representative from Rumford, Representative Erwin. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is the motion of Representative Chonko of Topsham that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 116

YEA - Adams, Aliberti, Bowers, Brennan, Carroll, Chase, Chonko, Clark, Clement, Cloutier, Coles, Constantine, Cote, Daggett, Faircloth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gwadosky, Hale, Heesch, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kontos, Larrivee, Martin, H.; Melendy, Michaud, Mitchell, E.; Morrison, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Pouliot, Richardson, Ricker, Rotondi, Rowe, Ruhlman, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Stevens, K.; Sullivan, Swazey, Townsend, E.; Townsend, L.; Treat, Walker, Wentworth, The Speaker.

NAY - Ahearne, Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Bennett, Birney, Bruno, Cameron, Carleton, Cashman, Clukey, Coffman, Cross, Dexter, DiPietro, Donnelly, Driscoll, Dutremble, L.; Farnum, Farren, Foss, Gray, Greenlaw, Heino, Joy, Kerr, Kneeland, Kutasi, Lemke, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marshall, Michael, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Pendleton, Plourde, Plowman, Poulin, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Spear, Stevens, A.; Strout, Tardy, Taylor, Thompson, Tracy, True, Tufts, Whitcomb, Winn, Young, Zirkilton.

ABSENT - Barth, Beam, Campbell, Caron, Carr, Cathcart, Dore, Farnsworth, Hatch, Hillock, Ketterer, Kilkelly, Marsh, Mitchell, J.; Nadeau, O'Gara, Rand, Townsend, G..

PAIRED - Vigue (Nay)/Erwin (Yea).
Yes, 62; No, 69; Absent, 18; Paired, 2;
Excused, 0.

62 having voted in the affirmative and 69 in the negative with 18 being absent and 2 having paired, the Majority "Ought Not to Pass" Report was not accepted.

Subsequently the Minority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-338) was read by the Clerk.

Representative Zirkilton of Mount Desert offered House Amendment "A" (H-393) to Committee Amendment "A" (H-338) and moved its adoption.

House Amendment "A" (H-393) to Committee Amendment "A" (H-338) was read by the Clerk and adopted.

Committee Amendment "A" (H-393) as amended by House Amendment "A" (H-338) thereto was adopted and the Bill assigned for second reading Monday, May 24, 1993.

The Chair laid before the House the second item of Unfinished Business:

JOINT ORDER - Relative to Joint Rule 13-B - Joint Select Committee on Rules (H.P. 1114)