

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Ninety-first Legislature

OF THE

STATE OF MAINE



1943

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

An Act Relating to the Teachers' Retirement Annuity Fund for Appropriation of Money Therefor. (H. P. 1277) (L. D. 790)

An Act Amending the Law Relating to Deposits of State Funds. (H. P. 1278) (L. D. 791)

An Act Relating to Terms of the Northern Aroostook Municipal Court at Fort Kent for the Trial of Actions of Forcible Entry and Detainer. (H. P. 1279) (L. D. 792)

An Act to Provide for the Surrender by Milton Plantation of its Organization. (H. P. 1281) (L. D. 794)

Finally Passed

Resolve, Relating to the Completion of the Eighth Division of the General and Public Laws. (S. P. 444) (L. D. 785)

Orders of the Day

The President laid before the Senate, as Unfinished Business, "Resolve Proposing an Amendment to the Constitution to Limit to Highway Purposes the Use of Revenues Derived from the Taxation of Vehicles Used on the Public Highways and Fuels Used for Propulsion of such Vehicles" (S. P. 233) (L. D. 339); the pending motion being to accept the Minority Report of the Committee on Ways and Bridges "Ought Not to Pass".

Mr. FRIEND of Somerset: Mr. President, when the vote is taken I ask for a division.

Mr. SANBORN of Cumberland: Mr. President, before the question is put I feel constrained to make a few observations which I hope may be found pertinent to the question under consideration. While the convention at Philadelphia, which framed the Constitution of the United States was in session, James Madison who was a prominent member of the convention and the individual whose influence in finally shaping that document was perhaps greater than that of any other member was in constant communication by correspondence with Thomas Jefferson who was then representing the State in Paris. In one letter which Mr. Jefferson wrote to Mr. Madison the writer strenuously emphasized the desirability of including in the Constitution then being framed, only such matters as related to the structure of the gov-

ernment to be established, and keeping out of the Constitution provisions concerning which changing conditions might make changes desirable. That seemed to the writer, Mr. Jefferson, a fundamental principle and it appealed to Mr. Madison, and it was a principle, as you will observe, as you read the federal constitution, which was closely adhered to. You may say that was 150 years ago and times have changed and such a document as that may not be any longer given consideration and weight by us. But there is a very recent pronouncement along the same line, to which I wish to direct your attention. Those who heard that masterful and statesmanlike speech of Winston Churchill's last Sunday will recall one of his earliest expressions was to the effect that the Cabinet in England was being besieged by requests to make decisions as to what should be done after the close of the War. You will recall the Minister declared emphatically that he did not propose to be a party to committing future cabinets or binding future cabinets by any action of the present one. The principle involved in that declaration was exactly the same as that involved in the letter from Mr. Jefferson to Mr. Madison.

It is a principle I still submit we should entertain and adhere to in considering the proposition of submitting to the people resolves for amending our constitution.

Now, to get down to the particular matter involved here. It was said in argument yesterday that the passage of this resolve and its adoption by the people is the only method by which we can make it certain that the funds derived from the tax on gasoline and the registration fees, etc., on automobiles, shall be forever made certain in their application to highway purposes. I want to point out and I believe you will see that it is true, that this is not the only method, that there is today between our present existing constitution and our legislative powers, a perfect means by which that earmarking, if you choose to call it that, can be transferred indefinitely. Suppose that the next legislature or a legislature ten years from now or twenty years from now should pass an act diverting some of these funds from highway purposes under our initiative and referendum provisions of

the Constitution, it is still in the power of the people by referendum to nullify that statute and still keep the money where the people want it. The people still have the power, the same power that they would have if they were to vote upon this resolve.

Now, once more, I think we should be very careful about paving the way for putting future legislatures in a position where their hands are tied. I am perfectly free to say on my own part that I think it is absolutely wise and proper at the present time, and I will say that so far into the future as my vision is able to penetrate, that these funds should be devoted exclusively to highway purposes, and the statutes so provide; but neither you, Sir, nor any member of the Senate can know what changed conditions may present themselves to a future legislature which may make it seem vitally important that some of that money be applied to some other use, and should such a contingency arise the hands of that legislature would be tied. It would be necessary then to invoke another resolve, have another amendment to the Constitution, more consumption of time, and for all we know, with all the injury and harm to the interests of the state which might ensue from such a delay.

There is another consideration which may enter into this, which in the debate so far, has not been referred to. That is reviewing historically and most of us recall—I certainly do—the situation that presented itself in 1913. At the time there was great pressure being brought to bear upon the legislature to provide means for the building up of a highway system which would be suitable for use by the automobile. The automobile then was something new and you will recall it was something available only to men of perhaps more than ordinary means. The average fellow didn't have an automobile and in those days the view had not then passed entirely from our vision, the view that it was only a temporary affair after all, that the automobile could never possibly supersede the horse-drawn vehicle. So the automobilists were a privileged class, people who could afford such a luxury. The legislature said to him, "What are you willing to contribute if you want this money spent which will serve your interests?" The auto-

mobolist through his organization came back and said, "We will contribute anything you like; you can tax us in you like, put on a stiff fee for registering cars, charge a fee for a driver's license, put a tax on gasoline, or anything you think will be right. We will meet you half way." That was the inception of the policy followed ever since. It had its inspiration from raising money from a privileged class on the understanding that the money should be applied to their exclusive advantage and benefit. What is the condition today? The automobile is used by everyone, every individual. I would like to see on a main road or any highway in the state as you drive past, a shack so low down in its appearance that you don't find one or two automobiles and perhaps a truck or two parked around it. Everyone drives an automobile. Everyone pays this tax. If everyone pays this tax, is there any reason why everyone should not, through the legislature, from time to time as conditions change, have the money applied as they for the time being wish? It seems to me that is one pertinent matter to be considered.

I doubt whether anything said here on the floor of the Senate may change a single vote but I do feel like emphasizing what I believe to be perhaps a matter of conscience, that we should as members of this Body, rise above what may appear to be a passing impulse, a passing demand, and act upon these matters from the standpoint of statesmanship. I think it would be equally wise and after this is over with, a very satisfactory thing to have done and I cannot see, if the motion which is before the Senate prevails, I cannot see how these funds are to be imperiled in the slightest degree unless and until the time shall come in the future, in future years, beyond the ken of any of us today, when it shall be considered necessary to make a change, and if and when that time comes I do not feel the hands of that Legislature ought to be tied either by us or by the people of the state of Maine at the present time.

Mr. BROWN of Aroostook: Mr. President, I wish to say just a few words in addition to what I said yesterday. We have here today on the calendar a bill cooperating with the federal government in the building of flight strips for the use

of airplanes. I asked the chairman of the committee, in discussing this, if it was a diversion of highway funds. He said very frankly, and I agreed with him, that it was not at the present time because the federal government was providing that money. We are simply cooperating, for the time being. I cannot see into the future any more than can the Senator from Cumberland, Senator Sanborn. None of us can foresee the future to any great extent, but we have reason to believe, all of us, after this war is over, that thousands, yes, millions of boys who have been educated to ride in airplanes instead of automobiles, and with the knowledge gained in the factories by the production of airplanes, with the result that they will be as cheap and as easy to own as the automobile, there will come in the not very far distant future a time when we will want to construct air strips along our highways, and there will be landing fields in every town in the United States. If we pass this constitutional amendment, it would be a plain diversion of gasoline money to construct such flight strips, and landing fields. Although it might be a very essential and desirable thing and one which the people, themselves, all desire, before we could do it we would have to have another change in the Constitution if this measure passes.

I think the Senator from Cumberland, Senator Sanborn has expressed it very well when he has said that no future legislature should attempt to divert highway money unless it is from an overwhelming demand from the people themselves, a much stronger demand than we are getting today from the public for this resolve, so I think it is better and perfectly safe to leave this to future legislatures and in the hands of the people themselves.

Mr. VARNEY of York: Mr. President, the only result to be obtained from taking this present law from our statute books and putting it into the Constitution is that you are going to take away from a majority of the people of the state of Maine the right, in the future, to do as they see fit. Now, Judge Sanborn touched on it but he didn't take it quite to its final conclusion. He pointed out that it is the law now. We all think it is a good law. None can say it will be

a good law two years or four years from now. None can say it will. At the present time it is in the statute books. Four years from now if it appears that a majority of the people of Maine believe it is a bad law and they want it changed and the legislature doesn't agree with them, under our provisions for initiative, the majority of the people of Maine can change that law, but if you place it in the constitution now you take that right away from the majority of the people to change the law four years from now if they want to. You place it squarely in the hands of one more than one third of the people who happen to be members of the Senate at the time, because then if it is a bad law four years from now and needs to be changed, the people could not initiate a bill to change the Constitution. The only way then they could change the law would be to persuade two thirds of the members of the Senate and two thirds of the members of the House that it was a bad law.

I say that if you carried the reasoning of the proponents to the logical conclusion, we should say that we believe every law we are passing in this session is a good law, and if we believe it is going to be a good law forever, we should put every law in the Constitution so the majority of the people could not change it if they wanted to. For those reasons I am opposed to changing this law from the statute books to the Constitution.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Cumberland, Senator McGlauffin, that the minority report "Ought Not to Pass" be accepted.

Mr. BISHOP of Sagadahoc: Mr. President, I have been a member of this body for two sessions, and never before have I been in a quandary how to vote on any matter. In fact, I have been too bold in many cases. I have been very friendly toward this bill, but after the discussion of yesterday, I must confess, I was bewildered. I am still friendly to the proponents of the bill; yet I agree heartily with the opponents of the bill. I still feel that the people, if it goes to referendum, should have the right to vote upon it, but I do not think, however, we should mess up our Constitution with a lot of new amendments. This body has been

very tolerant and very patient with my ignorance and with my innocence in the past and I wonder if it is out of order for me to ask permission to be excused from voting on this question?

The PRESIDENT: The Chair will state that the rules say that every Senator present should vote on a measure. The Chair will point out that the Senate is voting on the acceptance of a committee report and not on the final passage of the bill, so the Senator from Sagadahoc, Senator Bishop, still has considerable time to make up his mind how to vote before enactment.

Mr. DUNBAR of Washington. Mr. President and members of the Senate, I am not going to tire you with any long discussion because I am not going to make any long discussion. I did not intend to speak on this matter until a few moments ago. I do want to go on record as favoring this proposal to amend the Constitution, to safeguard the highway funds from some future raid made by some legislature on those funds.

The Senator from Cumberland, Senator Sanborn, in a very able and learned discussion of the groundwork in the laying of the federal Constitution at Philadelphia, which as you know is in that great state of Pennsylvania, tells you about the correspondence that passed between Madison on the one hand and Jefferson on the other. Let me say that if there is a state in the Union that would believe in the fundamental grounds of not changing the Constitution, it would be the state of Pennsylvania. And only yesterday in that great state—and I have it here in my hand now—they passed a resolution similar to the one that is before us now. It is dated March the 25th. The Pennsylvania Senate and House adopted "Resolution Calling for Anti-diversion amendments."

Now, I am not afraid to trust the people of Maine. Yesterday we were told that we should only amend the Constitution of the state, or present a Resolve to the people that they might have a chance to vote to amend the Constitution of the state, when there was a necessity for so doing. I believe there is a necessity and a necessity now. I have been told that in prior administrations, in one at least, there was diverted from the highway funds of this state, the sum of four hundred

thousand dollars that was used for other purposes than that for which the law proscribed, and that those funds were never returned to the highway funds of this state. It is for that reason that I want to guard this fund. It is true now that any department or the administration of this state can borrow, as I understand it, from the highway funds of this state but when they borrow they are under obligation to put the money back, and if you pass this resolution, referring it to the people, and the people adopt the constitutional amendment, even then you can borrow it from the highway funds of the state. But you are under obligation to put it back.

These funds are not all our funds. Intermingled with these funds are monies that are sent to us by the federal government, and it is for this reason that the states are now passing these anti-diversion amendment, in order to protect the funds, because as was said in here yesterday, state after state has lost its federal aid for the reason of diversion, and we are likely to lose it in Maine.

We have nothing to lose by passing it; we have everything to gain. Yesterday I noticed in the Kennebec Journal on March 25 in a column written by Elizabeth Mae Craig of Washington, the following:

"The Federal Works Agency has issued a statement on plans and studies for post war public construction in 22 states, including Maine, on roads and bridges. 'Be sure you don't make them think this is for construction right away,' says Miss Ruby Hutchinson, Senator White's secretary, who dug up some information on the five Maine projects included in the statement.

"State highway departments are preparing the specifications for the projects which will total 170 million dollars. This is a joint State-Federal undertaking, out of a fund of 10 million dollars provided for engineering work, to get these projects all ready to go, when the war is over and the slack begins, in employment. The money comes under the Defense Highway Act of 1941. States are required to match Federal contributions in highways. The whole program will run up to about half a billion dollars, of which half would be state contribution, and amounts to about two years of normal Federal-aid highway construction.

"A considerable number of the projects will be in and around cities, to provide employment for men demobilized from the armed forces and the war industries, and to relieve the traffic around cities, which is one of our greatest problems in ordinary times. The group involved in the statement include limited-access urban highway; limited access rural highways; major city arteries; alternate routes around cities, major rural highways."

"The Maine projects are a by-pass for Route 201, which will be 14 miles around Augusta, to relieve congestion to Richmond and Gardiner. Also a nine mile by-pass from Freeport to Freeport Village, two-lane. Also a re-location of the principle route from West Pembroke Village. Also a re-location on Route 201, by-pass and a new crossing at Winslow; which probably means a new bridge."

Now, that is what the federal government is planning to do. And let us safeguard these funds. Let's not take any chance now or in the future that we may lose federal aid. Now, is that a necessity? Is there a demand for this legislation to be submitted to the people? I want to repeat what Senator Friend said yesterday, for the demand. He listed the Commercial Motor Vehicle Association of Maine, the Maine Automobile Association, Maine Commercial Travelers Association, Maine Dairymen's Association, Maine Farm Bureau Federation, Maine Federation of Agricultural Associations, Maine Good Roads Association, Maine Hotel Association, Maine Lumber Dealers' Association, Maine Municipal Association, Maine Petroleum Industries Commission, Maine State Retail Grocers Association, Maine Rural Letter Carriers Association, Maine State Federation of Labor and the Maine State Grange and others. Is that a demand? If it is not a demand, then I ask the Senator from Cumberland, Senator McGlauffin, "What is a demand?" Who are you going to ask to add to that list which he has presented that is asking that this resolve be referred to the people of Maine? Will it satisfy the Senator if the Masonic bodies of Maine could be added, or the Knights of Pythias, or the Red Men, or the Knights of Columbus, or the Daughters of the Revolution? Or must it come from some one person, or a group of per-

sons who believe that the Resolution should come from them before this Body can pass it?

Now I come right back to the beginning and say to the Senate that I am not afraid to trust the people of the great sovereign state of Maine. If this Resolution is wrong, they will tell us so in no uncertain terms, when the matter comes before them. If it is right they will vote for it, and they should have the privilege to vote.

Mr. McGLAUFFIN of Cumberland: Mr. President, I just want to say a word in reply to the Senator from Washington, Senator Dunbar. I am a member of the Maine Automobile Association and I have been for many years. I understand that that association claims to be for this bill. I want to say to you that the matter has never been presented, to my knowledge, to the members of the Association to pass upon it at all. Senator Brown of Aroostook is a member of the Grange. I venture to say he never had an opportunity to express his opinion on the matter. When you get these associations like labor unions, how many do you think of the members of the labor unions have ever given the matter any consideration whatever? These things are put out by the men who manage the organizations and they are the ones who think they control the whole organization. You will find that it is true right down the line.

Mr. HARVEY of York: Mr. President and members of the Senate, I had hopes yesterday in the fine discussions and the fine analysis of the bill by the proponents and the opponents, that we would learn in that discussion, especially from the proponents, the necessity—the necessity, not the demand. My good friend from Washington, by colleague, Senator Dunbar, talks about not the demands but the necessity for this legislation.

I would like to read to you Article XXXII of the Constitution of Maine. I will read the first two lines. It says this, "The legislature, whenever two-thirds of both houses shall deem it necessary". I repeat. "deem it necessary, may propose amendment to this constitution." Now, will anyone, anyone give me so I can vote intelligently on this matter, a reason for the necessity of it? That is what I want to know.

I do not care anything about these associations that are demand-

ing all this. I understand what they want and the reasons why they want it but they have not explained to me yet to my satisfaction that it is necessary. Can any of you members of this Senate explain to us the necessity of this bill.

From the words of my good friend, Senator Dunbar, if we pass this measure we can still borrow, we can still take from the highway funds. Well, if we can still take from the highway funds after the amendment has been proposed and the people vote in favor of it, why the necessity of the bill now? We have the anti-diversion measure and we are under obligation, as I understand it, to not take any funds and we don't take any funds, but if we can do the same thing now as the bill will give a right to do, why the necessity of passing the bill?

It is true there was money taken, as I understand it, some few years ago, and I also understand, as has been mentioned, something like \$400,00 was taken, but it is also true the State of Maine was in very bad and pitiful circumstances and it is a good thing that they were able at that time, as I understand it, to take from one pocket and put in another pocket this \$400,000. I do not know whether it has been returned or not. I am taking the word of my good friend, the Senator from Washington, Senator Dunbar, that it hasn't been. But if it hasn't been, then legislatures that preceded us were under obligation because of that anti-diversion bill, to put it back. If they are going to have the same thing with the other bill, they will take \$400,000 if they need it and they will be also under obligation to return it.

I do not think this bill is necessary. I think it is absolutely unnecessary and I'd like to say this. I had hoped I could sit in here as a jury and I had hoped I could listen to arguments pro and con and after I had been given an argument or good reason—I do not say that these demands and wishes of people create any necessities—I would like to listen to a good reason why it is absolutely necessary that we pass this legislation. If anybody has the answer, kindly give it to us.

I received a letter yesterday from the Maine Good Roads Association asking my support of this measure and they say this, "Because the present protection" I repeat "Because the present protection can be changed at the will of the legislature". In other words, the Maine Good Roads Association apparently do not trust the legislature too fully. If they don't trust the legislature to do their duty in accordance with that anti-diversion law, then I am awfully sorry. Then they say secondly, "Because in post-war construction the states protecting their highway revenue by constitutional amendment will have priority on federal aid, and from information received." Oh, "just from information received" from Washington, they may be required—they don't say that they will be, but they may be, and I think I have some idea what that word defines itself to be, "they may be required to obtain federal aid". Is it a necessity now? I ask you, or is it some nice thought about something else? Let's tie ourselves up with federal aid on highways. They did a good job on unemployment compensation. They took it over. They will take the highways over. I say we are in a position to take care of our highways and our highway funds. I do not think anyone has shown any necessity for this, but if there is any, I would like to have it presented.

Mr. SANBORN: Mr. President, I hardly like the reply made to my observation regarding the incident of framing the constitution to go unchallenged, and I will point out as another historical fact in that connection, that at the time the convention was sitting in Pennsylvania, city of Philadelphia, the State of Pennsylvania had a constitution for its own government wholly unlike any of the other thirteen states. It had a single branch legislative body, it had a president and it had all sorts of fantastic provisions and the Pennsylvania delegation at that convention insisted their form of government be made the pattern for the new one. That was turned down and given very slight consideration, fortunately, and if what the Senator from Washington, Senator Dunbar has said about the action of Pennsylvania is true, it only bears out what I said, they were cockeyed in

1787 and they are living up to that reputation now.

The PRESIDENT: The question is on the motion of the Senator from Cumberland, Senator McGlauffin, that the "Ought Not to Pass" report of the committee be accepted. The Senator from Somerset, Senator Friend, has asked for a division.

A division of the Senate was had.

Eight having voted in the affirmative and twenty-four opposed, the motion did not prevail.

Mr. BISHOP: Mr. President, it may be entirely out of order, but I wish to state again that was the most difficult decision I have ever had to make. I feel any person, even a man, has a right to change his opinion if he has a good reason for it. I wish to state this: I believe the people should have the right to vote on this question. However, I am going to do everything within my power in the next two years to defeat this measure when the people vote upon it.

On motion by Mr. Friend of Somerset, the majority report of the committee, "Ought to Pass" was accepted and the bill was given its first reading, and the next legislative day assigned for second reading.

On motion by Mr. Harvey of York, the Senate voted to take from the table, bill "An Act Relating to Trial Justice and Judges of Municipal Courts" (S. P. 458) (L. D. 806) tabled by that Senator on March 24th pending passage to be engrossed.

Mr. Harvey presented Senate Amendment "A" and moved its adoption:

"Senate Amendment 'A.' Amend said bill by striking out in the seventh line thereof the word 'own.' Further amend said bill by adding after the word 'name' in the seventh line thereof the words 'as trial justice.'"

Thereupon, Senate Amendment "A" was adopted and the bill as so amended was passed to be engrossed.

Sent down for concurrence.

On motion by Mr. Hanold of Cumberland, the Senate voted to take from the table, bill "An Act

to Abolish the Old Age Assistance Commission" (H. P. 1272) (L. D. 778) tabled by that Senator on March 22nd pending second reading; and on further motion by the same Senator, the bill was given its second reading and passed to be engrossed in concurrence.

On motion by Mr. Peters of Androscoggin, the Senate voted to take from the table bill, "An Act Providing for Experience Rating under Unemployment Compensation Law" (S. P. 459) (L. D. 807) tabled by that Senator on March 24th pending second reading; and on further motion by the same Senator the bill was given its second reading and passed to be engrossed.

Sent down for concurrence.

On motion by Mr. Peters of Androscoggin, the Senate voted to take from the table, House Report from the Committee on Education "Ought Not to Pass" on bill, "An Act Relating to Teachers' Pensions" (H. P. 177) (L. D. 120) tabled by that Senator on March 24th pending acceptance of the report; and the same Senator moved the acceptance of the committee report.

Mr. OWEN of Kennebec: Mr. President, I rise to support the motion of the Senator from Androscoggin, Senator Peters, and I think before the vote is taken the Committee on Education ought to explain the reporting "ought not to pass" on this bill and also on Legislative Document 121, both of which refer to teachers' pensions and increases. Both bills refer to non-contributory pensions and in order to have passed these bills as they were presented it would have been necessary for the state to pay out something over \$60,000 a year more than it pays on non-contributory pensions. In consideration of the fact the state is paying out this year over \$950,000 to compensate for the fact that the state did not fulfill its obligation in 1933 to the teachers who are paying five percent of their salary to join the contributory pension system and due to the fact that the legislature has passed to be enacted a bill increasing the amount which the state contributes for each state teaching position of \$90 per teacher, and due to the fact that teachers