

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Second  
Legislature*

OF THE

STATE OF MAINE

1965

DAILY KENNEBEC JOURNAL  
AUGUSTA, MAINE

er, Washington County" (H. P. 159) (L. D. 182)

Bill "An Act Exempting Certain Nonresident Aircraft and Pilots from Registration under Maine Aeronautics Act" (H. P. 162) (L. D. 184)

Bill "An Act relating to Appointment, Rank and Duties of Assistant Adjutants General" (H. P. 163) (L. D. 185)

Bill "An Act relating to False Registration of Livestock" (H. P. 183) (L. D. 238)

Bill "An Act Increasing Compensation of Trustees of Mexico Sewer District" (H. P. 285) (L. D. 367)

Bill "An Act to Increase Borrowing Capacity of the Fort Fairfield Utilities District" (H. P. 366) (L. D. 468)

Bill "An Act relating to State Retirement Benefits for Certain Teachers" (H. P. 788) (L. D. 931)

Were reported by the Committee on Bills in the Third Reading, read the third time, passed to be engrossed and sent to the Senate.

#### Passed to Be Enacted Emergency Measure

An Act relating to Beano (S. P. 235) (L. D. 535)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a division was had. 139 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

#### Passed to Be Enacted

An Act relating to Civil Rights of Persons Hospitalized for Mental Illness (H. P. 69) (L. D. 80)

An Act relating to Powers and Duties of School Committee of the City of Portland (H. P. 80) (L. D. 90)

An Act Increasing Salaries of and Relating to Vacancies in Trustees of Boothbay - Boothbay Harbor Community School District (H. P. 126) (L. D. 150)

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.

#### Enactor

##### Tabled and Assigned

An Act relating to Bow and Arrow Hunting on Mount Desert Island, Hancock County (H. P. 131) (L. D. 155)

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

(On motion of Mr. Kennedy of Milbridge, tabled pending passage to be enacted and specially assigned for Tuesday, February 16.)

Resolve to Reimburse Allen Bragdon of Ashland for Loss of Poultry (S. P. 58) (L. D. 119)

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

#### Orders of the Day

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert and inquires for what purpose does he rise.

Mr. JALBERT: I would like to inquire if House Paper 9, L. D. 9, Resolve Proposing an Amendment to the Constitution to Eliminate Voting Restrictions on Paupers, is in the possession of the House.

The SPEAKER: The Chair will inform the gentleman from Lewiston that this matter is in possession of the House.

Mr. JALBERT: Mr. Speaker, I would like to move that we reconsider our action whereby we finally passed this resolve and I would like to speak to my motion.

The SPEAKER: The gentleman from Lewiston, Mr. Jalbert, now moves we reconsider our action on February 9 whereby this matter was finally passed. Is this the pleasure of the House?

The motion prevailed.

Mr. JALBERT: Mr. Speaker and Members of the House: Yesterday after the session adjourned, I went to the Speaker of the House and discussed with him the language that had been used in

finally passing this Resolve whereby the Speaker—and certainly no criticism of him at all — whereby the Speaker said that this being a measure it needed two-thirds of the elected members of the House in order to finally pass it. The Speaker informed me that he had talked with Mr. George West of the Attorney General's Office who told him, as he quoted from the top of his head, that if he was asked to give a ruling, he would possibly rule that this needed two-thirds of the elected members of the House. After discussing it with the Speaker and several others, it actually states in the Constitution — in our Constitution, Article 10, Section 4, that whenever two-thirds of both Houses shall deem it necessary, may propose amendments to the Constitution. However, Section 16 of Article 4, states that on emergency measures two-thirds is needed. In this body, at least ever since I have been here, on emergency measures, according to the Constitution, we have voted, we have always had to have two-thirds of the elected members. That is, one hundred and one at least.

On other measures, constitutional resolves, bond issues, governor's vetos, it has been the procedure and the thinking that we were sound in only requiring two-thirds of those members present. So, beyond the discussion that was entertained by several authorities, I dug up the Mason's Manual which says on page 353, section 4 where a — section 3, the requirements of a two-thirds vote unless otherwise specified, means two-thirds of the legal vote cast, not two-thirds of the members present or two-thirds of all the members.

Going further into the United States Report, there are no Maine cases involving this, but there are other cases from other states, and in the United States Report Vol. 248 spells it out rather clearly in which it says that the provision of the Constitution requiring a two-thirds of each House to pass a bill over a veto means two-thirds of a full quorum of each House; not two-thirds of all

the members of that body. Going further into the United States Reports into Vol. 253, it spells it out even more clearly as it states —and this is the conclusion of the Court as the other was, two-thirds vote in each House which is required for proposing an amendment is a vote of two-thirds of the members present, assuming the presence of a quorum, and not a vote of two-thirds of the entire membership present and acting. It even goes further in our contention that we are correct.

We have in the past, for instance the debate two years ago on a bridge when a three million dollar bond issue was voted by a vote of eighty-two to twenty-eight; the Capital Improvements in '59 a vote of ninety-eight to two which was not two-thirds if we were to be wrong; if the contention of the Attorney General, Mr. West, was to be right that we were wrong in doing this. Also in 1963 the Maine Maritime Academy bond issue of four hundred and seventy-five thousand, the vote was one hundred to nothing, still not two-thirds of all those elected; and in 1959 ten million dollar University of Maine Bond Issue eighty-seven to forty-three, which is certainly far from two-thirds of those present.

All the authorities and all the indications, and I don't think anyone will fight too strongly with the United States Report, indicate that we are sound in our thinking that two-thirds of those elected is necessary on emergency bills, but two-thirds of those present and voting are all that is necessary on bond issues, constitutional amendments and overriding of the governor's veto. However, the purpose for my reconsidering is not only that this bill must be amended very slightly, but the major purpose is the serious problem that this would plunge us into were we to be wrong in the future or were we wrong in the past in handling it in the way we have. For that purpose, if you will entertain my motion to reconsider, I shall table for two weeks, then tomorrow present a

program, that is being placed in wordage now, asking for an opinion of the Maine State Supreme Court.

The SPEAKER: The Chair recognizes the gentleman from Bath, Mr. Ross.

Mr. ROSS: Mr. Speaker, I have no legal documents before me like the gentleman from Lewiston, Mr. Jalbert, but having sponsored four constitutional amendments in the past which received final passage, and since I have always labored under the illusion that these needed the affirmative vote of two-thirds of those present, if there is any doubt, I certainly favor obtaining a decision from the Court so there will be absolutely no question in the future.

The SPEAKER: The Chair would be most happy to state that it at this time concurs with the gentleman from Lewiston, Mr. Jalbert and the United States Supreme Court.

The Chair recognizes the gentleman from Milbridge, Mr. Kennedy.

Mr. KENNEDY: Mr. Speaker, I subscribe to the idea of the gentleman from Lewiston, Mr. Jalbert, and I am sure that the Majority leadership does also and I hope that this body will support a move to have an opinion from our Maine Supreme Court so that we will have substance in the future to which we can guide our voting and our thinking.

Thereupon, on motion of Mr. Jalbert of Lewiston, the Resolve was tabled pending final passage and unassigned.

The Chair laid before the House the first tabled and today assigned matter:

Bill "An Act Prohibiting the Marking of Absentee Ballots Before Certain Officials." (H. P. 49) (L. D. 61)

Tabled—February 3, by Mr. Dudley of Enfield.

Pending—Third Reading.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: This bill had a unanimous report from this

Committee and I now move that it receive final passage or third reading or whatever stage it is in at this time — third reading.

The SPEAKER: Third reading of the bill.

The Chair recognizes the gentleman from Brownville, Mr. Ross.

Mr. ROSS: Mr. Speaker, I have no personal interest in this bill. My town clerk is elected at a town meeting so she does not appear on the ballot. She is a member of the opposite party of the one I belong to. She goes around and gets these absentee votes from the sick and the shut-ins and it seems to me that this bill is casting an aspersion on the integrity and honesty of elected and appointed officials such as Notary Public, Town Clerk and so forth. I move that it be indefinitely postponed.

The SPEAKER: The question before the House now is the motion of the gentleman from Brownville, Mr. Ross, that this bill be indefinitely postponed.

The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: This makes a very small change in the laws. As we have already said a few minutes ago, the Committee heard the bill; it was a very unanimous report. I would say this, if you look at the last line of the bill, it's number 61— I hope you have it before you, the last two lines, I would say it is very obvious that every member of this House cannot be a Notary or a Justice. It is a fact that some of us are, but I think it makes unfair competition for some new-comer who wants to run for my office if he is not a Notary or a Justice, because as a Notary or Justice I'd be allowed to go around and solicit votes and notarize them.

The same thing would be true in Town Clerks. Obviously in some towns, the Town Clerk has opposition and in some towns where they vote by Australian ballot I understand they also have absentee ballots so the clerk in office