

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

*One Hundred and Fourth  
Legislature*

OF THE

STATE OF MAINE

**Volume II**

May 9, 1969 to June 17, 1969

KENNEBEC JOURNAL  
AUGUSTA, MAINE

on their vehicles and equipment, that this is the way to hit the problem. So, consequently, I would heartily support the bill if it were amended to require that vehicle insurance be included. I think that would be the way to tackle it. As Senator Beliveau knows, I very jealously guard this concept of governmental immunity. If this change would be acceptable, I would support the bill one hundred per cent.

The PRESIDENT: Is the Senator withdrawing his motion?

Mr. BERRY: Not yet.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Beliveau.

Mr. BELIVEAU of Oxford: Mr. President, I am in the process of preparing an affidavit for Senator Berry to assure him that we will meet his objection. Therefore, I would prepare an amendment if some one would table this until Tuesday, and hope that we can resolve it at that time.

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

Mr. Berry of Cumberland was granted leave to withdraw his motion for Indefinite Postponement.

Thereupon, Committee Amendment "A" was Adopted in concurrence, and the Bill, as Amended, tomorrow assigned for Second Reading.

The President laid before the Senate the sixth matter tabled earlier in today's session, by Mr. Katz of Kennebec:

Bill, "An Act Relating to Time of Payment of Salaries of Members of the Legislature." (H. P. 1003) (L. D. 1310)

Tabled — May 28, 1969 by Senator Katz of Kennebec.

Pending — Passage to be Engrossed.

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

Mr. WYMAN of Washington: Mr. President and Members of the Senate: I have been trying to get an amendment which would be satisfactory for this bill, and so far I have been unable to obtain one. I have been talking this morn-

ing with the Legislative Finance Officer, and I hope somebody would table it for one more legislative day.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Hoffses.

Thereupon, on motion by Mr. Hoffses of Knox, retabled and tomorrow assigned, pending Passage to be Engrossed.

The President laid before the Senate the seventh matter tabled earlier in today's session, by Mr. Berry of Cumberland:

#### Non-Concurrent Matter

Bill, "An Act Relating to the Small Claims Act." (S. P. 246) (L. D. 755)

In the Senate May 26, 1969 the Bill substituted for the Report and on May 27, 1969 the Bill Passed to be Engrossed.

Comes from the House, the Ought Not to Pass Report Read and Accepted in non-concurrence.

Pending — Consideration.

Thereupon, on motion by Mr. Berry of Cumberland, the Senate voted to Insist and Request a Committee of Conference.

On motion by Mr. Beliveau of Oxford, the Senate voted to reconsider its action of earlier in today's session whereby it Passed to be Engrossed Bill, "An Act Relating to Comparative Negligence in Civil Actions." (S. P. 89) (L. D. 251)

Thereupon, on motion by Mr. Tanous of Penobscot, tabled and tomorrow assigned, pending Passage to be Engrossed.

#### (Off Record Remarks)

The President laid before the Senate the first tabled and unassigned matter:

HOUSE REPORTS — from the Committee on State Government on Resolve, Proposing an Amendment to the Constitution Providing for Convening of the Legislature at Such Times as the Legislature Deems Necessary. (H. P. 21) (L. D. 24) Majority Report, Ought to Pass; Minority Report, Ought Not to Pass.

Tabled — January 30, 1969 by Senator Hoffses of Knox.

Pending — Motion by Senator Wymann of Washington to Accept the Majority Ought to Pass Report.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Beliveau.

Mr. BELIVEAU of Oxford: Mr. President and Members of the Senate: To say that I was caught unexpectedly would be an understatement. Am I to understand that we are going through all these tabled items now? Are we going through them numerically, one, two, three, four, until they are all disposed of?

The PRESIDENT: The Chair would answer in the affirmative, except for those items that we decided we would leave on the table, according to the terms of the order that was passed in the Senate earlier this week.

Mr. BELIVEAU: Well, I don't have the document before me but, as I recall it, this document would permit the legislature, or the President of the Senate and Speaker of the House, to call sessions of the legislature when they felt it was necessary. I recall at the hearing that this was termed as the thinking man's answer to annual sessions, and as an alternative proposal to the bill which would create annual sessions.

I have several objections to this document. First, there isn't any need for it. As you know, under our present practice, under our present law, the Governor can call special sessions of the legislature when he believes there is a need for one. This has not been abused in the past by any of the Governors, as far as I know; that when there was a pressing need for a special session, it was called, and business that had to be disposed of was disposed of.

At the time I recall making a few notes and, as I recall, it said in the language of the bill, and more specifically, Section 1, it states: "The Legislature shall convene on the first Wednesday of January biennially and, as provided by rule, at such other times as they deem necessary, at the call of the President of the Senate and Speaker of the House." Now, "as provided by rule" is a very

vague and ambiguous phrase. Who is going to promulgate these rules? Who will be responsible for drafting them? Are we to play an active role in their adoption? Will we be conferred with? Will we have an opportunity to consider them? This is very vague and ambiguous. We will be delegating to our leaders, both of whom I have certainly a great deal of respect for, and I know it will not be abused, but we don't know who will be replacing them in the future, and not that I suggest that this will be used for partisan reasons because I know it won't — too much — in any event, if there appears to be a need for legislation like this, then we should do it properly. We should enact legislation to create annual sessions.

This is an attempt to avoid the bill which would provide for annual sessions. There could be a great deal of conflict also between an act by the Governor and an act by the Speaker of the House and the President of the Senate. Today this bill recognizes the need for annual sessions. This bill is supposedly an alternative to annual sessions. I can envision here situations where the Governor could be compelled to call an annual session with the threat that if he fails to do so the legislative leaders will.

As I said at the outset, this has not been abused in the past, and I see no need for it today. There appears to be a need because, in my opinion, this bill recognizes the need for annual sessions. Let's enact the proper document. Let's enact the document providing for annual sessions. This is piecemeal legislation. This is an attempt to kill annual sessions, and I object to it. I trust it will be defeated, regardless of the status of it now.

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

Mr. KATZ of Kennebec: Mr. President and Members of the Senate: I join with the Senator from Oxford in suggesting that an answer to our problem is annual sessions, and I supported the concept of annual sessions, but annual sessions are not the answer that attempts to be met by this constitutional amendment.

Since 1820 our government has become tremendously complicated. Our relationship with industry, business and every facet of human existence has become tremendously more complicated, and our needs for fast legislative action seem to be increasing. Each legislature seems to have two or perhaps three special sessions of the legislature now, and governors in the past have acted with dispatch and responsibility in calling these sessions as needed.

I am concerned though as to what lies ahead in the future. If the State of Maine does find itself in a need to act quickly in a matter of broad public concern, in the event of the inability or incapacity of the Governor, there just isn't any provision for the legislature to meet it. In the absence of a meeting of the legislature, the whole State of Maine can be put in the position of being unable to meet a challenge.

The rules to which the previous speaker alluded are rules which will be promulgated by the legislature. The proponents of this legislation feel that the entire tendency in the United States has been towards increasing executive power at every layer of government, and perhaps the proponents of this legislation might entitle this as equal opportunity or equal muscles for the legislature. So, on several bases it seems to be a temperate, proper amendment.

It has been on our calendar since January 30th, and I think we have had ample opportunity to study it, evaluate its good points, and evaluate its shortcomings, if indeed there are any shortcomings. I think the time has come for us to act on it today.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Reed.

Mr. REED of Sagadahoc: Mr. President and Members of the Senate: I don't wish to carry this debate much further, but I would just like to point out at least my feelings on this legislation. That is, it doesn't seem to me that it is really necessary. I couldn't get excited whether it passed or didn't pass.

First of all, I cannot picture the President of the Senate or the Speaker of the House calling a legislative session together unless they had approval from the Governor. If they did do this, then I feel it would be the last time, because it would be just a sideshow and they would get the best of it. I feel very strongly this way because of the position of these two presiding officers.

As far as the standpoint of succession goes, I think this might be a reason for passing this. Again, it doesn't seem to me it goes quite far enough. Let us assume that the Speaker of the House and the President of the Senate assumed that the Governor was slightly gone off his rocker and, therefore, they did call the legislature together, again, what is going to take place? I assume, and I know—I was on the Research Committee that studied this—and it was presented in good faith. I think at first glimpse it seems to have a lot of merit, but then you carry every potential avenue that this could accomplish to its ultimate end, it seems to be able to accomplish very little.

I think we do have problems, and I feel very strongly that the legislature should be strengthened. It just doesn't seem to me that this particular avenue is the way. Therefore, I can see little sense in passing this and putting it out to the people for referendum and making this constitutional change, and I hope that the bill would be defeated.

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

Mr. KATZ of Kennebec: Mr. President, I want to apologize to the members of the Senate for forgetting to mention that this is a governmental reform in the best meaning of the word.

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

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: I am opposed to the passage of this bill for several basic reasons. The usurping of the powers of the executive by the legislature is something to which we all

should be opposed as we would be to the usurping by the Governor of the powers of the legislature.

We have these three cornerstones to our pyramid here in Maine: the judicial, executive and legislative systems, and the two have got to be kept separate.

I also agree with the statement that was made that we have got to strengthen the legislature, but this certainly is not the tool to use to strengthen it. As has been pointed out, the main problem would be this so-called rule. I have a letter from the office of the Attorney General, and I would read you from it with reference to that as provided by rule. "A rule would be promulgated to govern the procedure. An essential part of the rule would be a requirement that when the legislature is assembled the first business to be taken up would be the question of the necessity of convening." Now, can you see, as Senator Reed has pointed out, the chaotic situation that could result if you have a very closely balanced legislature, either or both houses, and the arguments and the interminable debates that would go on, even before the legislature got off home plate? This is just not a workable solution.

Senator Beliveau mentioned that annual sessions would be better, and I share this view. This is an attempt, and a laudable attempt to temporize with the problem but, as in so many problems we face here in Augusta, maybe we just can't temporize this one, and when we do have to make the decision we are going to have to vote on the clear-cut issue of annual sessions.

This is an unworkable bill for several other reasons, and I would invite to your attention that we have the greatest respect for the presiding officers of the two legislative bodies at the present time, but it is conceivable and I could visualize a situation arising where two such gentlemen, not as fine as our present presiding officers, might be unduly influenced by a strong personality entirely outside the legislative system and, as a result of this, the legislature could be called into session at the whim of one person.

Now, when we are doing important things like calling the legislature into special session, this has got to be by the Governor. Senator Katz's concern that the Governor might be out of his mind or out of State, of course, doesn't hold any water, because the President of the Senate would automatically and legally step into that void, and he could call a special session of the legislature. So, for these and other reasons, I do hope that this bill never sees the light of day.

The PRESIDENT: The Chair would ask the Sergeant-at-Arms if he would escort the Majority Floor Leader, Senator Katz, to the rostrum to take over as President pro tem.

At this point the Sergeant-at-Arms escorted Senator Katz to the rostrum where he assumed his duties as President pro tem, and President MacLeod retired to the floor of the Senate Chambers.

The PRESIDENT pro tem: The Chair recognizes the Senator from Penobscot, Senator MacLeod.

Mr. MacLEOD of Penobscot: Mr. President and Members of the Senate: This bill probably is not the most momentous one that we will have before us this session, but I certainly think it is one of the most important as far as this body is concerned and the body at the other end of the corridor.

As the Senator from Cumberland, Senator Berry, said, he doesn't believe in the usurping of the powers of the executive by the legislature. I also don't believe that the executive should be superior to the legislative branch. We are supposed to be co-equal. If one of the three major branches of government cannot function except at the whim or the desire of another branch of government, then we certainly can't be an equal branch.

This bill is not intended to substitute for annual sessions in any sense of the word unless we can tell ourselves that if we have annual sessions we are going to be here twelve months of the year, the same as Congress is, and they are in Massachusetts and some other states that have annual sessions. This bill is to help make

the legislature more nearly an equal branch of government.

There are plenty of safeguards. The Senator from Cumberland, Senator Berry, mentioned something about this strange, outside, strong personality running the legislature. The amendment that was put on this bill in committee says: "And at such other times, on the call of the President of the Senate and the Speaker of the House, as the Legislature may prescribe by joint rules." I would assume that this would mean at least a majority vote of the legislature itself before the President and the Speaker could call them into special session.

In response to the Senator from Sagadahoc, Senator Reed, regarding the Governor who may be a little bit off and maybe doing some things he shouldn't be doing, either mental, moral, or many, many things we can think of—and thank God, we haven't had this happen in the past, and let's hope it doesn't happen in the future—but it could happen, and there is no provision for succession. There is provision for succession in the Maine Constitution when death occurs, but there isn't for mental aberrations or moral aberrations which could occur, and which could be a reason for impeachment of that Governor. Unless we should be in session during our regular biennial session or, if the annual session bill passed, be in session, maybe it is July or August of that off year, and something is going on in this State, something the Chief Executive is doing that calls for impeachment, we have no power to impeach, because we would have to wait until the next legislature regularly convenes.

This is not to try and stop annual sessions. I know that some of the backers of annual sessions believe that it is. It isn't. It is just to try and make this branch of government more nearly an equal partner to the judicial and the executive. Thank you.

The PRESIDENT pro tem: The Chair recognizes the Senator from Franklin, Senator Mills.

Mr. MILLS of Franklin: Mr. President, could I address a couple of questions to the Senator from

Penobscot, Senator MacLeod, through the Chair? I would like to ask Senator MacLeod—and I don't know, I have no information myself in this regard—the question is a sincere one—maybe I am remiss in not paying better attention to the debate, but is this a common provision among the other states? Secondly, I realize the merit to the argument that has been advanced in regard to hypothetical situations, and that there could be situations arise whereby there might be the need, but I am wondering if there has been, at any time within the memory of any of us, any need for this, or has there ever been a time when there has been a felt need for the convening of the legislature which met with resistance on the part of the executive to call the legislature?

I can tax my own memory a bit in this regard, and I do recall sitting in a hotel room in Cleveland, Ohio in 1936, and prominent politicians of my party were present attending the Republican Convention which nominated Alf Landon, as you will remember. I think Governor Brann at that time had been paying old - age assistance. I think there had been a federal law providing for the payment of old - age assistance by the States. Governor Brann and his Council, which was a Republican Council, by the way, was able some way or other to use their contingent fund which, if it was abused at that time, it wasn't the first time it had been abused, they took their contingent fund and started paying old - age assistance with it. I remember the late Senator Brewster engaging in this discussion as to how in the devil we could get that Governor to call the legislature together and make him call for an appropriation for this purpose. I remember the answer was that you just couldn't do it. You couldn't make him call the legislature together unless he wanted to. That is the only time I can recall this subject ever being discussed, or ever any need, and I don't know how much the need was then. The State seemed to get along all right and it came around

a little later and did provide adequately for old-age assistance from other funds than the contingent fund.

But has there been a time in the memory of any of us when we have felt that the legislature ought to be called in session, or our legislative leadership has felt so, and hasn't been able to convince an executive that he should do it? Also, do any other states have it?

The PRESIDENT pro tem: The Senator from Franklin, Senator Mills, poses a question through the Chair to the Senator from Penobscot, Senator MacLeod.

The Chair recognizes the Senator from Penobscot, Senator MacLeod.

Mr. MacLEOD of Penobscot: Mr. President and Members of the Senate: At last count, fifteen states do have this power at the present time, but in many other state legislatures this winter this same proposition is before them. It is being recommended by all of your National Associations of Legislative Leaders, the National Legislative Conference, the Council of State Government, they are all now recognizing this as a need that needs to be filled and should have been filled long ago.

As far as a situation where the legislature has not been in session and perhaps they should have had this power, the Governor of Louisiana was in a mental hospital in Texas and escaped away from the mental hospital, got back across the border into Louisiana, and immediately became Governor again as soon as he crossed the border. There was nothing that anyone could do about it because legislature was not in session. This is one example. I am sure that with our recent Governors, and the present holder of that corner office, that there would be no need for this type of reason to come back into session, but at some time in the future it might well happen.

I frankly can't understand the opposition of the body itself in being opposed to granting itself the right to function as a branch of government, which we now do not have, except under the Constitution meeting biennially and except at

the call of the Governor into special session. I do agree that this would be used only in extraordinary circumstances, in times of extreme urgency, or at times when the Governor did do things that deserved impeachment. Certainly, if we are to be equal as one of the three branches of government, an equal partner in this, we should have the power to function.

The PRESIDENT pro tem: The Chair recognizes the Senator from Cumberland, Senator Gordon.

Mr. GORDON of Cumberland: Mr. President and Members of the Senate: I will call to your attention that we are merely considering the acceptance of a report. To be very frank and honest with you, I am not as knowledgeable and familiar with this document as I might be and all of its implications, although I do contend that I enjoy this sort of government reform. I appreciate the research and the study that goes into it, and I enjoy this study and research.

I would really hate to have us throw this proposal aside without rendering sufficient study, and I really, honestly don't see what harm it would do to accept the report. I don't see what harm it would do for the Senators in their time, if time would permit them, to review this further, and if it does have merit then I hope we would accept it. If we discover in our deliberations and our study and research that it does not, then we could reject it. But I, for one, would prefer to pursue this a little further. Thank you.

The PRESIDENT pro tem: The Chair recognizes the Senator from Sagadahoc, Senator Reed.

Mr. REED of Sagadahoc: Mr. President and Members of the Senate: I would just like to bring up one or two points. I had forgotten the amendment which the Senator from Penobscot, Senator MacLeod, mentioned. I can remember in first looking at that—I think that amendment itself somewhat upsets me. I couldn't find the number, but I believe it goes something like "The President of the Senate and Speaker of the

House or otherwise proscribed by joint order." Now, when you do this you open up something that actually is very broad, because a joint order could be passed by this legislature in which the legislature could be convened by any member. I know this is an extreme case, but a joint order might be passed in which any member of the legislature might be able to convene that. Now, I didn't see the amendment and this may not be the case, but "as proscribed by joint order" is a pretty broad interpretation.

Secondly, I would merely say that I think if the Speaker of the House and the President of the Senate had the power to call this legislature together to start impeachment proceedings, it might be a valid argument, if you limited it to that.

I have no objection to this going on and being debated further. I sympathize with a great many of the things the Senator from Penobscot has said, and I am sure

that we all really want to do the same thing here, but I guess the question is possibly the correct way of doing it.

The PRESIDENT pro tem: The Chair will inform the Senate that the amendment in question is under Filing No. H-3.

Is the Senate ready for the question? As many as are in favor of accepting the Majority Ought to Pass Report will say "Yes"; as many as are opposed will say "No."

A viva voce vote being taken, the motion prevailed.

Thereupon, the Resolve was Read Once. Committee Amendment "A", Filing No. H-3, was Read and Adopted and the Resolve, as Amended, tomorrow assigned for Second Reading.

The Adjournment Order having been returned from the House, Read and Passed in concurrence, on motion by Mr. Hoffses of Knox, adjourned until Tuesday, June 3, 1969 at 10 o'clock in the morning.