

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Fourth
Legislature*

OF THE

STATE OF MAINE

Volume III

June 17, 1969 to July 2, 1969

Index

1st Special Session

January 6, 1970 to February 7, 1970

Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

HOUSE

Monday, January 12, 1970

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Mr. David Dunn of Augusta.

The members stood at attention during the playing of the National Anthem by the Hall-Dale High School Band of Hallowell.

The journal of the previous session was read and approved.

**Papers from the Senate
Tabled and Assigned**

From the Senate: The following Order:

ORDERED, the House concurring, that the joint rules be amended by adding a new Joint Rule 12-A, to read as follows:

12-A. Statement of fact. All bills and resolves shall, upon introduction and later amendment thereof, be accompanied by a written statement of fact indicating intent, prepared by the sponsor, legislator or legislative committee involved (S. P. 616)

Came from the Senate read and passed as amended by Senate Amendment "A", as follows:

Amend said Joint Order by striking out in the 5th and 6th lines the punctuation and underlined words "**prepared by the sponsor, legislator or legislative committee involved**"

In the House: The Order was read. Senate Amendment "A" (S-359) was read by the Clerk and adopted.

(On motion of Mr. Birt of East Millinocket, tabled pending passage in concurrence and specially assigned for tomorrow.)

**Reports of Committees
Ought Not to Pass
Covered by Other Legislation
Tabled and Assigned**

Report of the Committee on Education on Bill "An Act relating to Difference of Student Tuition Between University of Maine and the State Colleges" (S. P. 596) (L. D. 1767) reporting "Ought not to pass", as covered by other legislation.

Came from the Senate read and accepted.

In the House, the Report was read.

(On motion of Mr. Levesque of Madawaska, tabled pending acceptance in concurrence and specially assigned for tomorrow.)

Non-Concurrent Matter

Bill "An Act relating to Certain Classified Employees in the Forestry Department" (H. P. 1354) (L. D. 1683) which was passed to be engrossed in the House on January 7.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-360) in non-concurrence.

In the House: The House voted to recede and concur.

The following Communication appearing on Supplement No. 2 was taken up.

The following Communication:
STATE OF MAINE
SUPREME JUDICIAL COURT
AUGUSTA

January 12, 1970

Mrs. Bertha W. Johnson
Clerk, House of Representatives
State House
Augusta, Maine

Dear Mrs. Johnson:

There is enclosed the Answers of the Justices to the Questions of January 8, 1970.

Respectfully yours,

(Signed)

ROBERT B. WILLIAMSON

ANSWERS OF THE JUSTICES
TO THE HONORABLE HOUSE
OF REPRESENTATIVES OF THE
STATE OF MAINE:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following Answers to the Questions propounded on January 8, 1970:

QUESTION No. 1: Must the House of Representatives, if it disagrees with the veto of the Governor, take action under Article IV, Part Third, Section 2, of the Constitution of Maine to override the veto of the Governor?

ANSWER: We answer in the negative.

The Statement of Facts submitted with the Questions reveals that at the regular session of the 104th Legislature House Paper No. 21, Legislative Document No. 24, **RESOLVE, Proposing an Amendment to the Constitution Providing for Convening of the Legislature at Such Times as the Legislature Deems Necessary**, was passed by both the House and the Senate by a vote of two-thirds of each body. The Resolve was signed by the Speaker of the House of Representatives and the President of the Senate. The Statement of Facts continues, the Resolve was presented to the Governor for his consideration on June 27, 1969. The 104th Legislature adjourned without day July 2, 1969, before the Governor considered the Resolve. The Statement of Facts further recites that on the first day of the convening of the first Special Session of the 104th Legislature the Governor returned the Resolve disapproved.

Article IV, Part Third, Section 2, of the Constitution of Maine, provides in part as follows:

Section 2. Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it.

Article X, Section 4, entitled, Amendments to Constitution, reads as follows:

Section 4. The Legislature, whenever two-thirds of both Houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of November, or to meet in the man-

ner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives, on the Tuesday following the first Monday of November following the passage of said resolve, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution.

A resolve passed by a two-thirds vote of both Houses of the Legislature, proposing a constitutional amendment, is not a "bill or resolve having the force of law."

In proposing a constitutional amendment the Legislature is not exercising its power to make laws. It is acting as a special organ of Government for the purpose of initiating a constitutional amendment. To the exercise of this function the Governor is not a party.

The Legislature erred in sending Legislative Document No. 24 to the Governor for his approval. This being so, it necessarily follows under our Constitution, the sanction or approval of the Governor is not essential to the validity of the resolution proposing the amendment to the Constitution. Accordingly, his veto does not affect the validity of the resolution. The Governor has no duty to perform respecting constitutional amendments save that required by **1 M. R. S. A. Sec. 352**, i. e., within 30 days after it appears that a constitutional amendment has been adopted, the Governor shall make proclamation thereof.

We are mindful it has long been the practice of the Legislature to refer resolutions proposing constitutional amendments to the Governor for his consideration. We are unaware of any previous instance in which such resolve has been the subject of Executive veto. The occasion for a determination that the Governor's assent to a resolve proposing a constitutional amendment is unnecessary, could not, then, have sooner arisen. A long continued practice of the Legislature cannot have the effect of imposing duties upon the

Governor beyond those provided by the Constitution.

Since the Governor's veto subtracts nothing from the validity of the legislative action in this instance, it is not necessary for the House of Representatives to take action under **Article IV, Part Third, Sec. 2, of the Constitution of Maine** to override or sustain the veto of the Governor.

QUESTION No. 2: If the answer to Question 1 is in the negative, may the House of Representatives now, without further action, transmit Legislative Document No. 24 directly to the Secretary of State for his action in conformity with the provisions thereof?

ANSWER:

Question No. 1 has been answered in the negative. Since the resolution (Legislative Document No. 24) has been passed by 2/3 vote of both the House and Senate and no action thereon is required by the Governor, the Document becomes one that must be transmitted to the Secretary of State for his action in conformity with the provisions of the resolution. The usual and ordinary procedures, according to the rules of the Legislature, should be employed to accomplish this.

Dated at Augusta, Maine, this 12th day of January, 1970.

Respectfully submitted:

(Signed)

Robert B. Williamson
Donald W. Webber
Harold C. Marden
Armand A. Dufresne, Jr.
Randolph A. Weatherbee
Charles A. Pomeroy

The Communication was read and ordered placed on file.

Orders

On motion of Mr. Shaw of Chelsea, it was

ORDERED, that Molly Alexander of Farmingdale be appointed to serve as Honorary Page for today.

House Reports of Committees

Ought to Pass in New Draft

New Draft Printed

Passed to Be Engrossed

Mr. Starbird from the Committee on State Government on Bill "An Act relating to Municipal Zoning Ordinance Affecting Indian Lands" (H. P. 1358) (L. D. 1687) reported

same in a new draft (H. P. 1426) (L. D. 1795) under same title and that it "Ought to pass"

Report was read and accepted and the New Draft read twice. Under suspension of the rules the New Draft was read the third time, passed to be engrossed and sent to the Senate.

Ought to Pass

Printed Bill

Passed to Be Engrossed

Mr. Harriman from the Committee on Taxation reported "Ought to pass" on Bill "An Act Imposing a Tax on the Unorganized Territory Within the Maine Forestry District for Spruce Budworm Control" (H. P. 1317) (L. D. 1646)

Report was read and accepted and the Bill read twice. Under suspension of the rules the Bill was read the third time, passed to be engrossed and sent to the Senate.

Ought to Pass with

Committee Amendment

Tabled and Assigned

Mr. Kelley from the Committee on Inland Fisheries and Game on Bill "An Act relating to Penalty for Violations by Guides under Fish and Game Laws" (H. P. 1401) (L. D. 1757) reported "Ought to pass" as amended by Committee Amendment "A" submitted therewith.

Report was read and accepted and the Bill read twice.

Committee Amendment "A" (H-628) was read by the Clerk and adopted.

Under suspension of the rules the Bill was read the third time.

(On motion of Mr. Birt of East Millinocket, tabled pending passage to be engrossed and specially assigned for tomorrow.)

Mr. Shaw from the Committee on Legal Affairs on Bill "An Act Clarifying and Correcting an Omission in the Charter of the Town of Gorham" (H. P. 1345) (L. D. 1674) reported "Ought to pass" as amended by Committee Amendment "A" submitted therewith.

Report was read and accepted and the Bill read twice.

Committee Amendment "A" (H-629) was read by the Clerk,