

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

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(First Special Session)

OF THE

STATE OF MAINE

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KENNEBEC JOURNAL
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Mr. Jackson of Cumberland then moved that the Bill be tabled and Tomorrow Assigned, pending Passage to be Engrossed.

Thereupon, on motion by Mr. Speers of Kennebec, tabled until later in today's session, pending Passage to be Engrossed.

Mr. Merrill of Cumberland was granted unanimous consent to address the Senate.

Mr. MERRILL: Mr. President and Members of the Senate: I am sorry that Mr. Boyle has left the chamber. I might say at the outset that I did not originally intend to speak on this subject. Being a past graduate of Boys State and a former governor, I am afraid that the Senate might think that reflected badly on Mr. Boyle, so I was going to keep that secret. But I have been asked to read into the record a letter that was written to Mr. Boyle on this occasion, and I am proud to do so.

"Dear Jim:

I was delighted to hear that the Maine Legislature is honoring you today. It is a fitting and well deserved tribute to your contributions to the education of our young people in the way our government operates.

"Jane and I would like to join in adding our congratulations to you on the numerous achievements and our thanks for all you have done for your community and the state. I know this will be a memorable occasion for you. It is a proud one for the many of us who have had the honor of being your friends.

"With best wishes, sincerely," and it is signed by the other Senator from Waterville, Senator Ed Muskie.

Orders of the Day

The President laid before the Senate the first tabled and Specially Assigned matter:

Resolution, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money and to Permit the Legislature to Override All or Part of Such a Veto by a Two-Thirds Vote of Each House. (H. P. 1981) (L. D. 2170)

Tabled — March 29, 1976 by Senator Speers of Kennebec.

Pending — Final Passage.

(In the House — Failed of Final Passage)

Mr. Graham of Cumberland moved that the Resolution and all accompanying papers be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. GRAHAM: Mr. President and Members of the Senate: I hope the members will pardon me if I repeat a few of my previous remarks. Repetition is one of the most charming characteristics of the elderly. But I do want to establish the train of thought, and I am sure you want to know how this comes out.

From the beginning of Maine's history as a state, the office of governor has had, relatively speaking, little power. But we of the 107th are changing that. We have voted to give the governor more time to compose his veto messages, and we have struck off those handcuffs, the executive council, which have manacled every governor since 1820. By abolishing the executive council, we have made a great increase in gubernatorial power inevitable.

As a result of this constitutional change, a bill is coming forward that will increase the governor's power in three fields. First, the governor will have sole power to grant pardons and commutations. All power, as Lord Acton said, tends to grant pardons and commutations. All power, as Lord Acton said, tends to corrupt, and the aftermath of Watergate has shown us how corrupting even the pardoning power can be.

With the passing of the executive council, the governor will have greater fiscal powers, like transferring funds within the departments, sole disposition of the contingency funds, to a cer-

tain extent, and acceptance of federal grants. They all will be in the governor's power.

And three, perhaps most important of all, in view of the complicated confirmation procedures set up in place of the executive council, the governor's appointive powers will expand enormously. In the bill prepared by the State Government Committee, the number of gubernatorial powers requiring confirmation will shrink in number from over 600 to about 150. And many of these appointees, once confirmed, can be dismissed at will by the governor.

In short, this legislature has given or is committed to giving the office of governor unprecedented powers. For this reason, it seems to me, we should hesitate before adding the item veto power too. Should we and the people of Maine not wait a little and see how the additional powers already planned work out? After all, the executive and the legislative are separate and presumably equal branches of the government. But what is the legislature's basic power? Is it not the power of the purse? If we pass this bill, we will be putting our right arm in a sling, subordinating the legislative branch to the executive branch. Instead of centralizing the power of the purse, putting it more and more in the office of the governor, we should I think be diffusing it, putting it in the hands of a special budget committee, for instance, a budget committee of the legislature, even as has already been done with such success in the federal government.

So I urge you, members of the Senate, not to abdicate your legislative responsibilities. I urge you not to shrink from duties that democracy puts upon you. I urge you to indefinitely postpone this bill.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I rise to oppose the pending motion and to support the proposal presented in L. D. 2170, an act to provide for item vetoes by the governor. We have debated this matter before and I will not be repetitious.

In his previous comments, the Senator from Cumberland, Senator Graham, has referred to powers which are being granted by this legislature to the governor, such powers as pardons and commutations and various fiscal powers which have in the past been checked by the executive council, and, I think most pertinent to the bill we are discussing here, the power of the purse.

Now, it seems to me that it is appropriate at this time to really look at who retains the power of the purse strings. Even with an item veto provision in our constitution, the legislature is still the only body which can raise taxes and appropriate money for the expenditures.

The question, the real question which we need to spotlight, is the same issue which would be spotlighted by a governor who reviewed an appropriations bill containing many items, and that is: should each individual item included in a massive appropriations bill, or a bill with more than one appropriation, be enacted into law? I think that the power we would give to the governor would be an appropriate one, and one which would indeed help the legislature police its own abilities to spend money.

There is no provision, of course, for the governor to spend money.

There is no provision, of course, for the governor to raise any appropriations item that would be in an appropriations bill. There would be only the power to veto an individual item, and he could only do that after sending a message back to the legislature. The legislature would then, as with any other vetoed item, have an opportunity to override the veto by a two-thirds vote in each house of the legislature.

I think that the provision in the item veto would not be subordinating the legislature, it

would not be granting overriding powers to the governor, but would be making both branches of the government stronger, more efficient, and more responsible.

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

Mr. KATZ: Mr. President, I do not wish to debate this measure but to clarify some confusion in my mind caused by the distinguished Senator from Cumberland, Senator Graham. In listening to his debate, I got the distinct impression that he wishes to defeat this measure, and he has made a motion which is going to require the majority of the chamber to support him. Were he to withdraw his motion, those who are proponents would need two-thirds of this body to carry their point of view. So, on that confusion, I will pose a question through the Chair to the Senator as to what his intentions are.

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Cumberland, Senator Graham.

Mr. GRAHAM: Mr. President, I request permission to withdraw my motion.

The PRESIDENT: The Senator from Cumberland, Senator Graham, now requests leave of the Senate to withdraw his motion to indefinitely postpone this legislation. Is it the pleasure of the Senate to grant this leave?

It is a vote.

The pending question before the Senate is the final passage of this resolution.

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I request a roll call.

The PRESIDENT: A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, is the matter before the Senate still debatable?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. CONLEY: Mr. President and Members of the Senate: To me this is "D" day. It is the day we have to vote on this resolution, this constitutional amendment. I don't think in the history of the state we have ever had a chief executive that perhaps has been so controversial, and that sort of puzzles me at times. I think, in a sense, he has raised many issues of great concern to people in the state.

Since I first became a member of the legislature, I think that I have seen Republicans support item veto when a Republican was governor and oppose it when the governor was Democratic, and I have seen Democrats support the item veto when they had a Democratic governor and oppose it when they had a Republican governor. So today we are sort of faced with a complexity as to not looking down at the chief executive as to what party he represents, because we know that he is an independent governor.

I have, to the best of my knowledge, consistently supported item veto for the chief executive, and I am really wrestling with that decision, and I know the decision lies before me right now. And I think that every member of this body will obviously use their own best judgment, that no leader, whether it is the majority floor leader or the minority floor leader, is going to influence one as to how they should respond when the roll is called.

I think a lot of people have strong reservations about the item veto this morning, perhaps

because of the nature of our present chief executive. There are many people who feel that the legislature today is being run by headlines in the newspapers, that it is being run by the threat of veto itself while legislation is pending before both branches. I know that many statements that have appeared in the paper by the chief executive have irritated many members of this legislature in that the chief executive would seek to interfere while legislation is pending.

The good Senator from Penobscot, Senator Curtis, has expressed his thoughts that the item veto would be a good thing for the legislature in the sense that it would police its own appropriations before they got to the chief executive. I think that an order this morning, a joint order relative to establishing a committee to find those priorities and seek out those priorities, was defeated. But aside from that, I would think that the Appropriations Committee, the Taxation Committee, and such, would obviously be policing these matters long before they ever came before both branches to be voted on.

I still believe that the item veto is an effective and efficient tool for the chief executive. I intend to support it this morning, and I suggest that each member of this branch give it some deep thought.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Gahagan.

Mr. GAHAGAN: Mr. President and Members of the Senate: I am generally very much in support of a very strong legislative and executive branch. I think the concept of this item veto is a sound one and should be implemented, but not at this time. I think now that we have just undergone the change in the Maine executive branch, whereby we have done away with the executive council, that we should give the office of the governor the opportunity to see how it does without an executive council before we proceed to reconsider our action for an item veto.

I think basically my feeling is that this is too much too soon falling on the tail of the executive council, and I will not be voting for this item veto today.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I am going to support the item veto issue before us, and I am going to do so irrespective of our present chief executive and any of the comments made earlier by the Senator from Cumberland, Senator Conley.

I think history has shown us that it is difficult to get an item veto passed in the legislature, and I think we have an unusual situation right now, and I think we in good conscience ought to take advantage of that situation. I think we can pass that in this legislature. I think it should be passed now. And I don't think the next couple of years are going to make all that much difference on how it is handled, if anyone has reservations about how our present governor will use it. If they have those reservations, certainly I believe it will only be for a couple of years, and I don't think that is a big concern or a big problem. And for the sake of getting an item veto bill passed, I think we ought to do it at this time when we have that unique opportunity.

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

Mr. MERRILL: Mr. President and Members of the Senate: I am going to vote against this item veto today, and my action has nothing to do with the person who is presently the chief executive. I think it is foolish to vote on constitutional amendments with only the immediate situation in mind.

During the 106th this amendment was sponsored by a good friend who was in the other body at that time, and still is, Representative Peterson, and I was against it then. We had many lively discussions about this subject. The

reason I am against it then has nothing to do with the person who is the chief executive. The reason I am against it is that I think the idea of the item veto grows out of a fundamental misunderstanding of the relationship between the governor and the legislature and the way it should be.

The reason that the governor was given the power of the veto was to give him some power on extraordinary occasions to enter into the legislative process. The limit on that power is the fact that it is in fact a meat axe and not a scalpel. If we refine the power to the extent of making it an item veto on fiscal matters, the governor is in fact stronger than either branch in the legislative process, and I don't think that that is appropriate. As a matter of fact, I find myself a little shocked. During my youth I always thought that I was a strong believer in a strong chief executive. I haven't changed my votes any, and yet people who I used to look to who were in this legislature back then as the strong protectors of the legislative branch have seemed to have started the switch. So I suppose public opinion swings like a pendulum, but I think it was the fundamental belief of the people who wrote our constitution that the governor's powers should be in some ways limited and that the fundamental power to tax and to appropriate should stay in the legislature, should remain here.

So I really see, if we are going to expand the veto so extraordinarily as this allows the governor to do, I see no reason to limit it only to fiscal matters. Let's give the governor the power to amend other bills also. So if there is a phrase he doesn't like in a bill that doesn't involve money, let's let him take that out and send it back.

We all know that bills are put together by people giving a little from what they believe to get an agreement among a majority of the people of what they believe. That is the position that every legislator is in. And there will be one legislative branch that would be created by the passage of an item veto that will have power much greater than that. I just think that it is a change that is inappropriate, and it is a change that, if it is voted on, I think when it is used by some future governors — and it can be used just as much as a bludgeon to get more money as to get less — I think a lot of people would regret the happenstance.

The PRESIDENT: Is the Senate ready for the question? This resolution, having had its two several readings in the House, its two several readings in the Senate, having been passed to be engrossed, having been reported by the Committee on Engrossed Bills as truly and strictly engrossed, having failed of enactment in the House, is it now the pleasure of the Senate that this resolution be finally passed? This is a constitutional amendment and requires the affirmative vote of two-thirds of those present for passage. A "Yes" vote will be in favor of passage; a "Nay" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, R.; Carbonneau, Cianchette, Collins, Conley, Corson, Curtis, Cyr, Danton, Graffam, Greeley, Hichens, Jackson, Johnston, Marcotte, McNally, O'Leary, Pray, Roberts, Speers, Thomas, Trotzky, Wyman.

NAYS: Senators Berry, E.; Cummings, Gahagan, Graham, Katz, Merrill, Reeves.

ABSENT: Senator Huber.

A roll call was had. 24 Senators having voted in the affirmative, and seven Senators having voted in the negative, with one Senator being absent, the Resolution was Finally Passed.

Sent down for concurrence.

The President laid before the Senate the third tabled and Specially Assigned matter:

HOUSE REPORTS — from the Committee on Taxation — Bill, "An Act to Establish a Maine

Community Jobs Act." (H. P. 2165) (L. D. 2293) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass.

Tabled — March 30, 1976 by Senator Speers of Kennebec.

Pending — Motion of Senator Reeves of Kennebec to Accept the Minority Ought to Pass Report.

(In the House — Minority Ought to Pass Report Accepted and the Bill Passed to be Engrossed as Amended by House Amendment "A" (H-1126).)

Mr. Jackson of Cumberland moved that the Bill and accompanying papers be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. JACKSON: Mr. President and Members of the Senate: I am sure now that every member who has an interest in this bill in this body here has had an opportunity to look at the amendment, 1126. I have one point which I disagree with on this bill, and I think it is a good point. You are letting one man, the chief executive, you are authorizing him with this bill, although it is called a resolve, to institute and implement a jobs program, as the good Senator from Kennebec stated yesterday could come up to around 8,000 people, with funds which are already being administered by municipalities, by counties, under title 2 and title 6, and under title 5 and title 10.

You go through the bill and you look at 3, approval of application: The governor may approve an application, specify the amount of funding, this fund not to exceed \$100,000 for each project, and enter into an agreement with the sponsor, provided — projects which employ individuals who are assigning payments to the fund. I would assume this means unemployment payments.

I just don't feel that this bill will provide what the good Senator from Kennebec feels it will provide. I just think that we, if we pass this House Amendment or Bill, that we will just be opening a Pandora's Box which, once these people are employed under this program for 30 weeks, when the 30 weeks expire, that we will have to seek additional funds to keep them on the payroll.

I just feel it is a bill which is going to take jobs that are now being provided for the public sector and remove these people. You are putting it into one area which could really be a bad problem. It strings on just one man, and I don't feel that it's the type of situation we want to put this state in. Therefore, I am going to request, so I will save the good Senator from making it, that when the vote is taken I request it be taken by the "Yeas" and "Nays".

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Kennebec, Senator Reeves.

Mr. REEVES: Mr. President, I started to debate this bill last night and I would like to just briefly, if I may, go over some of the points that I raised last night.

The main point of this resolve is to change the emphasis of the public jobs program from what it is now, designed by bureaucrats in Washington for bureaucrats in big cities, to a program that means something to the situation here in Maine, where we have seasonal unemployment and we have more job opportunities available at one time than another, and to, instead of having these open-ended positions in local and state government, really assistants to bureaucrats, to limit the amount of time for any one project to 30 weeks, and thereby really doubling the amount of opportunities available to the unemployed people of Maine. And by limiting these projects to short-term 30 week projects that have a beginning and an end, we avoid that possibility that when the money runs out the local communities have to pay tax dollars to maintain these positions. The exam-