

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

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Legislature*

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

Thereupon, the Report was accepted and the bill read once.

Committee Amendment "A" (S-140) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

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

Bill "An Act Relating to Executive Sessions of Public Bodies or Agencies" (H. P. 722) (L. D. 899) (C. "A" H-286)

Tabled — May 16, by Mr. Snow of Falmouth.

Pending — Motion of Mr. McMahon of Kennebunk to Indefinitely Postpone House Amendment "A" (H-332).

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

House Order — Relative to Opinion of the Justices as to what Constitutes a Solemn Occasion.

Tabled — May 16, Pursuant to Rule 41.

Pending — Passage.

Thereupon, the Order received passage.

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

Joint Order — Re: Committee on Transportation reporting Bill on Naming East Machias-Machiasport Bridge (H. P. 1598)

Tabled — May 16, by Mr. Rolde of York.

Pending — Passage.

Thereupon, on motion of Mr. Palmer of Nobleboro retabled pending passage and tomorrow assigned.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Snow.

Mr. SNOW: Mr. Speaker and Members of the House, I hope you will vote against the amendment and indefinitely postpone Committee Amendment "A". I would like to speak briefly to the subject. I think the bill which the gentleman from Kennebunk, Mr. McMahon sponsored has some excellent points in it. I think the fact that no Executive Session can be held unless a vote is taken to do so is a splendid thing. I think the fact that the reason for going into Executive Session must be stated is an excellent thing. I am concerned, however, about the seven different reasons for which a public body may go into Executive Session. I think there is a danger in specifying reasons because I think it may be difficult to anticipate all the reasons which a municipal body might choose to go into Executive Session. For example, supposing there is some kind of a civil emergency and it is necessary for the council members or the selectmen to discuss it prior to action, privately, I think they should be able to have an Executive Session on that matter. Under this, they could not have an Executive Session, if they chose to do so, to discuss a problem they might be having with a member of their own council. Now, for that reason, I hope you will favor my amendment which simply says that "and no others". Now, if Mr. McMahon would restrict Executive Sessions to the 7 subject areas which are described in his document, which is L. D. 899, I do not think that municipal bodies should be restricted to these reasons to go into Executive Session. I think the fact that they must declare their reason for going into Executive Session, that they must vote to do so and that they can act on no other matter in Executive Session sufficient restrictions upon them. I am fearful and others who have been involved with me, as newspaper men, are fearful

that the mere designation of subject areas over which a municipal body may go into Executive Session may mean that they will automatically go into Executive Session when one of these subject matters comes up. However, we have not attempted to amend that out of the bill. We merely are attempting by our amendment to give municipal bodies, if you will, the right to go into Executive Session on any subject which they feel that they need to discuss privately. First, they state the reason for the session, they vote on it and they act on no other subject. So I hope you will defeat the motion to Indefinitely Postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMahon: Mr. Speaker, Ladies and Gentlemen of the House: As I stated on Friday, this bill is the only "right to know, bill," presently before us. It, and a companion bill, L. D. 1035 together represent an attempt to more clearly spell out what can and what cannot be discussed in Executive Sessions of public bodies. This is accomplished by a listing in the bill, 7 subject areas that I feel might sometimes need to be discussed in private. The decision to go into Executive Session on any of these subjects is not mandatory, however, and the public body may discuss these subjects in open session, if they wish, and if there is no compelling reason for them to go into a closed session. The bill further requires that a motion to go into Executive Session must state the nature of the business to be discussed to the exclusion of any other subject. This bill, if enacted in its present form, will ensure that public officials will have a clear guideline of what they can and what they cannot do in Executive Sessions and it will, most importantly, insure that the public's "right to know" will be honored to the maximum extent possible. Adoption of Mr. Snow's amendment, however, will render this bill little more effective than the present law, since under the present law, it is possible to go into Executive Session for just about any reason. I urge you to Indefinitely Postpone House Amendment "A" and to send this bill along to the other Body.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Members of the House: As a member of the City Council in Bangor, I have had some experience with this kind of thing and I would like to share some of those with you. I said the other day that I am a strong supporter of Home Rule and that I am, especially when it comes to substantive decisions. When it comes to the procedures by which those decisions are made, I think we have to fall on the side of openness, in this particular case, so that there really is an opportunity for Home Rule that is participation by the people in our communities and the decisions that are made in that community. Now, several years ago, I proposed a bill, an ordinance similar to the one that Mr. McMahon has presented here, for the City Council and there were the traditional, almost, reactions from the small groups of people who make decisions on the feeling that they have greater wisdom than the rest, by raising questions about interference, and that people would be listening in too much and might be disrupting the meetings and all kinds of things and the City Manager was generally of the same persuasion that interfered

with the smooth functioning and administration of things that maybe people ought not to get involved with. Well, as a result of that, I instigated a petition drive which would have led to a referendum and a sufficient number of signatures were gathered, so that the rest of the council saw the light and decided that maybe it was a good idea to have this kind of an ordinance, so we did pass it and we did have the same kind of argument whether restrictions would be a barrier and a problem because we do have specified reasons why we may go into Executive Session and they fall into the same areas, mainly, personnel matters, which are covered in this list, legal matters and consultation on acquisition of property and sort of an economic development kind of thing where a certain degree of confidentiality is necessary. Now since we've had that, in effect, we have had various results. One, is that we have not run into a problem. There hasn't been a situation in which we've found that the restrictions are too tight, we have always been able to deal with them. Number 2, it's been very helpful to people in our community who might have felt that they would like to attend these meetings, the budget meetings, various committee meetings, they never really quite had the gumption to do it, until they realized that they had this kind of a right, so to speak, and it wasn't so much that it was a legal right, it was sort of a moral right that the city was on record, that you and I could walk into these meetings and look at what your council is doing. I think that this kind of thing could very easily be extended to all of the citizens in the state and I don't think it would do any harm, it certainly has not in our case. It is in my judgment the case that Mr. Snow's amendment would, in effect, allow you to go into Executive Session for any reason whatsoever which is the current law and is obviously not the intention of this particular proposal.

Thereupon, the Committee Report was read by the Clerk.

The SPEAKER: The Chair recognizes the gentlewoman from Kittery, Mrs. Durgin.

Mrs. DURGIN: Mr. Speaker and Members of the House, I rise in support of this bill. Sometime ago in my hometown, Kittery, we had considerable dissention on Executive Sessions that ended up in a very unpleasant court case. I believe passage of this bill will prevent future difficulties in all towns and cities as it clearly defines when Executive Sessions can be held. Two officials from Kittery attended the public hearing on this bill and they are very much in favor of it. We need guidelines, they are in this bill and I hope you will support this very important piece of legislation.

The SPEAKER: The Chair recognizes the gentleman from Buxton, Mr. Berry.

Mr. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: I support the gentleman's bill from Kennebunk. I urge you to vote against the amendment because if you like the bill and vote for the amendment, then forget the bill. The amendment is a very simple one — it removes three words. It might just as well pass for Indefinite Postponement of the bill because it accomplishes the same thing. I have served on a lot of boards and commissions and so forth and on some of these I have been in a position of, perhaps, being on the minority side. As a matter of fact, probably on all of them, I have been in that position. What has happened to me, personally, is that certain people on these boards would want to go into Executive

Sessions to exclude things from becoming public and these things included things that probably should have become public and I have protested, my protest fell on deaf ears like a lot of them do here. I think that I do have a right to attend a meeting as a private citizen and I do have a right to know what is going on and I think in the case of even the legislative work sessions, so-called, that the public does have a right to attend those. They haven't had over the years and I just hope that you won't support the amendment of Mr. Snow.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, I've been a municipal officer since 1962 and I feel we have lived by what Mr. McMahon has proposed to be the law. It has been fairly much the law in Waterville, anyway, and I would be very much concerned that, we, as municipal officials, could discuss even more than we are already discussing in Executive Session that I would certainly support the motion of the gentleman from Kennebunk, Mr. McMahon to Indefinitely Postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Snow.

Mr. SNOW: Mr. Speaker, Members of the House: This bill, I believe, had its genesis in the Maine Municipal Association in a committee of which I was chairman. I am supporting the bill. I am also obviously supporting my amendment and I don't know that I should take very much more of your time because there doesn't seem to be many interested in it. However, I would like to point out to you that it seems to me that we are accomplishing one of the objectives of at least the towns and cities represented by the Maine Municipal Association. One of the reasons they were interested in having such legislation as this brought before us is so the reasons for which they could go into Executive Session would be spelled out, would be clear, and would be understood. This bill does that. It says, they may go into Executive Sessions on these subject areas. What bothers me is that we are saying to our towns and cities that you shall not find any other reason to go into an Executive Session. I doubt if many of us will find other reasons. I am a member of a town council in Falmouth. I am also a newspaper man. Personally, I feel that freedom should remain for members of the council or municipal body to select the reasons for which they need to go into Executive Session. They may go on these which Mr. McMahon's bill spells out, that is clarified. They may also go in, if you adopt my amendment, for other reasons and I maintain that it is impossible to spell out in the law all the reasons a municipal body might need to go into Executive Sessions and we should remember that they have to vote, that they have to state the reason that 3/5 of the members of such bodies must vote in favor. Mr. Speaker, I ask that when the vote is taken it be taken by the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker and Members of the House: People are led to believe that news reporters covering meetings such as City Council meetings, let the public know everything that transpires at such a meeting. In the first place, it is impossible for reporters to remember and write down every quote. A city editor may cut much from a reporter's story because of lack of space. This "right to know" business

should be a two-way street but it isn't. People are misled by this myth of "right to know." If anyone wants to know what happens at a meeting, everything of importance can be found in the minutes. The public is not interested in what the news media would lead us to believe the public is interested in. There is nothing wrong with Executive Sessions, but I do not approve of inconsistent news reporting.

In summing up, the people do not learn everything anyway because, as I have stated, the news media does not always send it to them and it is not the people so much who want to know every single thing that goes on, it is the news media and mostly for their own interest. I should know. I was a news reporter myself for more than six years, so my feeling is this, that we should not postpone Mr. Snow's amendment, it is a step in the right direction and our goal should be to eventually stop all this myth of so-called Executive Sessions, it is nothing but a big bluff.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker and Members of the House: Very briefly, ladies and gentlemen, this bill was originally L. D. 30, which I pre-filed last December. The bill is very much mine. I subsequently withdrew L. D. 30 and with the assistance of the Maine Municipal Association, which I requested, we re-wrote it as L. D. 899, which you see here. I was very happy to have the assistance of the Maine Municipal Association in this particular case since they represent, by and large, the large number of people who will have to operate under this bill but I want to let you know and the good gentleman from Falmouth, that the bill was very much mine, having been a selectman for two terms in my town, I can speak and attest from first-hand experience for the need of this bill.

The SPEAKER: The gentleman from Falmouth, Mr. Snow, requests a roll call. In order for the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and obviously more than one fifth of the members having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Kennebunk, Mr. McMahon, that House Amendment "A" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Albert, Ault, Bachrach, Bagley, Bennett, Berry, G. W.; Berry, P. P.; Birt, Blodgett, Boudreau, Bowie, Eurns, Bustin, Byers, Carey, Carpenter, Carroll, Chonko, Churchill, Clark, Connors, Connolly, Cooney, Cox, Curran, P.; Curran, R.; Dam, Davies, DeVane, Drigotas, Durgin, Farley, Farnham, Faucher, Fenlason, Finemore, Flanagan, Fraser, Goodwin, H.; Goodwin, K.; Gould, Greenlaw, Hall, Henderson, Hennessey, Hewes, Hobbins, Hughes, Hunter, Hutchings, Ingegneri, Jackson, Jensen, Joyce, Kany, Kauffman, Kelley, Kennedy, Laffin, LaPointe, LeBlanc, Leonard, Lewis, Lizotte, Lovell, Lunt, Lynch, MacEachern, Mackel, MacLeod, Mahany, Martin, A.; Martin, R.; Maxwell, McBreairty, McKernan,

McMahon, Mills, Miskavage, Mitchell, Morin, Morton, Mulhern, Nadeau, Najarian, Norris, Palmer, Pelosi, Perkins, T.; Peterson, P.; Peterson, T.; Pierce, Post, Powell, Rideout, Rolde, Rollins, Saunders, Shute, Silverman, Smith, Snowe, Spencer, Sprowl, Stubbs, Talbot, Tarr, Teague, Tierney, Torrey, Tozier, Truman, Twitchell, Tyndale, Usher, Wagner, Walker, Winship.

NAY — Berube, Call, Cote, Curtis, Immonen, Jalbert, Kelleher, Littlefield, Quinn, Raymond, Snow.

ABSENT — Carter, Doak, Dow, Dudley, Dyer, Garsoe, Gauthier, Gray, Higgins, Hinds, Jacques, Laverty, Lewin, Peakes, Perkins, S.; Strout, Susi, Theriault, Webber, Wilfong.

Yes, 118; No, 11; Absent, 20.

The SPEAKER: One hundred and eighteen having voted in the affirmative and eleven in the negative, with twenty being absent, the motion does prevail.

Thereupon, the Bill was passed to be engrossed and sent up for concurrence.

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

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act Increasing the Number of Associate Justices of the Supreme Judicial Court" (S. P. 147) (L. D. 510) ask leave to report: that the House recede from passage to be engrossed; indefinitely postpone House Amendment "B" (H-190); adopt Conference Committee Amendment "A" (H-373) and pass the bill to be engrossed as amended by Conference Committee Amendment "A": that the Senate recede from passage to be engrossed; adopt Conference Committee Amendment "A" (H-373) and pass the bill to be engrossed as amended by Conference Committee Amendment "A".

Signed:
Messrs. SNOW of Falmouth
CARPENTER of Houlton
— of the House.

Messrs. MERRILL of Cumberland
CLIFFORD of Androscoggin
COLLINS of Knox
— of the Senate.

Tabled — by Mr. Kelleher of Bangor
Pending — Motion of Mr. Hobbins of Saco to accept the Conference Committee Report.

Thereupon, the Report was accepted.
The House voted to recede from passage to be engrossed.

The House voted to recede from the adoption of House Amendment "B" and the Amendment was indefinitely postponed.

Conference Committee Amendment "A" (H-373) was read by the Clerk and adopted and the Bill passed to be engrossed as amended by Conference Committee Amendment "A" and sent up for concurrence.

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

Bill "An Act Creating the Post-Secondary Education Commission of Maine." (S. P. 344) (L. D. 1160) (C. "A" S-134) in Senate, passed to be engrossed as amended by Committee Amendment "A" (S-134).

Tabled — by Mr. Davies of Orono.
Pending — Passage to be Engrossed as amended by Committee Amendment "A".