

MAINE STATE LEGISLATURE

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the dignity of the State of Maine and which I think is poor legislation. I move the indefinite postponement.

Mr. CHAPMAN of Cumberland: Mr. President and members of the Senate: I am a little reluctant to arise again on this issue but there is one thing which was not mentioned before when we discussed this bill and when I made my observations on it.

It is my understanding that at that particular special stockholders' meeting at which the 80 per cent provision was put in that I discussed a few moments ago, that all of the represented stock there and voting at the meeting agreed to both of the so-called by-law changes, the sixty-six and two thirds per cent on the Consolidated merger and the eighty per cent provision with regard to further changing the by-laws. It is my understanding, and I believe the reports come from an extremely reliable source, that all of the stock issued and outstanding and represented at that meeting concurred in those two by-laws. I think that is a significant fact when you talk about what people agreed upon in regard to the contesting factions.

I support the motion to indefinitely postpone the bill, but if the Senator from Kennebec, Senator Reid, has feelings about it other than the reasons he previously expressed I would feel somewhat compelled morally to go along with his suggestion, because we all know that this matter has been discussed and I do not like to violate what might be called the spirit of an understanding or agreement.

Mr. REID of Kennebec: Mr. President, I do not feel that any member of this body has in any way committed me on this subject. I would, however, like to tell the facts as I know them with respect to the stockholders meeting. It is true that at that meeting everyone agreed to go along with the sixty-six and two-thirds, but the reason for that was that the majority stockholders insisted on that and there wasn't anything to do about it anyway; they simply said, well, there is no sense fighting about it so we will go along.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Franklin, Senator Butler, that the bill be indefinitely postponed. Is the Senate ready for the question?

A division of the Senate was had.

Six having voted in the affirmative and nineteen opposed, the motion did not prevail.

Thereupon, under suspension of the rules, the bill was read a second time and passed to be engrossed as amended by Senate Amendment A.

Sent down for concurrence.

On motion by Mr. Lessard of Androscoggin, the Senate voted to take from the table House Report from the Committee on Legal Affairs: "Ought not to pass" on bill, "An Act Amending the Charter of the City of Lewiston re Elections, Election of Mayor, Aldermen, Warden and Ward Clerk" (H. P. 437) (L. D. 483) tabled by that Senator on April 29 pending acceptance of the report.

The Secretary read the endorsements on the bill:

Comes from the House, the bill having been substituted for the ought not to pass report, and passed to be engrossed.

Thereupon, on motion by Mr. Lessard of Androscoggin, the Senate accepted the ought not to pass report in non-concurrence.

Sent down for concurrence.

On motion by Mr. Weeks of Cumberland, the Senate voted to take from the table Senate Reports from the Committee on Judiciary: Majority Report, "Ought to pass as Amended by Committee Amendment A;" Minority Report, "Ought not to pass" on bill, "An Act Relating to Eminent Domain by Maine Turnpike Authority" (S. P. 247) (L. D. 693) tabled by that Senator on April 29 pending acceptance of either report.

Mr. WEEKS of Cumberland: Mr. President and members of the Senate: I will try to be as brief as possible in regard to this measure, and I assure you that no matter how the decision goes I will be happy either way.

If you will examine the bill, it deals with the question of eminent domain when exercised by the Maine

Turnpike Authority. I move that the Senate be in order.

The PRESIDENT: The Chair would note that only with the permission of the Senate can a Senator occupy the seat of another Senator.

Mr. WEEKS (Continuing): In 1941 the Maine Turnpike Authority was created. At that time they were given certain powers and were created for a certain purpose. As everyone knows, they completed the first leg of their projected road speedway through the State of Maine up to the City of Portland.

Prior to April 23, 1953 they had worked on plans to make the next section from Portland to Augusta. Now under the authority granted by this legislature, it specified that they have the power to borrow money and issue bonds for the purpose of paying the cost of the turnpike, its connecting tunnels, bridges, overpasses and underpasses and to equip the turnpike in other respects. Nothing is said in the act about the question of compensating any public utility, whether it is a water company, power company, telephone company, for the expense which those companies might be put to in relocating their facilities because of the construction of the turnpike.

This measure before you today provides in its effect that I object to that the turnpike would have to do that. Now that has a very substantial effect. I am informed by my own Water District in Portland that it would cost \$70,000. I am informed that the Augusta facility would be compelled to spend some twelve thousand dollars; I am informed that the power company is spending somewhere in the neighborhood of seventy or seventy-five thousand dollars, and that various other utilities, telephone companies, would have to spend a substantial amount to relocate their facilities.

Now the purpose of this bill, which is retroactive in its effect, would be to compel the Turnpike Authority to pay for the cost of these relocations in the course of their development of their road. That is something that they had no way of foreseeing, except that counsel for both sides now inform me that it is a legal matter and that the question is now pending and

that they probably will go to court in the event that we do not pass this measure, and probably they will go to court in the event that we do pass it on the constitutional question. I am not going to attempt to debate the constitutional question because I do not consider this place the forum. It has always been rather difficult to consider constitutional aspects unless they are very apparent, in this forum. But the constitutional question is in doubt enough so that both sides, the proponents and the opponents have offered briefs on the subject sustaining their positions.

It has been interesting today to hear the discussion that has been going on regarding principle and rights of stockholders when we were talking about invasion of stockholders' rights as far as Bates Manufacturing Company was concerned, and the other day on the rate case there was the rights of the common stockholders discussed, or at least it was in the background: I suppose for the toll bridge bill which the Senator from Penobscot, Senator Woodcock, was discussing that in the background there must be some bonds that were issued and there must be some bondholders involved. And so far as this turnpike is concerned there are bondholders involved.

Now on April 23rd, which I referred to, the Turnpike Authority in projecting this extension issued a prospectus which related to the engineering facts which has been developed to show, so far as they were able to foresee, the reasonable amount tolls which could be anticipated. They also set forth the reasonable expenses which might be taken care of out of those tolls, for the purpose of interesting investors in buying those bonds with when they could then proceed to build the turnpike. At that time they had no way of knowing, as I said before, that they were going to be faced with the item of damages in relocating any public utility facility lines along the way. Now they are faced with it if this bill is passed and they are faced with it as of May 1st.

I want to call your attention to the fact that the passage of this

act making the turnpike liable for these expenses does, in my opinion, attack the rights of bondholders. They have the right to have the anticipated tolls as set forth in the prospectus devoted to those purposes set forth therein. Obviously there should be some contingency fund in any event on any project of this size, but certainly that would be set up with the idea of taking care of such foreseeable and other unforeseeable measures but not such as this, which would have been known to them if such had been the law and they could have anticipated it. This is not a small figure.

I have only mentioned those items of which I have personal knowledge, but the Bureau of Public Roads has reported so far as all types of speedways across the country are concerned that the cost of replacing those installations across the country runs approximately 2.6 per cent of the total cost of the venture. I do not say here that the turnpike will be faced with a million dollars to pay, which would be somewhere in the neighborhood of 2.6 per cent on forty million, but they will be substantially handicapped by having to pay out something above \$200,000. I do think it is an invasion of stockholders' rights.

I want to call your attention to this fact: During this same session by L. D. 985 a bill was introduced to compel the Highway Department out of your normal highway operating funds to pay water lines. This L. D. 985 did not apply to other utilities but it did apply to water companies. This L. D. 693 which we are discussing applies to all utilities, and that act had an unfavorable report and was accepted by this Senate.

Now the status of your Turnpike Authority is something in the nature of your Highway Department in the sense that it becomes the property of the State of Maine when all its indebtedness is discharged. Under the terms of the act when the bonds are paid for it becomes the property of the State of Maine and all revenue therefrom becomes payable to the Treasurer of the State of Maine as part of the highway fund of the State, and the maintenance and

care of it will rest in the Highway Department. The question therefore is whether or not these items of expense of relocation shall be paid by those who use the turnpike or whether each individual utility will have to pay its own costs. Now it will be very simple to resolve that, and I think we can all agree right today that if we were passing the act for the first time that that should be an element of cost. But when you realize that this element if saddled upon the turnpike now is retroactive legislation and might well be retroactive to two years ago instead of just to May 1st of this year. It was passed far enough back, to all intents and purposes, so the turnpike could have anticipated it, but they haven't done it, they had no reason to at the time. I firmly feel, although I would vote for it if it passed in due season I would vote for it for the future, that is so far as any future extensions are concerned, but this business of passing retroactive legislation which seriously handicaps the turnpike I do not think should receive favorable consideration.

I move the acceptance of the minority "Ought not to pass report" of the committee.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Cumberland, Senator Weeks, that the Senate accept the minority "Ought not to pass" report of the committee.

The Chair recognizes the Senator from Kennebec, Senator Reid.

Mr. REID of Kennebec: Mr. President and members of the Senate: In opposition to that motion I will be as brief as I can.

There are some seventeen or eighteen states which have turnpikes and they do pay the costs of relocation. The argument is this in substance, at least as I see it. In paying the costs of relocation who should support that expense — the persons who are using the turnpike way or the individual ratepayers in the individual utilities who are forced to relocate, should they pay the expense? I will admit it would seem to me to have been proper in the first instance for our Turnpike Authority to have agreed, and I think they could have agreed under

the present law if they wanted to, to include in the total cost of the turnpike the costs of relocation: In Massachusetts quite recently the Public Works Commission did exactly that and did it on this theory, that they borrowed I think two or three hundred million dollars down there, and of course they had to start paying interest on it as soon as they borrowed it and before the job was done, so it was important for them to get the job done as quickly as possible, and they thought that by agreeing to pay the relocation costs that the contractors and utilities would do a smoother operation and the work would be expedited.

Now nothing was done on this matter so far as the original turnpike from Kittery to Portland was concerned. However, the extension Portland to Augusta is now under construction and the work is being done.

I would certainly be opposed to this measure if I thought the bondholders' security was being jeopardized, but I cannot quite see that. In the first place, I think I am right in saying that the bonds outstanding on this new extension are in the neighborhood of seventy-five millions of dollars, and I think I am right in saying that the security of the bondholders rests with the revenues to be derived from tolls. The total cost of paying for relocations on this new extension—and my interest is for the Augusta Water District—I think is in the neighborhood of \$200,000, which it seems to me would in no way compare as against the seventy-five million dollar bondholders' investment or jeopardize it in any way.

Some of these water districts have been in certain locations for forty years, and now the Turnpike Authority comes in and crosses their water pipes. In the case of the Augusta Water District it will cost them I think \$16,000 for one job just outside Western Avenue. Should they be required equitably to defray this unusual cost item and pass it on to the people who pay the water rates, or would it be fairer for the Turnpike Authority and the people who are paying tolls and using the turnpike to pay this

fourteen or sixteen thousand dollars?

What about the Portland Water District? There is an item of seventy thousand dollars. It is a little different than the way the State operates: it is usually a small operation here and there, but when we get one of these big new turnpikes going through over a long and extended area we are really upsetting the apple cart and putting on unusually heavy expenses on some of these smaller utilities, especially the water utilities. Should these costs fall on the people who are paying the water rates or should they fall on the people who are using this turnpike which resulted in the relocations becoming necessary?

Now on the question of constitutionality, I think that word and the word "principle" have sometimes been used to sidetrack us a little bit. We all know that the United States Supreme Court has in one year held a certain act to be constitutional and several years later have reversed themselves. There are many borderline cases on the question of constitutionality, and no one can predict in a borderline case what any given court will do. In this particular matter there was left with the Judiciary Committee some very learned arguments sustaining the constitutionality of this bill. If we here declare it to be unconstitutional then the Augusta water ratepayers will have no recourse, we have said that they cannot get their relocation costs. It would seem to me to be fairer, if there is a fair constitutional question involved and the weight of it seems to be in favor of the constitutionality of this bill, and if the Turnpike Authority wishes to contest it, at least the court can make their decision. The bill is not retroactive in the sense that it applies to the original turnpike stretch from Kittery to Portland: it is going to be made to apply if the bill passes to the turnpike now under construction.

I certainly agree with the Senator from Cumberland, Senator Weeks, that if this bill in its present form fails of passage we ought at least to take this same step at the late date when we consider moving the

turnpike from Augusta on up northward.

I believe that the City of Lewiston was paid for their relocation on some kind of a technical theory, if you will, that they actually had some kind of a title, so that the Turnpike Authority in its wisdom felt that in that case it had to take the property by eminent domain and pay for it. The theory of the Turnpike Authority on all other utilities facilities to be relocated is that they exist in their present location more or less by franchise, they are not corporeal hereditaments that need to be taken by eminent domain and paid for. But isn't that a little bit beside the question. I feel that the equities in this case are in favor of such type of utilities such as water districts who are going to suffer an unusual blow as against people who are going to use the highway. To me that is the only question and I certainly do not believe that there is any strong constitutional point involved, and I want to say once more in closing that if I thought that this bill would in any way impair the integrity of the investment of the bondholders I would be against it, but I just cannot see that. I cannot see why their investment is not tied to revenue, and I cannot see in a seventy-five million dollar proposition even if it was tied to a seventy-five million dollar investment, which it is not, that the sum of approximately \$200,000 would be anything but a drop in the bucket.

Mr. MARTIN of Kennebec: Mr. President, my interest in this bill is two-fold: No. 1, I am the sponsor, and as the Senator from Kennebec, Senator Reid, has pointed out, the turnpike is affecting the Augusta Water District to the tune of sixteen thousand dollars. I think all of us are glad that we have a turnpike and that the turnpike is being extended from Portland to Augusta, and I hope in the future it goes from Augusta on further north. But I do not think that any of us thought when the turnpike was created thought that we were creating an octopus which would crawl willy-nilly along and destroy and damage the utilities such as the water districts, and I agree with

my colleague, the Senator from Kennebec, Senator Reid, that if this bill should fail to pass we certainly ought to put a stop to these octopuses doing more damage. And so in closing I simply want to say that I oppose the motion of the Senator from Cumberland, Senator Weeks.

Mr. FARRIS of Kennebec: Mr. President and members of the Senate: I think possibly one way to get at this would be to read over the first portion of this bill and remember that in 1941 we had a body sitting here the same as we have in 1955, and I certainly am convinced from the language as was originally incorporated that it was the intent of the legislature of the State of Maine that the turnpike authorities should assume all operational costs or relocation costs. Actually I feel this way: that we merely in this bill, if we support it and vote for it, are clarifying the intent of a previous legislature.

Mr. SINCLAIR of Somerset: Mr. President and members of the Senate: I am going to rise to support the motion of the Senator from Cumberland, Senator Weeks.

I recall that just a few days ago the statement was made in the Senate that what is good for the State of Maine is good for the utilities. I think the turnpike is good for the State of Maine and that we all recognize that, and I am a little fearful that if this bill passes it is not going to stop there but it is going to be used as an argument against our State Highway construction. Maybe I am wrong in that premise. We have already defeated the bill that would do the same thing in regard to our State Highway system.

The utilities have always enjoyed free use of our public highways with the full knowledge that their occupancy was secondary to the right of the traveling public. If this bill does pass I am afraid that some of the arguments might carry over into our State Highway Construction program which would do a great deal of damage, I think, as far as our construction costs are involved.

Now I was under the impression that the present liability rates are predicted upon the utilities' liability for this expense. I may be wrong

in that premise, but I do not want to see anything done that is going to curtail or take money away from our State Highway program particularly. I am afraid that if we do it under this bill we might do it under our State Highway program.

Mr. WEEKS of Cumberland: Mr. President and members of the Senate: I do not know of anything which has received as much favorable comment from the out-of-staters in the State of Maine as the turnpike, and it seems unfortunate in this day and age to refer to it as a horrible octopus. It does have a good many benefits and I dare say it will assist the people of Cumberland County to get to the capital city all the more readily, and I dare say they will be using the facilities around Augusta more than they would somewhere along the line. I dare say your motels and everything else will profit to the extent that people can make just another hour's run before bedding down for the night. I do not believe that the Senator from Kennebec would be unfavorable to that.

It is significant to me, as the Senator from Somerset, Senator Sinclair says, that you not only have turned down this rule of making them pay for relocations for all time until further legislation is presented, but you have not even considered the retroactive feature of it, you are thinking of the future. You are not going to compel the State Highway Department to pay for all relocations for water companies, but you do so far as the turnpike is concerned and you are asking that it be retroactive to any turnpike which has not been open prior to May 1.

As I said before, I do not find fault with the principle of the thing so far as the future is concerned but I do object to the retroactive feature which I think you should soundly consider before passing it. It is something which has passed very reluctantly in my history and I do not believe you should change now. I say that with full regard for the fact that my Portland Water District in the cities of Portland and South Portland are the only ones to sponsor the obligation and

they will be paying some \$70,000 according to the best estimates, but I think that the principle should be applied here and I do think there is some good faith to be preserved.

Mr. PARKER of Piscataquis: Mr. President and members of the Senate: I rise to support the motion of the good Senator from Cumberland, Senator Weeks. I believe we have the same principle involved here as the one that we acted on in regard to our highway bill, L. D. 985, in regard to water pipes in our highways, and I certainly believe and believe very seriously that this would be an entering wedge that might lead to eventually allowing the very same thing to take place in our highways. For that reason I shall have to support the Senator from Cumberland, Senator Weeks.

Mr. REID of Kennebec: Mr. President, I think it is a little unfortunate to confuse this issue by injecting the possibility that this same principle might apply in the case of the State Highway system. I would have no hesitation in voting on that subject if it became necessary at this or any other session which I happened to attend. It is an entirely different situation. The State of Maine is a sovereign body supported by the taxpayers of the State of Maine with a big, broad network of highways and proceeding rather slowly from time to time and in any one single instance not doing very much damage to water districts or other utilities. On the other hand the Maine Turnpike Authority is supported wholly by the people who use it through tolls; it is not a sovereign body, in a way it is a private body for the time being and will be until such time as the total cost is defrayed and it is turned back to the State of Maine for us to pay the expense of maintaining it. So I do not see any similarity between these two issues. I do not think they should be confused, and I do not think that the good Senator from Somerset, Senator Sinclair or the good Senator from Piscataquis, Senator Parker should have any fear as to what impact this particular bill might have now or in the future on the question of whether or not the state should pay relocation costs. I

do not believe it every will or should.

The only thing that I can see would happen if this bill passes, if it means another \$200,000 it might be that sometime in years to come instead of the turnpike being turned over on one day to the State of Maine for us to maintain it might be a few days later in order to recoup the necessary tolls in order to get this small extra expense out of the total expense of construction.

Mr. FARRIS of Kennebec: Mr. President and members of the Senate: I will be very brief but I do wish to point out that in the City of Lewiston the Turnpike Authority did pay the water district for relocation. That came about because of the fact that the City of Lewiston owns the water district, but it is still the people, Maine citizens that are the consumers that are going to have to pay the freight, as well as the consumers in the Portland Water District and the Augusta Water District. So certainly I cannot see any great distinction in principle as to whether the Turnpike Authorities pay a municipally-owned water district or a privately-owned water district. The same principle is there, which I think is another very telling argument in favor of this legislation.

Mr. WEEKS of Cumberland: Mr. President, I will say to the Senator from Kennebec, Senator Farris, that the turnpike pays for all condemnation costs, but this has nothing to do with condemnation costs at all; the turnpike is not taking anything from anybody. In this particular situation under discussion the City of Lewiston owned the facilities and the turnpike took some of the facilities and paid for them, just like they would pay for any right of way cost or easement costs. This is not a case where they are taking anything from anybody, it is just that in the course of their movement across the State when the relocations are required then the utilities move to adjust themselves to the turnpike facilities.

The PRESIDENT: The question before the Senate is on the motion of —

Mr. CHAPMAN of Cumberland: Mr. President and members of the Senate: In view of the finality with which the Chair started to put the question, I rise with extreme reluctance, but there are two points that I would like to briefly comment upon.

No. 1, which is the crux of this issue, it has been mentioned but I do not think perhaps it was clearly emphasized: as far as the financial or economic impact is concerned it boils down to who shall bear the cost as between two types of rate-payers, namely the toll riders on the turnpike or the consumers of electricity, gas, sewerage facilities, water and so forth in small local areas. It seems to me that as far as the basic standard of equity is concerned we have a problem here which was not clearly anticipated in the beginning, that it is much fairer to have a voluntary user, such as a turnpike rider who can travel that road or not and who can travel a parallel road if he wants to, pay the extra cost. It has nothing to do with the revenue rights of the bondholders because they will be paid according to contract in the long run. It may mean that before the property reverts to the state under the provisions it will run another half year to pay that \$200,000; but the revenue rights of bondholders are not affected any more than the ownership of the small utilities that I speak of are affected. There the rate-payers will pay the cost and those rate-payers are the persons who do it involuntarily. They are the users of the telephone facilities and so forth and they will pay it. And because we now regard in all fairness the users of water facilities, electric and so forth pretty much as mandatory users of facilities that they cannot do without, they will have to pay it. Consequently it boils down to a question between a voluntary payment by somebody who can avoid it and a necessary payment for a necessity which cannot be avoided, and that to me is a very appealing argument.

The other point that I would just like to comment briefly upon is the matter of the retroactive feature here. That does not trouble me a

bit, for this reason: The retroactive feature in the principle bill is dated May 1st. The bill was put in the hopper long before that time and the turnpike and those interested in it knew of it. It didn't alter one whit their planning in regard to construction. They will obviously abide by the will of this legislature, but they are on notice and they have not been misled. May 1st is the date that was fixed because it relates to summer construction from May through the fall. That is when the turnpike is really going to move. The question is still one of financial impact upon voluntary users or involuntary users. I will support the position of the majority of the Judiciary Committee, and I hope that the motion of my brother Senator from Cumberland, Senator Weeks, will fail.

Mr. WEEKS of Cumberland: Mr. President, the Senator from Cumberland, Senator Chapman, apparently has not read the bill. This act provides "all roads not open to the public prior to May 1, 1955." How the turnpike could have any idea what this legislature was going to do in 1955 when it was making its plans in 1953 I don't know, but it applies to the whole link from Augusta to Portland. They made their plans and issued their bonds on the basis of a prospectus issued in April, 1953. They have sold those bonds to people who bought them bona fide, and the argument which has been made is the most un-bona fide argument that I ever heard.

The PRESIDENT: The question now before the Senate is on the motion of the Senator from Cumberland, Senator Weeks, that the Senate accept the majority "Ought not to pass" report of the committee.

As many as are in favor of the motion will rise and stand until counted.

A division was had.

Three having voted in the affirmative and twenty-four in the negative, the motion did not prevail.

On motion by Mr. Reid of Kennebec, the majority "Ought to pass"

report of the committee was accepted and the bill was given its first reading. On further motion by the same Senator Committee Amendment "A" was adopted without reading, and under suspension of the rules the bill was given its second reading and passed to be engrossed as amended by Committee Amendment "A".

Sent down for concurrence.

On motion by Mr. Hillman of Penobscot, the Senate voted to take from the table the 17th tabled and unassigned matter, (S. P. 490) (L. D. 1370) Senator Report "Ought not to pass" on Bill "An Act Restoring Violations of the Liquor Law to the Operation of the Criminal Law," tabled by that Senator on April 28th pending acceptance of the report of the committee.

Mr. HILLMAN of Penobscot: Mr. President, I now yield to the Senator from Cumberland, Senator Chapman.

Mr. CHAPMAN of Cumberland: Mr. President, I am going to move the acceptance of the committee report on this bill, "Ought not to pass." It relates to the rather complex matter of violations of the so-called Liquor Code. Inasmuch as a zone of agreement with regard to the interests of various parties has not yet been arrived at and since this is not a matter of life and death in the next two years and will probably be solved, I move the pending question.

The PRESIDENT: The Senator from Cumberland, Senator Chapman, moves that the Senate do now accept the "Ought not to pass" report of the committee. Is this the pleasure of the Senate?

The motion prevailed and the "Ought not to pass" report of the committee was accepted.

Sent down for concurrence.

On motion by Mr. Reid of Kennebec,

Adjourned until 9:00 A.M., E.S.T. tomorrow.