

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

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KENNEBEC JOURNAL
AUGUSTA, MAINE

Under further suspension of the rules, sent down forthwith for concurrence.

Ought to Pass - As Amended

Mr. Holman for the Committee of Judiciary on Bill, "An Act Relating to Place of Hearings on Post - Conviction Cases." (S. P. 572) (L. D. 1699)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-381).

Which report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and, under suspension of the rules, the Bill, as Amended, given its Second Reading and Passed to be Engrossed.

Sent down for concurrence.

Mr. Holman for the Committee on Judiciary on Bill, "An Act Relating to Subpoena Power for State Employees Appeals Board." (Emergency) (S. P. 570) (L. D. 1697)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-382).

Which report was Read and Accepted, and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as Amended, tomorrow assigned for Second Reading.

Divided Report

The Majority of the Committee on Education on Bill, "An Act Clarifying Laws Relating to the University of Maine." (S. P. 559) (L. D. 1634)

Reported that the same be Referred to the 105th Legislature.

(Signed)

Senator:

KELLAM of Cumberland
Representatives:

RICHARDSON

of Stonington

CHICK of Monmouth

MILLET of Dixmont

KILROY of Portland

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass in New Draft Under Same Title. (S. P. 632) (L. D. 1804)

(Signed)

Senators:

KATZ of Kennebec

STUART of Cumberland

Representatives:

CUMMINGS of Newport
ALLEN of Caribou

Which reports were Read.

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

Mr. KATZ of Kennebec: Mr. President, I move that the Senate accept the Minority Ought to Pass in New Draft Report. Mr. President, I would ask if the Senate is in possession of L. D. 1804?

The PRESIDENT: The Chair would answer in the affirmative.

Mr. KATZ: Mr. President, I guess you can see that there is a substantial difference of opinion on the committee as to what we should do about the University of Maine's so - called clarification bill. The bill actually covers four areas, and I would like to go over the minority point of view with you, if I may.

Section one and two of the new draft covers the question of educational television. You will recall at the regular session that we had a little bit of a hassle here as to the proper use of ETV in the State of Maine, and how restrictive it is. The question was whether or not the Governor could even hold a news conference on ETV. Section one and two of this bill strikes out the portion of the law controlling ETV by statute, and puts ETV under the control of the Federal Communication Commission, which seems to operate very, very well in requiring a complete balance and impartial approach to exposure in educational television.

Section three of the bill concerns eminent domain, and we have a little lulu on our hands. Apparently there was a recent Supreme Court decision that startled everyone by saying, in effect that inasmuch as the legislature had never stated that the preservation of Atlantic Salmon or something of this kind was a public exigency, consequently, the legislature's silence in the matter indicated that eminent domain could not be used in this case. So, this is dictated by this recent Supreme Court decision and it says, in effect, that higher

education is involved in public exigency, and public exigency requires that the property may be taken under certain limited cases. The procedure is a very interesting and a very, very restrictive one. It says that if indeed the trustees determine that a piece of property must be taken they have got to go to the Governor and Council and they have to prove their case. Then the Governor and Council after public hearing — and this is unusual in Maine law, that it requires the Governor and Council to have a public hearing — and then, if they agree with the University trustees, then and only then may land be taken.

Section four of the bill has to do with the changing of names of the University and it says, in effect, that the propriety of naming various campuses, that this is the problem of the trustees and they, not the legislature, shall determine the names of campuses. Section four and five are about names. Section six is an assignment of duty, a delegation of authority from the trustees to the chancellor. It also says that the chancellor may delegate any such powers and responsibilities to a member of his staff.

I imagine that we are not in complete agreement, but the minority of the committee, including Senator Stuart and myself, felt that this was a reasonable approach to problems facing the University, that we could face them now and dispose of them now.

The PRESIDENT: The Senator from Kennebec, Senator Katz, moves that the Senate accept the Minority Ought to Pass in New Draft Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Kellam.

Mr. KELLAM of Cumberland: Mr. President and Members of the Senate: This particular bill is, in effect, several matters, as the good Senator has pointed out, all captioned under "An Act to Clarify the Laws Relating to the University of Maine." The caption itself is one of the more surprising aspects of the bill in that it does sort of take people by surprise, I think, when they find out what is actually in the bill.

I know I received a considerable response from my home district, when arriving home the week after the bill was heard, by all of the people who did not realize what was in it.

I believe it has enough substance to it to deserve a complete hearing by the legislature and complete airing, if you would, and further study before these steps are taken, because they are of considerable moment. That is the reason why, basically, the majority of the committee thought it ought to be referred to the next session of the legislature.

As you can see, there are a number of issues involved here, the eminent domain being one that engenders certainly a great deal of controversy. I personally feel that the bill was referred to the wrong committee. I felt that the Judiciary Committee ought to check into what is done about eminent domain, and possibly come up with some sort of a general codification to cover all instances where eminent domain is used. This is, I believe, the preferred practice, and it is used in other states, that all eminent domain procedures will follow a certain pattern, and that one particular agency will not be given one set of rules and another some others. Basically, the desire is to protect the public at large, so if a man is going to have his house taken, he certainly should be able to know that there is going to be a certain just procedure to be followed, and that he will ultimately receive fair compensation, and the determination as to the necessity of the taking of the house will be determined by some proper authority.

The first section, as the good Senator says, has to do with the educational television. This is something which we discussed and discussed over the last regular session of the legislature, and it did receive considerable comment, and people were concerned by what could be done with educational television, and whether any group or person could receive some substantial benefit over other people by appearing on the television or having television publicize his particular position over some

others. I felt that there is considerable merit to discussion of the ETV problem. I don't think that this particular bill really faces up to it just by wiping it out. As a matter of fact, I understand that the Attorney General had raised some question as to the reasonableness of taking out the law since this law, as I understood it, was passed together with a bond issue, or part of a bond issue, for the educational television. I had understood there was some communication from the Attorney General in that regard.

It seems to me that the university, if they did study this problem, as I know they have, it seems like they should be able to come up with some sort of a solution other than just removing all restraints upon them except for whatever the federal authority may impose.

The other items are: the change of the name, obviously, and then, of course, the chancellor having more assistants, or at least the chancellor being authorized to have assistants and delegating his duties. It almost seems as if, whatever needs to be done in this regard, could be done now by the trustees. So, I just would quibble a little bit about the necessity of the act. The changing of the name is not of any great moment to me; it might be to some. I understood that the students of the Portland and Gorham campuses did not like the idea of being called "Pogo". That is "Po" and "Go" run together, and that was the only objection I heard from anybody at the hearing because obviously there was nobody there except for the university personnel.

The crux of the matter is that the eminent domain provision should not be handled by the Education Committee. I have complete confidence in many respects with my brothers on the committee, but this is not an area in which I do have a great deal of confidence. I personally felt that it ought to be studied considerably longer. The case that was mentioned by the Senator from Augusta, of course, has no bearing on the University of Maine, as such, directly. It was a Fish and Game case, and I haven't heard anything

from the people that are concerned with the Sea and Shore Fisheries relative to their great problem in taking this land down in Washington County. The attorney for the University, Mr. Shur from Portland, raised this as being a potential problem to them but he didn't satisfy me, at least, that there was any great danger now, or any reason why we couldn't wait until the regular session.

I do believe that this bill is of great concern to a lot of people, and they would let their views be known if they were given an opportunity to do so. The eminent domain is one of the more difficult areas of government, and I would not question one bit that there is a need to take people's land at some times. It is necessary to the highway system, and with many other areas, but it is something that we should practice with the utmost of control, restrictions, and fairness to the people involved. I certainly see no reason why this bill should go through at this time, and I would hope that the pending motion would be reputed by the body so that we could refer the matter to the next session. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Anderson.

Thereupon, on motion by Mr. Anderson of Hancock, tabled and tomorrow assigned, pending the motion by Mr. Katz of Kennebec to Accept the Minority Ought to Pass in New Draft Report of the Committee.

Second Readers

The Committee on Bills in the Second Reading reported the following:

Senate

Bill, "An Act Creating a Commission to Study Means of Increasing the Effectiveness and Capability of the Maine Legislature." (S. P. 604) (L. D. 1784)

Which was Read a Second Time.

Mr. Logan of York then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-385, was Read and Adopted and the Bill, as Amended, Passed to be Engrossed.