

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

Reported that the same Ought Not to Pass.

Signed:

Senators:

BELIVEAU of Oxford
LETOURNEAU of York

Representatives:

STARBIRD of Kingman
DONAGHY of Lubec
D'ALFONSO of Portland
GOODWIN of Bath

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senator:

WYMAN of Washington

Representatives:

DENNETT of Kittery
MARSTALLER

of Freeport

RIDEOUT of Manchester

Which reports were Read.

Mr. Wyman of Washington then moved Acceptance of the Minority Ought to Pass Report of the Committee.

On motion by Mr. Beliveau of Oxford, tabled and tomorrow assigned, pending the motion by Mr. Wyman of Washington to Accept the Minority Ought to Pass Report of the Committee.

At this point President MacLeod entered the chambers and resumed his position at the rostrum. The Sergeant-at-Arms then escorted Senator Logan to his seat on the floor of the Senate, amid the applause of the Members of the Senate.

The PRESIDENT: The Chair wishes to thank the Senator from York, Senator Logan, for a very competent job.

Second Readers

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

Senate—As Amended

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

Which was Read a Second Time.

The PRESIDENT: Is it now the pleasure of the Senate that this bill, as amended, be passed to be engrossed and under suspension of

the rules to be sent down forthwith for concurrence?

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ of Kennebec: Mr. President, might I ask, through the Chair, some member of the committee as to the facts presented at the public hearing? I am unaware of any difficulties the Employees Industry Appeals Board has run into that would require the extension of the right to subpoena power, and I would pose this as a question.

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair which any Senator may answer if he so desires.

The Chair recognizes the Senator from Penobscot, Senator Quinn.

Mr. QUINN of Penobscot: Mr. President and Members of the Senate: That is the reason for the bill. They have run into some difficulty, and they feel in order to have a proper hearing they should have subpoena power to bring before the committee for that hearing all the testimony and evidence that is available in order to make a proper decision.

The PRESIDENT: Is the Senate ready for the question?

Thereupon, the Bill, As Amended, was Passed to be Engrossed and, under suspension of the rules, sent down forthwith for concurrence.

Orders of the Day

The President laid before the Senate the first tabled and specially assigned matter:

Senate Reports — from the Committee on Education on Bill, "An Act Clarifying Laws relating to the University of Maine." (S. P. 559) (L. D. 1634) Majority Report, be Referred to the 105th Legislature; Minority Report, Ought to Pass in New Draft Under same Title (S. P. 632) (L. D. 1804)

Tabled—January 22, 1970 by Senator Anderson of Hancock.

Pending—Motion by Senator Katz of Kennebec to accept the Minority Report.

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

Mr. ANDERSON of Hancock: Mr. President and Members of the Senate: The reason why I tabled this bill is that I think this privilege of eminent domain has been grossly abused. In fact, every time I see the two printed words my blood boils. However, I have studied this bill thoroughly and there seems to be a fairly tight checkrein on it and, if I could be assured that there would be no indiscriminate landgrabbing, I would be happy to go along with the pending question. I was wondering if the Majority Floor Leader might comment on this.

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

Mr. KATZ of Kennebec: Mr. President and Members of the Senate: There are many different organizations and political subdivisions which have the power of eminent domain, and I have been assured by those who have had experience in this field that the bill in its present form is far more restrictive on the University of Maine in the procedure for taking land than any other previous granting of eminent domain. I think this should be a real assurance to us.

Now, if there is ever any abuse of the eminent domain procedures, whether by the University of Maine or others, I am sure the Legislature would react, and react very sharply.

I would urge the Senate to accept the Minority Report for our purposes today, and I also would ask the Chair not to give this its second reading, with the understanding — I understand there is very, very substantial opposition to the repealer of the educational television control as expressed in existing law — and if the Senate will go along with my motion to accept the Ought to Pass in New Draft Report today, on Monday or Tuesday we will have for your consideration an amendment that would take the ETV repealer out of the bill, and let it perhaps go along its way without this restriction removed. I ask for a division.

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

Mr. KELLAM of Cumberland: Mr. President and Members of the Senate: I don't like to take too much of your time today because I explained yesterday, I believe as much as necessary, my opposition to this bill.

I am sure that the good Senator from Augusta, in receiving his assurance relative to eminent domain, didn't receive it from those people whose homes have been taken. But, be that as it may, I feel that it is very poor draftsmanship to have this eminent domain feature continued. I believe it is probably the only type of major legal document having to do with judicial functions which has come out of the Education Committee, and I have registered this objection over the time that we have been here since this bill was printed. The printing of it, I think, was about the second day we were in session. I know it wasn't available before the session started, and the bill was heard about the second day we were in session.

I just don't feel that it is the type of legislation that the Education Committee should take upon itself to put out to the public, and I have asked that the matter be referred to the next session in order that this particular feature could be reviewed by the Judiciary Committee, and possibly a bill come out that would have to do with eminent domain throughout the State of Maine. This would certainly leave a better taste in everybody's mouth, I think, and it would allow needed properties to be taken.

I don't think that we can in this day and age say that there should never be any taking against the will of a person who owns property because we know that there are times when there must be takings. But the method in which it is taken should be very carefully reviewed, and it should be a matter of a court procedure, an adversary procedure. It shouldn't be a matter of the administrators coming before the Governor and Council and asking about a piece of property which is off in Aroostook County someplace. It should be a procedure which is carried out in the area where the property is

located in order to give the people who own the property some chance of redress and an opportunity to testify. And certainly it should be in an area where the land is available to be seen. Many times a view of property will clear a person's mind considerably about the necessity of it.

These are things that are just questions really, and there is no need of this particular section of the bill. I have been assured by the Chancellor of the State University that he can live without that particular section, but he would like to have the procedural matters attended to relative to changing the name, and so forth. These are things they want, but they can wait until next January to deal with this particular problem because it doesn't bother them right now. Obviously, the entire State of Maine is not at a standstill on this eminent domain question, and there is no reason why we should have to deal with the University separately from the rest of the State.

I would assure you that I am not trying to block the University of Maine in any way. If they need a piece of property, there are ways they can get it, and they are not in a particular bind right now. Unless we do something this session relative to the requests made by the University of Maine on money matters, I don't believe they are going to be in a bind for a long time to come because they aren't going to have any money to buy property by eminent domain or otherwise. So, I think we ought to direct ourselves to problems which actually exist. There are a few of those around.

So, I would ask that this matter not be passed today; that the bill be referred to the next session of the Legislature, and I would ask for a division when the vote is taken. In other words, I oppose the pending motion.

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

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: This bill is in new draft, but I was the sponsor of the

original bill that was heard before the committee.

Now, I understand that Senator Kellam has some reasons to raise objections to the eminent domain feature of this bill, and I also want to thank him for the confidence that he expresses in the Judiciary Committee for their ability to to handle such a bill. I say this because this committee has come under fire in the various stages of the legislative proceedings here, particularly in the last regular session. So, I thank him for his confidence.

Let me say, however, with regard to the eminent domain feature that this bill is properly drafted and provides for the people, whose property would possibly be taken by this procedure, ample protection under the law.

First of all, I think it is up to this body whether it wants to give the University of Maine the power of eminent domain. I think it is just as cut and dried as that. We give the power of eminent domain to municipalities, we give it to water districts, we give it to sewer districts, and we give to private utilities the right to take property by eminent domain for certain valid, reasonable purposes. The University being, for all intents and purposes, a sub-structure of the government of the State of Maine, in my judgment, has ample justification to ask for this power.

Actually, under this bill, the University of Maine is not given outright power to take by eminent domain. They make the determination that public exigency exists which requires the taking of property by eminent domain and, after the trustees have made this determination, they in turn have to submit it to the Governor and Council, who start the proceeding originally again and make their own determination. If they so find that this is a valid purpose to be exercised, then the Governor and Council will authorize the taking by eminent domain. But once the Governor and Council have done this, once they have done this, then the laws of Maine with regard to taking of property by eminent

domain apply. And they apply in the same way they would apply if the Van Buren Light and Power District, the Portland Water Department, or Central Maine Power were to take property by eminent domain, and it is by judicial proceeding. And this would be referred back to the county where the land is located, and the proceedings would be initiated in that county, so the property owners have ample protection under the law.

I am satisfied that the procedure here is proper and there is no denial of anybody's right to get just compensation for their properties taken by the University or by the State, and that the public is fully protected.

I think what this body has to determine is basically whether or not they wish to give this authority for taking of land and property for the University of Maine by eminent domain proceedings. I personally am satisfied that the procedures here in this bill are correct and, if it were to appear before me as a member of the Judiciary Committee, I would certainly be willing to support this bill and the provisions in it with regards to eminent domain proceedings. I urge you to support the motion of the Senator from K e n n e b e c , Senator Katz.

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

Mr. KELLAM of Cumberland: Mr. President and Members of the Senate: I would just make a couple of very brief observations. It appears to me that there would be no reason why this matter of eminent domain shouldn't be looked upon in its entirety, but the people who are in favor of this bill apparently are very strong in their desires to have this go through, regardless of other problems the State may have. It seems to me there is no particular immediate need for the bill. If there is, I wish someone would tell me what it is, because they haven't ever done so.

I wish to point out to the members of the Senate that, if you look at the second page of the bill, at the top of the page, the language

is: "The trustees of the University of Maine shall have the right to determine in each case that public exigency requires the taking of a particular property or properties or interest therein, provided that no real property can be taken from a public utility corporation without consent of the Public Utilities Commission." I paraphrased that latter phrase. Apparently there is a great concern about not injuring the public utility corporations of the State, but not so much so for others.

Now, it is quite obvious to all that the University trustees shall determine in each case that a particular property must be taken. Now, that is the crux of the bill. The rest of the bill, having to do with procedures and so forth, I believe, almost come down to perfunctory performance on the part of the Governor and Council. The determination has been made that this particular property is necessary. It just seems to me that these things should be analyzed very, very carefully, and we should not have to come to a decision within the brief period of time that Senator Violette and I have had to look at this bill.

I just don't think the decision should be made now to carry on this particular activity and to let out of the Legislature this tremendous power. If there is a need for a particular piece of property to be taken, say, today, possibly we could take care of that matter and try to draft a bill to protect everybody involved.

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

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: At the risk of trying the patience of the members of this body, Senator Kellam has made one or two statements that the record should certainly show cleared up.

He indicated in his first talk that the University has exercised eminent domain powers, and I almost had the inference that this had caused some problems. To the knowledge of anybody familiar with it, the University of Maine has not exercised eminent domain for a long time. It has never exercised eminent domain in Sena-

tor Kellam's area, in Portland. The only indication we have that it ever might have used eminent domain in the entire history of the institution is that at Farmington it might have possibly been used.

As far as Senator Kellam's concern as to the need for the legislation, may I cite a situation which may or may not be hypothetical, and I think perhaps it isn't: the University of Maine in Portland is engaged in constructing an educational plant in conformance with the directions of this body and its predecessors. It has been given many millions of dollars. By negotiation it has acquired property at reasonable prices, and by this I mean not very much above assessed valuation and not very much above, and probably right at, the going value of the properties.

Now, there are on the boards at the University plans right at this minute for the construction of buildings in the Portland area. The non - passage of this legislation would very directly and immediately result in the property owners who are affected saying to the University: "You can't take us by eminent domain, as you could in the past. Our price is now X thousands of dollars more than it was before." Now, this is taxpayers' money that we are talking about, and I think Senator Kellam might be — and I am sure he is, knowing he is a friend of the University — sensitive to the fact that the few dollars we do scrape together up here for education should be stretched just about as far as they can be. I can't think of a better way to do it than to give the University trustees the powers they need, the powers that they used to have, incidentally, and give it to them right now at this session so that they can go ahead in an orderly manner and run the University.

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

Mr. KELLAM of Cumberland: Mr. President, I am not really sure but what I may have talked too many times now — I know I have, as far as the bill is concerned — but if I do need consent, I would appreciate receiving it in order to just clear up one little matter.

I don't believe that the University does have any difficulty in the City of Portland relative to its building program. I do know that the building that they have planned — the one building, I believe, that is in the planning stage or ready to be built — will sit upon land which is now vacant. There may be a need to acquire some land around the fringes for the sake of aesthetics, parking or something, and I am sure that can be arranged. I would be perfectly willing to see something done if there is an immediate need.

All of us know that the University of Maine is not reluctant to speak out when it needs something, and Dr. MacNeil is in the corridor, so if the good Senator from Cape Elizabeth would care to talk to him, I am sure he would tell him, as he has told me, that he would be willing to have this section of the law referred to the next session of the Legislature. So, I just relay that information for the benefit of all that are concerned here. Thank you.

The PRESIDENT: The pending question before the Senate is the motion of the Senator from Kennebec, Senator Katz, that the Senate accept the Minority Ought to Pass in New Draft Report of the Committee on Bill, "An Act Clarifying Laws Relating to the University of Maine." A division has been requested. As many Senators as are in favor of accepting the Minority Ought to Pass in New Draft Report of the Committee will rise and remain standing until counted. Those opposed will rise and remain standing until counted.

A division was had. Twenty - six Senators having voted in the affirmative, and four Senators having voted in the negative, the motion prevailed.

Thereupon, the Bill, in New Draft was Read Once and tomorrow assigned for Second Reading.

The President laid before the Senate the second tabled and specially assigned matter:

JOINT ORDER — Relative to Proposed State Liquor Store in the Town of Lubec. (H. P. 1437)

Tabled—January 22, 1970 by Senator Wyman of Washington.