

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 1394

S. P. 497

In Senate, February 14, 1963

Referred to Committee on Constitutional Amendments and Legislative Re-apportionment. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

Communication Re: Third Report of Maine Constitutional Commission

PIERCE, ATWOOD, SCRIBNER, ALLEN & McKUSICK
465 Congress Street
Portland, Maine

February 13, 1963

To the Honorable House and Senate of the 101st Legislature
State House
Augusta, Maine

Members:

I have the honor to transmit to you herewith the Third Report of the Maine Constitutional Commission. The Commission created by act of the 100th Legislature was directed to report to the 101st Legislature.

Very truly yours,

Fred C. Scribner, Jr.
Chairman, Maine
Constitutional Commission

TO THE LEGISLATURE OF THE STATE OF MAINE:

THIRD REPORT OF MAINE CONSTITUTIONAL COMMISSION

In this, its third report, the Constitutional Commission unanimously recommends nine amendments to the Constitution. The majority of the proposed amendments deal with the authority and duties of the Governor of the State.

Others clarify existing constitutional provisions affecting the executive or legislative branches and propose to remove as constitutional requirements the obligation to prepare and file certain reports which no longer appear to be of major significance.

Item Veto

(Amending Section 2 of Article IV, Part Third)

In the opinion of the Commission, the most important amendment presented in this report is that which would give to the Governor the right of item veto over legislation involving appropriations.

It is the responsibility of the Governor to prepare and submit to the Legislature a budget wherein the Governor, reporting on amounts of income available from existing or proposed revenue sources, indicates the expenditures which the Governor believes must be made to carry out authorized and proposed state programs during the next biennium. Such budget submissions, while giving guidance to the Legislature, do not make funds available to the executive branch of the government.

It is the responsibility of the Legislature to appropriate all amounts to be spent by the State of Maine. Such appropriations, however, require the approval of the Governor. If appropriations made by the Legislature depart from the budgetary proposals of the Governor, he may veto such appropriations. However, if many appropriations are contained in a single bill, most of them meeting with the Governor's approval, he might find it necessary or expedient to approve such bill even though certain appropriation items are excessive or in the Governor's opinion unnecessary, and even though such items do violence to the budget proposals made by the Governor.

More than forty states have now recognized that the hand of the Governor in financial matters should be strengthened by authorizing a Governor to veto separate items contained in appropriation bills. The Legislature at all times retains the right to pass such vetoed items over the Governor's objection. The right of item veto, however, does allow careful and thorough consideration both by the Legislature and the Governor of each separate item contained in a multi-item appropriation measure.

Maine should now join the more than forty other states in which a Governor has the right of item veto and the Governor of Maine should be authorized to veto or reduce separate items contained in bills appropriating state fund. A resolve containing the necessary amendment to the Constitution to accomplish this result is submitted herewith, marked **Resolve A**.

Governor's Authority as Commander in Chief

(Amending Section 7 of Article V, Part First)

As now drawn, Section 7 of Article V, Part First of the Constitution limits the authority of the Governor as Commander in Chief of the armed forces of the State to march or convey them outside the State. This provision, based on historical concern that conflict might develop between the various states of

the United States, restricts or makes impossible active training of the air force of the State's military forces since the maneuvering of modern planes is impossible within the confines of the borders of the State of Maine. Our military leaders have pointed out to the Commission other limitations on effective use of the State's forces which result from this outmoded provision. This limiting restriction on the authority of the Governor should be removed, and **Resolve B** submitted herewith, if adopted, would make the necessary deletion.

Amending the Governor's Appointing Authority

(Amending Section 8, Article V, Part First)

In its Second Report, the Constitutional Commission recommended that Judges of Probate should be appointed and not elected. Section 8 of Article V, Part First, of the Constitution should be amended to remove the limitation contained therein on the right of the Governor to appoint such judges. In addition, since the office of Coroner and the office of Land Agent have ceased to be in use in this State, the authority of the Governor to make appointments to these positions should be deleted. It is also the opinion of the Commission that authority to appoint Notaries Public need no longer be a constitutional provision. Authority concerning the appointment, control and removal of Notaries Public should be a matter of legislation to be enacted by the Legislature. To accomplish the various changes outlined above, the Commission recommends that said Section 8 be re-drawn to read as follows:

'Section 8. Nomination and Appointment of Officers. He shall nominate, and, with the advice and consent of the Council, appoint all judicial officers ~~(except judges of probate), coroners, and notaries public;~~ and he shall also nominate, and with the advice and consent of the Council, appoint ~~all other~~ civil and military officers, whose appointment is not by this Constitution, or shall not by law otherwise be provided for, ~~except the land agent;~~ and every such nomination shall be made seven days, at least, prior to such appointment.'

The form of resolve making this change is attached hereto and marked **Resolve C**.

Warrants for Public Money and Publication of Receipts and Expenditures

(Amending Section 4, Article V, Part Fourth)

Section 4 of Article V, Part Fourth of the Constitution which deals with the office of the Treasurer of the State provides that no money shall be drawn from the State Treasury "but by warrant from the Governor and Council." In the 1800's this provision had real meaning and the Governor and Council reviewed and approved separate items of expenditures, both large and small.

When the government of the State of Maine was streamlined and reorganized under former Governor Gardiner, statutory limitations were placed on the authority of the Governor and Council to allocate, transfer or otherwise, control expenditures of State funds. Expenditures within the limitations pro-

vided by legislative action are now supervised and controlled by the State Controller and the State Budget Officer. Although the form may remain, the Governor and Council have, for all practical purposes, discontinued the issuance of warrants and the detailed supervision on an item by item basis of State expenditures. The Constitution should be amended to eliminate the requirement that the Governor and Council issue warrants for all expenditures.

Section 4 of Article V, Part Fourth of the Constitution, should also be amended to eliminate the obligation which this Section now places on the Treasurer of the State to publish at the commencement of each biennial session of the Legislature a statement and account of the receipts and expenditures of all public money. Financial reports concerning state affairs are now published by the Bureau of Budget and Control in the Department of Finance and Administration, and the Treasurer of the State of Maine should no longer be subject to a constitutional requirement to make a biennial report. The incumbent Treasurer of the State approves this recommendation of the Commission. The Legislature may at all times provide for the filing with it by the Treasurer of such reports and material as the Legislature may determine.

The form of resolve making these changes is attached hereto and marked **Resolve D**.

Removing Obligation on Governor to File Report on Pardons

(Amending Section 11, Article V, Part First)

There is now a constitutional obligation imposed on the Governor to communicate to each session of the Legislature each case of reprieve, remission of penalty, commutation or pardon granted by the Governor since the last report. Investigation by the Commission has made it clear that little attention is given to these detailed reports when the same are filed. The use made of such reports does not justify the expense involved in preparing the same.

The methods now used in acting on requests for pardons and changes in penalties and the publicity given by various news media on all pardon hearings emphasizes the fact that a constitutional requirement for reporting is no longer necessary. The Legislature can by statute require the Governor to make such reports and submit such material concerning action taken on pardon requests as the Legislature desires. However, the detailed provision now in the Constitution requiring a report by the Governor on pardon action is the type of detail which should not be contained in a constitution. It is recommended that **Resolve E** submitted herewith be approved.

Clarification of Constitutional Authority Authorizing the Issuance of Bonds

(Amending Section 18 of Article IV, Part Third and Section 14 of Article IX)

Prior to 1951 Constitutional amendments were required to authorize the issuance of bonds by the State. By 1951 scores of constitutional amendments had been adopted authorizing the issuance of bonds. In order to eliminate

confusion and unnecessary constitutional amendments, the Constitution was amended in 1951 to provide that while the issuance of bonds by the State must be authorized in the same manner as amendments to the Constitution are adopted, such authorizations need not take the form of constitutional amendments.

The Commission believes that the history of this particular amendment to the Constitution and the provisions of the amendment require that state bonds may only be issued after they have been authorized by two-thirds of both Houses of the Legislature with such action ratified by a majority of electors voting thereon at all elections. A question has arisen, however, concerning the possibility of bonds being authorized by an initiated measure. In order to eliminate any doubt as to the manner in which State of Maine bonds are to be authorized, the Commission recommends that amendments be made to Section 18 of Article IV, Part Third of the Constitution, and Section 14 of Article IX of the Constitution to re-emphasize the fact that the issuance of bonds of the State may not be authorized by initiated legislation.

The proposed amendments to accomplish this result are set forth in **Resolve F** submitted herewith.

Procedure for Determining the Election of Governor

(Amending Section 3 of Article V, Part First)

Recent developments affecting State government which found the State for some time without a President of the Senate and facing the possibility that recount requirements might prevent a Governor-Elect from taking oath on the date fixed for such act by the Constitution have caused state officials and students of Maine government to re-examine the various constitutional provisions which relate to the authority to determine the number of votes cast, the swearing into office of elected officials and the providing for the filling of vacancies in office.

The Commission believes it advisable to clarify the provisions of Section 3 of Article V, Part First of the Constitution, to remove any question concerning the authority and responsibility of the Legislature to determine the individual receiving the largest number of votes for the office of Governor, and to fill the office of Governor in the event of a tie between candidates for said office.

Section 3 as originally written by Maine's Constitutional Convention provided that if no person received a "majority" of votes for office of Governor, the office should be filled by the Senate on nomination from a restricted class by the House of Representatives. This provision of the Constitution was amended following the historic controversy which took place after the election of 1879.

The word "majority" as used in Section 3 was stricken and in each instance the word "plurality" was substituted for the word "majority". Unfortunately, the substitution of the word "plurality" for the word "majority" in the last sentence of Section 3 makes this constitutional provision as now written inappropriate. The Constitution now provides that "if no candidate has a plurality of the votes," and this could only occur if two candidates had an equal number of votes, the House of Representatives shall, by ballot, choose from the persons

having the four highest number of votes in the last election for Governor, if there are such number of persons, two persons and the Senate shall then elect one of the two as Governor. This constitutional provision thus authorizes the House of Representatives to nominate for Governor two individuals, other than the two who were tied for the office of Governor, and the Senate would be required to elect one of the two so chosen. Thus the possibility exists, although remote, that neither of the individuals having an equal number of votes for the office of Governor would be elected.

Section 3 should be rewritten to remove all question concerning the ultimate responsibility of the Legislature to pass upon and determine the number of votes cast for the various candidates for the office of Governor. Since this section must be rewritten, it should also provide the action to be taken by the Legislature in the unlikely event that two candidates for the office of Governor have an equal number of votes.

Resolve G submitted herewith would if adopted make the necessary changes in Section 3.

Oath of Office for Senators and Representatives

(Amending Section 1 of Article IX)

Senators-Elect and Representatives-Elect are now required by the Constitution to take their oath of office before the Governor and Council. Only the Governor can now swear in such officials. If for some reason an outgoing Governor should not be available to attend the Legislature to swear in its members, a serious delay could result in qualifying Senators and Representatives for service in the Legislature. The functions of government could be seriously restricted. Provision should be made so that in the absence of the Governor or of his inability to give the oath of office to Senators-Elect and Representatives-Elect, the oath may be given by the Chief Justice of the Maine Supreme Judicial Court or some other Justice of that Court.

A constitutional amendment to accomplish this result is submitted herewith, marked **Resolve H**.

Filling Vacancies in the Office of Governor

(Amending Section 14 of Article V, Part First)

There is some lack of clarity in the constitutional provision providing for filling the office of Governor if the same becomes vacant by death, resignation, removal from office, or otherwise. It is believed that the Constitution should make it entirely clear that the President of the Senate is to fill such vacancy and that the Speaker of the House should only assume the office if there is no President of the Senate when the office of the Governor becomes vacant. Upon assuming such office the Speaker of the House should proceed promptly to set the necessary machinery in motion for the selection by the Senate of a President of that body who, upon such election, would replace the Speaker of the House as the individual charged with assuming the office of Governor until a new Governor is chosen.

A resolve making the necessary clarifications in Section 14 of Part First of Article V is herewith presented as **Resolve I**.

It is the opinion of the members of the Constitutional Commission that the proposed amendments submitted in this Third Report should be submitted to the people. Their adoption would eliminate unnecessary provisions which now exist in the Constitution, and would strengthen state government in Maine.

Emery O. Beane, Jr.
 John P. Carey
 Carleton E. Edwards
 Robert A. Marden
 Edwin R. Smith
 Stanley G. Snow
 George D. Varney
 John F. Ward
 Robert M. York
 Fred C. Scribner, Jr., President

February 12, 1963

RESOLVE I

RESOLVE, Proposing an Amendment to the Constitution Clarifying Provisions Governing the Assumption by the President of the Senate, or Under Certain Circumstances by the Speaker of the House of Representatives, of the Office of Governor.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part First, Section 14, amended. Section 14 of Part First of Article V of the Constitution is amended so as to read as follows:

“Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall assume the office of governor until another governor shall be duly qualified; in the event such vacancy occurs not less than ninety (90) days immediately preceding the date of the primaries for nominating candidates to be voted for at the biennial election next succeeding, the president of the senate shall exercise the office of governor until the first Wednesday of January following such biennial election. At such biennial election a governor shall be elected to fill the unexpired term created by such vacancy, unless the vacancy shall have occurred less than ninety (90) days immediately preceding the date of, or after such primaries, in which case the then president of the senate shall fill the unexpired term.

“If at the time the office of governor becomes vacant there shall be no president of the senate, then the speaker of the house of representatives shall exercise the office until a president of the senate shall have been chosen and such speaker assuming the office of governor shall by proclamation convene the senate that a president may be chosen to assume the office of governor and upon a president of the senate being chosen, he shall assume the office of gov-

ernor until another governor shall be duly qualified. Should the offices of governor, president of the senate, and speaker of the house of representatives all become vacant in the recess of the senate, the person acting as secretary of state for the time being shall by proclamation convene the senate that a president may be chosen to assume the office of governor. If while exercising the office of governor the president of the senate shall die, resign, be removed from office or otherwise be disqualified, the speaker of the house of representatives shall assume the office of governor and proceed in the same manner as if the office of president of the senate had been vacant when the office of governor became vacant. Whenever either the president of the senate or speaker of the house of representatives shall assume said office of governor, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house shall fill the vacancy resulting from such suspension, until his duties as governor shall cease."

RESOLVE A

RESOLVE, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article IV, Part Third, Section 2, amended. Section 2 of Part Third of Article IV of the Constitution is amended by adding at the end a new paragraph, to read as follows:

"If any bill presented to the Governor contains several items of appropriation of money, he may object to or reduce one or more of such items, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it a statement of the item or items which he declines to approve or which he has reduced, together with his reasons therefor and shall send a copy of such statement to both the house of representatives and the senate, and such item or items shall not take effect unless passed over the governor's objection, as in this section provided."

RESOLVE B

RESOLVE, Proposing an Amendment to the Constitution Relating to Authority of Governor as Commander in Chief.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part First, Section 7, amended. Section 7 of Part First of Article V of the Constitution is amended to read as follows:

"Section 7. Commander in Chief of the Militia. He shall be Commander in Chief of the Army and Navy of the State, and of the militia, except when **the same** are called into the actual service of the United States; ~~but he shall not march nor convey any of the citizens out of the State without their consent,~~

or that of the Legislature, unless it shall become necessary, in order to march or transport them from one part of the State to another for the defense thereof."

RESOLVE C

RESOLVE, Proposing an Amendment to the Constitution Relating to Power of Governor to Nominate and Appoint Civil and Judicial Officers.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part First, Section 8, amended. Section 8 of Part First of Article V of the Constitution is amended to read as follows:

"**Section 8. Nomination and Appointment of Officers.** He shall nominate, and, with the advice and consent of the Council, appoint all judicial officers (~~except judges of probate, coroners, and notaries public;~~ and he shall also nominate, and with the advice and consent of the Council, appoint ~~all other~~ civil and military officers, whose appointment is not by this Constitution, or shall not by law otherwise be provided for, ~~except the land agent;~~ and every such nomination shall be made seven days, at least, prior to such appointment."

RESOLVE D

RESOLVE, Proposing an Amendment to the Constitution Eliminating Requirements Relating to Warrants for Public Money and Publication of Receipts and Expenditures.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part Fourth, Section 4, amended. Section 4 of Part Fourth of Article V of the Constitution is amended to read as follows:

"**Section 4. No Money Drawn Except Upon Appropriations.** No money shall be drawn from the treasury, but ~~by warrant from the Governor and Council,~~ and in consequence of appropriations made by law; ~~and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the biennial session of the Legislature."~~

RESOLVE E

RESOLVE, Proposing an Amendment to the Constitution Removing Therefrom the Provision Requiring the Governor at Each Session of the Legislature to Communicate to the Legislature Each Case of Pardon Action Taken by the Governor and Council.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part First, Section 11, amended. Section 11 of Part First of Article V of the Constitution is amended by striking and deleting therefrom the last sentence of such section, said sentence to be deleted is as follows:

“And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted.”

RESOLVE F

RESOLVE, Proposing an Amendment to the Constitution Clarifying Manner in Which the Issuance of Bonds on Behalf of the State of Maine may be Authorized.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendments to the Constitution of this State be proposed:

Constitution, Article IV, Part Third, Section 18, amended. Section 18 of Part Third of Article IV of the Constitution is amended by substituting in place and instead of the first sentence thereof the following:

“The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment to the State Constitution and not a bill, resolve or resolution which would authorize the issuance of bonds on behalf of the State, by written petition addressed to the Legislature or to either branch thereof and file in the office of the Secretary of State or present to either branch of the Legislature within forty-five (45) days after the date of convening of the Legislature in a regular session.”

Constitution, Article IX, Section 14, amended. Section 14 of Article IX of the Constitution is amended by adding a new sentence thereto after the first sentence in said Section 14, the new sentence to read as follows:

“Legislation to authorize the issuance of bonds on behalf of the State shall not be initiated.”

RESOLVE G

RESOLVE, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article V, Part First, Section 3, repealed and replaced. Section 3 of Part First of Article V of the Constitution, as amended, is repealed and the following enacted in place thereof:

“Section 3. Election; Votes to be Returned to Secretary of State; Provision

in Case of a Tie. The meetings for election of Governor shall be notified, held and regulated and votes shall be received, sorted, counted and declared and recorded, in the same manner as those for Senators and Representatives. Attested copies of lists of votes shall be sealed and returned to the Secretary of State in the same manner and at the same time as those for Senators. The Secretary of State for the time being shall, on the first Wednesday of January then next, lay such lists before the Senate and House of Representatives to be by them examined, together with the ballots cast if they so elect, and they shall determine the number of votes duly cast for the office of Governor, and in case of a choice by plurality of all of the votes returned they shall declare and publish the same. If there shall be a tie between the two persons having the largest number of votes for Governor, the House of Representatives and the Senate meeting in joint session, and each member of said bodies having a single vote, shall elect one of said two persons and the person so elected by the Senate and House of Representatives shall be declared the Governor.”

RESOLVE H

RESOLVE, Proposing an Amendment to the Constitution to Provide for Taking Oaths of Senators and Representatives in Absence of Governor and Council.

Constitutional Amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed :

Constitution, Article IX, Section 1, amended. The last paragraph of Section 1 of Article IX of the Constitution is amended to read as follows :

“The oaths or affirmations shall be taken and subscribed by the Governor and Counsellors before the presiding officer of the Senate, in the presence of both houses of the Legislature, and by the Senators and Representatives before the Governor and Council, and by the residue of said officers before such persons as shall be prescribed by the Legislature; and whenever the Governor or any Counsellor shall not be able to attend during the session of the Legislature to take and subscribe said oaths or affirmations, such oaths or affirmations may be taken and subscribed in the recess of the Legislature before any Justice of the Supreme Judicial Court **and provided further that, if the Governor shall be unable to appear and administer the oath to the Senators and Representatives, such oaths shall be administered by the Chief Justice of the Supreme Judicial Court or in his absence, by the Senior Associate Justice of said Supreme Judicial Court present at the State Capitol on the first day of the term for which said Senators and Representatives shall have been elected.**”