

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Fifth
Legislature***

OF THE

STATE OF MAINE

Volume III

June 16, 1971 to June 24, 1971

Index

1st Special Session

January 24, 1972 to March 10, 1972

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**KENNEBEC JOURNAL
AUGUSTA, MAINE**

HOUSE

Friday, February 11, 1972

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Mr. Paul Plante of Auburn.

The journal of yesterday was read and approved.

**Papers from the Senate
Reports of Committees
Leave to Withdraw**

Covered by Other Legislation

Report of the Committee on Appropriations and Financial Affairs on Bill "An Act Providing Funds to Increase Payments to Boarding Homes" (S. P. 711) (L. D. 1985) reporting Leave to Withdraw, as covered by other legislation.

Came from the Senate read and accepted.

In the House, the Report was read and accepted in concurrence.

**Referred to Next Legislature
Bill Substituted for Report
Tabled and Assigned**

Report of the Committee on Appropriations and Financial Affairs on Bill "An Act to Create a Crime Laboratory" (S. P. 688) (L. D. 1869) reporting that it be referred to the 106th Legislature.

Came from the Senate with the Bill substituted for the Report and passed to be engrossed as amended by Senate Amendment "A".

In the House, the Report was read.

(On motion of Mr. Bragdon of Perham, tabled pending acceptance of the Report and specially assigned for Monday, February 14.)

**Ought to Pass in New Draft
Tabled and Assigned**

Report of the Committee on State Government on Resolution Proposing an Amendment to the Constitution Pledging Credit of the State for Guaranteed Loans to Resident Maine Veterans of the Armed Forces of the United States of America (S. P. 717) (L. D. 1990) reporting same in a new draft (S. P. 755) (L. D. 2027) under title of "Resolution Proposing a n Amendment to the Constitution

Pledging Credit of the State for Guaranteed Loans to Resident Maine Veterans of the Armed Forces of the United States of America or the Peace Corps" and that it "Ought to pass"

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

In the House, the Report was read.

(On motion of Mr. Lewin of Augusta, tabled pending acceptance in concurrence and specially assigned for Monday, February 14.)

Ought to Pass

Report of the Committee on Appropriations and Financial Affairs reporting "Ought to pass" on Bill "An Act Providing Funds for Maine Historical Society" (S. P. 710) (L. D. 1984)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed.

In the House, the Report was read and accepted in concurrence, the Bill read twice and assigned the next legislative day.

**Non-Concurrent Matter
Tabled and Assigned**

An Act relating to the Regulation of Private Detectives (S. P. 702) (L. D. 1883) which was passed to be enacted in the House on February 3 and passed to be engrossed as amended by Committee Amendment "A" on February 1.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" and Senate Amendment "A" in non-concurrence.

In the House: On motion of Mr. Porter of Lincoln, tabled pending further consideration and specially assigned for Monday, February 14.

Orders

On motion of Mr. Cooney of Webster, it was

ORDERED, that Rev. Peter Voorthuyzen of Sabattus be invited to officiate as Chaplain of the House on Friday, February 18, 1972.

On motion of Mrs. Doyle of Bangor, it was

ORDERED, that Rev. Irving Stevens and Rev. D. J. Stevens of Bangor be invited to officiate as Chaplains of the House on Wednesday, February 16, 1972.

On motion of Mr. Whitzell of Gardiner, it was

ORDERED, that Rev. Shane Estes of Winthrop be invited to officiate as Chaplain of the House on Thursday, February 17, 1972.

**House Reports of Committees
Ought to Pass in New Draft
New Draft Printed**

Mr. Jalbert from the Committee on Appropriations and Financial Affairs on Bill "An Act to Distribute Funds under the State-Municipal Revenue Sharing Act on a Monthly Basis" (H. P. 1453) (L. D. 1896) reported same in a new draft (H. P. 1571) (L. D. 2028) under same title and that it "Ought to pass"

Report was read and accepted, the New Draft read twice and assigned the next legislative day.

**Ought to Pass with
Committee Amendment**

Mr. Carey from the Committee on Appropriations and Financial Affairs on Bill "An Act Providing Police Communications Operators for State Police" (H. P. 1451) (L. D. 1894) reported "Ought to pass" as amended by Committee Amendment "A" (H-534) submitted therewith.

Mr. Simpson from the Committee on Labor on Bill "An Act to Provide for Administrative Enforcement of the Municipal Public Employees Labor Relations Law" (H. P. 1548) (L. D. 2007) reported "Ought to pass" as amended by Committee Amendment "A" (H-535) submitted therewith.

Mrs. Lincoln from the Committee on Veterans and Retirement on Bill "An Act to Clarify the Laws on Veterans Reemployment Rights in Public Service" (H. P. 1517) (L. D. 1959) reported "Ought to pass" as amended by Committee Amendment "A" (H-536) submitted therewith.

Reports were read and accepted and the Bills read twice. Committee Amendment "A" to each was

read by the Clerk and adopted, and the Bills assigned for third reading the next legislative day.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to pass" on Bill "An Act relating to Kindling Out-of-door Fires" (H. P. 1480) (L. D. 1923)

Report was signed by the following members:

Messrs. HARDING of Aroostook
TANOUS of Penobscot
— of the Senate.

Messrs. HEWES of Cape Elizabeth
HENLEY of Norway
LUND of Augusta
ORESTIS of Lewiston

Mrs. WHEELER of Portland

Messrs. KELLEY of Caribou
CARRIER of Westbrook
— of the House.

Minority Report of same Committee reporting "Ought not to pass" on same Bill.

Report was signed by the following members:

Mr. QUINN of Penobscot
— of the Senate.

Mrs. BAKER of Orrington

Mrs. WHITE of Guilford

Mr. PAGE of Fryeburg
— of the House.

Reports were read.

On motion of Mr. Hewes of Cape Elizabeth, the Majority "Ought to pass" Report was accepted, the Bill read twice and assigned the next legislative day.

**Passed to Be Engrossed
Amended Bill**

Bill "An Act Implementing the Reorganization of Department of Military, Civil Defense and Veterans' Services" (H. P. 1542) (L. D. 2014)

Was reported by the Committee on Bills in the Third Reading, read the third time, passed to be engrossed as amended by Committee Amendment "A" and sent to the Senate.

Orders of the Day

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

Bill "An Act Providing for a Change in Standard Deductions in Income Tax Law" (H. P. 1547) (L. D. 2003) — In House, Indefinitely

postponed — In Senate, passed to be engrossed in non-concurrence.

Tabled — February 10, by Mr. Finemore of Bridgewater.

Pending — Motion of Mr. Morrell of Brunswick to insist and ask for a Committee of Conference.

The SPEAKER: The Chair recognizes the gentleman from Caribou, Mr. Collins.

Mr. COLLINS: Mr. Speaker, I notice that the sponsor of this bill, Mr. Morrell, is not here today and I would hope that someone would table this for one legislative day.

Whereupon, on motion of Mr. Ross of Bath, retabled pending the motion of Mr. Morrell of Brunswick to insist and ask for a Committee of Conference and specially assigned for Monday, February 14.

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

An Act Providing Funds to Carry out Duties of the Criminal Division of the Department of the Attorney General (S. P. 690) (L. D. 1871)

Tabled — February 10, by Mr. Martin of Eagle Lake.

Pending — Passage to be enacted.

On motion of Mr. Martin of Eagle Lake, retabled pending passage to be enacted and specially assigned for Monday, February 14.

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

HOUSE REPORT — Ought to in New Draft — Committee on Labor on Bill "An Act to Promote Vocational Education" (H. P. 1483) (L. D. 1926) — New Draft (H. P. 1570) (L. D. 2026)

Tabled — February 10, by Mr. Good of Westfield.

Pending — Acceptance.

The SPEAKER: The Chair recognizes the gentleman from Westfield, Mr. Good.

Mr. GOOD: Mr. Speaker and Members of the House: After reading this draft over and conferring with all concerned, I find that the bill does absolutely nothing. For that reason, I move that this bill and all its accompanying papers be indefinitely postponed.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mr. McTeague.

Mr. McTEAGUE: Mr. Speaker and Members of the House: It is with real hesitancy that I disagree to any extent with our House Chairman, Mr. Good. I would agree that the bill has been changed since it was submitted and what the bill provides is basically this.

There are programs of cooperative education and on the job training for certain high school students. Sometimes these children are in a position where they really need a chance to get a job, to get some practical work experience. As the law stands now, if an employer takes on one of these students, and subsequently the student leaves him for any reason, the student may file a claim for unemployment compensation and the employer, as I understand it, receives a charge against his account like he would in the case of a normal worker that he had laid off. This is the result, at least in the opinion of some people, that there is being a discouragement rather than an encouragement among employers to give these students a chance in a work study program.

So the objective behind the bill is to encourage employers to go along with the work study program by giving them protection from a charge against their unemployment compensation account.

During our discussion in committee, the gentleman from Gardiner, Mr. Whitzell, pointed out that he had had some practical experience with this program and perhaps he will be able to inform the House more about the particulars than I am able to.

The SPEAKER: The Chair recognizes the gentleman from Gardiner, Mr. Whitzell.

Mr. WHITZELL: Mr. Speaker, Ladies and Gentlemen of the House: I didn't know we were going to speak on this today, but I don't believe it should be tabled, I don't believe it should be indefinitely postponed. I acted as coordinator at one time, trying to locate jobs for these kids.

These are children who are not academically oriented students,

they are usually of a disadvantaged background and, for the most part, will possibly fall into habits of unemployment. What we have tried to do on a school level is provide an education that is meaningful to them by providing a work study program. That is, half of the day is spent in classrooms, the other half a day is spent out on the job. Their job training is supervised by a member of the teaching staff in which case, at one time, I did this job.

Locating jobs for these youngsters is very difficult when you are faced with employers who are going to experience a claim against their unemployment compensation. So what we are trying to do here in this act is to make it easier and more appealing for the employer, since he will no longer be faced with an adverse premium on his unemployment compensation bill. I move that we do not concur with Mr. Good and that we accept this report.

The SPEAKER: The Chair recognizes the gentleman from Albion, Mr. Lee.

Mr. LEE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to take this opportunity to say that I don't too often agree with the gentleman from Brunswick, Mr. McTeague, in our committee meetings, but I do agree in this. I think it should have gone further.

It just happens that in the last year, in fact in the last few months, the compensation rate paid by the employer has changed from 2.7 to 4.5, and this is quite a bill. The idea behind this was to encourage employers under a program. Now while this student is in school, he cannot be eligible for unemployment. So we are just paying money. Say I was in a situation where I could join with this, I don't have to be but it might happen that way, but this student while he is in school he can't get unemployment anyway, so the employers are in fact paying for nothing.

I would think that this ought to go a little further even to the point of students working in the summer because when they go back to school they are not eligible for

unemployment insurance. I think we should pass this.

The SPEAKER: The Chair recognizes the gentleman from Livermore Falls, Mr. Lynch.

Mr. LYNCH: Mr. Speaker, Ladies and Gentlemen of the House: We have had a work study program in SAD 36 for a few years now, and it has worked to the advantage of many youngsters who would, if they were kept in school the entire day, achieve very little; and I would strongly support anything that would encourage work study programs in this State.

The SPEAKER: The pending question is on the motion of the gentleman from Westfield, Mr. Good, that this Bill and Report be indefinitely postponed. The Chair will order a vote. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

10 having voted in the affirmative and 109 having voted in the negative, the motion did not prevail.

Thereupon the Report was accepted, the New Draft read twice and assigned for third reading the next legislative day.

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

Bill "An Act Authorizing the Supreme Judicial Court to Provide for Juries of Fewer than 12" (H. P. 1478) (L. D. 1921) — Committee Amendment "A" H-522) adopted. (Passage to be engrossed reconsidered.)

Tabled — February 10, by Mr. McTeague of Brunswick.

Pending — Passage to be engrossed.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mr. McTeague.

Mr. McTEAGUE: Mr. Speaker, a parliamentary inquiry, please.

The SPEAKER: The gentleman may pose his inquiry.

Mr. McTEAGUE: Mr. Speaker, is Committee Amendment "A" now on the bill?

The SPEAKER: It was adopted February 4.

Mr. McTEAGUE: So it is on the bill, sir?

The SPEAKER: It is on the bill.

Mr. McTEAGUE. And is the bill in the proper posture to offer another amendment to it, sir?

The SPEAKER: The Chair would answer in the affirmative.

Mr. McTEAGUE: Mr. Speaker, I offer House Amendment "A" under filing number H-533 and move its adoption, and would ask to speak briefly to it.

House Amendment "A" (H-533) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Members of the House: I don't really oppose the amendment. What it does is changes the minimum number of jurors in trials of civil matters from six jurors up to eight jurors, and I had felt that six jurors would result in a greater saving to the counties than would 12 jurors and I still feel six would result in a greater saving than eight jurors, but I don't oppose the proposed amendment.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mr. McTeague.

Mr. McTEAGUE: Mr. Speaker and Members of the House: I think as the gentleman from Cape Elizabeth, Mr. Hewes, has said, we are all working on the same track here. The basic idea of this bill which was presented by the gentleman from Lewiston, Mr. Jalbert, is to provide for a lessening of the number of jurors, both in civil cases and in misdemeanor cases. I think there is general agreement that this is a good thing to do.

What the bill does in its present posture with Committee Amendment "A" on it is to provide for juries of six in misdemeanor cases. I assume the Judiciary Committee did this because there was doubt as to whether they could reduce the twelve in felony cases because of constitutional provisions. They might say why should we go with eight rather than six in regard to civil cases, and the answer is this.

We now have civil verdicts by a majority of nine out of twelve. In other words, 75 per cent or $\frac{3}{4}$ is what it takes for a verdict. The problem with the number six is

that it is not evenly divisible by $\frac{3}{4}$. Now $\frac{3}{4}$ of 6 is $4\frac{1}{2}$ and you could hardly have a verdict by $4\frac{1}{2}$ jurors. So the reason that we suggest the number eight in this House Amendment "A" which is before us now is because eight is divisible by $\frac{3}{4}$, the result being six; and I see a nod that the mathematics is right from a member of the teaching profession.

We could have gone with four out of six but that would be decreasing the percentage required for a verdict to 66 2-3. If we went with five out of six, it would be increasing it, and here my mathematics fails me, but I think to about 85 or 86 per cent. By going with 6 out of 8, we keep the current 75 per cent arrangement and as the gentleman from Cape Elizabeth, Mr. Hewes, has said, we are all on the same track, we are trying to economize and save some money.

This is particularly important now, because if my memory is right, in the regular session, we did increase the pay, the daily pay for jurors, and the passage of this bill will help to keep the overall expense in the counties along the lines that have been in the past. Mr. Speaker, I would hope that we would vote to accept House Amendment "A".

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

Mr. JALBERT: Mr. Speaker and Members of the House: I would not rise on this bill, even though it is my bill until a time that I just heard somebody make a stupid remark to me that I was looking for a packed jury. The truth of the matter is that I have never even read this bill.

It was handed to me by one of the most eminent jurists in the State, as a matter of fact, the top jurist in the state; and he says six, and I kind of go along with that.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker and Members of the House: I am opposed to the amendment and I am also opposed to the bill in principle. I am opposed because

you are presented here with a bill to take away the rights of the people to a full jury. You are, in fact, reducing for conviction, the jury itself from twelve to eight, and actually twelve to six, you are actually cutting it in half to have a conviction.

I think that this bill or one similar to it was presented in the regular session and it was defeated. I don't see any reason why it was presented in this session where there is no emergency clause. Apparently this is supposed to be a special session, but when some bill is defeated for some reason or other somebody had the bright idea to bring it back in special session and put it under just a majority vote. I would simply vote against the bill for that principle.

But the thing is, that I think we are, if you pass this bill at all, that you are thereby taking the rights of the people to a fair jury. Now, let me cite to you an incident which has happened in Portland very recently where one of the people that comes from my section was in there and his daughter had been subject to a simple assault.

Now let me tell you when you talk about justice that we did not have justice, because at the hearing she was represented by the County Attorney's office. But come to the actual day of trial, there was nobody there to represent this person. Now whether it is simple assault or whether it is any other kind of misdemeanor, to these people it is just as serious to get convicted for one as it is for criminal assault. Now the conviction on a twelve jury verdict as we have now stands to nine.

Well, I think that there is great safety in numbers, I think that as it stands, to my knowledge, if anybody doesn't want a trial he has the right to waive his right to jury and I think that this bill actually does nothing but to actually hinder and to subject people to I don't think a fair trial.

So therefore, I move for the indefinite postponement of this amendment "A".

The SPEAKER: The Chair

recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: I have just received a note that the gentleman who handed me the bill is in favor of eight, so that I would retract and go with the amendment.

I would, however, state insofar as the last remarks as made by my good friend from Westbrook, the Representative from Westbrook, Mr. Carrier, the original thinking of six was appealing to me; and I didn't have any bright ideas of putting this bill in, I didn't have any bright ideas at all. I just came here and signed my name to a bill from somebody who asked me to put the bill in. Whether it was put in at the 105th regular, the 104th, the 103rd is of no consequence to me.

The law says that we have special sessions. The Governor puts the bills in that he wants at a special session. We have a steering committee. The law says that the steering committee entertains the bills that they want introduced and shuts off those that they don't want. I had some that I wanted very badly; they were not put in. I had some that I wanted very badly; they were introduced. That is the end of the ball game as far as I am concerned and it doesn't make any difference whether it is at a regular session or a special session. There is no laws being broken, there is no law that says you cannot do these things.

Now if we are going to start taking all the bills that were presented here at the special session and we are going to start culling them out, you just present the bills that were put in at the regular session and cull those out, that appear here now, we could probably stay here until this afternoon and go home sine die.

Now as far as this bill is concerned, the cutting down to six appealed to me because only this last instance of the jury, the Superior Court convening in my county, there were 68 jurors called. They all got a day's pay, which is fair enough, and they all got their mileage, which is much more

than we get. But on that day, apparently, there was a mix-up between the two attorneys and so that they were all sent back home and told to come back the next day. The next day, 23 out of them were chosen, but the two lawyers got together and they settled the thing with the judge, and so they went home and they all got paid. And the same thing happened the next day, it happened on three consecutive days. And you start tallying up every one of them getting mileage and their time, it comes up to a great deal of money; and I see not hardly too much difference between a jury trial of eight or twelve other than the fact that it does save some money, and I think justice prevails in either case.

The SPEAKER: The pending question is on the motion of the gentleman from Westbrook, Mr. Carrier, that House Amendment "A" be indefinitely postponed. The Chair will order a vote. All in favor of indefinite postponement of House Amendment "A" will vote yes; those opposed will vote no.

A vote of the House as taken.

14 having voted in the affirmative and 107 having voted in the negative, the motion did not prevail.

Thereupon, House Amendment "A" was adopted.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Like my good friend from Westbrook, Mr. Carrier, I think we are just starting to nick away at the courts. This is just an attempt now, we will start in with misdemeanors and they are going to continue to go on until they get perhaps to criminal cases where they will try to reduce it to eight or six, whatever the case may be.

I am not in favor of this bill or the amendment and I wasn't going to bother to speak on it because I wanted to make a motion here on the floor to indefinitely postpone the bill and all its papers. This is just a liberal approach, an attempt to go at the courts, and you can rest assured that, if we

pass it in here this morning in the next session someone will come in and they will start whacking away again.

So I move for indefinite postponement of this bill and all its papers.

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

Mr. JALBERT: I hate to take issue with my very very dear friend from Bangor, Mr. Kelleher. I hope he is right on his thinking of the next session.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker and Members of the House: Just a few remarks here, it seems that this bill is referred to as an economy measure. Well, maybe it is so, but I don't think it should be done at the expense of the people that happen to make a mistake and go to court. I just wish to say to you that maybe you will save a few bucks on juries, but we have turned around in every session here and given raises to the judges, and I voted to give raises to the judges as long as they performed their work. But this is not going to be a saving and, even if it was, I think that the people of this state want to notice that some people here want to cut off their rights in order to make it faster or to get rid of the cases faster. I don't think that this is the approach whatsoever.

And talking about what Mr. Kelleher mentioned that later on it would be in criminal cases — it would come back in criminal cases, if you read your original bill, 1921, and you read the last section on the bill itself at the bottom, and it says right there and it has been changed by the committee, that even this bill suggests that "by rule provide for the trial of criminal action by juries of fewer than 12 jurors to the extent permitted by the Constitution."

So you don't have to wait until the next session, it is right in here. And I disagree totally and I am very surprised and they come here and they tell us that this is going to cost less but they don't tell you

that it will cost less at the expense of the poor person that has made a mistake and is in court. I will support the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker and Members of the House: I will be brief. The Federal Court system has provided for six-man jury trials, and Judge Gignoux, speaking at the Maine Bar Association convention in Waterville a month or so ago, said that it was estimated that it would save for the whole country, in federal cases, \$4 million.

As the gentleman from Lewiston has indicated, each term there are many supernumerary jurors brought in; he said 60-odd in one particular month. But there are usually twice as many jurors anyway as are needed. In other words, for a 12-man jury, there would be perhaps 24 or more called; they all get a day's pay. The intent behind this bill is that there will be a saving and I think it will be a substantial saving to the counties, of into the thousands of dollars each year.

The SPEAKER: The pending question is on the motion of the gentleman from Bangor, Mr. Kelleher, that Bill "An Act Authorizing the Supreme Judicial Court to Provide for Juries of Fewer than 12," House Paper 1478, L. D. 1921, be indefinitely postponed as amended. The Chair will order a vote. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

33 having voted in the affirmative and 93 having voted in the negative, the motion did not prevail.

Thereupon, the Bill was passed to be engrossed as amended by Committee Amendment "A" and House Amendment "A" and sent to the Senate.

By unanimous consent, all matters acted upon today in concurrence and all matters requiring Senate concurrence were ordered sent forthwith to the Senate.

On motion of Mr. Porter of Lincoln,

Adjourned until Monday, February 14, at three o'clock in the afternoon.