## MAINE STATE LEGISLATURE

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### LEGISLATIVE RECORD

OF THE

## 1st Special Session

OF THE

# One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

1974

Kennebec Journal Augusta, Maine

#### SENATE

Thursday, January 3, 1974 Senate called to order by the President

Prayer by the Rev. Bruce W. Meyer of Augusta.

Reading of the Journal of yesterday.

#### Papers from the House House Papers

Bill, "An Act to Provide Financial Assistance to Nonprofit Nursing Homes." (H. P. 1766) (L. D. 2234)

Comes from the House referred to the Committee on State Government and Ordered Printed.

Which was referred to the Committee on State Government and Ordered Printed in concurrence.

Senate Papers

Appropriations and Financial Affairs

Mr. Sewall of Penobscot presented, Bill, "An Act Making Current Service Appropriations from the General Fund for the Fiscal Year Ending June 30, 1975" (S. P. 800)

The same Senator presented, Bill, "An Act Making Supplemental Appropriations from the General Fund and Allocating Money from the Federal Revenue Sharing Fund for the Fiscal Year Ending June 30, 1975." (S. P. 807)

Which were referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

Judiciary

Mr. Brennan of Cumberland presented, Bill, "An Act to Provide Investigators for the Several District Attorneys." (S. P. 809)

Which was referred to the Committee on Judiciary and Ordered Printed.

Sent down for concurrence.

#### Labor

Mr. Tanous of Penobscot presented, Bill, "An Act Relating to Applicability of Workmen's Compensation Law to Employers." (S. P. 802)

Which was referred to the Committee on Labor and Ordered Printed.

Sent down for concurrence.

#### Legal Affairs

Mr. Joly of Kennebec presented, Bill, "An Act Relating to Use of Name of the State by Nonprofit Corporations." (S. P. 803)

Which was referred to the Committee on Legal Affairs and Ordered Printed.

Sent down for concurrence.

#### State Government

Mr. Minkowsky of Androscoggin presented. Bill, "An Act Relating to the Maine Development Act." (S. P. 804)

Which was referred to the Committee on State Government and Ordered Printed

Sent down for concurrence.

#### **Transportation**

Mr. Conley of Cumberland presented, Bill, "An Act Relating to the Powers of Maine Port Authority." (S. P. 801)

Which was referred to the Committee on Transporation and ordered Printed.

Sent down for concurrence.

There being no objection, all matters previously acted upon in today's session requiring concurrence were sent down forthwith for concurrence.

#### Orders

On motion by Mr. Richardson of Cumberland.

Ordered, the House concurring, that the Joint Standing Committee on Appropriations and Financial Affairs of the 106th Legislature report out a bill to change the time established for referendum ratification pursuant to chapter 118 of the private and special laws of 1973 from the next general election to the next special election to be held on June 11, 1974. (S. P. 806)

Which was read.

The PRESIDENT: The Chair recognizes the same Senator.

Mr. RICHARDSON: Mr. President and Members of the Senate: During the general session the legislature adopted a \$4 million wildlife habitat acquisition bond issue proposal to be administered under the direction of the Department of Inland Fisheries and Game. As the result of a drafting error in the Department, the date for the referendum is November, 1974. The purpose of my or-

der would be to ask the Appropriations Committee to report out a bill which would change the date of the referendum from November of 1974 to June of 1974.

This is a request of the Department. This \$4 million wildlife habitat bond issue proposal had virtually unanimous support in the legislature, and I would hope that we wouldn't lose the purchasing power, by the steady rise in the cost of real estate, of some portion of this \$4 million. Therefore, I would ask that you support this, and it will simply change the date of the referendum from November of '74 to June.

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

Mr. BERRY: Mr. President, I have been inquiring around amongst the members of the body here, but I didn't have a chance to speak to the good Senator from Cumberland, Senator Richardson, as to the nature of this item.

I suppose we might as well face the problem — well, not problem, but the possibility that there are many flowers growing in the garden in this body, and of course, I refer to the almost innumerable numbers of us who have aspirations for higher office.

With that observation, I will make this observation: I think that the date for any referendum should be set on that date that it will receive the maximum exposure to people in the State of Maine. And to my way of thinking, and I think this was the thinking of the legislature when the bill was passed, a lot more people are going to vote in the elections next November than are going to vote in the primary next June. So reluctantly I must oppose this, and I would move for its indefinite postponement.

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves that Item 4-1, Senate Paper 806, be indefinitely postponed.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Thereupon, on motion by Mr. Brennan of Cumberland, tabled and tomorrow assigned, pending the motion by Mr. Berry of Cumberland that the Order be Indefinitely Postponed.

On motion by Mr. Richardson of Cumberland.

ORDERED, the House concurring, that the Joint Rules be amended by adding a new Joint Rule 2A, to read as follows:

2A. Formal committee action. All formal committee or subcommittee action shall be taken in sessions open to the public, "Formal action" shall be construed to mean any vote or motion of a member of a legislative committee to report or not to report, amend, or table a bill or resolution and the discussion and debate thereof. (S. P. 810)

Which was Read.

The PRESIDENT: The Senator has the floor.

Mr. RICHARDSON: Mr. President and Members of the Senate: Undeterred by the remarks of my good friend, the Senator from Cumberland, Senator Berry, I would like to call to your attention the basic proposals of this rule change which have just been extensively discussed in Republican caucus — and I can tell the friends of this order that we have stormy seas ahead.

This order is, in effect, an amendment to the order which I presented yesterday, which is No. 1 on our special assigned table. The form of this amendment was suggested to me in a discussion with the Senator from Androscoggin, Senator Clifford.

Basically, this order provides that when a committee of the legislature is going to take formal action, and has before it a motion of a member to report or not to report, to table, or to amend legislation which it is considering, that hat action and the debate and discussion leading up to a decision on that motion shall be open to the public.

I see no reason to fear doing the business of our committees in public just as we do now when we all sign committee jackets. I don't find any basis for fear or concern about requiring that those meetings be held in public. I am not talking about any amendment to the rules that would require us to give notice of the executive session. There is nothing in the rules that would require people from the press or the general public who attend the session to be permitted to speak or to engage in any debate. It simply requires that the proceedings leading up to a decision on the motion be taken in an open

session, that the public's business in fact be done in public.

The order is not as extensive as is the legislation sponsored by Senator Brennan. The purpose of this order, as it is now set out, would require that formal committee action be open. If a meeting were to be held at which no formal action was contemplated, then it would not be necessary to have it open. In short, I think the opponents of the order see a good deal here that just isn't here. I don't think that there is any reason why you can't have discussions leading up to a motion on a bill, formal action, be taken in public. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: Back in November we sponsored legislation to throw open government at all levels; not only at the legislative level, but also for administrative agencies, cities and towns. I am very pleased that the good Senator from Cumberland, Senator Richardson, has joined with me to try to open up government. After all, it is the people's business, and that is all we are asking. I think these deliberations should be taken in public.

The one concern I have with this order though is that I am not sure it reaches the granddaddy of all executive sessions, the one which is held the last day of the session when the so-called pie is split up. I kind of think it reaches that, and I hope the legislative intent will so reflect, because those major decisions that are made at that time as to whether or not programs should be funded, I think they should be made under the public eye, with the press, other legislators and the public present. I am not condemning what people have done in the past, but I think the time has come to clearly throw open government at all levels.

I don't think this order goes far enough, but it is a step in the right direction and I wholeheartedly support it. I would ask for a roll call if there is a division on this.

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

Mr. BERRY: Mr. President and Members of the Senate: There are at stake here and there are vital issues involved here hat transcend the simplistic approach. Everybody in this room has subscribed, to my knowledge, through the years to total openness in the conduct of state government. And I know that you are all aware that one of the tenets of my leadership has been open caucuses and open meetings of all kinds, and this has been the basis of my personal operation ever since I have been in the legislature for thirteen years. As I say, I know you share my feelings on this subject. Why then does this order present cause for concern?

We, as members of the legislative branch, are part of the three-cornered support for state government. To this extent we are cloaked perhaps a little bit with the pillar on our right, the judicial system, and the pillar on our left, the executive department. The calm deliberations free from influence, either external or internal, is a very important part of our ability to properly handle our responsibilities. If we, as the elected representatives of the people, at a certain stage in our deliberations feel that we should conduct our own affairs under those circumstances in a particular way which will permit us to arrive at the right decision for the people of the State of Maine, we not only have the right to make that determination, we have the obligation to make that determination, the determination of how we shall arrive at these decisions.

Now, I would hold up to you that the pillar on our right, the judicial system, is not privy during the deliberations of the State Supreme Court to the sort of internal and external influences inherent in this proposed change of the joint rules. I would say that this is, of course, an extreme example, but I point out that it is very apropos to the question before us, and that is the retention of our own right to make our own determination under the circumstances that we face at the time.

Now, all of us, I repeat again, are committed to public knowledge of what we do, and I know of no instance when this has been hidden. I think this freedom from external and internal pressures on members of the legislature at the time of

decision-making is something that we, as members of the legislature, are very capable of making. For these reasons, I think this is a particular specific order that should not pass.

With these thoughts in mind, I very much welcome the roll call suggested by Senator Brennan of Cumberland. I think these are the points that we should keep in mind: let us retain our right of freedom of action, let us determine as a group of peers what we shall do. And at the time everybody, including the people of the State of Maine, are going to have confidence that we can make the right decision.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I wish that we perhaps would have had a little more opportunity to deliberate over such a very serious piece of legislation that is before us, where we are contemplating changing a vast part of the process of the legislature, and there are many ramifications involved. I can think of many, many reasons why we should adopt this order, but equally I can think of many, many reasons why we shouldn't.

First of all, let me point out, having been here for three terms and having deliberated on well over 1000 bills in the various committees that I have been chairman of, that I would like to defend the members of the legislature in saying that never once have I seen any activity in executive session that would lead one to believe that there is surreptitious activity going on. This I deny, and I would like anyone here to stand up and challenge this denial that there is activity going on in executive sessions that should not be going on. Now, we are all elected by our constituents, and they have confidence and faith in us, and I am sure that we would not get re-elected if they felt that shenanigans were going on behind closed doors. But this is only one reason perhaps why it shouldn't pass.

I can name other reasons that have been presented by Senator Richardson of Cumberland and Senator Brennan of Cumberland as to why this order should be passed but, again, as I say, there are many, many arguments pro and con. I can think, for instance, of an order that you might want in the sense of a jury, for instance. I mean, are you going to open the doors for juries to make their deliberations, your grand juries and your traverse juries? Should these be open to the public to be able to sit there and watch the jury discuss the guilt or innocence of an individual? These are executive sessions. It is a different arm of the government, but they still are executive sessions, in a sense.

There are many, many reasons perhaps why it shouldn't be adopted and why it should. For this reason, I feel myself, personally, that I would prefer to wait for the bill that is floating around the legislature that is going to have a public hearing. I would like to see the reaction of the public at the public hearing to determine whether we in fact should open our executive sessions. We do have the bill that is going to determine this particular issue, which will have a public hearing, and I frankly would like to listen to the public as to how they feel on whether we should have closed or open executive sessions. For this reason. I am going to oppose the order.

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

Mr. BRENNAN: Mr. President and Members of the Senate: Very briefly, we have all seen what secrecy in government can do. And to direct my attention to the good Senator from Penobscot, Senator Tanous, we are talking about legislative executive sessions right now.

Who among us that hasn't served here some years hasn't always wondered what takes place on the last day when the pie is cut up and someone's bill goes down the drain, and it is all done in secrecy? I think that is bad, this is a chance to correct it, and I hope you all support it.

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

Mr. CONLEY: Mr. President and Members of the Senate: In reading the order as presented by the good Senator from Cumberland, Senator Richardson, I honestly don't see where it is going to change any decision that is made by the Senate, particularly when the good Şenator from Cumberland, Senator

Brennan, makes reference to cutting up the pie.

I don't know how many leaders or alleged leaders participate in the so-called cutting up the pie, but I do think that every member of this body here, when it does come to the final day of what is going to pass and what isn't going to pass, certainly has the right to stand up and oppose or go along with what leadership is recommending.

To me, the whole thing seems to be sort of a cloudy issue in the sense that I have great belief in the integrity of most of the subcommittees. I think they all act somewhat independently. Perhaps years ago this may not have been so, but I think today it is working very well.

I know that as far as participating in municipal government, at no time can any municipal body take action relative to the public unless it is done in public session. An executive session is not what we consider to be a public session. I think that many times, particularly in municipal government, in order to get the facts and data on certain things that are going to be brought before the public

like in my community, say, we have an afternoon meeting, and many things are brought up at that time that are going to be voted on that evening in a public forum, and it is at that time it is brought to the public.

I think that all these bills or the pie that we are talking about that is being cut up are brought before the public at the time of the public hearings. What the Appropriations Committee has done and again, this just relates primarily to the financial situation of the state, is that we often report bills out just as any other committee does, and if they succeed they end up on the Appropriations Committee table until the last day, and if not, they die somewhere along the line or they are reported out of the Appropriations Committee ought not to pass. And I think we have to recognize the fact that there is just a certain amount of money to go along, and then the leadership measures up on that last day as to what the priorities of these are. Perhaps we don't all agree right down the line as to what those priorities are, but primarily, what I am getting at is that the action that is taken on the final days is really something that has been hashed out over and over again by the Appropriations Committee, both in a public hearing and also in executive session, and then again on the floor of this Senate if any member of the body so wishes to do so.

What I am afraid might happen if this order is passed — and I intend to vote for it -- but I do have a fear that it may possibly drive us back to the old system of where the majority party — and with all due respect to the present majority party that may not always be there whoever that majority party is, may start meeting in a closed room somewhere and start deciding what is going to pass on the final days, and then hold their little public session and invite the public in if they would like to play a part of the charade. That to me doesn't make too much sense. So, I hope that something good can come from it, but again, I think as far as the public knowing what is being done, it is being done here on that last day.

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

Mr. CYR: Mr. President and Members of the Senate: As I listen to this debate, it reminds me very much of some of the operations that have gone on in the past which I personally objected to in many cases. Now, all of us know that in these executive sessions most of the time the influence of the department heads have usually the swinging vote. They are the ones that really influence, in many cases, the voting of the committee members. In many cases information is brought to us by these department heads or their representatives in these executive sessions that they don't dare present to us in the public hearings.

I had mixed feelings when we started the debate on this, but the more that we debate on this the more it reminds me of some of the executive sessions that I attended and saw the influence of these various department representatives. I intend to vote for it this morning, to try to correct this influence, this extra influence of the various departments in our executive sessions. If they have information which is pertinent to our decision, to our judgment, they should present it at the public hearings. In many cases they don't dare stand up and reveal to us exactly what they think about

it and give a chance to the opposition to rebut their own information. For that reason, I intend to support this motion this morning.

The PRESIDENT: The pending question is passage of Senate Paper 810. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, a parliamentary inquiry: I was under the impression that the motion was to indefinitely postpone, the motion of the Senator from Cumberland, Senator Berry.

The PRESIDENT: The Senator from Cumberland, Senator Berry, moved that Item 4-1 be indefinitely postponed, and that was tabled until tomorrow. Item 4-2, no motion was made to indefinitely postpone. The pending question is passage.

The pending question before the Senate is passage of Senate Paper 810, Joint Order that the Joint Rules be amended by adding a new Joint Rule 2A. The pending question before the Senate is the passage of the Joint Order. A "Yes" vote will be in favor of passage; a "No" vote will be opposed.

The Secretary will call the roll.

#### ROLL CALL

YEAS: Senators Brennan, Clifford. Conley, Cummings, Cyr, Danton, Huber, Kelley, Marcotte, Richardson, Shute. Speers.

NAYS: Senators Anderson, Berry. Cianchette, Cox, Fortier, Graffam, Greeley, Henley, Hichens, Joly, Katz, Minkowsky, Morrell, Olfene, Roberts, Sewall, Tanous, Wyman, MacLeod.

ABSENT: Senator Schulten.

A roll call was had. 12 Senators having voted in the affirmative, and 19 Senators having voted in the negative, with one Senator being absent, the Joint Order Failed of Passage.

Thereupon, the Joint Order was Indefinitely Postponed.

#### Orders of the Day

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

Joint Order — Relative to amending Joint Rule 2A. (S. P. 805)

Tabled — January 2, 1974 by Senator Berry of Cumberland.

Pending — Passage. On motion by Mr. Tanous of Penobscot, the Joint Order was Indefinitely Postponed.

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

Bill, "An Act to Permit Lakeville Plantation to use a Public Lot for Sanitary Landfill." (H. P. 1746) (L. D. 2205)

Tabled — January 2, 1974 by Senator Richardson of Cumberland.

Pending — Reference.

The PRESIDENT: The Chair recognizes the Senator from Cumberland. Senator Richardson.

Mr. RICHARDSON: Mr. President and Members of the Senate: Having discussed this with the Senate Chairman of the Committee to whom the Reference of Bills Committee suggested reference, I know that he has no objection to this matter being referred to the Committee on Public Lands in non-concurrence, and I so move.

The PRESIDENT: The Senator from Cumberland, Senator Richardson, now moves that L. D. 2205 be referred to the Committee on Public Lands in nonconcurrence. Is this the pleasure of the Senate?

Thereupon, the Bill was referred to the Committee on Public Lands and Ordered Printed in non-concurrence.

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

Thereupon, there being no objection, the Chair appointed Senator Hichens of York as Chairman to the Committee on Agriculture.

#### Papers from the House

Out of order and under suspension of the rules, the Senate voted to take up the following:

#### Non-concurrent Matter

Resolve, Authorizing Commissioner of Mental Health and Corrections to Lease Certain Land in South Windham to the Maine Society for the Protection of Animals. (H. P. 1754) (L. D. 2213)

In the House January 2, 1974, referred to the Committee on State Government.

In the Senate January 2, 1974, referred to the Committee on Health and Institutional Services, in non-concurrence.

Comes from the House, that Body having Adhered.

Thereupon, the Senate voted to Recede and Concur.

#### Non-concurrent Matter

Bill, "An Act Relating to Medical Treatment of Persons at State-operated Facilities." (H. P. 1762) (L. D. 2230)

In the House, January 3, 1974, referred to the Committee on Judiciary.

In the Senate January 2, 1974, referred to the Committee on Health and Institutional Services, in non-concurrence.

Comes from the House, that Body having Adhered.

Thereupon, the Senate voted to Recede and Concur.

Bills today received from the House requiring Reference to Committees were acted upon in concurrence.

(Off Record Remarks) On motion by Mr. Sewall of Penobscot, recessed until the sound of the bell.

#### After Recess

Called to order by the President.
(Off Record Remarks)
On motion by Mr. Sewall of Penobscot,

Adjourned until 9 o'clock tomorrow morning.