

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Ninety-Sixth Legislature

OF THE

STATE OF MAINE

1953

DAILY KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Thursday, January 29, 1953.

The Senate was called to order by the President.

Prayer by the Rev. Arthur Christopher of Augusta.

Journal of yesterday read and approved.

Order

(Out of Order)

Mr. Haskell of Penobscot presented the following order, out of order and under suspension of the rules, and moved its passage:

ORDERED, the House concurring, that when the Senate and House adjourn, they adjourn to meet on Tuesday, February 3, 1953, at eleven o'clock in the forenoon. (S. P. 92)

Mr. HASKELL: Mr. President and members of the Senate, in support of the order it might be well to tell the Senate that, subject to their approval, the present thought is to go through another week with a Tuesday morning session, Wednesday morning and Thursday morning, and adjourn again next week on Thursday. I note that so that the committee chairmen may know that Tuesday and Wednesday certainly will be available for committee hearings, and Thursday if they wish, that being subject to the concurring wishes of both branches of the legislature. It is contemplated at the present time that the following week we start Friday morning sessions.

The order received passage and was sent down forthwith for concurrence.

Subsequently the foregoing order was returned from the House, having been read and passed in concurrence.

From the House

Joint Order

ORDERED, the Senate concurring, that any town clerk may, upon written request to the document clerk, receive without charge copies of all printed bills so that there may be available to the public, during the legislative session, a complete and convenient file of all printed bills. (H. P. 205)

Comes from the House read and passed.

In the Senate, on motion by Mr. Robbins of Aroostook, tabled pending passage.

Referred to Committees

"Resolve in Favor of Indians at Peter Dana Point Reservation for Building and Repair of Homes." (H. P. 135) (L. D. 135)

"Resolve in Favor of Indians at Pleasant Point Reservation for Building and Repair of Homes." (H. P. 136) (L. D. 136)

"Resolve in Favor of Hampden Academy." (H. P. 137) (L. D. 137)

Which were severally referred to the Committee on Appropriations and Financial Affairs in concurrence.

"Resolve in Favor of John Morin of the Unorganized Township of Connor." (H. P. 138) (L. D. 138)

Which was referred to the Committee on Claims in concurrence.

"Resolve Appropriating Money for Construction of Bridge Over Carabasset Stream." (H. P. 141) (L. D. 139)

Which was referred to the Committee on Highways in concurrence.

Bill "An Act Relating to Penalty for Carelessly Shooting a Human Being While Hunting." (H. P. 142) (L. D. 140)

Bill "An Act Relating to Retirement of Coastal Wardens Under Maine State Retirement Law." (H. P. 143) (L. D. 141)

Which were severally referred to the Committee on Judiciary in concurrence.

Bill "An Act Relating to Sale of Malt Liquor in Non-Returnable Bottles." (H. P. 145) (L. D. 143)

Which was referred to the Committee on Liquor Control in concurrence.

"Resolve Authorizing the State Tax Assessor to Convey by Sale Certain Interest of the State in Lands in the Unorganized Territory." (H. P. 146) (L. D. 144)

Which was referred to the Committee on Natural Resources in concurrence.

Bill "An Act Repealing Law of Manufacture and Sale of Bedding and Upholstered Furniture." (H. P. 148) (L. D. 145)

Which was referred to the Committee on Public Health in concurrence.

Bill "An Act Relating to Classification of Coastal Wardens." (H. P. 149) (L. D. 146)

Bill "An Act Regulating the Dragging of Scallops in Harrington River and Bay and Pleasant River, Washington County." (H. P. 150) (147)

Bill "An Act Relating to the Biennial Revision of Sea and Shore Fisheries Laws." (H. P. 151) (L. D. 148)

Which were severally referred to the Committee on Sea and Shore Fisheries in concurrence.

Bill "An Act to Provide a Credit Against the Sales Tax when the Price is not Paid." (H. P. 152) (L. D. 134)

Which was referred to the Committee on Taxation in concurrence.

Bill "An Act Increasing the Salary of the Mayor of the City of Augusta." (H. P. 153) (L. D. 149)

Bill "An Act to Increase the Salary of the Judge of the Westbrook Municipal Court." (H. P. 154) (L. D. 150)

Which were severally referred to the Committee on Towns and Counties in concurrence.

"Resolve in Favor of Carroll L. McKusick, of Parkman." (H. P. 159)

"Resolve in Favor of Ralph D. Olfene and Winifred O. Wallingford, of Auburn." (H. P. 160)

"Resolve in Favor of Dr. Bernard R. Marcus, of Auburn." (H. P. 161)

Which were severally referred to the Committee on Claims in concurrence.

"Resolve in Favor of Mt. Chase Plantation." (H. P. 4)

Which was referred to the Committee on Highways in concurrence.

"Resolve Providing for State Pension for Hollis Small, of Belfast." (H. P. 200)

"Resolve Providing for an Increase in State Pension for Char-

lotte E. Morrill, of Belfast." (H. P. 201)

"Resolve Providing for an Increase in State Pension for Blanche Dyer, of Belfast." (H. P. 202)

"Resolve Providing for an Increase in State Pension for Helen E. Easler, of Richmond." (H. P. 203)

"Resolve Providing for an Increase in State Pension for Lillian Sibley, of Old Town." (H. P. 204)

Which were severally referred to the Committee on Welfare in concurrence.

Communication

Opinion of the Justices of the Supreme Judicial Court, given under the Provisions of Section 3 of Article VI of the Constitution—to Questions propounded by the Senate by Order Dated January 20, 1953—

To the Honorable Senate
of the State of Maine.

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, the undersigned Justices of the Supreme Judicial Court, having considered the questions submitted by the foregoing Senate Order, answer as follows:

Questions 1 and 2

Article IV, Part First, Section 2, of the Constitution of the State of Maine reads as follows:

"Section 2. The house of representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the biennial meeting of the legislature. The legislature shall, within every period of at most ten years and at least five, cause the number of the inhabitants of the state to be ascertained, exclusive of foreigners not naturalized, and Indians not taxed. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population."

It is the duty of the Legislature to obey this mandate of the Constitution.

See Opinion of the Justices, 3 Me. 477, at 479.

Neither the language nor the purpose of the foregoing provision of our Constitution permits an escape from its performance.

See **Fergus v. Kinney**, 333 Ill. 437, 164 N. E. 665, 666.

The duty is a continuous one and is cast in turn upon every legislature succeeding that which has omitted to perform it until that duty is performed. That is to say, if the apportionment is not made within the period prescribed by the Constitution, the duty to make it devolves upon the legislature then next sitting and upon each following legislature until that duty is performed. **Botti v. McGovern**, 97 N. J. Law 353, 118 A. 107, 108.

This same principle is declared in **Fergus v. Kinney**, supra when the Illinois Court said:

"The duty is a continuing one, and, if it is not discharged at or within the time prescribed, the burden of its performance rests upon successive General Assemblies until the section has been obeyed."

The reason is well stated in **Botti v. McGovern**, supra, quoting from **People ex rel. Carter v. Rice**, 135 N. Y. 473, 31 N. E. 921, where it is said:

"It cannot be tolerated that a legislature, by mere omission to perform its constitutional duty at a particular session, could thereby prevent for another ten years the apportionment provided for by the Constitution."

The duty to apportion the state is a specific legislative duty imposed by the Constitution solely upon the legislative department of the state, and it alone is responsible to the people for the failure to perform it. See **Fergus v. Marks**, 321 Ill. 510, 152 N. E. 557.

The duty of causing the number of inhabitants to be ascertained may be discharged in any reasonable manner which may be determined upon and adopted by the Legislature, including that which has undoubtedly been used through the years, viz., adopting therefor the last Federal Census.

We answer Questions 1 and 2 in the affirmative.

Question 3.

While the ascertainment of the number of inhabitants should be as of the time it is made, the Legislature is entitled to use therefor such information as is currently available. This, as stated in our answer to Questions 1 and 2, includes the last Federal Census, which is now controlling in determining senatorial representation under our Constitution, Art. IV, Part Second, Section 1.

Question 4

There is nothing in the Constitution which requires the Legislature to state the term of any apportionment it makes. If made, it must continue for at least five years. However, the Legislature cannot constitutionally prescribe that it continue for more than ten years from the time it is made, nor can the Legislature, by prescribing that an apportionment continue for more than five years, deprive a subsequent legislature of its constitutional power to reapportion after the expiration of five years. In view of the fact that no action by this Legislature in making an apportionment can control the action of subsequent legislatures for more than five years, we cannot say that the Legislature **should** take either course concerning which the inquiry is made. It is for the Legislature and not for the Justices of the Supreme Judicial Court to determine whether it will be wise to make an apportionment of representatives in 1953, as it should, which will expire with the Legislature of 1961, as does the senate representation provided by the Legislature of 1951 in Resolves of 1951, Chap. 132.

Question 5.

The duty laid upon the Legislature with respect to reapportionment is a non delegable duty.

Dated at Portland, Maine, this twenty-seventh day of January, 1953.

Respectfully submitted:

HAROLD H. MURCHIE
SIDNEY St. F. THAXTER
RAYMOND FELLOWS
EDWARD F. MERRILL
WILLIAM B. NULTY
ROBERT B. WILLIAMSON

Which communication was read and ordered placed on file.

Referred To Committees Senate Papers

Mr. Fuller of Oxford presented "Resolve in Favor of Apple Storage and Packing Room at Highmoor Farm." (S. P. 93)

Mr. Brown of Washington presented "Resolve Providing for a Continuous Survey of Closed Clam Areas and Study of Fuel Oil Pollution." (S. P. 94)

Mr. Silsby of Hancock presented "Resolve in Favor of the Town of Aurora." (S. P. 95)

Mr. Haskell of Penobscot presented Bill "An Act Relating to Crediting of Property Taxes on Books of the State, and Making an Appropriation Thereof." (S. P. 96)

Which were severally referred to the Committee on Appropriations and Financial Affairs and the same ordered printed.

Sent down for concurrence.

Mr. Broggi of York presented Bill "An Act Relating to Renewal of Certificates by Certain Teachers." (S. P. 97)

Which was referred to the Committee on Education, and the same ordered printed.

Sent down for concurrence.

Mr. Dunham of Hancock presented "Resolve in Favor of George S. Bradbury, of West Franklin." (S. P. 98)

Which was referred to the Committee on Judiciary and the same ordered printed.

Sent down for concurrence.

Mr. Broggi of York presented Bill "An Act Exempting Certain Education Institutions from the Sales Tax." (S. P. 99)

Which was referred to the Committee on Taxation, and the same ordered printed.

Sent down for concurrence.

Mr. Silsby of Hancock presented Bill "An Act to Increase the Salary of Judge of Probate of Hancock County." (S. P. 100)

Mr. Littlefield of York presented Bill "An Act Relating to Payment to York County Law Library." (S. P. 101)

Which were severally referred to the Committee on Towns and Counties and the same ordered printed.

Sent down for concurrence.

Mr. Silsby of Hancock presented "Resolve Providing for State Pension for Donald M. McLaughlin, of Plantation No. 33." (S. P. 102)

The same Senator presented "Resolve Providing for State Pension for Eva A. Scammon, of Franklin." (S. P. 103)

Which were severally referred to the Committee on Welfare, and the same ordered printed.

Sent down for concurrence.

Senate Committee Report

Mr. Dunham from the Committee on Welfare on Bill "An Act Increasing Old Age Assistance and Aid to the Blind," (S. P. 25) (L. D. 13) reported that the same ought to pass.

Which report was read and accepted, the bill read once, and on motion by Dunham of Hancock, under suspension of the rules read a second time and passed to be engrossed.

Sent down for concurrence.

Emergency Measure

"Resolve, Authorizing Commissioners of Cumberland County to Provide for Survey of Portland-South Portland Bridge." (S. P. 45)

Which resolve being an emergency measure, and having received the affirmative vote of 31 members of the Senate, and none opposed, was finally passed.

Orders of the Day

Mr. WEEKS of Penobscot: Mr. President, I rise to inquire if bill, An Act Relating to Sales Tax on Isolated Sales of Motor Vehicles (S. P. 89) is still in the possession of the Senate?

The PRESIDENT: The Chair will state that the bill is still in the possession of the Senate.

Thereupon, that Senator was granted unanimous consent to withdraw bill, An Act Relating to Sales Tax on Isolated Sales of Motor Vehicles (S. P. 89).

On motion by Mr. Cummings of Sagadahoc, the Senate voted to

take from the table bill, An Act Relating to the Sales Tax on Motor Vehicles (S. P. 90) tabled by that Senator on January 28 pending reference to a committee; and on motion by Mr. Haskell of Penobscot, the bill was referred to the Committee on Taxation, ordered printed and sent down for concurrence.

The PRESIDENT: The Senate is proceeding under Orders of the Day.

On motion by Mr. Haskell of Penobscot

Adjourned until Tuesday next, February 3, at 11 o'clock in the forenoon.