

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Special Session

OF THE

*One Hundred and Second
Legislature*

OF THE

STATE OF MAINE

1966

DAILY KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Wednesday, January 19, 1966

Senate called to order by the President.

Prayer by Rev. Joseph Craig of Augusta.

On motion by Mr. Boisvert of Androscoggin,

Journal of yesterday was Read and Approved.

Communication

STATE OF MAINE
Office of the Governor
Augusta

January 17, 1966

To the Honorable Senate
of the 102nd Legislature

There is returned, herewith, without approval Senate Paper 555, Legislative Document 1564, entitled "An Act Creating the Investment of State Funds Law."

When this bill was placed before me I became deeply concerned over the fact that we were dealing in a delicate area and that any major changes in investment procedures should be made only after due deliberation and careful consideration of all factors. The fact that there has been no intensive study of a matter which is of prime importance to the many thousands of members of the Retirement System and upon whom even a slight miscalculation could cause a tremendous impact and also the fact that we are dealing with several millions of dollars influenced me to consider the matter in depth.

At the same time I was aware that a study was to be conducted by the Legislative Research Committee and as the investment program is a vital function of the Retirement System I was certain that this subject would be most carefully scrutinized. The committee did employ a competent and recognized firm of actuaries which has rendered an interim report on this bill and did comment on investment procedures. My caution has been justified and my objections to the bill have been substantiated by the consultants.

I could not understand how the employment of an investment of-

ficer and the appointment of a part time investment council could possibly improve the present investment process to any great extent. No one man, and certainly not a part time board, can accomplish all of the research, analysis and review that is required to adequately service a fund of the size of the Retirement System holdings. To support this contention I quote from the report submitted by the consultants.

"A single individual, no matter how qualified, cannot expect to perform such an extensive service. It must be anticipated that such an Investment Officer would have to build up a substantial department in order to perform such services."

I am sure that anyone with even the slightest conception of security trading will agree that when an issue is purchased that it can not be placed in a vault and forgotten until some future date, it should be and must be, continuously reviewed as world conditions and economic circumstances change from day to day, which affect investment. Obviously, one man, even with the aid of the best possible Investment Council could not properly service the portfolio.

The consultant's report recommends, and I quote "that such Investment Officer function as a liaison with a fiduciary or banking institution which has sufficient resources to handle the day to day purchases and sales in the investment portfolio. The bank or trust company could serve the investment department for the Investment Officer and would provide significant advantages."

One of these "significant advantages" was the assurance by the consultants that employing a fiduciary would place "Extensive investment research facilities" within reach of the Investment Officer.

If this is a correct assumption, and I do believe it is, why employ an Investment Officer? Why not contract directly with the fiduciary as fund managers? Why pay for both an Investment Officer as well as the fiduciary?

To employ both is wasteful; to employ only the Investment Officer accomplishes only a portion of the job; to employ the fiduciary directly is good common sense.

I was also concerned with that provision which placed the seven man Board of Trustees of the Maine State Retirement System in a secondary position. These seven men are representatives of the public, state government, the employees and the teachers and are responsible for the proper functioning and administration of the Retirement System. Each one and all are equally responsible and each one and all should have equal authority. This bill does permit four members of the Board of Trustees to be members of the Investment Council, but what of the other three members who are disfranchised? These three have no vote in investment proceedings, have no veto of any action by the Investment Council, have no voice in this most important phase of the program, yet, they are not relieved of any of the responsibilities but are certainly deprived of authority.

The Board of Trustees of the Retirement System had attempted to introduce two amendments to the special session, one would have permitted investments of up to 30 percent of the funds under the Prudent Man Theory and the other would permit the board to pay for fiduciary service from earnings on the investments of the system, but both bills were eliminated by the screening committee.

These two bills would have permitted a comprehensive answer to the investment situation with which we are faced as these bills would have allowed the Board to employ a fiduciary as well as to broaden the investment base, but just as importantly would maintain and preserve the Board's full control and authority over all phases of the system and would guard against any dilution of responsibility.

For the reasons set forth, I am returning Legislative Document 1564, entitled "An Act Creating

the Investment of State Funds Law," without my signature.

Respectfully submitted,
JOHN H. REED
John H. Reed
Governor

The President laid before the Senate, the Question: Shall this Bill become a law, notwithstanding the objection of the Governor? The Secretary called the roll, and the Senators answered the question as follows:

Mr. BROWN of Hancock: Mr. President and Members of the Senate:

I would like to mention a few points about this bill if I may. This bill may be perfectly acceptable to be used as a program to invest "idle State funds" which are under the control of the State Treasury, but it is not a sound basis for the investment of funds held by a retirement system.

The entire Board of Trustees, not just four of the seven, should have the right to function in the manner stipulated by the statute which says:

"The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this chapter are vested in a board of trustees."

This bill deprives three of these members of this right and it is common knowledge that a trustee must be completely responsible and must have complete authority.

Section 170 of this bill says that:

"The Investment Council shall formulate and recommend to the Commissioner of Finance and Administration for his approval any investment policy regulations or resolutions pertaining to the kind or nature of investment of any of the moneys."

The position of Commissioner of Finance does not require that the incumbent be an investment specialist or even a person qualified to perform the duties required of this section. I am sure that the present Commissioner of Finance, Ray Mudge, who is greatly respected for his financial abilities,

would be the first to admit that he was in no position to approve "investment policy regulations" or to approve "resolutions pertaining to the kind or nature of investment."

I, therefore, Mr. President feel that we should sustain the Governor's veto.

Mr. HARDING of Aroostook: Mr. President and Members of the Senate: With all due respect in this matter, I would suggest that the Governor was not present and he did not hear the man from Bowles, Andrews & Towne who made the study of this bill and made his comments concerning it. His comments generally were that this was a good bill. He did suggest some changes which were of a nebulous nature, shall we say. I would point out, however, that this bill as drafted and which the Governor vetoed was a model investment bill which was developed by the Advisory Committee on Intergovernmental Relations in Washington, D. C., and the same bill has been enacted in other states and has worked very satisfactorily.

We, of course, are pleased that the Governor at this time is concerned about these investment policies. I would point out to the Senate, however, that a committee, over ten years ago, pointed out how conservatively this fund was being managed, and that the fund was not getting the benefit of appreciation by virtue of the fact that only ten percent of it could be invested in common stocks. The Chief Executive of this state has been in authority in the Legislature and the Governor's Mansion during all of that time and has taken no action to remedy this great difficult situation which has resulted in employees of this state not receiving the benefits of the increase in value of this fund which other funds in other states have had the benefit of.

You will hear testimony before the State Government Committee possibly today in regard to this fund and you will see just how much the state employees have lost by virtue of the fact that this matter has not been tak-

en care of and the necessary legislation passed over all of these years. As far as investments are concerned, I was very pleased to read a note in the paper, according to the State Auditor, that under new procedures that have been followed in the investment of state funds that the state is somewhat over \$600,000 better off a year by virtue of the policies which have been followed by the current Treasurer, Eben Elwell, and which were not followed for many years. During the last ten years for instance, we can compute that the state has lost a total of \$6,000,000 in state funds alone by virtue of them not being properly invested.

Now, in the Governor's message he mentions that why is it necessary to have an investment officer and a fiduciary bank as well. Bowles, Andrews & Towne who made the study for us pointed out that you do need both the investment officer and the fiduciary. Your investment officer serves as a liaison with your investment council. He is with them when the need be. He understands their policies, their procedure and he must serve as a liaison to communicate this to the fiduciary bank.

Now, as to the fiduciary bank, you will bear in mind that if this whole fund were turned over to a fiduciary bank to manage that they charge a percentage of the entire assets of the fund. Those percentages vary. They are somewhere between a quarter of a percent and an eighth of a percent. That may not sound like much but on a \$100,000,000 a quarter of a percent is \$25,000 per year. So we are talking about big money. There are qualified people who believe that your investment officer can receive the advice of a fiduciary bank without having the fiduciary bank handle the entire fund. For instance, if only 30 percent of \$100,000,000 is invested in common stock, it may follow that you would only need the advice of your fiduciary bank on that 30 percent. You don't need to have them handle the whole thing.

Another objection which the Governor mentioned is that he was very disturbed about the provision which placed the seven man Board of Trustees in the State Retirement System in a secondary position. Now just because these people are appointed to the Board of Trustees of the Maine State Retirement System it does not mean that they are qualified to act on investment matters. As a matter of practice, we know that many of these people for years have taken absolutely no active part in investment policies; they have stood back and they have left this to somebody else to handle.

Now what about this objection that the Governor has raised, what does Bowles, Andrews and Towne say about it — and they have studied the bill. They say, "The necessary final control by the Board of Trustees over investment of the Retirement System is preserved in this bill, since of the seven potential voting members on the Investment Council, four are members of the Retirement System Board of Trustees and constitute the required majority vote for transaction of business. These four Board members on the Investment Council are three representatives of the state fund which owns the largest total investment assets (State Retirement System) and the Treasurer of State, who is ex-officio a member of the Retirement System Board."

Now the Governor has also mentioned in his veto message these two bills which were attempted to be put in here at the Special Session. I will point out to you members of the Senate that those two bills touch only a very small part of the project. One of them suggests that the law be amended so that thirty per cent of the funds be invested under the Prudent Man Rule. That is just a part of the problem. The other bill permitted the Board to pay for fiduciary service from the earnings and investment of the system. Your leadership has permitted to be introduced in this session a bill which we hope

will take care of the entire problem as far as investment of funds are concerned. It is proposed in that bill that every single recommendation which has been made by Bowles, Andrews & Towne will be incorporated in that bill, and therefore we think that this new bill that has been submitted, and I suggest that only nebulous changes will be made in it above the bill which the Governor vetoed, but inasmuch as this will be before your body for your consideration, I suggest that in the interest of time, since this is a Special Session, that we go along with the Governor's veto and that we not attempt to override it, because you will have a chance to vote on a bill at this session which will cover this entire subject-matter, not the limited areas which the Governor has mentioned but the entire subject-matter, and it will have the benefit of the study by Bowles, Andrews and Towne and I think will be a bill which will be of great benefit to the entire State of Maine.

It is my regret, and I am sure it is the regret of the Senate and this entire Legislature that this matter was not taken care of some ten years ago when the recommendation was made by the study committee that it be done.

Mr. STERN of Penobscot: Mr. President, I briefly want to go on record as being wholly in accord with the remarks of my brother, Senator Harding, and I want to remind the Senate that I sponsored this bill and at the time of the hearing we had many experts pro and con, we felt it was a worthwhile bill and I still think so.

The PRESIDENT: The question now before the Senate is: Shall this bill become law notwithstanding the objections of the Governor. According to the Constitution, the vote will be taken by the yeas and nays. A vote of yes will be in favor of the bill and a vote of no will be in favor of sustaining the veto of the Governor. Is the Senate ready for the question?

Mr. HARDING of Aroostook: Mr. President, perhaps I did not make it clear, but I would ask

that the Senate vote "No" on this by virtue of the matters which I mentioned in my talk.

Mr. BERNARD of Penobscot: Mr. President, would a motion to indefinitely postpone this bill be in order?

The PRESIDENT: It would not be in order, the vote on a veto must be taken by the yeas and nays. The Secretary will call the roll.

Roll Call

Yeas: Stern.

Nays: Bernard, Boisvert, Brown, Cahill, Carter, Casey, Chisholm, Dunn, Duquette, Faloon, Girard, Glass, Harding, Hilton, Hoffses, Jacques, Jutras, Letourneau, Manuel, Maxwell, McDonald, Mendell, Moore, Norris, O'Leary Reed, Smith, Snow, Southard, Sproull, Violette, Willey.

Absent: Shiro.

The PRESIDENT: 32 Senators having voted in the negative and 1 in the affirmative, 32 being more than two-thirds of those present, this body sustains the veto of the Governor.

The PRESIDENT: The Chair at this time would like to recognize in the back of the Senate Chamber a former Senator from Penobscot County, Senator Harrington. Would she please rise. (Applause)

Committee Reports

Senate — Ought to Pass

Mr. Violette from the Committee on Judiciary on Bill, "An Act Increasing the Number of Official Court Reporters." (S. P. 654) (L. D. 1610) reported that the same Ought to pass.

The same Senator from the same Committee on Bill, "An Act Relating to Executions on Civil Judgment of the District Court." (S. P. 622) (L. D. 1628) reported that the same Ought to pass.

Mr. Shiro from the Committee on Legal Affairs on Resolve, Authorizing the Attorney General to Convey Certain Lands of the State to the University of Maine. (S. P. 636) (L. D. 1600) reported that the same Ought to pass.

The same Senator from the same Committee on Bill, "An Act Relating to the Number, Election, Quorum and Term of Office of the Trustees of Hebron Academy." (S. P. 650) (L. D. 1601) reported that the same Ought to pass.

Which reports were Read and Accepted and the Bills and Resolve Read Once. Under suspension of the rules the Bills and Resolve were given a Second Reading and Passed to be Engrossed. Sent down for concurrence.

Ought to Pass — As Amended

Mr. Violette of Aroostook from the Committee on Judiciary on Bill, "An Act Relating to Duties of Reporter of Decisions." (S. P. 658) (L. D. 1641) reported that the same Ought to pass as amended by Committee Amendment "A" (S-352)

Mr. Maxwell of Franklin from the Committee on State Government on Bill, "An Act Increasing the Membership of the Industrial Accident Commission." (S. P. 619) (L. D. 1612) reported that the same Ought to pass as amended by Committee Amendment "A" (S-351)

Which reports were Read and Accepted, and the Bills Read Once. Committee Amendment "A" Read and Adopted, and under suspension of the rules the Bills were Read a Second Time and Passed to be Engrossed as amended. Sent down for concurrence.

Orders of the Day

Mr. O'LEARY of Oxford: Mr. President, as I was not present in the Senate Chamber to vote on the Governor's veto message on L. D. 1564 I would ask unanimous consent that I be placed on the record as having voted "No."

The PRESIDENT: The Senator from Oxford, Senator O'Leary, seeks unanimous consent to have his name entered on the roll as having voted "No." on the roll call vote on the Governor's veto message. Does the Chair hear objection? The Chair hears no objection and the Secretary will so record his vote.

Mr. CARTER of Kennebec: Mr. President, I was absent at the time of the roll call, and I also wish to have my name entered as voting "No."

The PRESIDENT: The Senator from Kennebec, Senator Carter, seeks unanimous consent to have his name recorded as voting "No" on the Governor's veto message on the roll call vote. Does the Chair hear objection? The Chair hears no objection and the Secretary will so record his vote.

The PRESIDENT: The Chair at this time would like to recognize in the back of the Senate Chamber a Senior Citizen's Group from the City of Lewiston. They are accompanied this morning by Mrs. Eloise Morrow and Mr.

Frank Torrey, and they are from Androscoggin County. We certainly welcome you here this morning. I am sorry to say we have just finished our business. We had a rather light calendar this morning and we had some committee reports. The rest of our day will be taken up by committee hearings and we hope you will visit some of them. I would, while you are here, like to introduce to you the Senators from your County of Androscoggin: Senator Boisvert, Senator Jacques and Senator Girard. We welcome you here this morning. (Applause)

On motion by Mr. Harding of Aroostook,

Adjourned until nine-thirty o'clock tomorrow morning.