

# MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Ninth Legislature

OF THE

STATE OF MAINE

1939

KENNEBEC JOURNAL COMPANY  
AUGUSTA, MAINE

**SENATE**

Friday, April 7, 1939.

The Senate was called to order by the President.

Prayer by the Reverend Louis Staples of Gardiner.

Journal of yesterday, read and approved.

**Order**

(Out of Order)

On motion by Mr. Spear of Cumberland, out of order and under suspension of the rules, it was

ORDERED, the House concurring, that when the Senate and House adjourn, they adjourn to meet on Monday, April 10, 1939, at 4:00 o'clock in the afternoon. (S. P. 647)

Sent down for concurrence.

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

From the House:

Bill "An Act to Permit Sunday Moving Pictures." (H. P. 1665) (L. D. 736)

(In the Senate, on April 5, passed to be engrossed as amended by House Amendments "A" and "B" and by Senate Amendments "B" and "C" in non-concurrence.)

Comes from the House, that body having insisted on its former action whereby the bill was passed to be engrossed as amended by House Amendments "A", "B" and "C" and as amended by Senate Amendments "B" and "C" and asking for a Committee on Conference, the Speaker having appointed as members of such a committee on the part of the House, Representatives McNamara of Winthrop, Buzzell of Belfast, Weatherbee of Lincoln.

In the Senate, on motion by Mr. Burns of Aroostook, that Body voted to insist and join with the House in a Committee of Conference and the Chair appointed as members of such committee on the part of the Senate, Senators Burns of Aroostook, Chase of Washington, Friend of Somerset.

**House Papers**

Bill "An Act Relating to Dealers in Motor Vehicles." (S. P. 385) (L. D. 786)

(In the Senate, on April 3, passed

to be engrossed as amended by Committee Amendment "A")

Comes from the House, passed to be engrossed as amended by Committee Amendment "A" and as amended by House Amendment "A" in non-concurrence.

In the Senate, on motion by Mr. Beckett of Washington, under suspension of the rules, that Body voted to reconsider its former action taken on April 3 whereby the bill was passed to be engrossed as amended by Committee Amendment A; and on further motion by the same Senator, House Amendment A was read and adopted in concurrence and the bill as amended by Committee Amendment A and House Amendment A was passed to be engrossed in concurrence.

Papers from the House, referred in concurrence.

**House Committee Reports**

The Committee on Pensions on Bill "An Act Relating to Support of Dependents of Soldiers, Sailors, and Marines of the World War," (H. P. 1443) (L. D. 562) reported that leave be granted to withdraw.

Which report was read and accepted in concurrence.

The Committee on Inland Fisheries and Game on bill "An Act Relative to Non-resident Fishing Licenses," (H. P. 1569) (L. D. 632) reported that the same ought to pass.

Which report was read and accepted in concurrence, the bill read once and Monday next assigned for second reading.

The Committee on Agriculture on bill "An Act Relating to Payment of Damages Done to Sheep and Lambs by Dogs," (H. P. 1533) (L. D. 680) reported the same in a new draft (H. P. 2054) (L. D. 1090) under a new title, Bill "An Act Relating to the Registration and Licensing of Dogs and to the Duties of the Sheep Specialist," and that it ought to pass.

(On motion by Mr. Chamberlain of Penobscot, tabled pending acceptance of the report in concurrence.)

The Committee on Legal Affairs on Bill "An Act Relating to Town

Reports," (H. P. 1670) (L. D. 889) reported the same in a new draft (H. P. 2057) (L. D. 1093) under the same title and that it ought to pass.

Comes from the House, report read and accepted, House Amendment "A" offered and indefinitely postponed; House Amendment "B" read and adopted, and the bill passed to be engrossed as amended by House Amendment "B".

In the Senate, the report was read and accepted in concurrence, and the bill was given its first reading. House Amendment A was read and indefinitely postponed in concurrence. House Amendment B was read and adopted in concurrence, and the bill as amended by House Amendment B was Monday next assigned for second reading.

The Committee on Maine Publicity on bill "An Act Relating to Holidays," (H. P. 1430) (L. D. 631) reported that the same ought to pass.

Comes from the House, passed to be engrossed as amended by House Amendment "A".

In the Senate, on motion by Mr. Owen of Kennebec, the report was read and accepted in concurrence. Thereupon, on motion by Miss Laughlin of Cumberland, the bill was laid upon the table pending first reading.

The Committee on Salaries and Fees on bill "An Act Relating to the Salary of the Recorder of the Recorder of the Northern Cumberland Municipal Court," (H. P. 687) (L. D. 260) reported that the same ought not to pass.

(In the Senate, on March 30, recommitted to the Committee on Salaries and Fees in non-concurrence.)

Comes from the House, that Body having adhered to its former position whereby the report of the Committee was accepted.

In the Senate:

Miss LAUGHLIN of Cumberland: Mr. President, I move that the Senate insist and ask for a Committee of Conference. Now, this seems to be a very foolish and unimportant thing, this asking for a Committee of Conference but there was a mistake in this matter. There was an understanding in the Cumberland County delegation that if legislation concerning salaries in other counties was passed that then they

would favor this; and otherwise not. And because of the reconsideration in the House on the matter of the county salaries in other counties changing the action by which the bills were defeated to the action by which they were passed, changing the situation, there was a mistake and the same action was not offered in regard to this bill. Therefore, I move for a Committee of Conference.

The motion prevailed and the President appointed as members of such committee on the part of the Senate, Senators Spear of Cumberland, Laughlin of Cumberland, Sanborn of Cumberland.

### Communication

Hon. Royden V. Brown,  
Secretary of the Senate,  
State House, Augusta, Maine.

Dear Mr. Secretary:

The Maine Delegation of the United States Congress at Washington has asked me to transmit to you for the information of the Legislature of the State of Maine in accordance with Joint Order of February 14, 1939 the report of Honorable John W. Hanes, Acting Secretary of the Treasury of the United States, together with enclosures therein referred to relating to existing obligations of the State of Maine to the Government of the United States.

If further information in relation thereto is desired we shall be glad to be advised.

It is to be noted that the report does not state that the obligation of the State of Maine incident to the Emergency Relief Administration advances have been cancelled but only that they "are not carried as indebtedness on the books of the Treasury." This statement is apparently as far as the Treasury feels warranted in going under existing legislation.

There is also enclosed a copy of the Act of February 24, 1938 to which reference is made.

In the circumstances as made known to us the Maine Delegation holds the view that the Emergency Relief Administration advances do not constitute an obligation for which the State can properly be asked for repayment.

Cordially yours,

(Signed)

RALPH O. BREWSTER, M. C.  
(S. P. 649)

On motion by Mr. Spear of Cumberland, the communication was read and ordered placed on file.

Sent down for concurrence.

Mr. MARDEN of Kennebec: Mr. President, a communication has been received recently by some of the members of this legislature from our congressmen in Washington relative to recent rulings in Washington relative to the status of certain post office construction projects in Maine in the light of our present statute. Both Congressman Brewster and Congressman Smith have contacted some of us with the rather urgent request that a minor change be made in one of our statutes to conform to the federal ruling so that these construction projects may not be prejudiced. With this in mind the Attorney General of Maine together with other counsel of the legislature have prepared a measure making the suggested changes and the congressmen hoped that this legislature would permit the admission of such a measure at this time by unanimous consent.

If the Senate is kind enough to permit the introduction of this measure I would feel it entirely proper that it be laid upon the table until such time as it could be printed and examined by those interested. With the feeling that the nature of the change is entirely harmless as far as the interest or the jurisdiction of the state of Maine over the properties involved is concerned and with the hope that the bill may be accepted without reference to a committee, with this preliminary comment, Mr. President, I would like to offer this measure and ask unanimous consent for its introduction, with the understanding that I will then move that the bill be tabled for printing and the examination of everyone interested.

Thereupon Mr. Marden of Kennebec was granted unanimous consent to introduce bill, An Act Relating to Jurisdiction Over Land Ceded to the United States (S. P. 650) and under suspension of the rules the bill was given its first reading without reference to a committee.

On further motion by the same Senator the bill was then laid upon the table pending second reading and 500 copies ordered printed.

### Referred to Committee

The following petitions and remonstrances were received and on recommendation by the Committee on Reference of Bills was referred to the Committee on Taxation:

Mr. Marden of Kennebec presented Petition of Mary Braley and 300 others of Waterville in favor of bill (L. D. 933) Relating to Licenses for Operation of Retail Stores. (S. P. 640)

Mr. Harkins of Androscoggin presented Petition of Doris Paradis and 355 others of Lewiston in Favor of bill (L. D. 933) Relating to Licenses for Operation of Retail Stores. (S. P. 652)

Mr. Graves of Hancock presented Remonstrance of Mrs. Mary McFarland and 317 other Consumers of Ellsworth and Vicinity Against a Tax on Chain Stores. (S. P. 653)

Mr. Cony of Kennebec presented Remonstrance of Harold Denson and 212 other Consumers of Oakland against a Tax on Chain Stores. (S. P. 654)

Mr. Harkins of Androscoggin presented Remonstrance of Mrs. George Emerson and 144 Consumers of Livermore Falls Against a Tax on Chain Stores. (S. P. 655)

Mr. Lewis of Lincoln presented Remonstrance of Mrs. W. G. Benner and 87 other Consumers of Waldoboro Against a Tax on Chain Stores. (S. P. 656)

Mr. Osgood of Oxford presented Remonstrance of W. B. Fessenden and 51 other Consumers of Fryeburg Against a Tax on Chain Stores. (S. P. 657)

### Senate Committee Reports

Mr. Osgood from the Committee on Agriculture on bill "An Act Repealing the Law Relating to Appropriating Money for Poultry Improvement," (S. P. 560) (L. D. 1089) reported that the same ought not to pass.

(On motion by Mr. Tompkins of Aroostook, tabled pending acceptance of the report.)

Mr. Hill from the Committee on Judiciary on bill "An Act Relating to Cruelty to Animals; Penalty," (S. P. 301) (L. D. 520) reported that the same ought not to pass.

Mr. Thatcher from the Committee on Motor Vehicles on bill "An Act Repealing the Act Providing for a Five Percent Reduction in Motor Vehicle Registrations Fees," (S. P. 265) (L. D. 444) reported that leave

be granted to withdraw as subject matter is covered in another bill.

Mr. Beckett from the same Committee on bill "An Act Relating to the Use of Head-lights," (S. P. 427) (L. D. 971) reported that the same ought not to pass.

The same Senator from the same Committee on Petition of J. J. Hennings and 9 others of Waterville favoring reduction of cost of Registering Motor Vehicles," (S. P. 432) reported that the same be placed on file.

Mr. Sanborn from the Committee on Pownal State School in behalf of that committee submitted its Final Report.

Mr. Littlefield from the Committee on Manufactures in behalf of that committee submitted its Final Report.

Mr. Chase of Washington from the Committee on Interior Waters in behalf of that committee, submitted its Final Report.

Which reports were severally read and accepted.

Sent down for concurrence.

Miss Laughlin from the Committee on Judiciary on bill "An Act in Regard to New Trials on the Ground of Newly Discovered Evidence," (S. P. 285) (L. D. 439) reported the same in a new draft (S. P. 650) under the same title and that it ought to pass.

Which report was read and accepted, and the bill laid upon the table for printing under the joint rules.

The Majority of the Committee on Judiciary on Bill "An Act to Establish an Unpaid Commission to Facilitate the Cooperation of this State with Other States," (S. P. 110) (L. D. 78) reported that the same ought not to pass.

(signed) Senators: Laughlin of Cumberland, Hill of Cumberland and Representatives: McGlaflin of Portland, Bird of Rockland, Varney of Berwick, Fellows of Augusta.

The Minority of the same Committee on the same subject matter reported that the same ought to pass.

(signed) Senators Burns of Aroostook and Representatives: Weatherbee of Lincoln, Thorne of Madison, Hinkley of South Portland.

On motion by Mr. Burns of Aroostook, tabled pending acceptance of either report.

The Majority of the Committee on Agriculture on bill "An Act Discontinuing Blueberry Control," (S. P. 559) (L. D. 1088) reported the same in a new draft "A" (S. P. 642) under a new title "Resolve Appropriating Money for Study and Control of the Fruit or Blueberry Fly in Maine," and that it ought to pass.

(signed) Senators: Osgood of Oxford, Findlen of Aroostook and Representatives: Holman of Dixfield, Chandler of New Gloucester, Snow of Dover-Foxcroft, Larrabee of West Bath, Bacon of Sidney.

The Minority of the same Committee on the same subject matter reported that the same in a second new draft "B" (S. P. 651) under a new title, "Resolve Appropriating Money for Study and Control of the Fruit or Blueberry Fly in Maine" and that it ought to pass.

(signed) Representatives Colby of Paris, Brown of Caribou.

Mr. OSGOOD of Oxford: Mr. President, I move the acceptance of the Committee Report "A under a new draft".

Mr. WENTWORTH of York: Mr. President, it seems that this matter of blueberries is a very highly controversial matter, as you will notice by the two reports that have been filed by the Committee on Agriculture. Your so-called joint committee which has been delving around here for the last two weeks looked into the matter quite thoroughly and found that the sum of six thousand dollars has been raised heretofore for this blueberry control. This six thousand dollars was spent in the control of the blueberry fly, in helping the farmers to dust their blueberries, and the idea at the start was to get the blueberry growers to get used to using the so-called dust, or arsenate of lead or whatever they do use, and we do feel that they know what it is all about now and ought to take it more upon themselves. Report B cuts the figure down from six thousand to four thousand for the first year and to two thousand dollars the second year and your so-called joint committee favors draft B. I hope that the motion of the Senator from Oxford, Senator Osgood, will not prevail.

Mr. FINDLEN of Aroostook: Mr. President, we have gone quite thoroughly into the question of blueberries and while I know very little about them, I feel that Report A is the one which we ought

to follow, which gives the blueberry people five thousand dollars the first year and three thousand for the second.

This blueberry question has had quite a bit of controversy in this legislature but I don't believe we ought to leave these people without giving them some measure of control without reference to the blueberry fly. I notice that in the first part of this legislative session we appropriated the sum of \$8100, I believe, to control the European Sawfly in timber lands. I believe that was a worthy project. I think that every interest in this state is entitled to some appropriation to cover the necessity of experimentation and the necessity of the control of flies and insects of this kind. Every industry that I know of receives some such control as this. We believe that eventually the blueberry industry should take care of itself by some sort of an assessment on the industry and each particular farmer, for instance, to take care of this control of the flies. We would suggest that they have compulsory inspection of all blueberry fields in that section but that could not be brought about in a short time. It is quite possible that in the next session of the legislature you will have such a bill before you, a bill for compulsory inspection and compulsory dusting, the inspection to determine how much of an infestation of flies there is in a section and further to advise the blueberry farmers how much arsenic they would dare to put on the plants. The blueberries, as I understand it, can carry only a certain amount of poison because they are eventually consumed for food yet they must have enough to control the insects and flies that infest them.

Now, it seems to me that five thousand dollars for the first year and three thousand for the second is very necessary in order to let these people down gradually. It is the only thing the state does for them that I know of and considering that industry along with other industries and especially along with, we will say, this Sawfly bill that has been already signed by the Governor, it is very similar. So, I hope that this Senate will accept

the recommendation of the committee in the A draft.

Mr. BECKETT of Washington: Mr. President, in one way or another I have discussed blueberries at quite some length during this session. I think perhaps I might be excused from criticism on that end because Washington County is the principle raiser of blueberries and it is an industry which affects Washington County primarily.

Senator Wentworth has said that the money appropriated is to teach the growers how to dust blueberries. That isn't altogether true. I wish just briefly to state to you why I think this expenditure of five thousand dollars this year and three thousand next year, as recommended in the new draft A, should be accepted by the Senate. The blueberry season, of course, is rather a short season. Blueberries ripen rapidly and have to be handled rather fast by the canner and shipper. At the present time the cannery have an inspector in the factory who inspects the blueberries as they come in before they are canned. The present appropriation by the state is used to inspect the blueberries in the field, first as to infestation by flies or worms and secondly as to the deposit of calcium arsenic which remains on the berries as a residue after spraying.

So many blueberries come into the factory at one time that it is impossible for the factory inspector to handle them as they arrive so this inspection is supplemented by the field inspection which the state has assisted in up to the present time. The state has been employing some thirty-five college boys to assist in this inspection work. About ten of those are Juniors in college who are chemists and the other twenty-five are college students. It gives them some six weeks work which assists them in their education and does them some good and is also beneficial to the industry. These boys inspect the fields as to the number of maggots in a certain area and if they find maggots in an area they order the grower not to pick blueberries from that part of the field but to pick them from other parts of the field not infested. The inspector at the factory receives the report of the field inspector and permits the packing of those blueberries without further

inspection by himself because it is impossible for him to inspect all of the berries that arrive at the plant in the short time he has at his disposal. When it comes to the fresh berry the chemists inspect the berries as to the residue of calcium arsenate which is a poison used to spray the berry and kill the fly.

We feel in Washington County that if this service were eliminated now it would be a serious handicap to us because some of the fresh berry growers would feel that if the state inspection were taken away they could not rely on their neighboring grower to test his berries suitably and he might possibly use an excess of calcium arsenate in a sort of hysteria and put on to the market berries which were poisonous. As soon as those berries were shipped out of the state they would be subject to seizure by the Federal Government if they were adulterated or poisonous and back in 1922 the Federal Government interfered and seized some eighty thousand dollars worth of Maine canned blueberries because of adulteration, and that is when this service was first set up. The Federal Government spent some seventy-thousand dollars in fighting this blueberry fly and the state of Maine has expended over sixty-five thousand dollars which shows that it is of some importance.

I feel that the blueberry growers in the state will very readily fall in with the inspection idea for which they will pay themselves in the future but to leave them now at a time when they cannot get organized and appropriate a sufficient amount of money to take care of this important service, I feel that it is a step in the wrong direction. The difference between the two reports is only one thousand dollars per year. I feel that it is a service which is not terribly expensive but is of great importance to a section of the state which finds it very difficult to pay its own way and I sincerely hope that Committee Report A, the majority report, will be accepted.

Mr. WENTWORTH: Mr. President, the Senator from Aroostook, Senator Findlen, has attempted to draw a comparison between the emergency which exists as to the European Sawfly and this blueberry fly control. I want to state briefly that there is no comparison. There certainly is an emergency in the spruce sawfly situation in that that

is something which has sprung up in the last year or two and if something is not done immediately to curb it the state of Maine is liable to lose all of its spruce.

Now, in comparison with the blueberry fly you are going to find that it is something that the blueberry farmer has got to do and furthermore I would like to ask this Senate who pays for the control of the potato bugs.

Mr. FINDLEN: Mr. President, I think we are the most glaring example in the County of Aroostook with reference to who pays. As far as our industry is concerned, we do pay for our own potato bugs. We have a very model system of inspection. We pay for our own certification and for our own inspection of all potatoes that go to market. We even raise one hundred thousand dollars for the advertising of our own product. I say we are a glaring example with reference to handling our own business of potatoes.

I would like to see the blueberry industry in the same sound position and I would like to see the other industries take care of themselves. I will even go so far as to say that I would like to see the advertising of Maine taken care of by the hotel men, but of course that is asking too much. I feel as though we should not let these blueberry men down right away. The committee has said, and will write in their report that they expect the blueberry people to take care of their own situation after next year by some method of compulsory inspection but let us not let them down right now. Let us let them down gradually. Since it is only a measly two thousand dollars difference between us we feel as though this Senate should accept the majority report.

Mr. SPEAR of Cumberland: Mr. President, I ask for a division.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Oxford, Senator Osgood, that the majority report of the Committee "Ought to Pass in New Draft A" be accepted and the Senator from Cumberland, Senator Spear asks for a division.

A division of the Senate was had.

Twenty-five having voted in the affirmative and three opposed, the majority report of the committee "Ought to Pass in New Draft A" was accepted.

Thereupon, the bill in new draft



A was laid upon the table for printing under the joint rules.

#### Passed to be Engrossed

Bill "An Act Relating to Compensation of the Register of Probate of York County." (H. P. 941) (L. D. 369)

Bill "An Act Relating to Apportionment of Motor Vehicle Registration Fees Paid by Inhabitants of Swan's Island." (H. P. 1220) (L. D. 462)

Bill "An Act Relating to Removal of Infected Persons and Goods and Securing Infected Articles." (H. P. 1601) (L. D. 912)

Bill "An Act Relating to Impersonating Justices of Officers." (H. P. 1617) (L. D. 705)

Bill "An Act Relating to Real Estate Brokers." (H. P. 1616) (L. D. 865)

Which bills were severally read a second time and passed to be engrossed in concurrence.

Bill "An Act Relating to Guaranty of Titles of Motor Vehicles and to the Facilitation of the Recovery of Stolen Motor Vehicles." (H. P. 2135) (L. D. 1123)

On motion by Miss Laughlin of Cumberland, tabled pending second reading.

Bill "An Act Defining and Prohibiting Unfair Sales Practices." (S. P. 324) (L. D. 517)

Mr. HILL of Cumberland, Mr. President, it was my understanding that there was a committee amendment to be attached to this bill. May I inquire whether or not the amendment has been previously adopted?

The PRESIDENT: The Chair will inform the Senator that Committee Amendment A was adopted on April 6th.

Thereupon, the bill as amended by Committee Amendment A was given its second reading and passed to be engrossed.

Sent down for concurrence.

Bill "An Act Relative to Hunting and Fishing Licenses." (S. P. 629) (L. D. 1143)

"Resolve Relative to the Trapping of Muskrats." (S. P. 630) (L. D. 1144)

Which bill and resolve were

severally read a second time and passed to be engrossed.

Sent down for concurrence.

#### Passed to Be Enacted

Bill "An Act Relative to Damage by Deer to Growing Crops and Orchards." (S. P. 179) (L. D. 230)

Bill "An Act Relating to Collection of Poll Taxes." (H. P. 484) (L. D. 179)

Bill "An Act Relating to Acceptance of Donations by Cemetery Corporations." (H. P. 2117) (L. D. 1109)

"Resolve Authorizing the Forest Commissioner to Convey Certain Interest of the State in Land in Washington County to Edith D. McKenney, of Lincoln." (H. P. 1760) (L. D. 1063)

#### Emergency Measure

Bill "An Act Relating to Part-Time Malt Liquor Licenses." (H. P. 2118) (L. D. 1110)

Which bill being an emergency measure, and having received the affirmative vote of 28 members of the Senate and none opposed was passed to be enacted.

#### Orders of the Day

The President laid before the Senate, An Act Relating to Automobile Travel by State Employees (S. P. 596) (L. D. 1108) tabled by Mr. Burns of Aroostook on April 5th and especially assigned for today; and the Chair recognized that Senator.

Mr. BURNS of Aroostook: Mr. President, I move for the indefinite postponement of this bill, Senate Paper 596, Legislative Document 1108, entitled An Act Relating to Automobile Travel by State Employees. My objection to the bill is confined to Section 1. I will read that section: "Sec. 1. Payment per mile for use of privately owned automobiles, regulated. The state shall hereafter pay for use of privately owned automobiles for travel by employees of the state in the business of the state not more than 5c per mile for the first 3,000 miles actually traveled by such employees on such business in any one fiscal year, not more than 4c for each mile exceeding 3,000 and not exceeding 7,000, and not more than 3c per mile for all such travel in excess of 7,000 miles."

I think we are aware of the fact that in the employment of any large number of employees whether

employed by the federal government, the state government or city government, or in private industry, that abuses creep in. I believe in the past there have been abuses on the part of state employees in relation to mileage and travel expense. I believe that some of them probably have operated their automobiles a more number of miles than were actually necessary, especially when they go into the larger figures because when they do that, when they have that opportunity they can operate their cars at some profit to themselves, and I feel that it is possible and entirely likely that abuse has been made in that regard. However, I have confidence that the majority of the employees of the state are honest and faithful employees. In drafting this bill and trying to avoid the abuse which a minority have practiced, unintentionally no doubt they have penalized the faithful employees of the state. I base that statement on my belief that you cannot operate a car within the state of Maine at three cents a mile. We are dealing with cars that are owned by employees, privately owned, and they charge and are allowed to charge so much a mile. In the past these employees have been allowed five cents a mile straight. There has been no sliding scale allowance as is provided in this bill.

I know for a fact that one employee with whom I have talked, whom I have known for a considerable number of years and I have the highest regard for his integrity and honesty, and this employee tells me if this bill becomes a law it will cost him approximately \$200. The effect then would be to indirectly reduce this employee's salary. In the first place, knowing of the nature of the work of this employee and knowing that others doing similar service are paid more in other departments than he is, I consider this would be an injustice. Are we to penalize an employee of the state by reducing his salary merely because in the prosecution of his work it is necessary for him to use an automobile?

It has already been said this morning by the Senator from Aroostook, Senator Findlen, that the potato industry pays for its own inspection of potatoes and certification of seed potatoes. This is done through the Department of Agriculture by state employees, but this

expense is borne by the industry and not borne by the state. The Department of Agriculture has made a study of the cost, mileage cost, of this work. The amount allowed is five cents a mile, has been for years and will continue to remain so, I am told. Is it fair for one department to receive five cents a mile and another department to receive three cents a mile? I say that brings about an inequality.

The place to correct these abuses is within the departments themselves. If a man is padding his expense account or running up miles on his car unnecessarily, the department head should investigate into that condition and if it is found there has been any malfeasance, bring the guilty party before him and warn him, if necessary, and then discharge him if he continues with this practice. I think this is an unfair bill to the vast majority of employees of the state who use privately owned automobiles in the state.

I cited one case. I have been told in the Welfare Department some of the young employees receiving \$23.00 a week are obliged to travel throughout the state and are obliged to purchase automobiles on the partial payment plan, and they would suffer if this bill went through, and indirectly their salaries would be reduced from \$23.00 to some figure below that.

In conclusion, I want to point out to the Senate that we members of the Legislature are allowed travel to each session and we receive ten cents a mile. It seems to me if we voted for this unfair bill that we would have to keep our fingers crossed, keep one eye closed and keep our tongues in our cheeks.

Mr. FINDLEN of Aroostook: Mr. President, I would also like to go on record as opposing the first section of this bill. We are, as I said before in this session, a very glaring example of paying our own bills, as far as our inspection is concerned.

We have probably 50 or 60 table stock inspectors of potatoes and in the neighborhood of 15 or 20 inspectors of certified seed in our section of the county. They must go wherever they are called in the county regardless of weather or road conditions. We have more bad roads up in that section of the country than probably any other county in the state. Yet when they are called to these back farms for

the inspection of potatoes, they must go. We also have more snow on our highways. The cost of travel in greater and the cost of gas is more in this section. We pay our own bills. We not only pay the cost of inspection but we pay the cost of travel. If there is anything left after the bills are paid, it is rebated to the growers and shippers in proportion to the business they have handled. This bill would make it impossible to do that. You could not expect inspectors in our section of the state to travel for any less than five cents a mile. I hope this bill will be indefinitely postponed.

Mr. SPEAR of Cumberland: Mr. President, when the vote is taken I ask for a division.

Mr. HILL of Cumberland: Mr. President, this measure now under discussion on its passage to be enacted is not a matter that has been thrown together in any hasty manner. The bill has had the consideration of ten members of the joint select committee that went into the figures, made an investigation into the cost and expense of the operation of these automobiles and into a comparison with the figures for operating automobiles in certain private industries. The ten members of the committee, I feel sure, and the ten members of the Legal Affairs Committee I am sure would not have reported favorably upon this measure if they had believed that it was an unfair thing or that it would work an injustice upon any of the employees of the state. I believe that after the consideration that was given this measure, the members of those committees felt that there was no injustice through this provision, and that on the other hand, it would be only a reasonably fair and proper saving to the state of Maine. Under Legislative Document 550, it appears that the total amount expended in mileage for privately owned cars was \$220,000 and some odd figures, with an expenditure of \$141,000 in round numbers in addition, making an aggregate of \$362,000 being expended by the state for travel of employees under the items recorded in that document. Now, that is at the rate of five cents a mile.

It seems to me it should be made clear to the Senate that this bill does not reduce the mileage to three cents a mile. The bill provides that not more than five cents a mile

shall be paid on the first 3,000 miles, not more than four cents on the next 4,000 and not more than three cents on mileage in excess of 7,000. So if an employee of the state drives, for example, 20,000 miles his average would be 3 1-2 cents a mile. If he drives 10,000 miles his average would be 4 cents a mile and at 5,000 it would be 4 3-5 cents a mile.

We found, from our investigations that in many cases state cars were being driven a large number of miles, 35,000 miles in some cases, and we were of the opinion that where the mileage is based on the rate of five cents there is an actual profit to the employee who drives any considerable number of miles, that he is more than reimbursed at that rate and consequently there is no incentive upon him to curtail the number of miles he travels as he goes about his business.

The suggestion was made to the committee that as an incentive upon the employee to eliminate unnecessary travel, this downward scale be adopted. It has been estimated that an employee driving 20,000 miles actually expends for gasoline, registration, insurance and minor repairs and other items about \$400 not including depreciation. Now under the present rate of five cents a mile he receives \$1,000. Under the rates proposed in the bill he would receive \$700 so that it seemed to us there was an allowance there of \$300 in addition to the \$400 that he is actually out of pocket, that \$300 going toward the cost of depreciation which, in our judgment, was ample to cover that.

The second section of the bill has had no reference made to it. It has been admitted and conceded that the features contained therein are desirable. Those features are designed to prevent the abuse which seems to be generally admitted does exist in some cases with relation to state owned cars. It seems to be natural that the people having those cars would use them for purposes other than the business of the state of Maine and at the expense of the taxpayer, so that is one feature it seems the Senate ought not to overlook in acting upon this measure.

This is one of the more important suggestions that has come from this committee, one we feel will result if the bill be enacted, in a very real saving to the people of Maine, and I sincerely hope that this Sen-

ate will not, by its vote, send out word to the people of Maine that we are not yet in a frame of mind where we are ready to adopt a reasonable and well considered economy. So, Mr. President, I earnestly hope the motion of the Senator from Aroostook, Senator Burns, made on the final stage in the passage of this bill, will not prevail.

Mr. TOMPKINS of Aroostook: Mr. President and members of the Senate, speaking of the cost of operation of the automobile used in the state service we are talking about the low priced car under \$1,000.

I have here a statement of an official not connected with the state, but a public official connected with the Anti-Tuberculosis Association of Aroostook County who, in the year 1938 operated a Chevrolet coach, a 1936 model. That car was driven every month in the year except January and February. The mileage covered 26,722 miles. The cost of that operating expense including registration, insurance, garage, repairs, gas and oil was \$483.83. Also it included the replacement of five tires, new piston rings and a new clutch. The average cost was 18-10 cents per mile. That includes nothing, however, for depreciation, but on a five cent mileage basis that employee would have received \$1,335. Under the present proposed spiral scale of mileage that employee would have received \$910, leaving some \$400 for depreciation of a new car or a second hand car.

It seems to me that the rate of mileage provided for in this bill is just and reasonable and I hope the motion of the Senator from Aroostook, Senator Burns, to indefinitely postpone does not prevail.

Mr. BECKETT of Washington: Mr. President, this matter of compensation for privately owned cars is something of especial interest to me. I have perhaps had a little peculiar experience in regard to automobiles which I might state at this time. In the beginning, I am in the wholesale business and I have operated cars, and trucks and cars for salesmen. I have had some contact with the automobile business as to the cost of repairs and cost of maintenance and selling of cars and I have inquired from the State Department, on my personal account, as to their methods in the cost of operation of state cars. I think the state operates a car for a little under three cents a mile but

I feel, from my experience, that they have an advantage over the private owner in that they buy automobiles. I should say, on an average of \$100 less than the private individual can buy their cars, and they get gasoline on preferential prices that the average individual driving a car could not get gasoline at. The cost is materially lower than that of the private driver.

So far as the experience of private industry in the operation of cars is concerned, I have questioned salesmen as to the practice of their companies in handling salesmen's automobiles. I find it about equally divided. Part of them own their cars and operate them, and in others the salesmen own the cars. In the cases where the salesmen own the cars most of them allow five cents. In the cases where the company owns the cars they require the salesmen to keep an accurate record as to his expenses. I know of one or two companies where it runs in the vicinity of four cents a mile. Those companies which own their cars keep and maintain a record of the cost of the cars, the repairs and operation.

I feel, personally, that this bill is all right with the exception of that portion which reduces the mileage in excess of 7,000 miles to three cents. If in order, I would move this bill be laid on the table with the understanding that an amendment will be offered which will eliminate those last lines and have everything in excess of 3,000 miles receive compensation of four cents on privately owned automobiles.

The motion prevailed and the bill was laid upon the table pending the motion to indefinitely postpone in non-concurrence.

On motion by Mr. Wentworth of York, the Senate voted to reconsider its action of yesterday whereby it accepted in concurrence the report from the Committee on Legal Affairs "Ought Not to Pass" on bill, An Act to Provide a Police Commission for the City of Biddeford (H. P. 1163) (L. D. 482); and on further motion by the same Senator, the bill was laid upon the table pending acceptance of the report in concurrence.

On motion by Mr. Boucher of Androscoggin, the Senate voted to take from the table, An Act Relat-

ing to the Sale of Wood by the Load (H. P. 1893 (L. D. 1022, tabled by that Senator on March 29th pending second reading; and on further motion by the same Senator, the bill was given its second reading and passed to be engrossed in concurrence.

On motion by Mr. Eliot of Knox, the Senate voted to take from the table, House Report from the Committee on Inland Fisheries and Game 'Ought to Pass in New Draft, same title' on bill, An Act Relative to the Use of Buckshot in Hunting Deer (H. P. 676 (L. D. 251), tabled by that Senator on April 6th pending acceptance of the report; and that Senator yielded to the Senator from York, Senator Boothby.

Thereupon, on motion by that Senator, the report of the committee "ought to pass in new draft" was accepted in non-concurrence, and the bill was given its first reading and Monday assigned for second reading.

On motion by Mr. Cony of Kennebec, the Senate voted to take from the table, House Report from the Committee on Judiciary Majority Report "Ought to Pass", Minority Report "Ought Not to Pass" on Resolve, Authorizing Charles A. Darrington to Bring Suit at Law against the State of Maine (H. P. 1425) (L. D. 559), tabled by that Senator on March 24th pending acceptance of the minority report.

Mr. CONY: Mr. President, at the time I tabled what seemingly is a very minor matter involving a sum of money less than \$100—I think \$86.00 or thereabouts—I had considerable hesitation on the thought of taking so much time of the legislature on a sum so insignificant, knowing it had passed through the hands of a competent committee.

I had the feeling then and I still have, that it seemed a rather improper thing to waive in this matter a principle of law which has prevailed for a generation. I am informed and I think authentically, that there have been three cases where parties have been permitted to sue the State in the last 27 years, and that those three cases involved a very substantial sum of money, indicating to my mind that the legislature which passed upon it must

have considered it upon its size as being something that should have consideration and which could properly be submitted to the courts.

We have a Claims Committee here. I understand that this matter has never been before it. I do not see why this Senate should take a stand that this man, whoever he may be, should be permitted to go to court on a matter of this kind. Certainly if he goes to court and if he pays his attorney the expense is pretty certain to equal the amount he would receive, especially if he has employed people to appear for him before this legislature. It seems to me it has the earmarks of an individual who wants to have his own way, and not for the purpose of recovering the monetary claim, and I do not think it is fair that this Senate should stop and pick up pins in a case of this kind. The argument of those who favored it, as I understand it, was that they thought the principle of law was wrong, that the greater part of this law was wrong, and that everyone should have the right to sue the state. If that is true, we need to do something more than to allow an \$86.00 claim to take up the time of the legislature and our courts. We need to do something more basic. I hope the minority report of the committee will be accepted.

Miss LAUGHLIN of Cumberland: Mr. President, this matter was very ably and at some length discussed when this report came before this Senate. The report as made by the Judiciary Committee was, after due hearing and discussion before that committee, a majority of nine of the committee reporting in favor of permitting this man to sue the State. There came before the committee many cases where there was no merit. In this particular case there was very good and sufficient reason, a difference of opinion and direct contradiction of facts and evidence by the witnesses that appeared before the committee, which would make it impossible for a committee to come to any decision. It could be decided only in court where the people could come and present the different sides.

This man has a grievance and he is willing to spend his money to bring suit. He believes in it thoroughly. If we refuse him the right, as was so ably set forth by the Senator from Cumberland, Senator Sanborn, he goes away with a grievance

because he cannot sue the state, because it is an ancient rule and the legislature will not let him sue the state,—a suit which he would have to bring with very little expense to the state.

This matter has been gone over very thoroughly, even with the Governor of the state on the matter, and therefore I hope this motion, made weeks after we heard the full discussion of it, will not prevail, so that we may accept the majority report of this committee.

Mr. FRIEND of Somerset: Mr. President, in connection with this bill I would like to say a word. You have a Claims Committee that has heard some 400 claims this session, some of them large and some of them small. There have been claims before the committee amounting to at least \$10,000. Other sessions there have been claims amounting to \$10,000 and \$25,000 and even up to \$50,000. I do not remember that this particular claim has been before the Claims Committee. If it had been presented before that committee, it would have been properly handled, and if a deserving claim it would have been allowed.

It doesn't seem to me it would be good policy for the legislature to permit anyone to sue the State of Maine, particularly with a claim as small as this one is. If I remember correctly, no one has been allowed to sue the State since either 1929 or 1931, and since way back to 1920 I believe there have been only three cases where people have been permitted to sue the State. One of the cases came before the Claims Committee of the legislature. The claim was not considered sound and was disallowed. Later on these same people who put in the claim were allowed to sue the State of Maine. They sued the State for a much larger amount than they put in the claim before the legislature, and the suit against the State was allowed. As I have said, they won out in their suit and it amounted to considerably more than the sum for which they had put in the claim, which the Claims Committee threw down because of its being unsound.

I think it would be a very poor precedent indeed, and I think it would be opening the doors and establishing a bad precedent if we allowed this man to sue the State of Maine on this small item at this time. I hope that the minority re-

port, "ought not to pass" will be accepted.

Miss LAUGHLIN: Mr. President, in this matter which we are considering, I do not think that any reference to what happened in some other cases has any point whatsoever. These matters should be decided on their individual merits. If it had been a claim and I had been a member of the Claims Committee, I would have voted against it, but I do not think that is sufficient. This is an entirely different proposition. This man says, "I am willing to lay my claims before a court." It is a quite different thing. The facts presented in this specific case did appeal to nine members of the Judiciary Committee as a case where he should be allowed to sue the State. There have been other cases presented where the committee refused, because the grounds were not sufficient, but in this case it seemed to us that instead of having a disgruntled citizen saying, "they will not even let me try my rights in court," we are better off to let him bring his case to court to see if he really has a case.

Mr. SANBORN of Cumberland: Mr. President, this may perhaps be something in the nature of a tempest in a teapot but it seems to me there is perhaps some degree of confusion in the minds of some of the members here as to the function, perhaps, of the Committee on Claims. It occurs to me that the distinction that may properly be made is something like this, and I will illustrate by citing a claim which I myself had occasion to present at this session where a boy escaped from a state school and on his way across the country stole an automobile which he wrecked.

Now, obviously, there was a situation where there could not be a suit brought. No court would authorize a judgment against the state, but we could properly go before the Committee on Claims and say in effect, "This is not, of course, a legal claim against the state, but the state having through its officers and agents permitted the boy to escape and do this damage, in good conscience and in equity shouldn't the state voluntarily reimburse this man?" In this particular instance the committee took that view and, as has been pointed out, it has already been passed and signed by the Governor.

Now, there is another situation

where a man has furnished gravel, we will say, to the state for the construction of a bridge. Let us assume for the moment that the Highway Commission was doing the construction and not an independent contractor. This man has furnished the gravel and he has declared that he has furnished cubic yardage enough to come to a given amount of money. The state inspectors reported back to the Commission that it was a couple of thousand yards less. It is contended that a mistake has been made in the tallying.

Now, obviously, if that gravel had been furnished to a contractor and there was that difference of the amount the man would have to sue the contractor and let it be determined on the evidence which was right. But when that same dispute arises between a man who furnished the gravel and the State Highway Commission he is barred from bringing his suit at all and that is the sort of case which, it seems to me, should be considered as proper for the bringing of a suit against the state, and I am given to understand from the reading of this bill that here is a man who has just such a claim. He says he has performed some labor for the state which the state does not recognize and refuses to pay. Now, obviously, if he said he had performed that labor for one of us and we refused to pay he would sue us and the court would determine who was right.

I hope I have made clear the distinction that where a man has a claim against an individual his right to sue is not questioned but where he has a claim against the state he cannot bring suit without permission of the legislature and I think this is a case where we ought to let down the bars and give the man an opportunity to have his rights determined by a court.

I would agree that it is somewhat unfortunate that the amount in this case seems to be small but if he were to have the same claim of eighty-six dollars, or twenty-four dollars, against you or me he would have the right to sue and we would have to defend, and he might have the pay his lawyer more than he recovered because he might recover nothing and even if he recovered the whole amount he would still have to pay his lawyer, but it is a

privilege that every man should have, to have his rights in such a case determined before the court.

Mr. GRAVES of Hancock: Mr. President, it is my understanding that it is not a question of the gravel that is in debate. I think there is no question as to the amount that was used. It was the amount of top soil, and that was, as I have understood, that the top soil was taken off in a larger amount than was necessary to get the required yardage of gravel, and this top soil, I believe, was taken and used for grading purposes around this gentleman's house. The sole contest for this claim is on the top soil, as I understand it.

I would like to mention the fact that there have been three suits brought against the state. I have them here. These are the actions brought against the state since 1912—twenty-seven years. The first is Keyes against the State in 1919, which was a suit of about \$18,000 and was allowed. The second was Jones against the State, 122 Maine, 1923, for about \$25,000 and he was allowed \$18,000. The third case is Kerr against the State in 1927. He sued for \$195,753.93. He sued for that and was allowed \$2,481.50. Those are the three suits we have had in twenty-seven years and they are all for large amounts, but in this connection I might say that in the first claim, Keyes against the State in 1919, that Governor Milliken in his veto of a similar resolve in favor of a man named Burns said at that time, "The state's immunity from being sued by an individual is an attribute of sovereignty and should be waived only upon rare occasions when there is urgent and conclusive evidence that only by such extraordinary means can the ends of justice be served."

I do not think that this case comes within that category, Mr. President, and I hope the Minority Report will prevail.

Mr. HILL of Cumberland: Mr. President, the Senator from Hancock, Senator Graves, has referred, I think, to the case of one Kerr who brought an action at law and was permitted by the legislature to sue the state and brought his action into court. May I inquire from the Senator from Hancock (Senator Graves) whether he has the information as to the verdict awarded the plaintiff in that case?

The PRESIDENT: The Senator from Cumberland, Senator Hill asks a question through the Chair of the Senator from Hancock, Senator Graves, who may answer if he wishes.

Mr. GRAVES: Mr. President, I believe the verdict was two thousand dollars.

Mr. HILL: May I also inquire, Mr. President, whether this same gentleman did not later bring a claim to the legislature and present it before the Committee on Claims, after that two thousand dollar verdict had been awarded, and what the result of that was?

The PRESIDENT: The Senator from Hancock, Senator Graves may answer if he wishes.

Mr. GRAVES: Mr. President, I think the Senator from Somerset, Senator Friend might answer that better than I.

Mr. FRIEND of Somerset: Mr. President, I believe it was in 1929 that that claim came in and I was not on the committee at that time, or possibly it was 1927, but fifty thousand dollars was allowed and since then he has come back in three or four different sessions but no further amount has been allowed.

Mr. HILL: I thank the Senator, Mr. President. I simply wished to

bring out the point that in the case where the gentleman was permitted to sue and was awarded two thousand dollars, subsequently the matter was brought before the legislature in the form of a claim and fifty thousand dollars was awarded.

I ask, Mr. President, that when the vote is taken, it be by a division.

Mr. BURNS of Aroostook: Mr. President, may I inquire through the Chair, who signed the minority report?

The PRESIDENT: The Representative from Portland, Mr. McLaughlin, signed the minority report.

The question before the Senate is on the acceptance of the minority report "Ought Not to Pass" and the Senator from Cumberland, Senator Hill, asks for a division.

A division of the Senate was had.

Nineteen having voted in the affirmative and eight opposed, the minority report "Ought Not to Pass" was accepted, in nonconcurrence.

Sent down for concurrence.

The PRESIDENT: Is there any further business to come before the Senate?

On motion by Mr. Findlen of Aroostook, adjourned until next Monday at four o'clock in the afternoon.