

STATE OF MAINE
SUPREME JUDICIAL COURT
OPINION OF THE JUSTICES
OJ-15-2

BRIEF OF ATTORNEY GENERAL SUBMITTED IN CONJUNCTION WITH
QUESTIONS PROPOUNDED TO THE JUSTICES OF THE SUPREME
JUDICIAL COURT
BY THE GOVERNOR ON July 17, 2015

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The Attorney General respectfully submits the following brief pursuant to the Court's Procedural Order of July 20, 2015, to assist the Justices in resolving the questions presented by the Governor in his request of July 17, 2015.

Questions Presented

The Governor posed the following questions:

Question 1. What form of adjournment prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Art. IV, pt. 3, §2 of the Maine Constitution?

Question 2. Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

Question 3. Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?

SUMMARY

The correct answer to Question 1 is that adjournment *sine die*, or without day, is the only type of adjournment that prevents the return of bills by the Governor with his objections, within the meaning of Article IV, part 3, section 2, and thus is the only type of adjournment that stops the running of the 10-day clock for the Governor to exercise his veto power. Because the Legislature did not adjourn *sine die* on June 30, but merely adjourned temporarily until the call of Speaker and the Senate President, the applicable 10-day periods continued to run. As a result, all 65 bills held by the Governor until July 16, 2015, when he

attempted to return them with objections, had already become law by operation of Maine's Constitution.

Question 2 addresses the internal workings of the Legislature and is not the proper subject of an advisory opinion. If the Justices decide to consider Question 2 on the merits, the answer is no, because the Legislature adjourned only temporarily and thus did not trigger the three-day provision in the veto clause.

Question 3 is not the proper subject of an advisory opinion under the general rule that the Justices will refrain from answering questions from one branch of government inquiring about the power, authority or duty of another branch. If the Justices decide to consider Question 3, the answer is no for the reasons outlined in response to Question 1.

FACTUAL BACKGROUND

The 127th Legislature convened its First Regular Session on Wednesday, December 3, 2014, and reconvened in January 2015. The statutory adjournment date for the session, pursuant to 3 M.R.S. § 2, was Wednesday, June 17, 2015.

On June 18, 2015, the Legislature voted to extend the session for five legislative days and by the same motion voted unanimously to ratify "all action taken by the House and Senate on June 18, 2015 prior to the vote." Gov. Request,

Ex. 3.¹ Both Houses voted to extend the session for another five legislative days just after midnight on the night of June 23, 2015. In floor debate on the motion, House leaders indicated that they expected to meet on June 30 and again on or about July 16. Gov. Request, Ex. 8. In presenting the Joint Order to extend, Representative McCabe noted:

There are some remaining items still with the other body so extending these days is appropriate so that we make sure that we can act on that work beyond July, I mean beyond June 30th. And, at this time, I hope that when we take this vote, folks will support this and will be prepared *so that when we come back July 16th*, we can take up any remaining items as well as when we come back on the 30th.

Id. (emphasis added). Representative Fredette also referenced the likelihood of returning on July 16th in his remarks:

...my anticipation is that we would be able to ... come back on the 30th of June, complete some work on that day and come back on a second day, which may or may not be July the 16th, and complete some additional work that is required by this body on behalf the people of the State of Maine, and then be able to complete that work in a timely fashion so that we don't have to use those complete five additional days.

On Friday, June 26, the Senate President and the Speaker of the House sent a memorandum via email to all members of the 127th Legislature (attached as Ex. 3), which specifically anticipated meeting on June 30, July 1 (for potential line-item vetoes) and July 16.

¹ June 18, 2015 constituted the first legislative day of the 5-day extension. *See* remarks of the Speaker and Rep. Fredette, Legis. Rec. House (June 18, 2015) attached as Exhibit 2.

The Legislature had many reasons to anticipate more line item vetoes from the Governor, who had already issued line-item vetoes on five bills (L.D.'s 260, 856, 1080, 1019 and 1185) during the period from June 12 through June 23, including 64 line-item vetoes on the budget bill (L.D. 1019). The Constitution gives the Governor one day to return a line-item veto, while reserving the full 10 days for him to veto the underlying bill. Me. Const. art. IV, pt. 3, § 2-A. Under their rules, the House and Senate have only 5 calendar days to act on a line-item veto. Senate Rule 523; House Rule 521.

Shortly before 11:00 pm on June 30, the House and Senate adjourned “until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.” Joint Order (S.P. 556) attached as Ex. 7 to Governor’s request. As noted by one member of the State House press corps in his blog post the following day (attached as Ex. 4), this type of adjournment clearly signified that “they’re still not finished” and that only an adjournment “*sine die*” or “without day” would mean “no more sessions scheduled.”

As of the June 30 adjournment, the Governor had not yet acted upon 85 bills that had been presented to him less than 10 calendar days (Sundays excepted) before June 30. *See* Ex. 1. The Governor returned three of these bills to the Revisor of Statutes without his signature on July 1, and signed seven into law

during the period from July 1 to July 8. *Id.* As of July 8, the Governor was still holding the remaining 19 bills for which the 10-day deadline for action had expired, and 51 bills enacted on June 30 for which the time period for action was due to expire at midnight on July 11. *Id.*

On Monday, July 6, the Senate posted notice that it would reconvene on July 16th at 10:00 am. Ex. 5. On July 8, the Revisor of Statutes notified legislative leaders that the bills that had not been returned by the Governor within 10 days of presentation were being assigned Chapter numbers, as public laws or resolves. Ex. 6. The Governor issued a press release that same day asserting his right to hold onto these bills, stating: "As allowed by the Maine Constitution, the Governor will submit the vetoes when the Legislature meets again for three days." Ex. 7.

Two Senators subsequently asked the Attorney General for an opinion regarding the status of these 19 bills. On July 10, the Attorney General issued a formal opinion that the bills had indeed become law pursuant to Article IV, part 3, section 3 of the Constitution, since the Legislature had not adjourned *sine die* and more than 10 days had elapsed since these bills were presented to the Governor. Ex. 8. The Attorney General acted promptly in order to give the Governor an opportunity to act on the 51 bills that remained on his desk for which the 10-day deadline was due to expire at midnight the following day.

The House Clerk and Secretary of the Senate emailed the Governor's Office on Thursday afternoon, July 9, to indicate their availability "to come in on Saturday to pick up bills that may be vetoed" and included phone numbers where they could be reached. Ex. 9. The Governor's office acknowledged receipt of the communications that same afternoon. *Id.*

On Friday, July 10, the Governor's Legal Counsel issued a memorandum outlining for the first time the Governor's unprecedented position and stating unequivocally: "[T]he Governor is not holding these bills as a result of a misstep or mistake. He is deliberately holding them based on his reading of the Maine Constitution... [T]he Governor is waiting for the Legislature to reconvene for 4 consecutive days (the first day does not count), at which point, he will act." Ex. 10. That same day, the Governor's Counsel wrote to the Executive Director of the Legislative Council challenging the Revisor's actions in "chaptering" as public laws bills that the Governor was holding, and alleging that her actions constituted "overly partisan conduct." Ex. 11. The July 11th deadline passed without any bills being returned by the Governor with his objections. Accordingly, the Revisor assigned chapter numbers to those bills indicating that they had become law without the Governor's signature.

After the Legislature reconvened on July 16, the Governor's staff attempted to deliver 65 veto messages for bills that had already been chaptered as public laws

or resolves on or before July 12, 2015.² The Governor was informed by the House Clerk and Secretary of the Senate that “because the bills had already become law and had been chaptered by the Revisor of Statutes,” the bills “were not properly before the body” and would instead be delivered to the Revisor’s Office. *See* Ex. 12. As noted by the Governor in his request, 17 of these chaptered laws are emergency enactments, which take effect upon approval. *See* Ex. 1. On July 16, the Senate overrode the Governor’s vetoes of 7 bills that had been returned on June 30. Both houses also considered two new bills presented by the Governor that day (L.D. 1453 and 1454), one of which was enacted and signed by the Governor. P.L. 2015, ch. 376. At approximately 6 p.m. on July 16, the House and Senate adjourned *sine die*, concluding the First Regular Session of the 127th Legislature. The Revisor issued a formal notification that all non-emergency measures would therefore take effect 90 days hence, on October 15, 2015. The following day, the Governor submitted this request for an Opinion of the Justices.

SOLEMN OCCASION

The Maine Constitution obliges the Justices of the Supreme Judicial Court “to give their opinion upon important questions of law, and upon solemn

² The Governor subsequently returned to the Revisor of Statutes 6 bills that he had been holding since June 30 (or before), to which he apparently no longer objected. These are listed on Exhibit I as having been returned without the Governor’s signature on July 21, 2015.

occasions, when required by the Governor, Senate or House of Representatives.” Me. Const. art. VI, § 3.³ The “first issue that must be addressed,” therefore, is whether the questions submitted by the Governor present “a solemn occasion involving important questions of law.” *Opinion of the Justices*, 2002 ME 169, ¶ 3, 815 A.2d 791.

The status of 65 bills or resolves enacted by the Legislature on or before June 30, 2015 is at issue. Of these 65 bills, 17 were enacted as emergency measures. If the Governor missed the deadline to veto the bills, the emergency measures are now in effect and the non-emergency bills are law with an effective date of October 15, 2015. While legal precedent and historical practice overwhelmingly support the conclusion that these bills are now law, Question 1 raises an important issue that is critical to the public interest.

There is substantial doubt as to whether Questions 2 and 3 present a “solemn occasion” because they relate to nonjusticiable political questions.⁴ The political question doctrine “concerns ‘questions of which courts will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or

³ Article VI, § 3 thus creates a narrow exception to the fundamental principle of separation of powers, articulated in Article III of the Maine Constitution, which would preclude the Justices from answering questions presented by the executive or legislative branch regarding their respective authority. *Opinion of the Justices*, 2002 ME 169, ¶ 5, 815 A.2d 791, 794.

⁴ Use of the term “political question” in this section refers to the legal principle that certain issues should be resolved by a branch of government other than the courts. It is not meant to refer to partisan politics.

legislative powers.’” *Wright v. Department of Defense & Veterans Servs.*, 623 A.2d 1283, 1284-85 (Me. 1993) (quoting *Black's Law Dictionary* 1043 (5th ed. 1979)). The source of the doctrine is the separation of powers principle, which prevents one branch of government from interfering with powers reserved to another branch. *Baker v. Carr*, 369 U.S. 186, 210 (1962); *see also State v. Hunter*, 447 A.2d 797, 799 (Me. 1982).

The factors noted in *Baker* are present here. Maine’s Constitution clearly commits to the Legislature the power to enact appropriate statutory limits on the length of the first and second regular sessions and to determine the rules of its proceedings, both of which the Legislature has done. Me. Const. art. IV, pt. 3, §§ 1 & 4; 3 M.R.S. § 2; *see also Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977) (“A challenge to the Legislature’s exercise of a power which the Constitution commits exclusively to the Legislature presents a nonjusticiable ‘political question.’”).

In his request, the Governor states that the Legislature failed to “legally extend its session,” that the Legislature conditionally adjourned “without day” and that the “exact date of the end of the session is likely disputed.” The Governor’s interpretation is in direct conflict with the Legislature’s internal procedures, rules

and historical practice, including this Governor's past practice. It is for the Legislature, not the Chief Executive to determine when it is in session.⁵

A review by the Justices of whether the Legislature properly extended its session, or properly framed its adjournment orders, raises serious concerns of comity and respect for a separate branch of government under the political question doctrine. Such questions relating to the internal operation of the Legislature do not present a solemn occasion but rather constitute nonjusticiable political questions which are not appropriate for an advisory Opinion of the Justices. Moreover, in the context of an advisory opinion of the justices, the Court has refrained from answering questions from one branch of the government inquiring about the power, duty or authority of another branch. *See Opinion of the Justices*, 709 A.2d 1183 (Me. 1997); *In re Opinion of the Justices*, 132 Me 491, 167 A. 176 (1933).

For all of the above reasons, the Justices should decline to address the substance of Questions 2 and 3.

⁵ See National Conference on State Legislatures, *Mason's Manual of Legislative Procedure*, § 781 (2010 ed.) (two houses of the legislature have the "right and power to make their respective journals show that all their business was transacted before the arrival of the moment of time for their adjournment as fixed by the constitution and, at least in the absence of a gross and flagrant violation of the constitutional restriction as to the length of the session, evidence is inadmissible to contradict the journal").

QUESTIONS PRESENTED

Should the Court address the merits of the questions posed, the Attorney General submits the following comments.

1. Question 1. “What form of adjournment prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Art. IV, pt. 3, §2 of the Maine Constitution?”

The word “adjournment” means different things in different provisions of the Constitution, and its meaning can only be discerned in context.⁶ The Governor’s question attempts to narrow the focus to what is “contemplated by the use of the word, adjournment” in Article IV, part 3, section 2 of the Maine Constitution. The word “adjournment” is not used in isolation, however, and must be analyzed as part of the entire phrase in which it appears:

If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it *unless the Legislature by their adjournment prevent its return...*

Me. Const. art. IV, pt. 3, § 2 (emphasis added). The only type of adjournment that stops the 10-day clock for the Governor’s action on a bill is an *adjournment that prevents* the Governor from returning the bill.

⁶ The quorum provision, for example, provides that while a majority of the House and Senate “constitute a quorum to do business ... a smaller number may adjourn from day to day.” Me. Const. art. IV, pt. 3, § 3. *See also id.* art. IX, § 4 (Legislature may adjourn “from day to day” as necessary to complete election of officers); Me. Const. art. IV, pt. 3, § 12 (“Neither House shall, during the session, without the consent of the other, adjourn for more than 2 days...”). By contrast, the people’s veto provisions, in defining the event that triggers the 90-day clock for regular enactments to take effect, use the phrase “recess of the Legislature” which is then defined as “the adjournment without day of a session of the Legislature.” *Id.* §§ 16, 20.

A. Adjournment *sine die* (or without day) prevents the return of bills by the Governor with his objections.

When the Legislature adjourns “*sine die*,” it finally concludes the regular session. Such action terminates all legislative business for that session. *Mason’s Manual of Legislative Procedure*, § 445-3. It also triggers the 90-day clock for the effective date of non-emergency enactments and the time period for a people’s veto of any such laws. Me. Const. art. IV, pt. 3, §§ 16-20.

Precisely because it has such legal significance, the Legislature treats the act of final adjournment with great formality. Each house sends a delegation to the other body and to the Governor to inform them that there is no further business to come before the body and that it is ready to adjourn without day. The members of the delegation typically inquire whether the Governor wishes to deliver any message to the House and Senate before the House and Senate adjourn the regular (or special) session. The motion to adjourn without day always includes the phrase “*sine die*” or “without day.” Indeed, this practice has been consistent since at least 1850. *See* attachment to Ex. 8. There can be no doubt regarding when a regular session has finally adjourned because the language used by the House and Senate is express, and these formalities are always observed.

Once the Legislature has finally adjourned (i.e., adjourned *sine die*), it has no authority to act until convened in a special session, either by proclamation of the Governor, or at the call of the Speaker and Senate President with the consent of

a majority of members of both parties. Me. Const. art. IV, pt. 3, § 1. Adjournment *sine die* of a regular or special session does “prevent the return” by the Governor of any bills enacted during that session because the session has ended and the Legislature has no authority to consider the Governor’s veto. This is recognized in prior Opinions of the Justices and has never been questioned.⁷

B. Temporary adjournment during a regular session may not be construed as adjournment *sine die*.

Motions for temporary adjournment during a regular session often include a specific date – e.g., motion to “adjourn until 10:00 am on” a specified day. Numerous examples of such motions are referenced on the chart attached as Exhibit 13. There are many reasons why the Legislature may not wish to specify a return date, however, and failing to specify does not convert its action to an adjournment *sine die*.

Adjournment *sine die* means *there can be no more days in that regular or special session*. By contrast, a legislative vote to adjourn to an unspecified date – e.g., “until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor” (Joint Order S.P. 556, attached as Ex. 7 to Governor’s

⁷ The instances involving Governors Brennan and Baldacci, cited by the Governor LePage’s legal counsel in their July 10, 2015 memorandum, all involved situations in which the Legislature had adjourned its regular session *sine die* before the Governor took any action. *See* Ex. 10 at 3-4. Earlier Opinions of the Justices cited by the Governor’s legal counsel also dealt with instances when the Legislature had expressly adjourned *sine die*, which is not the case here. *See Opinion of the Justices*, 484 A.2d 999 (Me. 1984); *Opinion of the Justices*, 437 A.2d 597, 604 (Me. 1981).

request) – is a vote to adjourn for a period of time *during* the session. It is not the same legal act as an adjournment *sine die* and there is no legal basis to treat it the same.⁸

To construe any adjournment that fails to mention a specific date for returning as an adjournment without day would unconstitutionally restrict the Legislature’s power. Unlike the Governor’s authority, “[l]egislative power is defined by limitation, not by grant, and is absolute except as expressly or by necessary implication restricted by the Constitution.” *Opinion of the Justices*, 623 A.2d 1258, 1262 (Me. 1993). If the Legislature had to set a specific date for its return in order to avoid having a temporary adjournment construed as an adjournment without day, it could frustrate the Legislature’s ability to address line-item vetoes and to control the conduct of its own business.⁹ The Legislature would

⁸ Indeed, to construe a motion to adjourn “until the call” as equivalent to adjournment *sine die* (as the Governor’s legal counsel suggested in a Memorandum dated July 10, 2015 (Ex. 10)) would lead to absurd results. Non-emergency bills enacted during the regular session would have different effective dates, with a different batch taking effect 90 days after every motion for a temporary adjournment lacking a specific date to reconvene. And the Legislature would have to call itself back into a new special session after every such motion. Indeed, if the Governor’s view of the June 30th adjournment order were to prevail, the validity of two emergency bills (one of which he presented) enacted on July 16 would be in question. P.L. 2015, c. 376 and 377.

⁹ The legislative record for 2012 illustrates this problem. During its second regular session, the 125th Legislature adjourned on April 14, 2012 “until 10:00 am on May 15.” Governor LePage then returned line-item vetoes on a budget bill. The Speaker was unable to garner support of a majority of members of both parties to call the House into session before that specific date and thus had to forego the opportunity to override those vetoes. *See* Legis. Rec. H-1537 - 1538 (2012) (letter to House Clerk, dated April 18). When the House and Senate adjourned on May 17 (after reconvening on May 15), they did so without specifying a date, moving instead to adjourn “until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business pursuant to the Joint Order (S.P. 689).” *Id.* at H-1589. They returned on May 31 to consider several vetoes that the Governor had submitted after May 17, 2012. *Id.* at H-1590 – 1604; *see* Ex. 13.

be forced to stay in session every day until the Governor had exercised all of his veto powers, regardless of whether the bodies had any other business to conduct.

Once again, the Legislature has plenary authority to determine when and how it adjourns. That is not for the Governor or the Judicial Branch to decide. *See N.L.R.B. v. Canning*, ___ U.S. ___ 134 S. Ct. 2550, 2574 (2014) (Senate is in session when it says it is).

C. No form of adjournment other than an express adjournment “*sine die*” or “without day” prevents the return of bills by the Governor with his objections.

Nothing short of adjournment *sine die* of the regular session of the Legislature actually prevents the return of bills by the Governor. This is evident from the language of the Constitution and historical practice of the legislative and executive branches in Maine. This conclusion is also consistent with the majority view in other jurisdictions expressed in case law and treatises dating back to 1791.

1. The language of the Constitution recognizes that temporary adjournments do not prevent the return of bills.

Since the veto provision in Article IV, part 3, section 2 excludes Sundays, but not Saturdays or other legal holidays, that provision clearly contemplates the return of bills when the Legislature is not conducting business in daily session. Nothing in the language of section 2 precludes the Governor from returning a bill to the Clerk of the House or Secretary of the Senate on a day when the House and Senate are not in daily session. *See* 3 M.R.S. §§ 22 & 42; *In re Interrogatories of*

the Colorado Senate of the Fifty-First General Assembly, 195 Colo. 220, 578 P.2d 216 (1978) (vetoed bills were returnable to the General Assembly during recess at which time the chief clerk of the House, the Secretary of the Senate and, from time to time, the Speaker of the House, the majority leader of the House and the majority leader of the Senate were in attendance in the respective chambers). Indeed, as discussed below, this has been the usual practice in Maine for decades.

2. Historical practice demonstrates that a temporary adjournment during the regular session does not prevent the return of bills by the Governor.

“Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions” regulating the relationship between the legislative and executive branches of government. *N.L.R.B. v. Canning*, 134 S. Ct. at 2559 (quoting the *Pocket Veto Case*, 279 U.S. 655, 689 (1929)). The practical construction given to a provision of the Constitution by the executive or legislative branch, in which the other branch has acquiesced “while not absolutely binding on the judicial department, is entitled to great regard in determining the true construction of a constitutional provision the phraseology of which is in any respect of doubtful meaning.” *Pocket Veto Case*, 279 U.S. at 690 (quoting *State v. South Norwalk*, 58 A. 759, 761 (Conn. 1904)).

In this instance, the Legislature has a long history of adjourning for a period of several days or weeks before the end of a regular session and then returning to

wrap up its business, including the consideration of gubernatorial vetoes. The Governor is not prevented from returning bills during such a temporary adjournment. He need only deliver the bills to the House Clerk or the Senate Secretary, and they will be entered on the Journals of that body for consideration as soon as the members reconvene to resume business. *See* 3 M.R.S. §§ 22 & 42.

The attached chart (Ex. 13) shows the historical practice since the 1973 amendment to the veto provision, in which Governors have routinely returned bills with objections during such temporary adjournments, and the Legislature has reconsidered the bills, either overriding or sustaining the Governor's vetoes, before finally adjourning the session *sine die*.

Indeed, Governor LePage followed this practice every year of his first four-year term. In 2014, for example, the Legislature adjourned on April 18 until May 1. In the intervening weeks, Governor LePage returned 40 bills with his objections to the Senate and House. *See* Ex. 13 (referencing communications dated April 22, 23, 25, 28, 29 and 30). The Legislature reconsidered those bills when they reconvened on May 1, 2014, and then adjourned *sine die*. The same pattern occurred in 2011, 2012 and 2013.¹⁰

¹⁰ During the First Regular Session of the 126th Legislature, the House and Senate adjourned on June 27 until July 9, 2013; the Governor returned 30 bills with objections during that interval; the House and Senate met to reconsider those bills on July 9 and then adjourned without day. During the First Regular Session of the 125th Legislature, the House and Senate adjourned on June 16 until June 28, 2011; Governor LePage returned 8 bills with objections in the intervening days; the House and Senate reconsidered those bills on June 28 and then adjourned *sine die* on the evening of June 29, 2011.

The history of these four legislative sessions demonstrates that this Governor has experienced no difficulty returning bills during a temporary adjournment period in the midst of a regular session in the past, regardless of whether the Legislature specified a date for reconvening in the adjournment order. The pattern at least four decades demonstrates an established and common understanding of both the legislative and executive branches of government that a temporary adjournment does nothing to prevent a Governor from returning bills with objections, nor does it prevent the Legislature from reconsidering those bills before adjourning their regular session.

3. The overwhelming weight of authority supports the conclusion that only a final *sine die* adjournment prevents the return of a bill within the meaning of Article IV, part 3, section 2 of the Maine Constitution.

The majority of jurisdictions which have construed comparable constitutional provisions have held that only adjournment *sine die* prevents the return of a bill. The majority rule dates back to a 1791 Opinion of the Justices issued by the Massachusetts Supreme Court. *Opinion of the Justices*, 3 Mass. 567 (1791) (copy attached in Addendum). In that case, the Justices clearly distinguished between a *sine die* adjournment, where there is no subsequent

In the Second Regular Session, the 125th Legislature adjourned on May 17, 2012, “until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business pursuant to the Joint Order (S.P. 689).” No return date was specified in the Joint Order. The House and Senate reconvened on May 31 “according to adjournment” and reconsidered four bills that had been returned by the Governor with objections during the temporary adjournment. *See* Ex. 13.

meeting of the same legislative body (referred to as a “Prorogation”), and a temporary adjournment, where the same legislative body returns. The Justices opined that where there is a final *sine die* adjournment before the expiration of the time for the Governor’s veto, the bill does not become law, but where the adjournment is not final, the bill does become law. *Id.* at 567-568.

The rationale in the Massachusetts *Opinion* is also consistent with the general rule described by Justice Story in his treatise on the United States Constitution with regard to the balance between the veto power of the President (called the “qualified negative”) and the legislative check to prevent an undue exercise of that power:

The Constitution, therefore, has wisely provided that, “if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it.” But if this clause, stood alone, Congress might in like manner, defeat the due exercise of his qualified negative by a *termination of the session*, which would render it impossible for the President to return the bill. It is therefore added, “unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.”

(Emphasis added). Arnold Story, *Commentaries on the Constitution*, §891 (1891). Justice Story’s historical treatise makes clear that it is the *termination of the session*, or a *sine die* adjournment, that would prevent return, triggering the “pocket veto” provision of the United States Constitution. Similarly, the courts which have followed the majority rule reason that it is only a final *sine die* adjournment which prevents the return because the legislative session has ended

and the legislature is prevented from reconsidering a bill and finally enacting it over an executive veto.

The Massachusetts *Opinion of the Justices* was followed by the New Hampshire Supreme Court in *Opinion of the Justices*, 45 N.H. 607 (1864). A similar result was reached in the majority of jurisdictions to have considered the issue under comparable state constitutional provisions. *See, e.g., State ex rel. Gilmore v. Brown*, 451 N.E.2d 235 (Ohio 1983) (word “adjournment” within meaning of constitutional provision requiring the Governor, in case adjournment by General Assembly prevents return of a vetoed bill, to file bill in office of Secretary of State means adjournment *sine die* and not a weekend adjournment); *Redmond v. Ray*, 268 N.W.2d 849 (Iowa 1978) (an intra-session three to four-week legislative adjournment during which an agent is designated to receive messages from the Governor is not an adjournment which prevents return of disapproved bills and hence does not trigger pocket veto provision); *Johnson City v. Tennessee Eastern Elec. Co.*, 182 S.W. 587 (Tenn. 1916) (adjournment means final adjournment and governor cannot veto bill by returning it after 33-day temporary adjournment); *Hequembourg v. City of Dunkirk*, 2 N.Y.S. 447 (1888) (temporary ten-day adjournment of legislature did not prevent the return of bill by the governor and it became a law); *Miller v. Hurford*, 9 N.W. 477 (Neb. 1881) (adjournment means adjournment *sine die* and not period during which legislature

adjourned temporarily for two months); *Harpending v. Haight*, 39 Cal. 189, 1870 WL 857 (1870) (governor could have returned a bill during the constitutional period to an agent of the Senate while not in actual session because it still has an organized existence as a legislative body).¹¹

Cases interpreting the “pocket veto” clause of the United States Constitution are also consistent with the majority rule. In the *Pocket Veto Case*, Congress adjourned its First Session *sine die* less than ten days after presenting a bill to the President. The Supreme Court held that during this inter-session adjournment, the President was prevented from returning the bill, within the meaning of the constitution, even if it was returned to a duly authorized officer or agent of the

¹¹ See also *Hoppe v. Northern States Power Company*, 215 N.W.2d 797 (Minn. 1974) (adjournments short of final adjournment will not prevent the return of legislative bills by the governor and during temporary and interim adjournments, the governor is free to return the bills, with his objections, to any member or officer of the proper house of the legislature); *Hawaiian Airlines, Limited v. Public Utilities Commission of the Territory of Hawaii*, 43 Haw. 216, 1959 WL 11641 (1959) (constitutional phrase “unless the legislature by their adjournment prevent its return” refers to *sine die* adjournment); *State ex rel. Sullivan v. Dammann*, 267 N.W. 433 (Wis. 1936) (adjournment in constitutional provision concerning return of bills by the Governor means “*sine die*” adjournment and temporary adjournment for more than three days did not prevent bill from becoming law where Governor failed to return it in relevant time period); *Wood v. State Administrative Board*, 238 N.W. 16 (Mich. 1931) (only adjournment “without a day” prevents the return of a bill by the governor); *State ex rel. Putnam v. Holt*, 215 N.W.200 (Minn. 1927) (bill vetoed by the governor need not be returned to the house of origin while in session, but may be returned to presiding officer, secretary, clerk, or member); *State ex rel. Thompson v. Dixie Finance Co.*, 278 S.W. 59 (Tenn. 1925) (bill need not be returned by governor to General Assembly while in session, but may be returned to a clerk or some member of the committee on enrolled bills); *State ex rel. State Pharmaceutical Ass’n v. Michel*, 936, 27 So. 565 (La. 1900) (adjournment means final adjournment and governor can properly return a bill during relevant period to agents of the originating house); *Corwin v. Comptroller General*, 6 S.C. 390, 1875 WL 5392 (1875) (bill might have been returned by governor to agents of the house while temporarily adjourned and such an adjournment does not prevent compliance with the constitutional requisition); *Opinion of the Justices*, 45 N.H. 607, 1864 WL 1586 (1864) (final adjournment is the only adjournment that can prevent the return of a bill); see also *What Amounts to Constitutional Provision that Bill Shall Become a Law If Not Returned by Executive Within Specified Time, Unless Adjournment Prevents Its Return*, 64 A.L.R. 1446; *Power of Executive to Sign Bill After Adjournment, or During Recess of Legislature*, 64 A.L.R. 1468; 1 Singer & Singer, *Sutherland, Statutory Construction*, §§ 16.03-16.04 (7th ed.).

House in which the bill originated. 279 U.S. at 683-84. Later, in *Wright v. United States*, 302 U.S. 583 (1938), the Court held that the President was not prevented from returning a bill because of a three day intra-session recess of the Senate.

The rationale of *Wright* was followed in *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974). The Court of Appeals for the District of Columbia concluded that a brief intra-session adjournment for the Christmas holiday (6 days for one House, five for the other) did not prevent the President from returning a bill, noting that “[M]odern methods of communication make it possible for the return of a disapproved bill to an appropriate officer of the originating House to be accomplished as a matter of public record accessible to every citizen.” *Id.* at 441.

A minority of jurisdictions have held to the contrary.¹² Those cases rely upon constitutional provisions that are different from ours (for example, the Delaware and Pennsylvania constitutional provisions which refer to both final (*sine die*) and temporary adjournment), and the cases do not fully analyze the historical underpinnings and precedent.

¹² See *Jubelirer v. Pennsylvania Department of State*, 859 A.2d 874 (Pa. Com. Ct. 2004), *aff'd*, 871 A.2d 789 (2005) (under constitutional provisions which mention both adjournment and adjournment *sine die*, temporary adjournment does prevent return triggering alternate veto procedure of returning bill to Secretary of the Commonwealth and giving public notice within 30 days); *Opinion of the Justices*, 175 A.2d. 405 (Del. 1961) (under constitutional provisions which mention both adjournment and final adjournment, temporary adjournment does prevent the return of a bill for purposes of triggering pocket veto); *In re An Act to Amend an Act Concerning Public Utilities*, 84 A. 706 (N.J. 1912) (temporary recess prevents return of a bill); *State ex rel. Town of Norwalk v. Town of South Norwalk*, 58 A.759 (Conn. 1904) (3 days for governor's return did not include days when general assembly was in actual session); *People v. Hatch*, 33 Ill. 9, 1863 WL 3219 (1863) (governor prevented from returning bill when legislature not in session).

The Attorney General urges the Justices to uphold the consistent historical practice in Maine and follow the rule adopted by the majority of jurisdictions, including the earliest opinion on the subject from Massachusetts, a state which shares most of Maine's history and legal precedent.

Question 2. Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

In Question 2, the Governor appears to be asking the Justices to opine on the propriety of actions taken by the Legislature when it extended its session on June 18, 2015, and whether the wording used by the Legislature in its June 30, 2015 temporary adjournment order amounted to an adjournment *sine die*. While these aspects of the Governor's question fall within the political question doctrine, to the extent the Justices reach the merits of the question, the answer to the question is no. Since the Legislature had not adjourned *sine die* before the Governor's time for returning his veto had expired, the three-day procedure was not triggered.

The Legislature properly extended its session on June 18, 2015, and ratified all previous action taken by both Houses.¹³ See Ex. 2 & Gov. request, Ex. 3.

Nothing in the Constitution (or statute) requires the Legislature to formally extend the session prior to midnight on the last day. As discussed, the Legislature has the

¹³ According to *Mason's Manual of Legislative Procedure*, § 146-6, the Legislature may ratify any action that it had the power to authorize in advance and the ratification dates back to the action that was ratified. *Mason's* is referenced in House Rule 522 and Senate Rule 520 as a guide for procedure.

exclusive authority to make and enforce its own rules governing procedure, including “the power and right to determine for itself when the moment of time has arrived for adjournment.” *Mason’s Manual of Legislative Procedure*, § 781-4.

Question 3. Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?


Like aspects of Question 2, Question 3 is not the proper subject for an advisory Opinion of the Justices because Question 3 would require the Justices to answer a question from one branch of government about the power, duty or authority of another branch of Government. *Opinion of the Justices*, 709 A.2d 1183 (Me. 1997). Should the merits of Question 3 be reached, the answer to Question 3 is no because only *sine die* adjournment triggers the 3-day alternative veto procedure, and the Legislature did not adjourn *sine die* until July 16, 2015, after all applicable 10-day periods for the exercise of the Governor’s vetoes had expired.

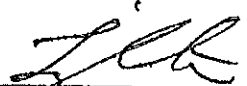
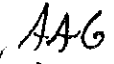
CONCLUSION

For the above reasons, should the Justices address the merits of any of the questions presented, the Attorney General respectfully suggests that the Justices advise the Governor to faithfully execute all 65 measures that became law without his signature on or before July 12, 2015.

Dated: July 24, 2015

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Janet T. Mills, Attorney General, do hereby certify that I caused to be served the Brief of Attorney General Submitted in Conjunction with Questions Propounded to the Justices of the Supreme Judicial Court by the Governor on July 24, 2015 on the following by first class mail prepaid to:

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Dated: July 24, 2015


JANET T. MILLS For
Attorney General

ADDENDUM

Brief chronology of relevant constitutional and statutory provisions

- 1820 Legislature to convene annually; annual elections for Governor and members of the House and Senate. Me. Const. Art. II, § 4 and Art. IV, pt. 3, § 1.
- Veto provision in Art. IV, pt. 3, § 2 concludes as follows:
- If the bill or resolution shall not be returned by the Governor within 5 days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect as if the Governor had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within 3 days after their next meeting.
- 1841 Established two-year term for Governor and members of the House and Senate; Legislature to meet once in 2 years. Const. Res. 1941, ch. 181 (eff. Mar. 17, 1842).
- 1880 Established biennial sessions of the Legislature, with biennial elections of Governor and members of House and Senate. Const. Res. 1879, ch. 151 (eff. Mar. 18, 1880).
- 1909 People's veto and direct initiative adopted; established that no laws, other than emergency provisions, would take effect until 90 days "after the recess of the legislature passing it;" "recess of the legislature" expressly defined to mean "adjournment without day of a session of the legislature." Me. Const. Art. IV, pt. 3, §§ 16-22, enacted by Const. Res. 1907, ch. 121 (eff. Jan 6, 1909).
- 1957 Governor's term extended from 2 to 4 years. Const. Res. 1957, ch. 95 (eff. Sept. 19, 1957).
- 1970 Legislature given authority to convene itself into special session, "on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the members of the Legislature of each political party, all members of the Legislature having been first polled." Const. Res. 1969, ch. 74 (eff. Jan. 14, 1970).
- 1973 Veto provision amended to add that if Legislature "prevents return" of a bill by adjournment, then Governor has 3 days *after the next meeting of the same Legislature* that enacted the bill to return it with objections. Const. Res.

1973, ch. 2 (eff. Oct. 3, 1973), amending the last clause of Art. IV, pt. 3, § 2 as follows:

... unless returned within 3 days after ~~their~~ the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.

- 1975 Established annual sessions of the Legislature with specific dates for convening the first regular session in the year following the biennial election, and a second regular session in the subsequent year. Const. Res. 1975, ch. 5 amending Art. IV, pt. 3, § 1 (eff. Oct. 1, 1975).

Also amended Art. IV, pt. 3, § 16 to clarify that the 90-day period until a bill takes effect runs from the recess *of the session of* the Legislature in which the bill was passed. *Id.*

- 1976 Veto provision in Art. IV, pt. 3, § 2 amended to expand period for Governor to act from 5 days to 10 days. Const. Res. 1975, ch. 6 (eff. July 29, 1976).
- 1976 Legislature amended 3 M.R.S. § 2 to establish time limits for the first and second regular sessions (at 100 days and 50 days, respectively), with provisions authorizing two extensions of 5 legislative days each, based on a 2/3 vote of each body, plus a veto day. P.L. 1975, ch. 750, § 1 (eff. July 29, 1976).
- 1985 Legislature amended 3 M.R.S. § 2 to specify dates for adjournment, rather than set a number of days for each session; first regular session to “adjourn no later than the 3rd Wednesday in June” and the second regular session by “the 3rd Wednesday in April.” P.L. 1985, ch. 166 (eff. May 10, 1985).
- 1995 Constitution amended to authorize line-item veto. Const. Res. 1995, ch. 1 (eff. Nov. 27, 1995), enacting Art. IV, pt. 3, § 2-A. *See Opinion of the Justices*, 673 A.2d 1291 (Me. 1996).

REPORTS
OF
CASES
ARGUED AND DETERMINED
IN THE
SUPREME JUDICIAL COURT,
OF THE
Commonwealth of Massachusetts.

VOL. III.

CONTAINING THE CASES FROM JUNE, 1807,
TO THE END OF THE YEAR.

BY DUDLEY ATKINS TYNG, Esq.
COUNSELLOR AT LAW.

WITH A SUPPLEMENT.



EXETER :

PRINTED BY CHARLES NORRIS & CO. FOR WILLIAM SAWYER & CO.
Newburyport....AND FARRAND, MALLORY & CO.
Boston....1808.

THE two following Documents containing the solemn Opinion of the Court upon Questions duly submitted to their consideration, pursuant to the Constitution, Chapter 3. Article 2. it was thought expedient to transfer them from the Newspapers, in which they were published, into the Reports, that a more easy and general access may be had to them, should any future discussions arise on the same subjects.

I.

Opinion of the Justices of the Supreme Judicial Court on certain Questions referred to them by the Senato of Massachusetts in the year 1791.

THE Justices of the Supreme Judicial Court, in obedience to your Honours' orders of the 14th. of February last, beg leave to submit the following opinions, in answer to your Honeurs' Questions.

First. Whether a Bill or Resolve, having passed both branches of the Legislature, and being laid before the Governor for his approbation, less than five days before the recess of the General Court next preceding the last Wednesday in May, and five days before the period when the Constitution requires the General Court shall be dissolved, but not acted upon by him, has by the Constitution the force of Law?

If by recess in this question is meant a recess after a Prorogation, or recess after an adjournment, where there is no subsequent meeting of the same General Court on that adjournment, we are clearly of opinion that such Bill or Resolve has *not* the force of Law.

Secondly. Whether a Bill or Resolve, having passed both branches of the Legislature, and being laid before the Governor for his approbation, less than five days before any recess of the General Court, other than such as is stated in the preceding Question, and not acted upon by him, has the force of Law?

If by the term recess, in the second, is intended a recess upon an adjournment, and such Bill or Resolve lays more than five days before the Governor for his approbation, including the days of the Courts sitting before the adjournment, and so many days of the Courts sitting upon the adjournment, as will make up the full term of five days, with-

out the Governor's returning the same, with his reasons for not approving it, we conceive such Bill or Resolve has the force of Law for all the days of the Court's sitting are but *one Session*, although an Adjournment intervenes. When a Prorogation takes place, the Session is ended, and a Bill or Resolve, *after the Session is ended*, cannot acquire the force of Law.

All which is humbly submitted

NATHANIEL P. SARGEANT.
FRANCIS DANA.
ROBERT T. PAINE.
INCREASE SUMNER.
N. CUSHING.

Boston, May 9, 1791.

Hon. President of the Senate of the Commonwealth of Massachusetts,

II.

A Letter from the Justices of the Supreme Judicial Court to the Governor of the Commonwealth of Massachusetts, in answer to a Question upon which he had requested their Opinion.

MAY IT PLEASE YOUR EXCELLENCY.

WE have received your Letter requesting of the Justices of the Supreme Judicial Court, agreeably to the provision of the Constitution, their opinion on the following question :

“Whether the Constitution of this Commonwealth authorizes inhabitants of any of the unincorporated plantations in the State, to give in their votes for Governor and Lieutenant Governor ?”

Having considered that question, We now transmit to your Excellency the best opinion we have been able to form.

The Constitution of the Commonwealth is an original compact, expressly, solemnly, and mutually made between the People and each citizen. On this compact is founded, not only the powers and duties of the several Magistrates and officers of government, as the substitutes and agents of the People : but also the political rights and privileges

Chart of Chaptered Laws and Resolves
(including only bills presented to the Governor between June 18 and June 30, 2015)

Public Law ch.	LD #	Enacted by Legislature	Presented to Governor	Gov Action deadline	Signed	Returned w/o Signature	Returned w/ Objections	Became law
300	1411	17-Jun	18-Jun	30-Jun	n/a	1-Jul	n/a	7/1/2015
301	1196	17-Jun	18-Jun	30-Jun	n/a	1-Jul	n/a	7/1/2015
302	580	18-Jun	18-Jun	30-Jun	n/a	1-Jul	n/a	7/1/2015
303	284	30-Jun	30-Jun	11-Jul	1-Jul	n/a	n/a	7/1/2015
304*	1307	30-Jun	30-Jun	11-Jul	1-Jul	n/a	n/a	7/1/2015
305	1415	30-Jun	30-Jun	11-Jul	1-Jul	n/a	n/a	7/1/2015
306*	1272	30-Jun	30-Jun	11-Jul	6-Jul	n/a	n/a	7/6/2015
307	25	19-Jun	19-Jun	1-Jul	n/a	n/a	16-Jul	7/2/2015
308	113	19-Jun	19-Jun	1-Jul	n/a	n/a	16-Jul	7/2/2015
309*	1145	19-Jun	19-Jun	1-Jul	n/a	n/a	16-Jul	7/2/2015
310	78	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
311	299	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
312	722	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
313	756	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
314	870	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
315	1013	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
316	1039	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
317	1085	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
318	1108	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
319*	1303	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
320*	234	23-Jun	23-Jun	4-Jul	n/a	n/a	16-Jul	7/5/2015
321	522	23-Jun	23-Jun	4-Jul	n/a	n/a	16-Jul	7/5/2015
322	822	23-Jun	23-Jun	4-Jul	n/a	21-Jul	n/a	7/5/2015
323	1185	23-Jun	23-Jun	4-Jul	n/a	n/a	16-Jul	7/5/2015
324	369	23-Jun	24-Jun	6-Jul	n/a	n/a	16-Jul	7/7/2015
325	1391	23-Jun	24-Jun	6-Jul	n/a	n/a	16-Jul	7/7/2015
326	91	30-Jun	30-Jun	11-Jul	8-Jul	n/a	n/a	7/8/2015
327	652	30-Jun	30-Jun	11-Jul	8-Jul	n/a	n/a	7/8/2015
328	1452	30-Jun	30-Jun	11-Jul	7-Jul	n/a	n/a	7/7/2015
329*	1381	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
330*	729	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
331*	1044	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015

* contains emergency preamble

Chart of Chaptered Laws and Resolves
(including only bills presented to the Governor between June 18 and June 30, 2015)

Public Law ch.	LD #	Enacted by Legislature	Presented to Governor	Gov Action deadline	Signed	Returned w/o Signature	Returned w/ Objections	Became law
332*	1348	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
333*	1451	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
334*	86	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
335*	186	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
336	93	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
337	1205	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
338	231	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
339	679	30-Jun	30-Jun	11-Jul	n/a	21-Jul	n/a	7/12/2015
340	787	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
341	839	30-Jun	30-Jun	11-Jul	n/a	21-Jul	n/a	7/12/2015
342	853	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
343	921	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
344	941	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
345	1166	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
346	1246	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
347	1291	30-Jun	30-Jun	11-Jul	n/a	21-Jul	n/a	7/12/2015
348	1337	30-Jun	30-Jun	11-Jul	n/a	21-Jul	n/a	7/12/2015
349	1372	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
350	1449	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
351	140	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
352	164	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
353	170	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
354	210	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
355	222	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
356	319	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
357	431	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
358	512	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
359	582	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
360	651	30-Jun	30-Jun	11-Jul	n/a	21-Jul	n/a	7/12/2015
361	727	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
362	1332	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
363	1277	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015

* contains emergency preamble

Chart of Chaptered Laws and Resolves
(including only bills presented to the Governor between June 18 and June 30, 2015)

Public Law ch.	LD #	Enacted by Legislature	Presented to Governor	Gov Action deadline	Signed	Returned w/o Signature	Returned w/ Objections	Became law
364	1160	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
365	1040	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
366	983	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
367	840	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
368	767	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
370	666	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
371	919	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
372*	1230	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
373	125	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
374	1369	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
375	623	18-Jun	18-Jun	30-Jun	n/a	n/a	30-Jun	7/16/2015
Resolve chapter	LD #	Enacted by Legislature	Presented to Governor	Gov Action deadline	Signed	Returned w/o Signature	Returned w/ Objections	Became law
43*	260	22-Jun	22-Jun	3-Jul	n/a	n/a	16-Jul	7/4/2015
44*	155	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
45*	63	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
46*	1042	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
47*	905	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
48*	721	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
49	500	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
50	1350	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
51	261	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
52	418	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
53	1202	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015
54	831	30-Jun	30-Jun	11-Jul	n/a	n/a	16-Jul	7/12/2015

* contains emergency preamble

The SPEAKER: Pursuant to Title 3, Section 2, the date of adjournment for the First Regular Session of the 127th Legislature is hereby extended beyond June 17, 2015 for an additional five legislative days, and further that all actions taken by the House and the Senate on June 18, 2015, prior to the vote, are hereby ratified.

At this point the Speaker laid before the House the following question, "Will the House extend the First Regular Session of the 127th Legislature beyond June 17, 2015 for an additional five legislative days?"

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative FREDETTE: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House, sorry for the break. Obviously, pursuant to the Maine Constitution, we have a Constitutional requirement to adjourn on the third Wednesday of the month of June. We obviously are here on a Thursday, so we're technically beyond that date, and not even technically, we are beyond that date. And so, in order, I think, for the body to continue the important work that we have on behalf of the people of the State of Maine, we have still lots of bills to do that, essentially what my understanding is, what I believe we should do, as a body, take a roll call on this matter, so I'd be asking for a roll call. It would require a two-thirds vote of this body to continue to extend an additional five days as permitted under the State Constitution and state law, so that we can continue to do our work in a legal fashion on behalf of the people of the State of Maine. Thank you, Mr. Speaker.

Subsequently, the same Representative REQUESTED a roll call on the motion to EXTEND the First Regular Session of the 127th Legislature beyond June 17, 2015 for an additional five legislative days.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative McCabe.

Representative McCABE: Thank you, Mr. Speaker, Men and Women of the House. I just rise to agree with my good colleague from Newport, Representative Fredette, suggests that we light the board up in green, and then we move on with the afternoon, with the other work we have, and move forward with the many bills that are still between the bodies. Thank you very much.

The SPEAKER: The Chair will read the language one more time before the vote is open: Pursuant to Title 3, Section 2, the date of adjournment for the First Regular Session of the 127th Legislature is hereby extended beyond June 17, 2015 for an additional five legislative days, and further that all actions taken by the House and the Senate on June 18, 2015, prior to this vote, are hereby ratified.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative O'Connor.

Representative O'CONNOR: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative O'CONNOR: Are these five consecutive days starting from today? What days are these that we're voting on?

The SPEAKER: What we are voting on is, we have five days outlined in the Constitution. If we go beyond statutory adjournment, we can extend beyond the five legislative days. This is the first legislative day beyond statutory adjournment. This would be our first legislative day.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative FREDETTE: Thank you, Mr. Speaker. I think to the extent that at the end of each day when we decide to come back, and we adjourn set for the next additional day at a specific time, that would be establishing the next legislative day. And so, we did that last night when we decided to come back today. And so, as we continue to do that, I think at the end of the day when you say, essentially, "We are going to adjourn until tomorrow. We will come in session at 9 o'clock," that then would be counted as a legislative day. That's how I would interpret that.

Pursuant to 3 M.R.S.A., Section 2, this EXTENSION of the First Regular Session of the 127th Legislature beyond June 17, 2015 for an additional five legislative days, required the affirmative vote of two-thirds of the membership present.

The SPEAKER: The Chair recognizes the Representative from Brooksville, Representative Chapman.

Representative CHAPMAN: I'm just concerned about the integrity of this system, about my seatmate who is not here has a vote registered.

The SPEAKER: A roll call has been ordered. The pending question before the House is Extension. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 296

YEA - Alley, Austin, Babbidge, Bates, Battle, Beavers, Beck, Beebe-Center, Bickford, Brooks, Bryant, Burstein, Campbell J, Campbell R, Chace, Chapman, Chenette, Chipman, Cooper, Corey, Daughtry, Dillingham, Dion, Doore, Duchesne, Dunphy M, Edgecomb, Espling, Evangelos, Farnsworth, Foley, Fowle, Fredette, Frey, Gattine, Garrish, Gideon, Gilbert, Gillway, Ginzler, Golden, Grant, Grohman, Hamann, Hanington, Harlow, Hawke, Head, Herbig, Herrick, Hickman, Higgins, Hilliard, Hobart, Hobbins, Hogan, Hubbell, Hymanson, Jorgensen, Kinney M, Kruger, Kumiega, Lajole, Longstaff, Luchini, Maker, Marean, Martin R, Mastraccio, McCabe, McClellan, McCreight, McElwee, McLean, Melaragno, Monaghan, Moonen, Morrison, Nadeau, Noon, Parry, Peterson, Picciotti, Pierce J, Pierce T, Pouliot, Powers, Prescott, Reed, Rotundo, Rykerson, Sanderson, Saucier, Schneek, Seavey, Shaw, Short, Stanley, Stearns, Stetkis, Stuckey, Sukeforth, Tepler, Theriault, Timmons, Tipping-Spitz, Tucker, Tuell, Vachon, Verow, Wadsworth, Wallace, Warren, Walsh, White, Winsor, Wood, Mr. Speaker.

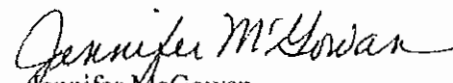
NAY - Black, Buckland, Crafts, Dunphy L, Farrin, Fecteau, Goode, Greenwood, Guerin, Hanley, Lockman, Long, Lyford, Martin J, O'Connor, Pickett, Russell, Sherman, Sirocki, Skolfield, Timberlake, Turner, Ward.

ABSENT - Blume, Davitt, DeChant, Devin, Kinney J, Kornfield, Malaby, Nutting, Sanborn, Sawicki.

Yes, 118; No, 23; Absent, 10; Excused, 0.

118 having voted in the affirmative and 23 voted in the negative, with 10 being absent, and accordingly the House voted to EXTEND the First Regular Session of the 127th Legislature beyond June 17, 2015 for an additional five legislative days.

This is to certify that this is a true and accurate copy of the House Legislative Record dated June 18, 2015.


Jennifer McGowan
Assistant Clerk of the House
July 23, 2015

Sampson, Ashley

From: Thibodeau, Michael
Sent: Friday, June 26, 2015 1:53 PM
To: Legislature: All
Subject: Upcoming session dates

MEMO

To: All Members of the 127th Maine Legislature
From: Michael D. Thibodeau, President of the Senate
Mark W. Eves, Speaker of the House
Date: Friday, June 26, 2015
Re: Session

As the Legislature nears completion of our work for the first Regular Session, please be aware that we are anticipating the potential for morning, afternoon and evening sessions:

- **Tuesday, June 30th**
- **Wednesday, July 1st** - It has recently come to our attention that we will need to have an afternoon session on Wednesday, July 1st to take up any potential line-item vetoes by the Governor.
- **Thursday, July 16th**

As always, we appreciate your hard work and we look forward to continuing to work with you as we complete our business for the First Regular Session.

If you have any questions, please do not hesitate to contact us.

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Legislature on cusp of historic decision to clip LePage's bond-approval wings

July 1, 2015 Daily Brief
By Christopher Cousins

[Print](#)

Good morning from Augusta, where they're still not finished.

The House and Senate adjourned late Tuesday, for you parliamentary procedure geeks, "until the call of the president and speaker." What we're looking for, in terms of the end of the session, is adjournment "sine die," which means "without day," which means no more sessions scheduled, which in layman's terms, means "they're really, really done this time."

Unless there's a special session, but let's not go there.

The House and Senate plowed through a considerable amount of work on Tuesday, including something north of 50 veto override votes — which consumed several hours of each chamber's

day. They dispensed with several bills, including enactment of a long-debated county jail fix bill, which now go to LePage for consideration.

Now starts the waiting game with LePage, which is the reason they adjourned the way they did. Here's why:

Several bills that required funding — about \$2 million worth altogether — were enacted Tuesday and sent to LePage. LePage could line-item veto the funding levels in those bills — just as he did 64 times in the biennial budget — which he must do within 24 hours. That brings us through Wednesday afternoon.

If there are line-item vetoes, the Legislature has to consider them within five days and would convene either late Wednesday afternoon or Thursday.

There is little question that LePage has his veto pen ready for just about every bill that comes across his desk — he has promised to veto every single one, after all — though he does let a few to go into law. It is hard to imagine him vetoing, for example, the historic bill sent to him Tuesday that will allow concealed carrying of handguns without permits, which has long been a goal of the governor's.

The Legislature plans to reconvene on July 16 for “veto day,” when the only business is supposed to be vetoes. Ha! The governor used veto day in 2014 to propose two new bills and dealt hard-ball negotiations late into the night which ended in the Legislature rejecting the bills. (Hat tip to Scott Thistle for those two links.)

So today is a bit of a question mark for the full Legislature, not that in general, any other time isn't. — Christopher Cousins

Source: <http://stateandcapitol.bangordailynews.com/2015/07/01/legislature-on-cusp-of-historic-decision-to-clip-lepages-bond-approval-wings/>

Last accessed on July 23, 2015

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@ME__Senate

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THE SENATE WILL RECONVENE ON
JULY 16TH AT, 10AM

1:15 PM - 6 Jul 2015



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EXHIBIT 5



SUZANNE M. GRESSER
REVISOR

MAINE STATE LEGISLATURE
OFFICE OF THE REVISOR OF STATUTES
STATE HOUSE STATION 7
AUGUSTA, MAINE 04333-0007
(207) 287-1650
FAX: (207) 287-6468

Date: July 8, 2015

To: Michael D. Thibodeau, President of the Senate
Mark W. Eves, Speaker of the House of Representatives
Members of the Legislative Council

From: Suzanne M. Gresser, Revisor of Statutes

Re: Recent chaptering of laws

As you know, the Legislature sent to the Governor a number of bills that were not returned by the Governor within 10 days (Sundays excepted) after presentation. Pursuant to the Constitution of Maine, Article IV, Part Third, Section 2, those bills have become law without the Governor's signature, and, although we have not yet received the original bill folders from the Governor, those laws have been chaptered sequentially and may be found on the Legislature's website here:

<http://legislature.maine.gov/ros/LOM/LOMDirectory.htm>

Please let me know if you have any questions.

Cc: Heather Priest, Secretary of the Senate
Robert Hunt, Clerk of the House
Shawn Roderick, Assistant Secretary of the Senate
Jennifer McGowan, Assistant Clerk of the House
Chiefs of Staff
Grant Pennoyer, Executive Director of the Legislative Council
Nonpartisan Legislative Office Directors

Feeley, Timothy

Subject:

FW: Pocket Veto - Inaccurate Term Used By Some Media

----- Forwarded Message -----

From: "Adrienne Bennett" <Adrienne.Bennett@maine.gov>

To: "Alanna Durkin" <ADurkin@ap.org>, "Mario Moretto (mmoretto@bangordailynews.com)" <mmoretto@bangordailynews.com>, "Scott Thistle" <sthistle@sunjournal.com>, "Kevin Miller" <kmiller@mainetoday.com>, ajhiggins@mpbn.net, "Mal Leary (mleary@mpbn.net)" <mleary@mpbn.net>, "Naomi Schalit" <pinetreewatchdog@gmail.com>, "Mike Violette (MViolette@portlandradiogroup.com)" <MViolette@portlandradiogroup.com>, "Ken Altshuler (KAltshuler@portlandradiogroup.com)" <KAltshuler@portlandradiogroup.com>, rictyler@blueberrybroadcasting.com, steve@howiecarrshow.com, "Assignment Editor (wabi@wabi.tv)" <wabi@wabi.tv>, "Assignment Editor (wmtw@wmtw.com)" <wmtw@wmtw.com>, "Assignment Editor (assignments@wgme.com)" <assignments@wgme.com>, "Assignment Editor (newscenter@wesh6.com)" <newscenter@wesh6.com>, "Assignment Editor (newscenter@wlbz2.com)" <newscenter@wlbz2.com>, wvwm@blueberrybroadcasting.com, "tvmail-wgme" <tvmail-wgme@sbgstv.com>, "Amy (tv7news@wvii.com)" <tv7news@wvii.com>, "Ted Varipatis (Ted.Varipatis@wesh6.com)" <Ted.Varipatis@wesh6.com>, "Mike E Reagan" <MReagan@hearst.com>, "Angel Matson (amatson@wabi.tv)" <amatson@wabi.tv>, "Jon Chrisos (jchrisos@wgme.com)" <jchrisos@wgme.com>, "David Charns (dcharns@hearst.com)" <dcharns@hearst.com>, "Don Carrigan" <Don.Carrigan@wesh6.com>

Sent: Wednesday, July 8, 2015 9:39:38 AM

Subject: Pocket Veto - Inaccurate Term Used By Some Media

Please see the following statement regarding 19 bills currently on the Governor's desk:

This is not a pocket veto. As allowed by the Maine Constitution, the Governor will submit the vetoes when the Legislature meets again for three days. It has been a contentious session, and many in the Legislature claimed they did not have time to deal with the vetoes. The Legislature can choose to meet for at least three days now, or they can wait until they come back January. Either way, they will have ample time to thoughtfully consider these vetoes, rather than rushing through them in another veto-override spree without understanding what they are voting on.

Please note: The Legislature passed a joint order on June 30, 2015 to adjourn-not to "recess." <<http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280057826>>

There are three separate, but equal branches of government. The Legislature creates and passes legislation while the Executive Branch implements the law. The Governor and Chief Legal Counsel have carefully reviewed the chief executive's authority within the State of Maine Constitution and, rest assured, the Governor will take appropriate action and the bills will be delivered to the 127th Legislature in accordance with the State of Maine Constitution.

Thank you,
Adrienne

Adrienne A. Bennett, Press Secretary
Office of Governor Paul R. LePage
Adrienne.Bennett@Maine.gov <<mailto:Adrienne.Bennett@Maine.gov>>

EXHIBIT 7

JANET T. MILLS
ATTORNEY GENERAL



TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

2015-01

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

July 10, 2015

The Honorable Dawn Hill
The Honorable Thomas Saviello
Maine State Senate
3 State House Station
Augusta, ME 04333-0003

Dear Senator Hill and Senator Saviello:

You have inquired about the status of bills that were presented to the Governor but which he has neither signed nor vetoed. The Legislature has not adjourned *sine die*, and more than ten days have elapsed since certain bills were presented to the Governor.

Article IV, Part 3, Section 2, of the Maine Constitution states:

If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it *unless the Legislature by their adjournment prevent its return*, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law. (Emphasis added).

The most recent act of the Legislature was to pass a joint order reciting "that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor." Joint Order S.P. 556, June 30, 2015 (copy attached). This joint order was a day to day adjournment, and not a final adjournment *sine die* of the first regular session of the Legislature, which would start the 90-day period for non-emergency bills to become effective under Article IV, Part Third, Section 16, allowing time for a people's veto effort under Article IV, Part Third, Section 17 ("recess of the Legislature" in these sections means "the adjournment without day of a session of the Legislature." *Opinion of the Justices*, 116 Me. 557, 587, 103 A. 761, 774 (1917); Article IV, Part Third, Section 20).¹

¹ Although literally "sine die" means simply "without day," in custom, practice and constitutional and historical context, of course, adjournment "sine die" has much greater significance than merely not scheduling a specific day to come back into session.

The adjournment order of June 30, 2015, has not prevented the Governor from returning the bills with his objections. To the contrary, the Legislature specifically envisioned receiving veto messages and made it clear in the joint order that they were prepared to deal with them in timely fashion, and possibly even line item vetoes requiring more immediate attention, allotting the full ten days authorized in the Constitution.

The Maine Constitution delegates to the Legislature the authority to “enact appropriate statutory limits on the length” of the first and second regular sessions, Article IV, Part Third, Section 1. The Legislature has done so by enacting Title 3 M.R.S. sec. 2. The determination of the length of the session is uniquely a legislative one, and for another branch of government to reinterpret the decision of the Legislature might well violate the provisions of Article III, Section 2 of the Maine Constitution. (“No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.” Cf. State v. Hunter, 447 A.2d 797 (1982)).

It is exclusively the Legislature that decides when it adjourns, not another branch of government, and there is no requirement that the Legislature set a specific date for the next meeting when it finishes its business of the day. Conversely, the failure to set a specific date for reconvening does not become an adjournment *sine die* by default.

In this instance, the Legislature invoked its constitutional authority and complied with the procedure in Title 3 M.R.S. sec. 2 by twice voting to extend the date of final adjournment by five legislative days each. See, Senate RC #288; House RC #296; HP 991, Joint Order Extending the First Regular Session of the 127th Legislature for Five Legislative Days; and remarks of Rep. Fredette, June 24, 2015. The second five-day period has not expired, nor has the Legislature used the extra day authorized by the same statute for “considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2.” The first regular session of the 127th Legislature has not concluded and the Legislature specifically extended the time for final adjournment in order to review any additional line item vetoes, giving the Governor the time allotted to him under Article IV, Part 3, Section 2-A, and to consider any vetoes under Section 2, giving the Governor the full ten days to review enacted legislation.

The term “adjournment” must be read in the context of the constitutional passage in which it appears. The phrase “unless the Legislature by their adjournment prevent its return” means final adjournment or adjournment *sine die*, because a day to day adjournment does not prevent the return of bills, as the presiding officers may call the Legislature back to work at any time. In recent decades the Legislature has regularly adjourned until the call of the presiding officers for the purpose of acting on veto messages from the governor. See, e.g., Leg.Rec.-H-1361, June 1, 1997, Orders; Leg.Rec.-H-2699, April 28, 2000; Leg.Rec. H-1589, May 17, 2012. Bills that were vetoed and overridden became effective 90 days after adjournment *sine die*—at the same time as bills that were not vetoed—not 90 days after the day to day adjournments of the Legislature.

There is no ‘default’ provision whereby the end of a legislative day becomes a final adjournment simply because the Legislature has not said otherwise or has not set a specific date for the next meeting. To the contrary, when the Legislature adjourns its session *sine die*, it does

so deliberately, with a degree of formality befitting the occasion, each house sending a committee notifying the other body and sending a committee to officially notify the governor that they are ready for final adjournment so that he may confirm that there is no further business for them to address. (Historically, this practice goes back at least as far as 1850; see, e.g. House Jour. 1850, <http://lde.mainelegislature.org/Open/LegJrnl/HJ1850.pdf>, pp. 521, 525 (copy attached); Senate Rec., p.453 March 27, 1897). The event is significant, the action intentional and formal because it starts the clock ticking for nonemergency legislation to become law in ninety days and it notifies citizens that they may then commence a people's veto effort under Article IV, Part 3, Section 17. It also signifies that any unfinished business on the calendar automatically expires,² that the Legislature does not anticipate any additional meetings and that it may not reconvene except by the special and somewhat cumbersome procedures of Section 1 of Article IV, Part 3.³ No such formal adjournment *sine die* occurred in the Maine Legislature on June 30, 2015.⁴

Common sense says that the term "adjournment" in Section 2, as amended in 1973, must be read to be consistent with the term "recess" in Section 16, enacted in 1909; otherwise, different ninety day periods would be invoked for many different bills. In any case, neither a recess per Section 16, nor an adjournment per Section 2 has occurred for the first regular session of the 127th Legislature.

Notably, the same provision of the Constitution that authorizes the Governor to veto, or "return" a bill with his objections, in calculating the ten-day period excepts Sundays and Sundays only. The provision therefore envisions that the Governor could return bills with his objections—or vetoes—on Saturdays and holidays when the Legislature does not meet, still within that session of the legislature and before adjournment *sine die*. Thus the Legislature need not actually be meeting in order for the Governor to return a bill with his objections to the house in which it originated.

This reading is consistent with the term "adjournment" as it is used generally and in other sections of the Constitution when it refers to final adjournment of the legislative session, not simply a day to day adjournment of that particular legislative day. See, e.g., Tinkle, The Maine Constitution, p.79 ("if a final adjournment of the legislature intervenes during the period that the governor has to consider a bill, then he may pocket-veto it..."). See also, Mason's Manual of Legislative Procedure, 2010, p.295, Sec. 445 Motion to Adjourn Sine Die: "1. When a state legislature is duly convened, it cannot be adjourned sine die nor be dissolved except in the regular legal manner, and an adjournment from day to day cannot have that effect."⁵

² Mason's Manual of Legislative Procedure, 2010, Sec.445.3: "A motion to adjourn sine die has the effect of ...terminating all unfinished business...and all legislation pending upon adjournment *sine die* expires with the session."

³ "The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled."

⁴ This situation therefore is distinguishable from the facts addressed in the Opinion of the Justices, 437 A.2d 597 (1981), the Opinion of the Justices, 484 A.2d 999 (1984) and the 2003 and 2005 controversies during the Baldacci administration; in each of those cases, the Legislature expressly and distinctly adjourned *sine die*.

⁵ "Adjournment" as used in constitutional provisions "is generally held to relate to final adjournment rather than temporary adjournment or recess. Thus, a return of a bill after a temporary recess does not prevent the bill from becoming law." Singer & Singer, Sutherland Statutory Construction, §16.4, p. 740.

This reading is also consistent with the view adopted by the majority of jurisdictions which have construed similar state constitutional provisions and with interpretations of the comparable provision of the U.S. Constitution. See, e.g., NLRB v. Noel Canning et al., 573 U.S. _____, 134 S.Ct. 2550, 2574-76 (2014); Wright v. United States, 302 U.S. 583 (1938); State, ex rel. Gilmore v. Brown, 6 Ohio St. 3d 39, 40, 451 N.E.2d 235 (1983) (only adjournment *sine die* prevents delivery of Governor's veto message under Ohio Constitution); 1 Singer & Singer, Sutherland Statutory Construction § 16.4 (7thed). Finally, It is consistent with the historical practice of every legislature and every governor, including the present Governor, in recent memory, and it is consistent with the determination of the effective dates of enacted legislation under the Maine Constitution.

The Constitution requires that the Governor "return" a bill "with objections to the House in which it shall have originated" within ten days for the legislature's consideration of his veto. This provision clearly envisions a physical delivery of the bill with a veto message to the legislative branch within the ten day time frame.

Bills that have not been returned to the Legislature with the objections of the Governor within ten days of being presented to the Governor, excluding Sundays, have now become finally enacted in accordance with Article IV, Part 3, Section 2. Those that are emergency bills are in full force and effect.

I trust this answers your inquiry.

Yours very truly,



Janet T. Mills
Attorney General

JTM/elf

cc: President Michael Thibodeau
Sen. Garrett Mason
Sen. Andrea Cushing
Sen. Justin Alford
Speaker Mark Eves
Rep. Jeff McCabe
Rep. Sara Gideon
Rep. Kenneth Fredette
Rep. Ellie Espling
Heather Priest, Secretary of the Senate
Rob Hunt, Clerk of the House
Grant Pennoyer, Executive Director of the Legislative Counsel
Paul R. LePage, Governor

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
FIRST REGULAR SESSION
SENATE ADVANCED JOURNAL AND CALENDAR

Tuesday, June 30, 2015

SUPPLEMENT NO. 31

ORDERS

Joint Order

(4-1) On motion by Senator MASON of Androscoggin, the following Joint Order:
S.P. 556

Ordered, the House concurring, that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.

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Chapman, Danforth, Bennett, Quinn, Garland,
Genthron, Gilman, M. A. Gordon, Haines,
Hathorn, Hayden, Hayes, Holbrook, Holmes,
Horrans, Houton, Jordan, Leighton, Lord,
Littlefield, McIntyre, Mitchell, Percival,
Pinkham, W. P. Pomeroy, Putnam, Rogers,
Sewall, Simonton, Stanley, Totten,
Waterhouse, W. Wood, Whittier, Withers,
Young.

Kays

Alexander, Ames, Arnold, Campbell,
J. Chase, Cochran, Cox, Cunningham,
M. J. Davis, Dudley, Gordon, Hall, Hancock,
Higgins, Holway, Hopkins, King, Knowlton,
Lane, Mason, Miliken, J. M. Little, Merrill,
Merrill, Perry, W. Pomeroy, Quinn,
Quinn, Reed, Sargent, W. Smith, Thayer,
Victory, Walker, J. Wood, Higgins, Wells,
York.

The House joined Messrs. Sewall,
Mr. Smith, and Mr. Appleton's Motion to
the Committee to wait on the Governor and
inform him that the two Houses have
acted on all business before them and
are now ready to adjourn.

The Committee subsequently reported
that the Governor had no further com-
munications to make except to com-
municate the title of a resolution they
have signed.

Mr. Appleton of Bangor (the Speaker
having left the Chair on account of
indisposition) rose and said—

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Mr. Sewall of Oldtown was charged
with a Message to the Senate informing
that today that the House had acted
upon all Business before it and is now
ready to adjourn without day.

A similar message was received
from the Senate.

On motion of Mr. Sewall of Oldtown
the House then adjourned without day.

E. W. Hall Secy

Hunt, Rob

From: Priest, Heather
Sent: Thursday, July 09, 2015 2:38 PM
To: Hunt, Rob; Libby, Lance
Subject: RE: Saturday

Same goes for me, too. I can be reached at 458-5980.

*Heather Priest
Secretary, Maine State Senate
3 State House Station
Augusta, Maine 04333-0003
207 287-1540*

From: Hunt, Rob
Sent: Thursday, July 09, 2015 2:30 PM
To: Libby, Lance
Cc: Hicks, Ana; Priest, Heather
Subject: Saturday

Hi Lance,

I was writing to let you know that if you need me to come in on Saturday to pick up bills that may be vetoed, I am more than willing to do so. Please call me at 207-756-5476. I will be in Belgrade about 20-25 minutes away.

I do have to go to a memorial service for my grandmother that day, but I will have my phone with me and will be available afterwards.

Let me know if you have any questions.

All the Best,

Rob Hunt
Clerk of the House
Maine House of Representatives
2 State House Station
Augusta, ME 04333
(207) 287-1400

Hunt, Rob

From: Libby, Lance <Lance.Libby@maine.gov>
Sent: Thursday, July 09, 2015 2:44 PM
To: Hunt, Rob
Subject: RE: Saturday

Thank you for the email, Rob.

Lance Libby
Legislative Policy Coordinator/Policy Advisor
Office of Governor Paul R. LePage
207-287-3533 – Office
207-592-0041 – Mobile
Lance.Libby@Maine.Gov

From: Hunt, Rob [<mailto:rob.hunt@legislature.maine.gov>]
Sent: Thursday, July 09, 2015 2:30 PM
To: Libby, Lance
Cc: Hicks, Ana; Priest, Heather
Subject: Saturday

Hi Lance,

I was writing to let you know that if you need me to come in on Saturday to pick up bills that may be vetoed, I am more than willing to do so. Please call me at 207-756-5476. I will be in Belgrade about 20-25 minutes away.

I do have to go to a memorial service for my grandmother that day, but I will have my phone with me and will be available afterwards.

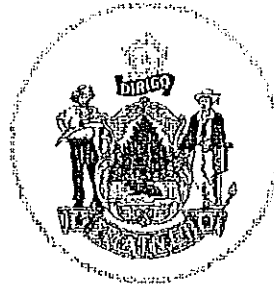
Let me know if you have any questions.

All the Best,

Rob Hunt
Clerk of the House
Maine House of Representatives
2 State House Station
Augusta, ME 04333
(207) 287-1400

MEMORANDUM

TO: GOVERNOR LEPAGE
FROM: CYNTHIA L. MONTGOMERY, CHIEF LEGAL COUNSEL
HANK FENTON, DEPUTY LEGAL COUNSEL
SUBJECT: GOVERNOR'S VETO POWER AND ADJOURNMENT
DATE: 7/10/2015



Governor, the following is my analysis of the current situation concerning a number of bills you are holding. This memo has been prepared for release to the Legislative leadership and the media.

First and foremost, the Governor is not exercising what is known as the "pocket veto." The Governor has not even considered using the "pocket veto" because it is not available to him during the first regular session. Any claims to the contrary by media or political bloggers are nothing but attempts to create a long line of ill-informed, one-sided and unfair news stories that are not helpful to anyone in the resolution of the dispute over the meaning of the relevant Maine Constitutional language.

Secondly, the Governor is not holding these bills as a result of a misstep or mistake. He is deliberately holding them based on his reading of the Maine Constitution. The analysis of his decision to hold these bills follows.

The Governor is holding a number of bills he has been prevented from returning to their legislative houses of origin due to the Legislature's adjournment. In situations like this, the Constitution provides that the Governor must exercise his veto power within 3 days after the reconvening of that same Legislature. In essence, the Governor is waiting for the Legislature to reconvene for 4 consecutive days (the first day does not count), at which point, he will act.

FACTS

Pursuant to 3 M.R.S. §2, the statutory adjournment date for the 127th Legislature was June 17, 2015. It is not totally clear but it appears that on June 17, the Legislature attempted to exercise its statutory option to extend the adjournment deadline for 5 legislative days, and it also appears it did so again on June 24. In any event, it appears that these acts (or at least one of them) carried the session to June 30. In session on June 30, 2015, the Legislature presented a number of bills to the Governor for his consideration. On that same day, June 30, the Legislature adjourned pursuant to a Joint Order "Adjourning until the Call of the Speaker and President" (SP 556). The Legislature has not returned from that adjournment.

LEGAL ANALYSIS

The Governor is holding these bills, waiting on the Legislature to reconvene for 3 days, because he has been deprived by the Legislature's adjournment of the opportunity to return these bills to their houses of origin. He has the right to hold these bills until "3 days after the next meeting of the same Legislature which enacted the bill[s]" Me. Const. Art. IV, §2. In their zeal to play "gotcha" with the Governor, the Democrats and their many friends in the media have failed to do their research, have misread the law or simply don't understand that this is the way legal issues are raised and, ultimately, addressed: someone begins by challenging the status quo.

The Maine Constitution provides limitations on both the Legislature's and the Governor's action with respect to the enactment of laws and thereby balances the powers of government between three branches. The Legislature is restricted in the number of days it has to enact laws and, of course, its enactments are subject to the Governor's veto power. The Governor, in turn, also has time limits within which he must exercise his veto power, a power that is subject to potential override by the Legislature. In the case at hand, the Legislature chose to act in such a way as to trigger the Constitutional grant of a different procedure, which gives the Governor 3 consecutive days after the Legislature reconvenes to exercise his veto power. There is no requirement in either the Constitution or state law mandating the Legislature to adjourn for longer than the Constitutional grant of 10 days for the Governor to exercise his veto power. Once it chose to adjourn and not return within 10 days, however, the Legislature triggered the 3-day procedure.

Restrictions on the Legislature's enactment authority

The Maine Constitution provides, "The Legislature shall enact appropriate statutory limits on the length of the first regular session ... The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of the majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled." Me. Const. Art. IV, Part Third, §2. Accordingly, Maine law provides, "... The first regular session of the Legislature, after its convening, shall adjourn no later than the 3rd Wednesday in June" 3 MRS §2. Maine law further provides,

[t]he Legislature ... may by a vote of 2/3 of the members of each House present and voting, extend the date for adjournment for the first ... regular session by no more than 5 legislative days, and ... by a vote of 2/3 of the members of each House present and voting further extend the date for adjournment by 5 additional legislative days. The time[] for adjournment for the first ... regular session[] may also be extended for one additional legislative day ..."

The essence of these provisions is that "adjournment" has legal significance in the Constitution and it operates to trigger particular deadlines.

Restrictions on the exercise of the Governor's veto power

With respect to the Governor's general veto power, the Maine Constitution provides,

... If the bill ... shall not be returned by the Governor [to the bill's house of origin] within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect unless returned within 3 days after the next meeting of the same Legislature which enacted the bill ... [emphasis added] Me. Const. Art. IV, Part Third, §2.

The essence of this provision is to answer the question, "What happens if the Legislature presents bills to the Governor, then adjourns, and does not reconvene within the 10 days the Governor is constitutionally given to exercise his veto power?" The answer is that the Legislature must reconvene for 3 full consecutive days, giving the Governor the opportunity to return the bills to their house(s) of origin and giving the Legislature time to reconsider the vetoed bills and vote on sustaining or overriding them.

The Supreme Court has already opined on and answered some of the questions at hand.

In 1981, Governor Joseph Brennan submitted a series of legal questions to the Justices of the Maine Supreme Court concerning the State's trust responsibility with respect to submerged lands because of a newly enacted law pending the Governor's action. In that case, the bill was presented to Governor Brennan on June 19, 1981. On that same day, the Legislature adjourned *sine die*. Ordinarily, the bill would have become law when not acted on by the Governor within 10 days. "However," the Justices said in their August 27, 1981 answer, "the adjournment of the Legislature tolled that period, and the Governor has until three days after the next meeting of the 110th Legislature to act on the bill." The Justices further noted that the Governor was entitled to the 3 days even though "the Legislature met in special session for one day on August 3, 1981." The Justices stated, "We are of opinion, however, that article IV, pt. 3, §2 requires that the same Legislature must be continuously in session for three days before the period in which the Governor may act on the pending bill expires. That is so because article IV, pt. 3 §2 also provides that the Governor, if he disapproves a bill, shall return it to the Legislature, obviously for the purpose of the Legislature's reconsideration. The Legislature would have no opportunity to do that unless it is still in session." The Justices concluded that the bill had not yet become law as of August 27 and was still awaiting the Governor's signature. *Opinion of the Justices*, 437 A.2d 597 (1981).

How to count the 3 days was a subsequent question answered by the Justices in 1984. In that case, a bill was presented to Governor Brennan on May 7, 1984, following adjournment of the Legislature on April 25, 1984. Governor Brennan did not return his objections to the House until September 7, 1984, the fourth calendar day of Special Session, which commenced on September 4, 1984. The Justices opined that the Governor's objections were timely filed because the day of the triggering event is excluded from computation of the 3 days. *Opinion of the Justices*, 484 A.2d 999 (1984).

The Governor has until after the Legislature is in session for 3 consecutive days to deliver his veto message(s) to the bills' house(s) of origin.

As it did in the situation Governor Brennan faced, the Legislature's adjournment on June 30, 2015 has prevented the Governor from returning his objections to the bill(s)'s house(s) of origin within the 10 days he is constitutionally granted for the exercise of his veto power. In essence, the Legislature's

adjournment has tolled the 10-day period. Consequently, the Governor has until 3 days *after* the triggering event, which is the reconvening of the Legislature.

In fact, the Maine Legislature has faced this situation before. In 2003, LD 1361 was enacted on June 11 and sent to Governor Baldacci. On June 14, the Legislature adjourned *sine die*. The Governor held the bill—which had been enacted by both houses with “veto-proof” margins—as of June 26. The Legislature was in special session from August 21 to 23, 2003 but did not deal with the bill. On January 13, 2004, the bill was recalled from the Governor’s desk and eventually “died.”

Likewise, LD 1690 was enacted on June 16, 2005 and delivered to Governor Baldacci. Though that Legislature came back for a one-day special session on July 29, 2005, the bill sat until the Legislature reconvened in January 2006. Governor Baldacci then delivered his objections on January 10, 2006 and his veto was sustained.

Others may argue that in these cases and the ones before the Justices, the adjournment was *sine die*, and therefore they are inapposite to the question at hand. That argument must fail, however, for two reasons: 1) the Constitution does not require “adjournment *sine die*” to trigger the 3-day procedure and 2) even if it does, the Legislature has in essence and effect, adjourned *sine die*.

The Maine Constitution does not require adjournment *sine die* to trigger the 3-day procedure. First, the plain language in Article IV, Pt. 3, §2 unambiguously provides that when “adjournment” – not “adjournment *sine die*” – prevents the Governor’s return to the bill’s House of origin, he gets 3 days after the Legislature reconvenes to exercise his veto power. Moreover, the Constitution, in another, unrelated provision refers to “adjournment without day” (i.e., adjournment *sine die*), which indicates that the Constitution contemplates the distinction between adjournment and “adjournment without day.” Since the triggering event in this provision is adjournment and because the Legislature is currently adjourned, the Governor has been unable to return his objections to the bill(s)’ house(s) of origin. Rejecting the argument that the word “adjourn” in the veto provision of the Pennsylvania Constitution meant “adjournment *sine die*,” the Commonwealth Court of Pennsylvania said, “... If we were to accept ... [the] interpretation [that adjournment meant adjournment *sine die*] ... then the General Assembly could prevent the Governor’s veto, and thereby subvert the checks and balances of the Pennsylvania Constitution, by passing a bill, presenting it to the Governor and adjourning for a period longer than ten days.” *Jubelirer v. Pennsylvania Dept. of State*, 859 A.2d 874, 877 (2004), *ftnt* 2.

In addition, some may argue that – as has been asserted by Democratic Majority Leader Jeff McCabe – that the Legislature is not adjourned; it is in “recess.” Hence, the argument goes, the bills on the Governor’s desk have become law because they were presented to the Governor more than 10 days ago and the Legislature is not adjourned. This argument ignores its own fatal flaw. The Legislature has indisputably been adjourned for the purposes of Art. IV, Part Third, Section 2, since June 30, 2015. The Legislative record clearly shows that Senate Paper 556 titled “Adjourn Until the Call of the Speaker and President” was passed on the evening of June 30, 2015. Because the Legislature adjourned and has not reconvened since the passage of SP 556, these bills have not become law without signature. The Legislature must meet for 3 full consecutive days in order for the bills to either be vetoed by the Governor or become law.

In the alternative, even if the word “adjournment” in the Constitutional provision at issue is construed to mean “adjournment *sine die*,” the facts suggest that while no one used the phrase, “*sine die*,” the Legislature has actually done just that – adjourned “without day.” On June 30, 2015, the Legislature

adjourned "Until the call of the Speaker and President." While many claim that the Legislature will reconvene on July 16, it will not be done pursuant to a duly raised, considered and voted on motion that can be found in the Legislative database. Rather, the June 30 Joint order makes clear that the Legislature is adjourning until some unspecified future day—or not, if the Speaker and President do not call them back. Likewise, according to Mason's, "When no provision has been made as to the time for reconvening, and the adoption of the motion to adjourn would have the effect of dissolving the body, the motion is, in fact, a motion to ... adjourn *sine die* ..." Mason, Paul, *Mason's Manual of Legislative Procedure*, Eagan, MN: West, 2010, §201, p. 162. In this case, the Legislature did not provide a time for reconvening and the motion did dissolve the body. Finally, once the bills being held by the Governor became the subject of intense media scrutiny on July 8, 2015, the Maine Office of the Revisor of Statutes notified legislative leadership that it was "chaptering" the bills as law. Pursuant to Title 3 MRS §163-A, sub-§§ 3 and 4, the legislative staff (which includes the Revisor's Office) chapters laws "after the adjournment of each session ..." In essence and effect, the Joint Order to adjourn until the call of the Speaker and President constituted an adjournment without day and the conduct of the Legislature subsequent to that adjournment confirms that.

Others may also maintain that because the Legislative clerks remain in the State House when the legislators are gone, the adjournment does not prevent the return of the bill to its house of origin. The weakness in this claim is that the clerks were presumably present in 1981 and 1984 when the Justices issued their opinions and they were likely present when Governor Baldacci did not return LD 1361 in 2003 or LD 1690 in 2005. Clearly, returning a bill to its house of origin must be more than simply dropping it off in a clerk's office. If simply delivering the bill to the clerk satisfies the Constitutional requirement of returning a bill to its house of origin, then there would never be a need for the 3-day procedure.

Some may also claim that if the Governor's position is correct, then 3 MRS §2, which allows the Legislature to extend the statutory adjournment date by two 5-legislative-day periods and one more day, known as "veto day," would be invalid. Such an argument is short-sighted. As the law currently stands, the Legislature's "remedy" is simple. When the Legislature adjourns as it did on June 30, 2015, it must do so knowing that under the Constitution, it will be required to deal with the bill(s) at issue at a time when it is in session for 3 consecutive days. Among other possible options, it can schedule "veto day" on the eleventh day after it presents the bill(s) to the Governor; it can call a special session at any time after its adjournment to deal with the Governor's objections; or it can wait to deal with the Governor's objections during the second regular session in January. In all of those cases, 3 MRS §2 is valid and operating consistently with the Constitution.

Some may also contend that strictly construing the word "adjournment" as used in the Constitution would wreak havoc during future sessions because each temporary adjournment would subject the Legislature to uncertainty as to the legal significance of that adjournment and would increase the risk of repeatedly triggering the 3-day procedure. These fears are unwarranted because this dispute did not arise during the regular session. Rather, it arose after the statutory adjournment date. As mandated by the Constitution, the Maine Legislature has a very specific, statutorily created period of time in which to conduct its business. It cannot drag things out forever—the legislative session must end. That same statute allows the Legislature to extend the period in which it may conduct business by 11 additional days—10 days for the Governor to exercise his veto power and one more day for the Legislature to reconsider the bill once it is returned by the Governor. It is reasonable and consistent with the rules of statutory construction to treat the period of time beginning with the statutory adjournment date to the end of the statutorily allowed 11 days or to adjournment *sine die*, whichever comes first, differently

than the regular session. This is so because in the vast majority of instances during the regular session, the Governor is allowed 10 days in which to exercise his veto power and temporary adjournments do not prevent the return of the bill to its house of origin. This is so because adjournments fix a date and/or time of return. Moreover, should the Constitution be so construed, the Legislature can handle any uncertainty or sense of risk by simply adjourning to a date certain or paying attention to the timing of when bills are presented in relation to when they must be returned so that the Governor is allowed 10 days to exercise his veto power and can return the bills when the Legislature is not adjourned.

Finally, some may also argue that the Governor's position is inconsistent with standing practice. If there's one thing this Governor is known for, it is not doing things a certain way just because "that's the way we've always done it." While it may have been the practice to schedule "veto day" outside of the 10 days that the Governor is granted to exercise his veto power, the Legislature cannot insist that its practice and/or interpretation of its statute trump the plain language of the Maine Constitution. Moreover, this is not the first time a bill has been held because the Legislature's adjournment prevented its return. In fact, it happened at least twice during the Baldacci administration. The Legislature can continue its practice as long as it desires, but if it chooses to adjourn after the statutory adjournment date and within the 10-day period the Governor has to exercise his veto power, then it must then follow the Constitution and understand that the Governor's veto message is not due until "3 days after the next meeting of the same Legislature which enacted the bill."

CONCLUSION

By adjourning on June 30, 2015 after presenting to the Governor a large number of bills, the Legislature deprived the Governor of the opportunity to return them to their house(s) of origin within 10 days of their presentment. Fortunately, the Constitution contemplates just such a scenario and offers a very simple remedy. It grants the Governor the right to hold these bills until "3 days after the next meeting of the same Legislature which enacted the bill[s]" Me. Const. Art. IV, §2. The Justices of the Maine Supreme Judicial Court have also shed light on the application of this Constitutional provision. In 1981, they opined that when the Legislature's adjournment prevents the Governor from returning the bill to its house of origin, the Governor is not required to return the bill until 3 days after the same Legislature reconvenes, and they have to convene for 3 consecutive days. Convening for just one day is insufficient to trigger the 3 days. In 1984, the Justices said that because the Legislature reconvening is the triggering event, the date that they first reconvene does not count when computing the 3 days. Hence, they must convene for four days.

Approximately 20 years later, in 2003, Governor Baldacci did exactly what Governor LePage is doing. After the Legislature had adjourned, a bill sat on his desk until the following January when it was actually recalled by the Legislature and later killed. A couple of years after that, in 2005, Governor Baldacci held another bill after the Legislature had adjourned, and he vetoed it the following January.

While there are a number of arguments on both sides of the issue of whether the 127th Legislature's June 30 adjournment prevented the Governor from returning the bills to their House(s) of origin, this is clearly not a settled question of law. That said, the Constitution's plain language, the opinions of the Justices and the conduct of the previous Governor all strongly suggest that once the 127th Legislature reconvenes for 3 consecutive days, the 3 day-procedure is triggered.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

July 10, 2015

Grant T. Pennoyer, Executive Director
Legislative Council
115 State House Station
Augusta, Maine 04333-0115

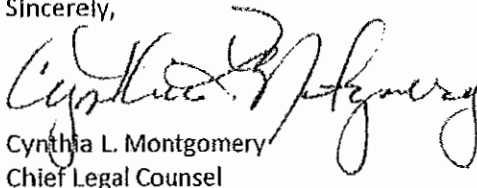
Dear Mr. Pennoyer:

I understand that the Revisor's Office has already chaptered a number of bills the Governor is holding because the Legislature's adjournment prevented his return of the bills to their House(s) of origin within the 10 day deadline. As a result of the Legislature's conduct, and as I am sure you know, the Governor disputes the present validity of these laws. On the other hand, of course, the Governor's opponents wish to rush through the procedural hurdles associated with implementation of the laws and declare them valid. Having the Revisor's Office completely ignore the Governor's position is not only overly partisan conduct on the part of the Revisor's Office, it is also unnecessary as the Governor intends to seek a legal solution to this matter. There is nothing in 3 M.R.S. §163-A that demands such immediate action on the part of the Revisor.

Regardless of whether we agree on which legal theory is more persuasive, surely we can agree that there is a great need for a reasoned and legal resolution. Accordingly, I am requesting that the Revisor's Office pause in its zeal to effectuate these laws, allowing time for the dispute to be addressed. In addition, I suggest that at the very least, this matter should be voted on in the Legislative Council.

Thank you for your time and attention.

Sincerely,


Cynthia L. Montgomery
Chief Legal Counsel



RECYCLING SYMBOL

GRANT T. PENNOYER
EXECUTIVE DIRECTOR
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR
LEGISLATIVE COUNCIL

July 10, 2015

Cynthia L. Montgomery
Chief Legal Counsel
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

Dear Ms. Montgomery:

I have received your letter regarding the recent chaptering of bills for which the 10-day period for Governor's action had expired. The Revisor's Office was performing its administrative function of chaptering laws, which had become law pursuant to the Constitution of Maine, according to the same procedure and timeframe that it always does. The only difference is that, in this instance, the office did not receive the originals back from the Governor's Office. The Revisor's Office did not ignore the Governor's position; in fact, despite their repeated attempts to get clarification regarding the original bill folders for the bills that had become law pursuant to the Constitution, no one in the Governor's Office conveyed to them the Governor's position. After repeated inquiries by the Revisor's Office, Scott Van Orman informed the Revisor that the bills were "not available," prompting the Revisor to ask whether the bills had been misplaced. Following assurances that the bills were in the Governor's Office somewhere, the Revisor informed Scott Van Orman and Suzanne Brochu that "it was fine and that the office would simply chapter the laws without the original bill folders."

You have requested that the Revisor's Office pause in its chaptering of these laws. Absent a legal opinion from an authoritative external legal source, such as an Opinion of the Justices or a written opinion of the Attorney General, which the office has used as guidance in the past, the Revisor's Office will continue to perform its administrative responsibilities in an absolutely nonpartisan manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant T. Penoyer".

Grant T. Penoyer
Executive Director of the Legislative Council



STATE OF MAINE
HOUSE OF REPRESENTATIVES
CLERK'S OFFICE
2 State House Station
Augusta, Maine 04333-0002

Robert B. Hunt
Clerk of the House

July 20, 2015

Governor Paul R. LePage
1 State House Station
Augusta, ME 04330

Dear Governor LePage:

The purpose of this letter is to inform you that I received the 37 vetoed bill jackets your office delivered on July 16, 2015.

However, because the bills had already become law and had been chaptered by the Revisor of Statutes, I delivered them to the Revisor's Office on the date they were received for official archiving.

Respectfully submitted,

A handwritten signature in cursive script that reads "R. B. Hunt".

Robert B. Hunt
Clerk of the House

EXHIBIT 12



Heather J.R. Priest
Secretary of the Senate

THE MAINE SENATE
127th Legislature

3 State House Station
Augusta, Maine 04333

July 20, 2015

The Honorable Paul R. LePage
Governor, State of Maine
Office of the Governor
1 State House Station
Augusta, Maine 04333-0001

Governor LePage:

This letter serves to acknowledge receipt of legislative documents with veto messages by the Secretary of the Senate's Office on July 16, 2015.

In light of the fact that all the documents had already been chaptered into law and were not properly before the body, I subsequently delivered them to the Revisor's Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather J.R. Priest".

Heather J.R. Priest
Secretary of the Senate

History of Vetoes During Temporary Adjournments (1973-2014)

Year	Legislature	Session	Convened	Temporary Adjournment	Dates on which Governor returned bills w/objections during temporary adjournment	Adjournment Sine Die	Notes
2014	126th	2nd Regular	Jan. 8, 2014	April 18 - adjourned until May 1 (SP 757)	April 22 (3 bills), 23 (1 bill), 25 (2 bills), 28 (15 bills), 29 (17 bills), 30 (2 bills) - total of 40 bills)	May 1 (after considering 40 vetoes)	
2013	126th	1st Regular	Dec. 5, 2012	June 27, 2013 - adjourned until July 9 (SP 626)	June 28 (6 bills), July 2 (3 bills), and 8 (21 bills)	July 9 (after considering 30 vetoes)	
2012	125th	2nd Regular	Jan. 4, 2012	April 14 - adjourned until May 15 (SP 686)	April 14 (line item vetoes of Supp Budget bill), and April 20 (1 bill)		April 18 - Speaker reported that House would not convene to consider line item vetoes due to lack of consent of majority of members of both parties.
				May 17 - adjourned "until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business." (SP 689)	May 25 (3 bills) and 29 (1 bill)	May 31 (after considering 4 vetoes)	Reconvened on May 31
2011	125th	1st Regular	Dec. 1, 2010	June 16, 2011 - adjourned until June 28 (HP 1188)	June 17 (3 bills), 20 (3 bills) and 23 (2 bills)	June 28/29 (after considering 8 vetoes)	
2002	120th	2nd Regular	Jan. 2, 2002	April 9 - adjourned until April 24 (HP 1737)	April 11 (2 bills), 17 (1 bill)	April 24 (4:44 am on April 25) (after considering 3 vetoes)	
2001	119th	1st Regular	Dec. 2, 1998	June 5, 1999 - adjourned until June 18 (SP 855)	June 11 (2 bills), 14 (1 bill), 15 (10 bills), 16 (7 bills) and 17 (2 bills)	June 18 (at 12:10 am on June 19) (after considering 22 vetoes)	

Year	Legislature	Session	Convened	Temporary Adjournment	Dates on which Governor returned bills w/objections during temporary adjournment	Adjournment Sine Die	Notes
2000	119th	2nd Regular	Jan. 5, 2000	April 27 - House adjourned at 2:50 am on April 28 "until the call of the Speaker of the House, when there is a need to conduct business, pursuant to Joint Order (SP 1092)"	May 8 (5 bills)	May 12 at 3:31 am (after considering 5 vetoes)	
1997	118th	1st Special	March 27, 1997	June 1 - adjourned "until the call of the President of the Senate and the Speaker of the House pursuant to Joint Order (HP 1353)	June 2 (1 bill), 10 (1 bill) and 11 (1 bill)	June 20 (after considering 3 vetoes)	Reconvened on June 20
1993	116th	1st Regular	Dec. 2, 1992	July 1, 1993 - adjourned until July 14 "for the purpose of considering possible objections of the Governor" pursuant to Joint Order (SP 544)	July 13 (2 bills)	July 14 (after considering 2 vetoes)	
1989	114th	1st Regular	Dec. 7, 1988	June 21, 1989 - adjourned until Thursday, June 29, 1989, at nine o'clock in the morning pursuant to Joint Order (SP 660)	June 23 (1 bill), 27 (2 bills), 28 (2 bills) and 29 (1 bill)	July 1 (after considering vetoes)	Held 3-day session from June 29 to July 1, 1989
1988	113th	2nd Regular	Jan. 6, 1988	April 21 - on motion of Representative Diamond of Bangor, adjourned until Wednesday, May 4, 1988, at ten o'clock in the morning pursuant to Joint Order (HP 1945)	April 27 (2 bills), May 3 (4 bills) (one does not have a date on the communication entered in the record (LD 2501))	May 5 (after considering vetoes)	On April 21, the House and Senate invited the Governor to address the bodies, though they reconvened in May to adjourn <i>sine die</i> .

History of Vetoes During Temporary Adjournments (1973-2014)

Year	Legislature	Session	Convened	Temporary Adjournment	Dates on which Governor returned bills w/objections during temporary adjournment	Adjournment Sine Die	Notes
1987	113th	1st Regular	Dec. 3, 1986	June 18, 1987 - on motion of Representative Wentworth of Wells, Adjourned until Tuesday, June 30, 1987, at ten o'clock in the morning, pursuant to Joint Order (SP 654) .	June 19 (1 bill), June 29 (2 bills) and 30 (1 bill)	June 30, 1987 (after considering 4 vetoes)	
1987	113th	2nd Special	Oct. 21, 1987	October 21 - the Legislature convened in Special Session and passed this Adjournment Order: The following Joint Order: (SP 694) ORDERED, the House concurring, that when the House and Senate adjourn, they adjourn to the call of the President of the Senate and the Speaker of the House when there is need to conduct legislative business, pursuant to Article IV, Part 3, Section 12 of the Constitution. Came from the Senate, read and passed.	October 22 (2 bills)	Nov. 20 (after considering 2 vetoes)	On October 21, 1987, the Legislature convened in Special Session and adjourned at the call of the Speaker and the President on the same day. Reconvened on November 19. The Governor returned a veto message, dated October 22 (for LD 1895). It was considered on November 19 in the House.
1981	110th	1st Regular	Dec. 3, 1980	June 12, 1981 - adjourned until June 19	June 19 (1 bill)	June 19, 1981 (after considering 1 veto)	
1978	108th	2nd Regular	Jan. 4, 1978	March 24 - adjourned until April 6 (SP 770)	April 5 (7 bills) (one is undated in the record (LD 2139))	April 6 (after considering vetoes)	

Year	Legislature	Session	Convened	Temporary Adjournment	Dates on which Governor returned bills w/objections during temporary adjournment	Adjournment Sine Die	Notes
1977	108th	1st Regular	Jan. 5, 1977	July 11 - adjourned until July 25 (HP 1840)	July 11 (1 bill), July 12 (4 bills), July 18 (1 bill), July 19 (4 bills), July 20 (5 bills) and July 22 (6 bills)	July 25 (after considering vetoes)	
1976	107th	1st Special	Jan. 19, 1976	April 16 - adjourned until April 26 (SP 812)	April 22 (1 bill)	April 29 (after considering 1 veto)	