

# MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Fifth Legislature

OF THE

STATE OF MAINE

1911

ter 450 of the Private and Special Laws of 1907 entitled "An Act to prohibit the throwing of sawdust and other mill waste into Bog brook and its tributaries in the counties of Oxford and Androscoggin, came from the Senate indefinitely postponed.

On motion of Mr. Andrews of Norway the House voted to concur with the Senate in its action.

An Act to provide for the State certification of teachers of public schools

An Act relating to nomination of candidates by direct primaries.

Mr. WILLIAMSON: Mr. Speaker: We have under consideration two bills relating to the nomination of candidates by direct primaries.

The first comes to us under the initiative. I understand it was drawn by the gentleman from Yarmouth, and it has therefore been usually known as the "Davies" bill.

The second was drawn by the Hon. Nathan Clifford and the Hon. Wm. M. Pennell, both of Portland and has been usually known as the "Pennell" bill.

Both bills have been drafted with care, and reflect credit upon their respective authors.

The two bills differ somewhat in the details of preparing ballots, and conducting the primary elections, but these differences are not important and I will not discuss them. Both apply the direct primary to the Governor, Representatives in Congress and to an advisory vote for United States Senators.

There the Pennell bill stops. The Davies bill goes further and applies the direct primary to State senators, county officers and representatives to the legislature. I do not believe this extension of scope wise, and I will briefly give you my reasons.

If the members of this legislature instead of meeting here to discuss laws which are proposed were called upon to vote yes or no upon them at their homes, although without opportunity of mingling together and exchanging experiences and ideas, very good results might in some cases be obtained. Upon matters like resubmission or woman's suffrage the argu-

ments for and against which are well known, we could perhaps vote as well in that way as in any other. But upon questions little known such as whether a certain charter should be granted, or a certain appropriation made, the majority of us could not vote intelligently without the advantages derived from meeting, having the question considered by a committee and discussing it if necessary on the floor of the House.

As it is with measures, so with men. From men whom he knows either by reputation or otherwise, the voter can select one in the privacy of a booth as easily and intelligently and with much greater freedom than can a delegate in a convention.

But if the voter has never heard of the men upon the primary ticket, how can he intelligently choose among them?

The direct primary does away with all nominating conventions where men meet the various candidates and each other, discuss their merits and decide accordingly.

The test of a proposed law is not how good it is in theory but how it is going to work. Many laws in theory seem flawless, which in actual practice fail miserably. A law which is founded on the premise that the action of men is automatic and makes no allowance for human interests is bound to be a failure. And so the supreme test of proposed legislation is not its theory which may be beautiful, but the question of how it will result when actually applied. It is admitted that so far as the higher officials are concerned the direct primary law has worked well elsewhere and will work well here.

Candidates for governor and for United States senators are usually well known throughout the state; candidates for representatives in Congress are known throughout their district. The people can decide upon nominees for such offices directly without the medium of a convention just as we could decide questions like that of resubmission without reference to a legislative committee, or even without assembling at all.

But how will it work as to county of-

ficers and members of the legislature?

I believe the result will be this. If the Davies or any other law applying the direct primary to county officers and legislators goes into effect, the smaller towns will be almost wholly deprived of representation. The nominees for all county officers will live in the larger cities and towns. The nominee for the legislature will live in the largest town in the class.

Under the present system of county conventions, there is a certain spirit of fairness in the distribution of offices. Seldom are two nominees on the same ticket chosen from the same city. The claims of every section receive due consideration, and the fact that a certain town has had no nominees in previous years, carries, as it should, due weight. The candidates, too, are usually present and the delegates have an opportunity to determine their fitness by personal observation.

But under the direct primary all this will be changed. Put yourself in the place of the average voter going into a booth to mark one of several candidates for county treasurer. In nine cases out of ten he will know nothing of any of them. Unable therefore to make any intelligent selection, what will determine his choice? What can determine it except the locality in which the different men reside? If one lives in the voter's town he may know him and therefore vote for him; if he doesn't know him, he votes for him on general principles, because he is a townsman.

The majority of men in Portland will therefore vote for a Portland candidate; the majority of men in Scarborough will vote for a Scarborough candidate; if they have no Scarborough candidate they are more likely to vote for the Portland man than for any one else. And so, not because the Portland man is better fitted for the office or more popular or really any better known than the Scarborough man, but merely because there are more voters in Portland than in Scarborough, the Portland candidate for county office will be nominated and the man from Scarborough or any other smaller town defeated.

Nor can this tendency in any way be corrected. If candidates from the

large cities and towns get their names on the ticket as they may easily do, the people will vote for them, no matter how much the party bosses scold or the judicious grieve. They will vote not only for one, but for every townsman whose name appears on the ticket. The attraction of a nominating plurality toward men in its own community is as strong and certain as the attraction of gravitation. Knowing the density of the population the number of nominees can be computed with almost absolute accuracy.

If the Davies bill becomes law it will be useless for the gentleman from Fayette, or the gentleman from China ever to aspire for county honors at the hands of their respective parties.

Our Kennebec county nominees will then all come from Augusta and Waterville with now and then one from Gardiner.

The county ticket in Penobscot will all hail from Bangor. The Androscoggin county commissioners may all live in one Lewiston ward. Neither Brunswick nor Westbrook will do any more county business. All will go to Portland.

But it may be said that this is all idle speculation; that no one can tell how the Davies law would work, and that perhaps it might not be so bad for the smaller towns after all.

Let us see. Human nature in New Hampshire is very like that in Maine. New Hampshire has a law applying the direct primary to county officers. There is no reason why we should not be guided by the lamp of her experience.

Last fall all the New Hampshire counties elected eight officers, a sheriff, a solicitor, a treasurer, a register of deeds, a register of probate and three commissioners.

The county of Rockingham lying next to Maine contains 37 towns. In 1900 its population was 51,118. Portsmouth had 10,637 and Exeter 4922. There are no other large towns.

Five of the nominees under the direct primary lived in Portsmouth, and three in Exeter. These two towns with 15,559 population had eight of-

ficers. The other thirty-five towns with 35,559 population had none.

In Hillsboro county the two largest cities are Manchester and Nashua. Of the seven nominees elected four lived in Manchester, and three in Nashua. One commissioner from a small town was nominated, but was defeated at the polls.

In Stratford county, Dover and Rochester are the largest cities. Dover had six nominees, Rochester two, the smaller towns none.

In Belknap county, Laconia with 8042 inhabitants is the largest city. Laconia had six nominees, all except two commissioners. Gilford, a suburb, had one, and Tilton a town of about 200 the only other nominee.

In Cheshire county, Keene with 9165 inhabitants is the largest city. The nominees for sheriff, solicitor, treasurer, two registers and one commissioner came from Keene. The smaller towns got two commissioners only.

In Merrimack county, Concord and Franklin are the largest places, Concord had five nominees, Franklin two, and the country towns which contain considerably more than half the population had to be content with one of the three county commissioners.

In short the operation of the law has been so unjust in depriving the smaller towns of representation that I understand some of our New Hampshire friends are seriously thinking of holding county conventions next year, not for the purpose of actually nominating candidates, for that is forbidden by law, but to see if they cannot devise some method to unite the people in the country against those in the cities. In self defense they seek to return as nearly as possible to the method which the gentleman from Yarmouth so earnestly urges us to give up.

The same rule can be applied to the nomination of members of the legislature by direct primaries. In the cities and towns having one or more representatives, all the candidates would be fairly well known in their respective communities, and in such cities and towns I believe it would work well.

But how will it operate in a representative district composed of several towns? Take the class so ably represented by the gentleman from Hallowell, Mr. Clearwater, and composed for the next decade of that city with 3000 inhabitants and of the towns of Manchester and West Gardiner each with about 600. Under the present system which the Pennell bill does not disturb, I presume Manchester would have one term, West Gardiner one, and Hallowell three. But if the Davies bill becomes law neither Manchester nor West Gardiner will be represented during the next ten years.

Now gentlemen, my colleague and myself represent the largest city in Kennebec county. At present the only county officers from Augusta are the clerk of courts who is a Republican, and one county commissioner, who is a Democrat. At the last Democratic county convention Augusta had candidates for nearly every officer upon the ticket. Had the Davies bill been law, some and perhaps all of them would have been nominated. But the county convention did not nominate any of them, except one State senator. The delegates thought that with the Governor and two county officers, Augusta had her share, and proceeded to distribute the nominations among the other cities and towns. If the selfish interests of my city were to determine my action, I should be for the Davies bill first, last and all the time, for it would give it a prominence in the councils of both parties entirely disproportionate to its size.

Nor am I especially in favor of the Pennell bill because it was drawn by leading Democrats. The difference between the bills is not a political one. I am opposed to the Davies bill because it will throw the nominations for nearly all the county officers, Democratic, Republican, Prohibition and Socialist alike into the cities. I favor the Pennell bill because it will not.

Our forefathers when they formulated the constitution of Maine, denied cities and towns entitled to more than one representative in this House equal representation with the classed towns according to their population. I have

never heard their wisdom in so doing questioned. This legislature has decided not to give the city of Augusta three representatives though it has more than three times the aggregate population of the towns in several of the classes. It has decided not to give the city of Rockland two representatives. I do not question its wisdom.

But it seems to me absurd to ask a legislature which has properly been so jealous of the rights of the smaller towns, to vote for a measure which in its practical effect would deprive those towns of their just representation upon the county tickets.

Two courses may be pursued as to the Pennell bill. We may enact it into law or we may send it to the people with the Davies bill as a competing measure. The legislature finally determines which method shall be taken.

I believe the Pennell bill should be enacted into law for two reasons:

First: Both parties pledged themselves to enact a direct primary law, not merely to submit one to the people.

Second: The enactment of the Pennell bill will give the people an opportunity to observe the practical operation of a primary law so that all may determine for themselves whether its provisions should be any further extended.

The Davies bill having come to us through the initiative, must unless enacted by us without change, be submitted to the people and be voted upon at the polls. If adopted by the people it will repeal the Pennell bill or any other law which we may here enact so far as its provisions are inconsistent therewith.

I trust no Democrat in this House will vote to enact the Davies bill. I hope no Republican will feel bound to vote for it, merely because it comes to us with the indorsement of the Republican members of the Judiciary Committee and is to a certain extent a Republican measure.

I hope no one, no matter what his politics may be, will vote for it at the polls unless he sincerely believes the interests of the State demand that more of the county officers and members of the legislature than at pres-

ent should be chosen from the urban and less from the rural population.

The Davies bill will, if enacted, greatly increase the advantages which a dense population already possesses over one equal in number but scattered over a wider area. Such an advantage once obtained, will never be voluntarily relinquished.

The great interest of our State is, and always will be agriculture. From its nature this pursuit can be carried on only in districts which by comparison with the cities are sparsely settled. In this legislature and among the officers of every county in the State it has a representation befitting its importance both in numbers and ability.

If we desire to limit this representation no measure can in my opinion be more effective to that end than the Davies bill. I trust therefore that it may be overwhelmingly defeated not only by our votes but by the people who under the constitution must vote either to accept it without change or to wholly reject it.

Mr. CHASE of York: I wish to ask the gentleman a question. Would not this same rule apply in case of nominations of representatives to Congress where there are two or three candidates?

Mr. WILLIAMSON: It would in a less degree, but usually men who are candidates for Congressional nominations are so well known that the voters would take the pains to intelligently choose between them. I believe the candidates of either party at the last election in the gentleman's own Congressional district could have been chosen as well under the direct primary as by conventions. On the whole the advantages of the direct primary as applied to governor and members of Congress distinctly outweigh its disadvantages; as applied to members of the legislature from classed towns and to county officers the disadvantages greatly overbalance.

Mr. DAVIES: Mr. Speaker, a word as to how it works. I wish to call attention to what one of the first gentlemen in New Hampshire said about it, the Hon. Frank S. Streeter. "Fifteen states have adopted a mandatory pri-

mary law. Its operation in New Hampshire has been so successful and so satisfactory as to command the strong favorable opinion of men originally hostile to it. If it has any enemies, which I doubt, they can have no hope of securing a repeal of this law." That was the opinion of General Streeter. Eighty per cent. of the people of the United States now choose their candidates by direct primaries. The system originated in Pennsylvania 75 or 100 years ago and has been in operation since that time; so it is no new thing. I have here the opinions of several prominent gentlemen, Governors and ex-Governors of various states, giving their opinion of the law, and all in favor of it. From nearly every state where that law is in operation testimony of a similar kind has been given as to the efficiency and practical working of the direct primary. Governor Hughes of New York called the Legislature in special session for the purpose of enacting this special primary law.

Mr. MILLER of Hartland: Mr. Speaker, I hear that the committee were divided in to three classes in regard to this matter, some doubtful about the primary law anyway, others in favor of the Pennell measure, others want to extend it to the entire nomination including the county officers. I would suggest that the Pennell law which confines it to Governor and Congressmen is the proper one for us to pass at this time. Then let us see how that works. If we like it we can continue it and can extend it; if we don't like it we can abolish it.

Mr. AUSTIN of Phillips: Mr. Speaker, I do not certainly believe that a direct primary, especially as it applies to candidates for Governor and Representatives to Congress and to United States Senator, is going to operate exclusively towards electing what you might call the real choice of the people at all times. I do not think anybody fears the choice of the people, but the question that troubles me is that it might open the door to demagoguery and the result might be that the man who had the most capital at his disposal and could advertise himself the most would be the man that would be most prominently brought before the people and therefore would be likely to win out. That is the

only objection I ever had to the primary law. I fear it will not register the honest public opinion of the voters of our State. But I believe there is a demand of the State of both parties for a primary election law, and I believe if a primary election law is to be tried in this State we had better begin at home, as near the people as we can. The candidates for our county offices and for the Legislature are known among the people of the various counties. If it is a good thing to apply to the head of the ticket it is a good thing to apply to the whole ticket, and I am heartily in favor of the Davies Bill going before the people.

Mr. PATTANGALL: Mr. Speaker, unless the Davies Bill is accepted without change by the Legislature it must be submitted to the people to vote upon. Pending that Bill going to the people to vote upon, four members of the committee have recommended a Bill which can go into effect now, under which the people will in a sense experiment with the direct primary. It seems to me it would be the part of wisdom for the Legislature to accept the majority report of the committee and give this Bill, No. 766, an immediate passage. Personally I have not become converted to the idea that a direct primary is either necessary or advisable to the people of Maine, but both political parties pledged themselves to a direct primary Bill. Since the passage of the State income tax it has been asserted that some of us violated our platform promise in respect to an income tax Bill. I think we kept the substance of that Bill; and I would dislike to see this Legislature fail to keep any of its promises. If we fail to pass any direct primary Bill we would be fairly open to a just criticism of not keeping our party promise. There are only two courses open to us I think, either to adopt the Davies Bill or the Pennell Bill. My personal preference would be strongly to adopt the Pennell Bill at the present time, and submit the other bill to the voters, and in the meantime the people will have a chance to experiment with the nomination of Governor and congressmen by direct primary law. After that they may adopt the Davies bill if they desire. In the meantime we have fairly and reasonably fulfilled our campaign promises. I hope the House will adopt the report

of the committee in favor of the Pennell bill.

Mr. Davies moved that the minority report, in favor of the so-called Davies bill, be accepted.

A division was had and the motion was lost by a vote of 15 to 76.

The question being on the adoption of Report A, "ought to pass," on the so called Pennell bill,

A division was had and the vote was accepted by a vote of 75 to 20.

Mr. Davies presented an order and moved its passage, to the effect that both measures be submitted to the electors in such manner that the people can choose between the competing measures or reject them.

On motion of Mr. Pattangall the order was indefinitely postponed.

The bill then received its three readings and was passed to be engrossed under a suspension of the rules.

From the Senate: An Act to provide for salaries and mileage of members and officers and for other expenditures incident to the Seventy-Fifth Legislature. (Read three times and passed to be engrossed under a suspension of the rules.)

From the Senate: An Act in relation to the superior court of Cumberland county, came from the Senate passed to be engrossed in that branch under a suspension of the rules.

The House concurred with the Senate in its action.

On motion of Mr. Otis of Rockland the rules were suspended and he introduced a resolve in favor of the State librarian and on further motion by Mr. Otis the rules were suspended, the resolve received its two readings and was passed to be engrossed.

On motion of Mr. Bowker of Phippsburg the House took a recess until 2 o'clock.

#### AFTERNOON SESSION.

On motion of Mr. Murphy of Portland, the House voted to reconsider the motion whereby Resolve in favor of John Bradbury was passed to be engrossed.

Mr. Murphy offered Amendment A by

substituting the words "eight dollars" for the words "four dollars."

The Amendment was adopted, the Resolve received its two readings and was passed to be engrossed as amended.

The conference report on the disagreeing action of the Legislature on two Bills relating to the distribution of the State school fund, came from the Senate.

The House adopted the report in concurrence

An Act for the equalization of school privileges.

Mr. Murphy offered Amendment A by striking out "\$50,000 in line seventeen and substituting the words "\$27,500."

The Amendment was adopted, the Bill then received its three readings and was passed to be engrossed as amended under a suspension of the rules.

Bill to provide for the payment of State funds for amount paid on account of union superintendents. (Read three times and passed to be engrossed under suspension of the rules.)

An Act authorizing the State land agent to convey a lot in Castle Hill to Samuel Maynard of Castle Hill, came from the Senate that branch non-concurring with the House in its action and asking for a committee of conference.

The House voted to join a committee of conference.

The Speaker appointed on the part of the House, Messrs. Bogue of East Machias, Libbey of Oakland, and Buzzell of Fryeburg.

An Act relating to the salary of the Judge of Probate of Cumberland county, having been indefinitely postponed in the House, came from the Senate in that branch passed to be engrossed.

On motion of Mr. Scates of Westbrook the House voted to recede and concur with the Senate in its action.

The Bill then received its three readings and was passed to be engrossed under a suspension of the rules.

#### Passed to be Enacted.

An Act to incorporate the Casco Bay Water Company.

#### Finally Passed.

Resolve in favor of roads in Indian Township.

Resolve in favor of the clerk of committee on manufactures.

Resolve for a co-operation agreement