

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and First Legislature

OF THE

STATE OF MAINE

VOLUME II

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and

SPECIAL SESSION

JAN. 6 - JAN. 17, 1964

DAILY KENNEBEC JOURNAL
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**Constitutional Amendment
Tabled and Assigned**

Resolve Proposing an Amendment to the Constitution Eliminating Requirements Relating to Warrants for Public Money and Publication of Receipts and Expenditures (H. P. 991) (L. D. 1434)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

(On motion of Mr. Berry of Cape Elizabeth, tabled pending final passage and tomorrow assigned.)

Passed to Be Enacted

An Act Increasing Salary of Superior Court Messenger of Cumberland County (S. P. 404) (L. D. 1107)

An Act Adjusting Salary for the Supreme Judicial Court Messenger in Cumberland County (S. P. 435) (L. D. 1178)

An Act Providing Access Roads to Ski Areas Open to General Public (S. P. 570) (L. D. 1515)

An Act relating to Refund of Excise Taxes on Malt Beverages Sold to Maine Army National Guard Training Site (H. P. 875) (L. D. 1379)

An Act relating to Junk Motor Vehicles as Public Nuisances (H. P. 1078) (L. D. 1545)

An Act relating to the Taxation of House Trailers (H. P. 1083) (L. D. 1550)

An Act relating to Disposition of Part of Tax on Pari Mutuel Pools on Running Horse Racing (H. P. 1084) (L. D. 1551)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

The SPEAKER: The Chair would request the Sergeant-at-Arms to escort the Majority Floor Leader, the gentleman from Bangor, Mr. Wellman, to the rostrum to serve as Speaker pro tem.

Thereupon, Mr. Wellman assumed the Chair as Speaker pro tem amid the applause of the House and Speaker Kennedy retired from the Hall.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

SENATE REPORT — Ought to pass with Committee Amendment "A" (Filing S-199) — Committee on Constitutional Amendments and Legislative Reapportionment on Resolve, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor." (S. P. 530) (L. D. 1451)

Tabled — May 7, by Mr. Childs of Portland.

Pending — Acceptance of Report. Mr. CHILDS: Mr. Speaker, I move at this time the acceptance of the Committee Report.

The SPEAKER pro tem: The gentleman from Portland, Mr. Childs, moves the acceptance of the "Ought to pass" Report. Is this the pleasure of the House?

The Chair recognizes the gentleman from York, Mr. Rust.

Mr. RUST: Mr. Speaker, Ladies and Gentlemen of the House: I probably should not be standing up here this morning on this particular issue, but I think it is of sufficient importance that I couldn't let it go by without making a few comments on it.

As a result of the last gubernatorial election, we had a difficult and a long recount for the office of Governor. However, from my own opinion I think the parties involved in it handled the matter very well, expeditiously, and all parties concerned were satisfied with the results. I further feel that people who are involved in recounts have the decency and the sincerity to handle things in a proper manner and to give and take when they are in doubt and when they realize they are wrong.

This particular piece of legislation here as proposed would amend the Constitution to provide that on disputed elections that it would be the duty of the Legislature in joint convention to resolve that dispute. I, for one, see no particular need for this piece of legislation or this amendment to our Constitution, and I would now move the indefinite postponement of this bill and I request a division.

The SPEAKER pro tem: The question now before the House is the motion of the gentleman from York, Mr. Rust, that this matter be indefinitely postponed.

The Chair recognizes the gentleman from Bar Harbor, Mr. Smith.

Mr. SMITH: Mr. Speaker, the gentleman from York, Mr. Rust, has raised a very basic question, one which this body should give very careful attention to in any change it may choose to make.

I must disagree with the gentleman from York, Mr. Rust, when he says that there is proposed in this resolve a change in the Constitution which would place in this body the responsibility of determining who is chosen for Governor. I submit that that responsibility lies in this body at the present time and has ever since the adoption of our Constitution in 1819.

The present law is contained in Article V, Part First, Paragraph 3 of the Maine Constitution. It is with the exception of amendments not now in question, these same provisions as that contained in the Constitution, a copy of which I have here, adopted by the State of Maine when separated from Massachusetts: Article V, Part First, Paragraph 3, even the same numbering, so we are talking about a provision which I believe we must examine here, if you will bear with me, which has been in our law for some hundred and thirty or hundred and forty years. Article V, Part First, Paragraph 3 provides: "The meetings for election of governor shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives." That is the first sentence, so we must refer to the procedure for the voting and counting of votes for senators and representatives. We look at the provision concerning senators and it says in the same manner as that used with respect to representatives, so we look to that and we find the following procedure: that the vote is to be received, sorted, counted, declared and recorded by local election officials, the vote declared after counting, and the town clerk, from a list of persons voted for and the number of votes for each person, shall form a list and send that to the Secretary of State, making a

fair copy, fair record is the word used. The Secretary of State then has a list of those who — the numbers of those who voted for and against the candidates for governor. Turning back to the Constitutional provisions: "They" meaning these lists, "shall be sealed and returned into the secretary's office in the same manner, and at the same time as those for senators", which I have just reviewed. "And the secretary of state for the time being shall, on the first Wednesday of January, then next, lay the lists before the senate and house of representatives, and also the lists of votes of citizens in the military service, returned into the secretary's office, to be by them examined, and, in case of a choice by a plurality of all the votes returned, they shall declare and publish the same". Now "they" is there referring to the House of Representatives and the Senate. They shall declare and publish the same. Now what is the "same"? The same is the choice for Governor. Now the Legislature of Maine is not a body constituted merely to count votes. It is a body constituted to declare and publish the choice. We have a Secretary of State who could do that if it is just a matter of counting. I submit therefore that the decision was placed with this body and with the Senate in the beginning and it remains there now. The Resolve, L. D. 1451, proposes in this connection to state that the ballots be brought in with these lists to assist the House and Senate obviously. But the words in a proposed amendment which I believe has been circulated points out that the words "together with the ballots cast if they so elect" are the new words in the proposed resolve on this particular question. If the House of Representatives and the Senate have the duty of declaring who has been chosen, obviously it will be of great assistance to have the ballots to examine. Under the Constitution the House of Representatives or the Senate may seek an opinion from the Justices of the Supreme Judicial Court on such solemn occasions as to the House of Representatives or the Senate seem appropriate. Certainly the

question of who has been chosen Governor is a solemn occasion and on that occasion I am sure in the wisdom of the Legislature, if there were a legal point to be clarified, it would seek the opinion of the Justices of the Supreme Judicial Court. It has in the past as recently as two years ago in a dispute concerning the election of a member of this body, the opinion of the Supreme Judicial Court was sought and received.

The Legislature, particularly the House of course, is close to the people. In the situation which we are considering the people have voted. There is some question as to how they voted in the matter of counting the votes or in the matter of the validity of the votes. It seems to me this body should adhere to the tradition, the method implicit in the wording of our Constitution at the beginning and still there; adhere to that procedure and adopt this resolve which by the wording proposed is clarified merely by providing that the ballots in dispute be brought before this House and the Senate. They would of course be considered by a committee, and any legal questions I am sure would be referred to the Supreme Judicial Court. I urge you to vote against this rather radical motion by the gentleman from York, Mr. Rust, to remove this clarifying provision which I have described to you.

The SPEAKER pro tem: The Chair will interrupt debate at this time to recognize in the gallery thirty members of the seventh grade of Stonington Memorial High School. These young people are accompanied by their teacher, Mr. Raymond Morris and chaperones Donald Cowles, Prentiss Shephard, Wallace Carter, Leroy Small and Mrs. Gordon Richardson.

These students are the guests of Representative Gordon Richardson of Stonington. The Chair, on behalf of the House, extends its welcome to you and hopes that your visit will be both profitable and enjoyable. (Applause)

The SPEAKER pro tem: The Chair recognizes the gentleman from Houlton, Mr. Berman.

Mr. BERMAN: Mr. Speaker, Members of the House: I rise to support my able friend and colleague, Mr. Smith from Bar Harbor, in opposing the indefinite postponement of this very sensible and worthwhile amendment. Now I seriously disagree with my friend, the gentleman from York, Mr. Rust, that there is no need for the amendment.

This amendment seeks to clarify existing law. Now under existing law if no person, as a candidate for governor, shall have a plurality of votes, the House of Representatives shall by ballot from the persons having the four highest number of votes on the list, if so many there be, elect two persons, and make return of their names to the Senate, of whom the Senate shall by ballot elect one who shall be declared the governor. Now this is why there is a need for L. D. 1451. Under existing law the House of Representatives could take the lowest two of four names on the gubernatorial totem pole, send them over to the Senate and the Senate would in effect be choosing as governor one of the people who had run for that office who had received either the third or fourth largest number of votes rather than the first or second largest number of votes. Now this proposed Constitutional amendment simply says that if no one has a majority because two people are tied, then the names of those two people shall be sent to a joint convention, and the joint convention shall do the fair and sensible thing of determining which of these two people who have been tied in the gubernatorial election shall be elected governor. Now I suggest that a simple comparison of the existing law and what this amendment proposes to do will certainly support in reason Mr. Smith's and my opposing the motion for indefinite postponement.

The SPEAKER pro tem: Is the House ready for the question? The Chair recognizes the gentleman from York, Mr. Rust.

Mr. RUST: Mr. Speaker, Ladies and Gentlemen of the House: My comments and my motion this morning having served the purpose to

evoke some discussion of this motion on this Legislative Document, I now withdraw my motion.

The SPEAKER pro tem: The question now before the House is the acceptance of the Report.

Thereupon the "Ought to pass" Report was accepted in concurrence and the Resolve read once.

Committee Amendment "A" was read by the Clerk as follows:

COMMITTEE AMENDMENT "A" to S. P. 530, L. D. 1451, Resolve, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor.

Amend said Resolve in the Referendum by striking out in the 7th, 8th and 9th lines the words "or special state-wide election on the Tuesday following the first Monday of November following the passage of this resolve"

Committee Amendment "A" was adopted in concurrence.

Mr. Childs of Portland offered House Amendment "A" and moved its adoption.

House Amendment "A" was read by the Clerk as follows:

HOUSE AMENDMENT "A" to S. P. 530, L. D. 1451, Resolve, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor.

Amend said Resolve in that part designated "Section 3," by striking out in the 9th and 10th lines the underlined words and punctuation "together with the ballots cast if they so elect,"; and by striking out the single quotation mark at the end of the 19th line and inserting in place thereof the following underlined sentence:

"The Supreme Judicial Court, on appeal, shall determine the validity of any disputed ballots."

The SPEAKER pro tem: The Chair recognizes the gentleman from Bar Harbor, Mr. Smith.

Mr. SMITH: Mr. Speaker and Members of the House: I rise to oppose the proposed amendment which you have before you. It seeks to, in my opinion, remove from the Legislature the functions which I just described to you in connection with the acceptance of the report, and place in the Supreme Judicial Court on appeal the very questions

which in my opinion, this Legislature is under the Constitution as originally written and as now existing, is obliged to settle. I urge that you vote against the adoption of the amendment.

The SPEAKER pro tem: The Chair recognizes the gentleman from Portland, Mr. Childs.

Mr. CHILDS: Mr. Speaker, Members of the House: When the Constitutional resolve was being debated a few minutes ago, you will notice that I had nothing to say for I believe that there is ambiguity in the Constitution as it now stands and that something should be done to correct it. You will also notice when the gentleman from Bar Harbor, Mr. Smith, read the Constitution to you, that it was expressly left out in the original Constitution that the ballots would be sent to the Legislature for their determination. I submit to you that that was an intentional act by the framers of the Constitution, for I feel that they felt in their opinion that the validity of ballots should be determined by the Court and not by the Legislature.

I believe, Members of this House, that by going along with this Constitutional Amendment without the House Amendment which I have offered to you, would be politics in its ugliest form. I certainly do not think that Members of the House, and certainly this is no reflection on the Members of the House, but I certainly do not think that Members of the Legislature should be stepping into an area which belongs to our Courts. Our Courts are trained in the law, they have had experience in the law, they have precedents to rely on, and they can determine the validity of ballots. Now in determining the validity of a ballot you are talking about the intention of a voter, and I think it would be cumbersome and I think it would not be fair to the Members of the Legislature for them to take into consideration something that they have had no experience in.

The gentleman from Bar Harbor, Mr. Smith, says that if the Legislature so desired that they could ask for an advisory opinion and I agree with him, but I submit to you that it should not be a matter of discretion. When there are dis-

puted ballots, it should be mandatory that our Courts determine the validity of them. Unquestionably, if there is a close election, close enough to have a recount, unquestionably disputed ballots could determine the outcome of the election, and the only thing that my amendment does is to have the Courts determine the intent of the voter. In our original Constitution all it said was the lists would be submitted to the Legislature and they would determine the count, and nothing in there was said about the ballots. And therefore I hope that if the gentleman did make a motion that this amendment be indefinitely postponed, I hope it will not prevail, and when the vote is taken at this time I would request a division.

The SPEAKER pro tem: The question before the House is the adoption of House Amendment "A."

The Chair recognizes the gentleman from Bar Harbor, Mr. Smith.

Mr. SMITH: Mr. Speaker, the gentleman from Portland, Mr. Childs, indicates that he seeks to remove an ambiguity from the Constitution by the proposed amendment. Well, the ambiguity, if there is one, is removed by the amendment which has been—by the resolve which has been unanimously approved by the Committee on Constitutional Amendments. As for politics in its ugliest form, I fail to see why in the vague future when some such question as we are now discussing may come up, why politics enters into it. We have no knowledge as to how this House may be constituted party-wise in the future. We only know about the present. And as for it being politics in its ugliest form to vest in this Legislature a legitimate power, it just has no meaning to speak of it in those terms. I move the indefinite postponement of House Amendment "A."

The SPEAKER pro tem: The question now before the House is the motion of the gentleman from Bar Harbor, Mr. Smith, that House Amendment "A" be indefinitely postponed.

The Chair recognizes the gentleman from Portland, Mr. Childs.

Mr. CHILDS: Mr. Speaker, I only

want to add to what the gentleman from Bar Harbor, Mr. Smith, has said, that regardless of which party is here, whether this Legislature is controlled by the Democrats or by the Republicans, I would still oppose this Constitutional Amendment as it now stands for I still feel it would be an infringement upon the Members of this Legislature to determine something which they have had no experience or knowledge of, and I hope that his motion shall not prevail.

The SPEAKER pro tem: The Chair recognizes the gentleman from Houlton, Mr. Berman.

Mr. BERMAN: Mr. Speaker, I again rise in support of my able colleague from Bar Harbor, Mr. Smith. To be perfectly frank and candid about this amendment, this amendment is nothing more than a political move by the Minority Party, to remove from the Legislature a power it presently has, which is to decide in a disputed election who shall be the governor of this state. Now I submit to the ladies and gentlemen of this House that this House is an honorable body, and that if any ballots should seriously be in dispute, they will ultimately be examined by the Supreme Judicial Court anyway.

Now we have seen time and again during this session of attempts to whittle away the legislative powers in this state, and I strongly urge that when you vote on Mr. Smith's motion to indefinitely postpone this amendment, that you not whittle away any more legislative powers today.

The SPEAKER pro tem: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker, as a member of the Democratic Party, I resent wholeheartedly the remarks of the gentleman from Houlton, Mr. Berman, when he says that this is an attempt by the Minority Party, in other words, a wheeling and dealing action by the Minority Party. As far as I am concerned, I just learned of this amendment a few minutes ago, and I assure you that I may rise here and join the opposition sometimes wherein it concerns monetary mat-

ters, budgetary matters and appropriations matters; but when it is going to either affect, good or bad, my party, you're going to hear from me and I think I'm going to know what's going on.

This is an attempt to lay the problem where it should go. There are those who feel that I have been here too long. Well I've been here long enough to remember being in the Council Chamber and seeing a stack of ballots here and a stack of ballots there and a little stack of ballots this way, these were disputed ballots that the Governor and Council had rejected, and they held two matches, one was a long one and one was a short one. You pick and you win — you lose and you lose. I don't think that's right. And if a member of the Majority Party wants to accuse us of skulduggery, I'll plead guilty; so on that basis, when the vote is taken I move it be taken by a roll call.

The SPEAKER pro tem: The Chair recognizes the gentleman from Houlton, Mr. Berman.

Mr. BERMAN: Mr. Speaker, Members of the House: I have no intention of accusing anybody of skulduggery, but I do wish to face the facts of political life. Now so long as this Legislature continues an honorable body, the people of the State of Maine have nothing to fear about the Legislature deciding a disputed election recount.

The SPEAKER pro tem: The Chair recognizes the gentleman from Madawaska, Mr. Levesque.

Mr. LEVESQUE: Mr. Speaker, Ladies and Gentlemen of the House: As has been mentioned by the Representative from Houlton, Mr. Berman, that eventually these disputed ballots would end up in the Judicial Courts of the State of Maine, I see nothing wrong in spelling it out that if there are disputed ballots that they should be going to the Courts rather than being on our desks and eventually landing in the Courts after innumerable time has been spent for absolutely nothing.

The SPEAKER pro tem: The question now before the House is the motion of the gentleman from Bar Harbor, Mr. Smith, that House

Amendment "A" be indefinitely postponed. A roll call has been requested. In order for the Chair to order a roll call one-fifth of the members present must arise and stand in their places and so indicate their desire. Would all those who desire a roll call please rise and remain standing until the monitors have made and returned the count.

A sufficient number arose.

The SPEAKER pro tem: Obviously, more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the gentleman from Portland, Mr. Cottrell.

Mr. COTTRELL: Mr. Speaker, I am very, very sorry and disappointed to see or to hear rumors that a matter of the Constitution is being degraded to the point of partisanship. I would simply remind the members of the House that when we had this very tense and exciting recount this last fall, that this matter came up, and two of our most prominent attorneys in the State, Mr. Scribner, the Honorable Mr. Scribner, and the Honorable Mr. Wernick could not agree. They brought this point up, and they said it was not carefully spelled out in the Constitution, and I certainly hope that the members of this House give this sincere consideration.

The SPEAKER pro tem: The Chair will restate the question. The question before the House is the motion of the gentleman from Bar Harbor, Mr. Smith, that House Amendment "A" to L. D. 1451, Resolve Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor be indefinitely postponed, and a roll call has been ordered. Those in favor of the indefinite postponement of House Amendment "A" will answer "yes" when their name is called; those opposed will answer "no" when their name is called. The Clerk will call the roll.

ROLL CALL

YES — Albair, Benson, Berman, Berry, Birt, Boothby, Bradeen, Bragdon, Brewer, Brown, Fairfield; Brown, South Portland; Carter,

Chapman, Choate, Cookson, C o p e, Coulthard, Cressey, Crockett, Curtis, Davis, Dennett, Drake, Dunn, Easton, Ewer, Finley, Foster, Gifford, Gilbert, Gill, Gustafson, Hammond, Hanson, Hardy, Harrington, Hawkes, Hendsbee, Henry, Hobbs, Humphrey, Hutchins, Jewell, Jones, Kent, Knight, Laughton, Libby, Lincoln, Linnekin, Littlefield, MacLeod, MacPhail, Maddox, Mathieson, McGee, Meisner, Mendes, Minsky, Norton, Oberg, Osborn, Osgood, Pease, Philbrick, Pierce, Prince, H a r p s-well; Rand, Rankin, Richardson, Ricker, Roberts, Ross, A u g u s t a; Ross, Brownville; Rust, Sahagian, Scott, Shaw, Smith, B a r H a r b o r; Smith, Falmouth; Smith, S t r o n g; Susi, Taylor, Thaanum, Thornton, Townsend, Treworgy, Turner, Tynedale, Vaughn, Viles, Wade, Waltz, Waterman, Watkins, White, Guilford; Whitney, Young.

NO — Anderson, Orono; Baldic, Bedard, Bernard, Binnette, Blouin, Boissonneau, Bourgoin, Burns, Cartier, Childs, Cote, Cottrell, Crommett, Denbow, Dostie, Dudley, Edwards, Gallant, Giroux, J a l b e r t, Jameson, Jobin, Karkos, K i l r o y, Lebel, Levesque, Lowery, Nadeau, Oakes, O'Leary, Pitts, Plante, Poirier, Prince, Oakfield; Reynolds, Roy, Snow, Wood.

ABSENT — Anderson, Ellsworth; Ayoub, Bussiere, Hendricks, K e n nedy, MacGregor, Mower, N o e l, Tardiff, Ward, Welch, W i g h t, Presque Isle; Williams.

Yes, 98; No, 39; Absent 13.

The SPEAKER pro tem: Ninety-eight having voted in the affirmative, thirty-nine having voted in the negative, with thirteen absentees, House Amendment "A" is indefinitely postponed.

Thereupon, the Resolve was assigned for second reading tomorrow.

The SPEAKER pro tem: The Chair recognizes the gentlewoman from Chelsea, Mrs. Shaw.

Mrs. SHAW: Mr. Speaker, I move we reconsider our action of this morning on L. D. 1467 "An Act relating to Effective Date for Salary Increase for County Officers"

whereby we voted to recede and concur.

The SPEAKER pro tem: The question now before the House is the motion of the gentlewoman from Chelsea, Mrs. Shaw, that the House reconsider its action of this morning whereby the House receded and concurred with the Senate.

Mrs. SHAW: I would like to speak briefly.

The SPEAKER pro tem: The gentlewoman may proceed.

Mrs. SHAW: Mr. Speaker, this bill, L. D. 1467 would unify the dates statewide of salary increases of county officials. The bill as passed by the other body now carries with it an amendment, S-183. This amendment in effect approves the measure but says let's put it off until the next biennium. The House, before this morning's action, insisted on its former action on May 8th and voted to join a Committee of Conference on May 10. In view of these facts, I believe the amendment should be defeated, and the House should stand with its former decision to join the Committee of Conference, and I hope we so vote.

The SPEAKER pro tem: The Chair recognizes the gentleman from South Paris, Mr. Hammond.

Mr. HAMMOND: Mr. Speaker, I arise to support the motion of the gentlewoman from Chelsea, Mrs. Shaw. This matter was gone over very carefully in the Committee which heard this bill and I sincerely trust that the House will go along with its former action.

The SPEAKER pro tem: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: This wouldn't be the first time that I have opposed increases, not only for county salaries but other things.

Now in substance what we are trying to do I think is this. We are elected to the Legislature. We are not able to raise our own pay. I don't think we should be. On the other hand, these people that run for county offices, most of them are very devoted people and certainly all of them know when they are running for public office what