

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Twelfth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 5, 1984 - June 20, 1985

ly, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

RESOLVE, Pertaining to a State Employee Health Promotion (H.P. 990) (L.D. 1428) (S. "A" S-79)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 116 voted in favor of the same and none against and accordingly, the Bill was finally passed, signed by the Speaker and sent to the Senate.

An Act to Clarify Certain Aspects of Mineral Exploration, Development and Disclosure (S.P. 549) (L.D. 1466)

An Act Relating to Membership on the Board of Trustees of the Criminal Justice Academy (H.P. 1016) (L.D. 1465) (H. "A" H-119)

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 following items appearing on Supplement No. 1 were taken up out of order by unanimous consent:

Reports of Committees

Unanimous Leave to Withdraw

Representative PAUL from the Committee on Legal Affairs on Bill "An Act to Limit the Transportation of Fire Arms in Motor Vehicles" (H.P. 460) (L.D. 661) reporting "Leave to Withdraw"

Representative BRANNIGAN from the Committee on Business and Commerce on Bill "An Act to Make Maine's Implied Warranty Law Applicable to the Sale of Used Motor Vehicles by Dealers" (H.P. 977) (L.D. 1409) reporting "Leave to Withdraw"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Ought to Pass in New Draft

Representative BRANNIGAN from the Committee on Business and Commerce on Bill "An Act Concerning the Composition of the Board of Elevator and Tramway Safety" (H.P. 531) (L.D. 751) reporting "Ought to Pass" in New Draft (H.P. 1043) (L.D. 1518)

Report was read and accepted. The New Draft read once and assigned for second reading later in today's session.

Ought to Pass in New Draft/New Title

Representative BRANNIGAN from the Committee on Business and Commerce on Bill "An Act to Exempt Houses of Worship from Inspection Fees for Elevators" (H.P. 595) (L.D. 865) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Concerning Annual Inspection Fees for Inclined Lifts and Vertical Lifts" (H.P. 1044) (L.D. 1519)

Report was read and accepted, the New Draft read once and assigned for second reading later in today's session.

Orders of the Day

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

COMMITTEE OF CONFERENCE REPORT—on RESOLVE, to Name the Wiscasset Bridge the Donald E. Davey Bridge (H.P. 373) (L.D. 492)

TABLED—May 9, 1985 by Representative BRANNIGAN of Portland.

PENDING—Acceptance of Committee Report. (Roll Call Requested)

On motion of Representative Melendy of Rockland, retabled pending acceptance of the Committee Report and specially assigned for Friday, May 17, 1985.

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

An Act to Prevent Double Benefits for the Same Period of Service, to Provide Membership as of the Effective Date of First Contributions and to Provide that Benefits be Paid only to Members, their Dependents or Beneficiaries (H.P. 999) (L.D. 1441)

TABLED—May 9, 1985 by Representative HICKEY of Augusta.

PENDING—Passage to be Enacted. On motion of Representative Hickey of Augusta, retabled pending passage to be enacted and later today assigned.

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

An Act to Clarify the Definition of Spouses (H.P. 426) (L.D. 606) (C. "A" H-102)

TABLED—May 9, 1985 by Representative HICKEY of Augusta.

PENDING—Passage to be Enacted. On motion of Representative Hickey of Augusta, retabled pending passage to be enacted and later today assigned.

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

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Extend the Tenure for Sheriffs from 2 Years to 4 Years (S.P. 348) (L.D. 943)

TABLED—May 10, 1985 by Representative NADEAU of Saco.

PENDING—Final Passage. The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: This is a bill that has been sailing through the process the past three or four days and before we vote on this for enactment, I have got some concerns with this bill that I would like to express to each of you.

This is a bill that has been before the Legislature several times but I think it may be appropriate to examine just for a moment the historical background of the powers and duties of the sheriffs to find out how they got where they are today.

In theory, law enforcement on the county level has derived from the traditional common law duty of the sheriff as a conservator of the peace and protector of the society against the commission of vice and crime. This was the case of Sawyer versus County Commissioners back in 1917. So, theoretically, the sheriffs duty to preserve the public peace extends throughout the county. However, realistically, with the advent of local police departments and state police departments, clearly the sheriffs departments are involved in to the greatest extent are in those rural areas of each particular county. Clearly the most important duty of sheriffs now would be the maintaining of a jail or detention facility and that function of patrolling. However, even though a large portion of the sheriff's budget is committed to patrolling, the sheriffs patrol is not all that great a presence in comparison with the patrolling functions of the municipal and state police. But there are those rural areas, obviously, that have begun to consider operating central communications for county, municipal police and fire departments. However, in comparing these services provided by local and state police departments, it becomes clear that county law enforcement throughout the state has been experiencing a declining presence.

Present powers and duties of sheriffs in each of Maine's counties now are defined by common law and only in a few particular instances by state statute. Though the courts have not established in detail the nature and extent of the sheriffs powers and duties they have recognized, once again, that the sheriff's essential duties and powers are, with reference to the same court case, as a conservator of the peace and protector of society against the com-

mission of vice and crime. So under this, the generally accepted common law, the basic duties of the sheriff can be seen as three parts, first of all, a conservator of peace; secondly, as a jailor ex officio, and thirdly, as an officer of the court.

Now I know this has been somewhat of a dry background and description of the sheriff powers and I apologize but I think it is important because it leads up to the problem that I have with this bill. It is important to note that the common law duties and powers of the sheriff exist in the absence of statutory provisions defining the sheriffs powers and duties.

Normally, the common law definition of a sheriff's scope of authority can be altered or removed simply by enacting legislation to cover the same area. In Maine however, this is very difficult because of the fact that the sheriff is a constitutional officer and being a constitutional officer limits the power of this legislature to alter or change the powers of the sheriff.

Presently in the State of Maine, sheriffs are elected for a two year term. There is a reason for a two year term and that reason is as follows: the position of sheriff is very influential and can be, as in many other occupations, abused. Now the purpose for increasing sheriff terms to four years, according to the Statement of Fact in this bill, is to enable the sheriffs office to run more efficiently. This presupposes that the two year term in itself creates an inefficiency that can't be overcome by any other means than by having a four year term. I did a little poll last Friday and again this morning and I talked with several legislators to get an idea of how long their sheriffs have been in their perspective counties. I think if you take the time to do this you will find it to be an interesting phenomenon, that being the sheriffs across the state seem to be able to get reelected without any great deal of difficulty. And if you are looking for a reason why the sheriffs seem to get reelected without a great deal of difficulty, you may just want to look closely at the structure of the sheriff departments. I am not suggesting that the sheriff departments make great political machines or even used for that purpose. And I am not suggesting that they are not used for that purpose. I am merely presenting these facts for you as individuals to analyze.

I suspect this bill has some support. I know my sheriff in Somerset County supports the bill just as every sheriff in every county in the State of Maine supports the bill, but despite who supports the bill and despite the pressures that may be put on many of us to vote for a piece of legislation like this, there comes a time when you are serving a legislature, when despite the pressures that are put on you and despite who supports the bill, that you simply cannot, in good conscience, vote for a bill. I think that is where I am this morning. It is because of the historical background or the traditional powers of the sheriff, it is because of the fact that the sheriff is a constitutional officer which limits us as a legislature without any control over the powers and duties of the sheriffs that I, as one legislator, plan to vote against this bill on enactment.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Sproul.

Representative SPROUL: Mr. Speaker, Men and Women of the House: Could we have the Clerk read the Committee Report please?

Whereupon, the Committee Report was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Jackson.

Representative JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: I rise this morning to support this resolution and request that the members of this body support this resolution. I don't disagree with what the good Representative has stated in his remarks discussing the history of law enforcement.