

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

1st Special Session

OF THE

*One Hundred and Sixth
Legislature*

OF THE

STATE OF MAINE

1974

Kennebec Journal
Augusta, Maine

as amended by Committee Amendment "A" Mr. Smith abstained from voting.

Report was read and accepted and the Bill read once. Committee Amendment "A" (H-666) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

Ought to Pass in New Draft New Draft Printed

Mr. Tyndale from the Committee on Education on Bill "An Act Relating to the Budgetary Process of the Eleven New Regions and Central Aroostook County Region for Vocational Education" (H. P. 1780) (L. D. 2252) Emergency reporting "Ought to pass" in New Draft (H. P. 1945) (L. D. 2479) under new title Bill "An Act Relating to the Budgetary Process of the Eleven New Regions for Vocational Education" Emergency.

Report was read and accepted, the New Draft read once and assigned for second reading tomorrow.

Divided Report

Majority report of the Committee on State Government on Resolution Proposing an Amendment to the Constitution to Provide Appointment of the Attorney General and the Treasurer by the Governor (H. P. 1854) (L. D. 2347) reporting "Ought not to pass"

Report was signed by the following members:

Messrs.

WYMAN of Washington

SPEERS of Kennebec

—of the Senate.

Messrs.

SILVERMAN of Calais

FARNHAM of Hampden

CURTIS of Orono

GAHAGAN of Caribou

STILLINGS of Berwick

—of the House.

Minority report of the same Committee on same Resolution reporting "Ought to pass" as Amended by Committee Amendment "A" (H-664).

Report was signed by the following members:

Mr.

CLIFFORD of Androscoggin

—of the Senate.

Messrs.

CROMMETT of Millinocket

COONEY of Sabattus

BUSTIN of Augusta

Mrs.

NAJARIAN of Portland

GOODWIN of Bath

—of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Curtis.

Mr. CURTIS: Mr. Speaker, Ladies and Gentlemen of the House: I would like to move acceptance of the Majority "Ought not to pass" Report and would speak briefly to my motion.

The SPEAKER: The gentleman from Orono, Mr. Curtis, moves that the House accept the Majority "Ought not to pass" Report.

The gentleman may proceed.

Mr. CURTIS: Mr. Speaker, Ladies and Gentlemen of the House: This divided report, which you may have noticed already, is strictly on partisan lines. It involves two matters which we have discussed for many years in the Maine Legislature and is a result of two Maine Management and Cost Survey recommendations which are found on page two of the original green parcel called the Longley Commission Report. Those recommendations recommended that both the Treasurer and the Attorney General of the State be appointed by the Governor and be responsible to him rather than to the legislature. I oppose this recommendation, and my reasons quite simply are that I think the chief prosecutor of the State of Maine, the Attorney General, ought to be in an independent position from the Executive Branch.

The Maine Cost Management recommendation is that the Attorney General should be appointed by the Governor, subject to approval by the legislature, and report to him. The Governor should have full power of his removal from office for cause. It seems to me that an Attorney General who is appointed by the Governor, subject to his removal for cause upon the decision of the Governor, would also be beholden to the Governor.

We have been very fortunate in Maine in having a fine history of independence between those two separate divisions, and the result has been highly beneficial in terms of fair, equal, honest enforce-

ment of the laws and administration of them.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker, Ladies and Gentlemen of the House: I am shocked and dismayed at the remarks of the gentleman from Orono, Mr. Curtis, this morning in implying that this bill should go down the lines here according to the parties that we belong to. I would indicate to you that you should not be too impressed by the majority report, because it is only a majority of one. This is a 7 to 6 report.

This bill simply provides that the Governor of the state will appoint the Attorney General and the State Treasurer, and we have sweetened it up a little bit by adding Committee Amendment "A" which says the people holding these offices must resign if they intend to run for state-wide office. We thought that might make it a little more palatable.

Evidently Mr. Curtis was not listening carefully last week when the Speaker of the House and the Majority Leader admonished members of the House to give very careful consideration to the recommendations of the Longley Report. After all, this group of businessmen gave their own time and money, came down here, studied this whole situation and made a very thorough recommendation. I would like to read those recommendations to you in their entirety. It is not very long.

Recommendation 3. Make the Treasurer of State appointive. Historical reasons for making the Treasurer of State an elective officer are no longer germane. Responsibilities of the Treasurer are financial in nature, and efficient performance demands a high degree of career competence. He should be made appointive with responsibility for his selection resting with the Governor.

Recommendation 4. Make the Attorney General appointive by the Governor. Currently the Attorney General is selected by reports to the legislature. He is charged with the responsibility of providing legal counsel to all agencies. Due to the present method of appointment, he is most responsive to the Legislative Branch. This creates a conflict with the Executive Branch because of varying

objectives and priorities. As a result, the Governor and Executive Agencies do not always receive the benefit of objective and timely counsel. The Governor needs assistance from the Attorney General in areas such as bill drafting, rendering opinions and representing the state in litigation. At times, it is also necessary for the Attorney General to serve as chief law enforcement officer to assist with special functions such as consumer protection and drug abuse.

The Attorney General should be appointed by the Governor, subject to approval by the legislature, and report to him. The Governor should have full power of his removal from office for cause. That is recommendations 3 and 4 from the Maine Management and Cost Survey. I think we should pay very close attention to what these people say.

I was concerned when I was asked to sponsor this bill that it might go down party lines, but seeing that the Longley Commission has come out in full support of it, I am quite aware that we will give it even more careful consideration than normal. Thank you very much.

The SPEAKER: The Chair recognizes the gentleman from Calais, Mr. Silverman.

Mr. SILVERMAN: Mr. Speaker, Members of the House: I signed the "ought not to pass" report. One of the principal reasons is that we as a legislature I do not think want to relinquish our powers. One of those powers is that we can vote in the Attorney General for the current year or two years. We can also select the Treasurer. And it gives us a standard of balance between the Executive Branch of our government in Maine and the Legislative Branch of government in Maine. I do believe in keeping the fine tradition we have in Maine. We will keep the Attorney General and the Treasurer an elected official from the state legislature and not appointed by the Governor.

Also, my colleague, Dave Bustin, mentioned the Longley Report. As I understand the Longley Report, it is supposed to be a cost management study, and a cost management study based on savings in state government for the State of Maine. In no way does this bill, in my opinion, or I think in any other person's opinion, save money by a management pro-

cess. Therefore, I would ask you to support the "ought not to pass" report.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: The gentleman from Augusta stated that we should follow the suggestions of the Longley Commission because they worked hard and gave of their time. I agree that they worked hard and gave of their time, but I also reserve the right to disagree with any single suggestion in their report.

It is interesting to note that Mr. Bustin himself disagreed with their suggestion on roll call 416 on the four-year college program.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Simpson.

Mr. SIMPSON: Mr. Speaker, Ladies and Gentlemen of the House: I am a little bit confused this morning when the gentleman from Augusta, Mr. Bustin, says that you are not a winner when you win by one. I am sure that if all of a sudden he won his seat in Augusta by 51 percent that he wouldn't give it up to the fellow who only got 49 percent.

As we look at the Longley Report, I would have to agree that I think the other day we said that the Longley Report should be heard within the committees and should be brought out on the floor for debate, and here is one that is out here.

The other night at a meeting with the Longley Commission, this is one of the items that I asked him about. I asked them if they weren't getting into philosophy rather than actual cost savings. I asked them if they could prove to me where the appointment of the Treasurer by the Governor or the legislature could be any cost savings to the State of Maine. The only answer I could get from them would be that if we set up the criteria whereby he was selected, there could be some cost savings. Well, I say that we can set up that same criteria right within the legislative appointment or the gubernatorial appointment. I think I would support a full-time Treasurer that was not answerable to either one of us if he had the qualifications and the qualifications were determined and placed on the record as to what type of an in-

dividual he should be and what background and so forth.

Let's take a look at the A.G. for a minute and take a look at the entire Longley Commission, because there is also a portion of the Longley Commission Report that says that the Governor shall have his own legal counsel independent of the Attorney General's Office. Where are we going to be when that bill comes out here. We should make up our mind right here and now whether the A.G. is available to the Governor and to the Legislature collectively or not. The present Governor has had his problems with the former A.G., but I think right now he gets along pretty well with the present Attorney General we have. I think the Attorney General has also been very agreeable to work with him.

I think the Attorney General's position is one to litigate. The Attorney General's Office should be involved in the many things that we decide to give them. If they are understaffed, we should make the determination whether they should have more people there. I say, "Where will the legislature be if we have appointment to the Governor?" If the Governor feels right now that he does not have access to the Attorney General's Office because they are more dependent upon us, or that the A.G.'s Office should be a role affecting our thoughts, then I would say, where are we going to be if suddenly the Governor has the appointment of the A.G.? The shoe would be just reversed and we would be back again in the same boat. I say we do not need either one, and I think whether they are on party lines or not, I think we know where this bill is going when it needs two thirds.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Either one of these reports don't suit me if either one of them were in the majority. I kind of disagree with my good friend from Standish. If I could have my way, and I have said this before on the floor of the House, I would like to see the people of the State of Maine elect the Attorney General, not the legislature, not the Governor appointing them. I am not going to support the bill, and I wouldn't

support either report if there was a majority.

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

Mr. JALBERT: Mr. Speaker and Members of the House: In welcoming me back in a note, the gentleman from Standish, Mr. Simpson, said it has been rather quiet around here. There are two things that usually get me on my feet — appropriations and constitutional bills. As far as this bill is concerned, and I am not chiding my good friend, and I mean that sincerely, from Augusta, Mr. Bustin, I am rather amazed because he has been around here long enough to know that a majority report is a majority report. It may be 7 to 6, but he is going to find out when those glimmers go on that that is the biggest one vote majority that he has seen and taken a peek at for a long time, and I think he agrees with me.

I have got to agree with the — speaking about the Longley Report, there is no one in this room that knows Mr. Longley any better than I do, has spent more time with him during all this period than I have, yet I have never and did never see the report nor was it discussed with me. I did not know of a comma in the report until I heard it at the Civic Center. But I would go along with the same areas that have been talked about today. This is not what the report was conceived of in the beginning. This is policy-making, and in my opinion this is wrong. I presented a bill to elect the Attorney General. Certainly I would agree with my good friend from Bangor, Mr. Kelleher. Just for laughs, can you imagine — and I don't think we should blame the Governor, he didn't have anything to do with it, he didn't write the report — but by the same token, with the House being 79 to 73, with the Republican Party temporarily being in command and the Senate being what it is and the Governor being a Democrat, can you just imagine the Governor appointing an Attorney General and the appointment landing here. We wouldn't have an Attorney General for four years. It would be the same thing as tabling something and having some legal matter in the council chamber now.

And as far as the Treasurer is concerned, I have maintained for years, and

I maintain the same thing even though I am very very fond of the present Treasurer of the State, we need a treasurer like we need a hole in our heads. So I think the gentleman from Augusta, Mr. Bustin, says it is one, I am afraid it was two just a couple of minutes ago, and I am going to make it three.

The SPEAKER: The Chair recognizes the gentleman from Eagle Lake, Mr. Martin.

Mr. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I was pleased to hear the remarks of the gentleman from Standish, Mr. Simpson, in reference to this particular recommendation.

I am sure I don't need to remind the members of the House that this particular recommendation dealing with both these particular constitutional officers has been made before, made back in the thirties by a commission that was held during that time, was made in the fifties, it was made some time ago, and it is true that it has been in the Democratic Party platform for a long time. I would point out that that doesn't necessarily make it wrong. It may just make it right. I am sure that the gentleman would agree with me that even we in the minority come up with good ideas from time to time.

I was, needless to say, surprised and pleased that the members of the business community recommended this particular recommendation to us for our consideration. They made the point that evening, if the gentleman remembers, they made the point that one of the considerations and one of the reasons why they made this recommendation was not based on politics, per se, but it was based on the fact that they seem to feel that legal counsel, if it were done that way in the business community, that they would never get an opinion which would satisfy them or would be responsive or responsible to the organization that they are a member of. And they felt that the Governor is basically the chief administrative officer of large corporation, comparably, and that he ought to have the capabilities of being able to do something like this.

I think as we look upon these two recommendations of the Longley Commission Report, we have to keep in mind and

agree with many of the areas, for valid reasons, in that particular report, and we ought to be honest and say so. But I would hope that we would not do it on the basis of politics.

It seems to me an excellent opportunity for us to give the businessmen a vote of confidence in this particular recommendation.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Bustin.

Mr. BUSTIN: Mr. Speaker and Members of the House: Before the vote is taken, Mr. Speaker, I would like to advise the Majority Leader and perhaps members of his party that where appropriate they could be missing a bet here. Because if we fall upon bad times and we get a republican governor in the November elections and the people in their wisdom elect a democratic legislature, there will be people around here who will regret the day they killed this bill. That aside, in any case I move the yeas and nays.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Orono, Mr. Curtis, that the House accept the Majority "Ought not to pass" Report on Resolution, Proposing an Amendment to the Constitution to Provide Appointment of the Attorney General and the Treasurer by the Governor (H. P. 1854) (L. D. 2347). All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Ault, Baker, Berry, G. W.; Birt, Bither, Bragdon, Brawn, Brown, Bunker, Cameron, Carey, Chick, Churchill, Cote, Cressey, Curtis, T. S., Jr.; Dam, Davis, Donaghy, Dudley, Dunn, Dyar, Emery, D. F.; Evans, Farnham, Farrington, Ferris, Fineman, Flynn, Gahagan, Garsoe, Good, Hamblen, Haskell, Herrick, Hofses, Huber, Hunter, Immonen, Jackson,

Jalbert, Kauffman, Kelleher, Kelley, Kelley, R. P.; Knight, Lewis, E.; Lewis, J.; Littlefield, MacLeod, Maddox, McCormick, McMahon, McNally, Merrill, Morton, Murchison, Norris, Palmer, Parks, Perkins, Pratt, Rollins, Ross, Shaw, Shute, Silverman, Simpson, L. E.; Snowe, Soulas, Sproul, Stillings, Strout, Trask, Trumbull, Twitchell, Tyndale, Walker, Webber, White, Willard, Wood, M. E.

NAY — Albert, Berry, P. P.; Berube, Binnette, Boudreau, Bustin, Carter, Chonko, Clark, Conley, Connolly, Cooney, Cottrell, Crommett, Curran, Deshaies, Dow, Drigotas, Dunleavy, Farley, Faucher, Fecteau, Gauthier, Genest, Goodwin, K.; Greenlaw, Hobbins, Jacques, Keyte, Kilroy, LaCharite, LaPointe, Lawry, LeBlanc, Lynch, Mahany, Martin, Maxwell, McHenry, McTeague, Morin, L.; Morin, V.; Mulkern, Murray, Najarian, O'Brien, Peterson, Pontbriand, Ricker, Rolde, Smith, D. M.; Smith, S.; Talbot, Tanguay, Theriault, Tierney, Wheeler, Whitzell.

ABSENT — Briggs, Carrier, Fraser, Hancock, McKernan, Mills, Santoro, Sheltra, Susi.

Yes, 82; No, 58; Absent 10.

The SPEAKER: Eighty-two having voted in the affirmative and fifty-eight in the negative, with ten being absent, the motion does prevail.

Sent up for concurrence.

Divided Report

Majority Report of the Committee on State Government on Bill "An Act to Transfer the Pesticides Control Board to the Department of Environmental Protection" (H. P. 1871) (L. D. 2370) reporting "Ought to pass" in New Draft (H. P. 1946) (L. D. 2480) under new title Bill "An Act to Transfer the Pesticides Control Board to the Department of Agriculture"

Report was signed by the following members:

Messrs. WYMAN of Washington
SPEERS of Kennebec
CLIFFORD of Androscoggin
—of the Senate.

Messrs. CURTIS of Orono
BUSTIN of Augusta
FARNHAM of Hampden
COONEY of Sabattus