

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate

May 19, 1993 to July 14, 1993

FIRST CONFIRMATION SESSION

October 14, 1993

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, As **Amended**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Minimize Electric Rates"
S.P. 307 L.D. 940
(C "A" S-159)

In Senate, May 25, 1993, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-159)**.

Comes from the House **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-159) AS AMENDED BY HOUSE AMENDMENT "C" (H-592)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **ESTY** of Cumberland, Tabled until Later in Today's Session, pending **FURTHER CONSIDERATION**.

House Papers

Bill "An Act to Amend the Laws Governing the Required Qualifications to Practice Law in the State"
H.P. 1153 L.D. 1552

Comes from the House referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**.

Which was referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**, in concurrence.

COMMITTEE REPORTS

House

Ought to Pass

The Committee on **JUDICIARY** on Bill "An Act to Expand the Duties of the Judicial Council to Include Implementing the Recommendations of the Commission to Study the Future of Maine's Courts and to Implement Certain Other Recommendations of the Commission" (Emergency)
H.P. 1154 L.D. 1553

Reported that the same **Ought to Pass** pursuant to Joint Order (H.P. 1134).

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

Which was, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

Divided Report

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for the Direct Popular Election of the Attorney General
H.P. 960 L.D. 1291

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-432)**.

Signed:

Senators:

BERUBE of Androscoggin
BUTLAND of Cumberland

Representatives:

BENNETT of Norway
AHEARNE of Madawaska
DUTREMBLE of Biddeford
WALKER of Blue Hill
GRAY of Sedgwick
LOOK of Jonesboro
ROWE of Portland
YOUNG of Limestone
JOSEPH of Waterville

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

Signed:

Senator:

ESTY of Cumberland

Representative:

KILKELLY of Wiscasset

Comes from the House with the Majority **UGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolution **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-432)**.

Which Reports were **READ**.

Senator **BERUBE** of Androscoggin moved that the Senate **ACCEPT** the Majority **UGHT TO PASS AS AMENDED** Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Esty.

Senator **ESTY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would urge the body to oppose the Ought to Pass As Amended Report. It seems to me that in regards to this particular motion and the election of the Attorney General, that we have a system that has served the State of Maine very

well for the last 150 to 200 years. It seems to me that we can make some minor improvements on the system but I don't think that this is the correct process for us to take. I would urge you to oppose this motion and then support the Ought Not to Pass motion. Thank you.

Senator **ESTY** of Cumberland requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise also to oppose this motion and ask you to support the Ought Not to Pass motion. It seems to me that we are getting into very dangerous areas when the Chief Law Enforcement Officer of the State will need to run for election and raise campaign funds from perhaps those potential individuals that he or she will have the responsibility over which to enforce the laws of the State. In other states where they have popularly elected Attorney Generals, there have been some horror stories in regards to those kinds of improprieties. I would suggest that what we have isn't perfect, it has some blemishes, but I would urge you not to take a dramatic new approach that has tremendous risks to it and put our chief law enforcement officer at the risk of being obliged to consider those large donors to his or her campaign when those individuals may be subject to the laws of the State which that person may have to enforce. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Butland.

Senator **BUTLAND:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would rise today just to speak in favor of the pending motion. The State of Maine is the only State in the Union where the Attorney General is elected by the Legislature. In 43 states they are popularly elected and 5 other states the Governor appoints and in 1 other State the Supreme Court appoints. This is a major public policy maker in the State of Maine and should be held accountable to the State of Maine, not the 186 people in the legislature. I feel that the way the system is presently structured it puts too much reliance on past service in the legislature. That seems to be a prime prerequisite. If we go to popular election I think that it will open up the pool of potential candidates and we will have a much larger pool to choose from. I hope that you will support the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I hope that you will oppose the Ought to Pass as Amended Report. I have heard it said that simply because Maine is the only State where the Legislature elects the Attorney General that it is a bad idea. My experience, and I have dealt with Attorney General's from two neighboring States, Massachusetts and New Hampshire, one where it is appointed by the Governor and one where it is elected by popular election and I haven't seen any difference in the quality of the Attorney General's. In fact, I feel the Attorney General's in Maine have been higher quality than those two states. Every election year the State of Maine faces calls for a boundary dispute between Maine and New Hampshire over the location of the shipyard. That is largely because in their State the Attorney General

has become much more of a political position than it is in this State. I understand the comments about who runs for the Attorney General's office now, but I want to point out that if we change this to be a popularly elected position, the people you are going to see running for the Attorney General's position are mainly attorney's from the large law firms in this State who can raise the kind of money that it is going to take to run for that kind of position. It is going to be people who can raise \$400,000 or \$500,000 or \$600,000 and who they are going to raise it from are the very attorney's that they are going to be prosecuting cases against. If you want to talk about a conflict of interest, that will be a conflict of interest. I was up here a few days ago speaking about how, when I get in the elevator with the Governor, I don't even think he knows who I am. If we popularly elect the Attorney General how will the Attorney General relate to us in the legislature. When we have a problem with our constituents with the Attorney General's office, I can go to the Attorney General's office for that constituent, and I can get the Attorney General's ear. When a constituent has a problem, again, how will they be able to contact their Attorney General. They will not get the service out of the Attorney General's office that we get now. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Our caucus this afternoon really had a little bit of a laugh because we had been talking about the questionnaires we sent out and what the response was on certain issues. The point came up, and I can't remember who in our caucus raised it, as far as there was an overwhelming support in one area. The comment was raised when was the last time we followed public opinion and did something the public wanted up here. I'm going to make this speech once, we have a number of popular elections of our constitutional officers, and I'm going to share this speech with you once. I did send out a questionnaire and I asked on the questionnaire, and I will read it to you exactly as I wrote it because I know depending on how you write a question will sometimes dictate the answer you receive, I stated "Currently our State Constitutional Officers, our State Attorney General, our Secretary of State, and our State Treasurer are elected by the majority party of the State Legislature. There are proposals for changing this system. Which do you prefer?" To keep it the way it is now, 28% said yes, and 72% said no. To popular election of Constitutional officers, 76% said yes and 24% said no. Appointment of Constitutional officers by the Governor and approved by the Legislature, 52% said yes and 48% said no. I guess I'm going to go against the opinion of some of the members of the caucus and vote the way my constituents have told me to. They have given me a directive. I think the question that I posed was fair and I think the people of my district are fairly intelligent people, I mean they did vote to send me up here and represent them. First, for the Attorney General, the good Senator from York, Senator Lawrence, raised some legitimate concerns and they are legitimate but there are just as many legitimate concerns on the other side as far as instead of having just to be accountable to the large law firms in Portland, or Lewiston, or Bangor. I disagree to a certain extent because I think the people of the State of Maine will be able to critique exactly what the credentials of that Attorney are. Currently, if you take a look at the people who run for Attorney General here in the Legislature, and you can do a

case study over the last ten sessions, they have either been in the Attorney General's office already, a former member of this chamber or a former member of the other chamber. Those are the individuals, that's the pool that we are drawing from. It is a very limited pool. My proposal is if we open it up to popular election we would be able to open up the pool. I guess I would have a little bit of a concern as far as the accountability of the Attorney General's office and what the difference would be from a popularly elected Attorney General and an Attorney General elected by the majority party of the legislature, or a majority of the legislature. For the last seven years I have put forward term limit legislation. Every year a request has been put forward by the Committee of jurisdiction over the Attorney General's office and I have from each session I have a letter from Cab Howard that I have framed and on my wall as far as basically saying no, the opinion of the Attorney General's office is that you cannot do this statutorily, it can't be done. Well we have just found from the Supreme Court of our State that it can be done and maybe the Attorney General is off the mark. I think if we go with a popularly elected Attorney General he will be much more accountable to the people of the State of Maine. I agree with the good Senator from York, there is some give and take on both sides and I guess when I balance it off I find I balance it off more toward the popular election. When the vote is taken I request the yeas and nays. Thank you.

On motion by Senator **HANLEY** of Oxford, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to share with you some of my personal reasons why I will be voting with the Majority Ought to Pass Report, a report, by the way, which is totally bipartisan. There are 6 members of the Democratic party in the Ought to Pass and 5 members of the Republican party in the Ought to Pass Report. Maine is, indeed, the only State that elects by its partisan legislature its Attorney General and there is the perception out there that it is a position which should not be partisan and it is, indeed, partisan. I stress the word perception. This Bill would remove that perception of the fact that it is political and partisan. People would have an opportunity to make a selection if it were an election at large and question the candidates on what their positions are on sexual abuse cases, and we have many of those that come before the Judiciary Committee, on the budget for the AG's office, on prison corrections, and issues of that nature. They would know before hand how the candidate felt on those issues. Currently, local elected officials, such as the District Attorney's, can be removed by unelected Attorney General's. Last, but not least, I think it would open up the process to many attorney's throughout the State, young, brand new attorneys, or those who are a little older and experienced who could offer something or bring some new ideas into the process. I think it is a fair, democratic process and I think we should allow the citizens of this State the chance to select the AG. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **BERUBE** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

Senator **BERUBE** of Androscoggin who would have voted **YEA** requested and received Leave of the Senate to pair her vote with Senator **BALDACCI** of Penobscot who would have voted **NAY**.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **AMERO, BEGLEY, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, MARDEN, PINGREE, SUMMERS, WEBSTER**

NAYS: Senators **BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CLEVELAND, CONLEY, ESTY, HANDY, LAWRENCE, LUTHER, MCCORMICK, O'DEA, PARADIS, PEARSON, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE**

ABSENT: Senators None

PAIRED: Senators **BALDACCI, BERUBE**

Senator **SUMMERS** of Cumberland requested and received Leave of the Senate to change his vote from **NAY** to **YEA**.

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 2 Senators having paired their votes and No Senators being absent, the motion of Senator **BERUBE** of Androscoggin, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **STATE & LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Provide for the Direct Popular Election of the Treasurer of State

H.P. 961 L.D. 1292

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A"** (H-433).

Signed:

Senator:
BUTLAND of Cumberland