

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
State of Maine

Volume 1

First Regular & Special Session
December 6, 1996 to May 19, 1997

Pages 1 - 980

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require the Election of the Secretary of State in Statewide Elections.

S.P. 122 L.D. 401

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-73)** (11 members)

Minority - **Ought Not to Pass** (1 member)

Tabled - April 1, 1997, by Senator **NUTTING** of Androscoggin.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report

(In Senate, April 1, 1997, Reports **READ**.)

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING**: Thank you Madam President, men and women of the Senate. This particular bill calls for the Secretary of State to be elected via statewide popular election. I voted against this. I'm asking this Body to go along with my motion of Ought Not to Pass. I feel the Secretary of State is the person who's in charge of all the elections in Maine. I don't feel as though it's healthy or proper for that person, him or herself, to be running for office and soliciting campaign contributions. The committee was given copies of campaign fund raising letters written by other Secretary of State's running for offices in other states. I felt that was totally inappropriate and so, for that reason I voted against this particular L.D., L.D. 401 and voted Ought Not to Pass. Thank you.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by Senator **NUTTING** of Androscoggin to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

The Chair laid before the Senate the following Tabled and Later (4/7/97) Assigned matter:

Bill "An Act to Include Nontraditional Medical Alternatives under Health Maintenance Organization and Medicaid Coverage and to Allow the Patient to Choose the Method of Treatment"

H.P. 1226 L.D. 1738

Tabled - April 7, 1997, by Senator **LAFOUNTAIN** of York.

Pending - **REFERENCE**

(In House, April 3, 1997, referred to the Committee on **HEALTH AND HUMAN SERVICES** and **ORDERED PRINTED**.)

On motion by Senator **LAFOUNTAIN** of York, referred to the Committee on **BANKING AND INSURANCE** in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/7/97) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for the Direct Popular Election of Constitutional Officers. H.P. 290 L.D. 354

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-137)** (10 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - April 7, 1997, by Senator **PINGREE** of Knox.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**

(In House, April 3, 1997, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-137)**.)

(In Senate, April 7, 1997, Reports **READ**.)

Senator **BENNETT** of Oxford requested a Division.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING**: Thank you Madam President, men and women of the Senate. This particular bill, and I hope you can keep track, some of these bills I couldn't help but get the feeling that the bills were submitted and you, maybe, could lump them all together under the heading of "Anything, But What We Do Now".. Some of the bills call for the Governor to appoint the Treasurer. The same people would sponsor a bill for the direct popular election of the Treasurer or in this case, the Attorney General. I'm not sure if there was a priority of the sponsors to have these constitutional officers appointed or elected by statewide popular election but both points were argued in the affirmative, almost at the same time, before the committee. Once again, I'll be brief. I think the Attorney General selection process is working. I've been very proud of the Attorney Generals we've had over the last ten years that I've been involved as an elected official. I think it keeps the balance between the executive and the legislative and the judicial system in proper balance. And for those reasons I feel as though, to quote my grandfather, "If it isn't broke, don't fix it." Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY**: Thank you Madam President, men and women of the Senate. We have obviously heard a lot of bills in State and Local Government Committee regarding local qualifications of these positions and the way they're chosen. And this particular bill, I think it's important to discuss here in the Senate, the way that these constitutional officers are chosen. It seems to me that each of the constitutional officers really should be directly accountable to the people of Maine and currently they

are not. Currently the constitutional officers, and I realize that there's an election that's held in the House of Representatives regarding these constitutional officers but I think we have a problem here. We're talking about constitutional officers who are accountable only to one political party and there is something inherently wrong with that. As I said in a caucus earlier this week, I will continue to vote out bills that change the process, any process, that allows for that level of partisanship to enter the debate on who should be our constitutional officers in the State of Maine. And I hope that you'll think seriously about this problem because it is one of the great problems that we have. This is not a case where, "If it isn't broke, don't fix it." This is a case where, if you're in one party it isn't broke but if you're in the other party it's very broken. So, I think that's very unfortunate. I think we need to rise above the partisanship in this hall. I've seen an awful lot of partisan votes since I've become a Senator and I'm extremely disappointed with that. This is a case where, along with some of the other bills, you may not agree that this particular position should be chosen by statewide popular election. You may not agree. But it is not a partisan issue and I would say this to you. If you make it a partisan issue, I would challenge that. I would say that you ought to come up with a well-reasoned, philosophically backed position on how these positions should be elected. To just say that these should be controlled by one party or another is inherently wrong. I thank you for your time.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Madam President, fellow members of the Senate. I rise to respond to a comment by the Senator from Androscoggin, Senator Nutting, who I think frankly, is probably treading on the edges of our rules in the Senate by talking about other legislation than this and I would like to just point out that this Senator, at least, is just considering the single item that we have before us right now, which is the issue of L.D. 354. The State and Local Government Committee very well may have considered these bills together. They may have looked at them perhaps appropriately, together but as we're debating this issue, right here in this chamber, we have one issue before us, not a dozen. In so saying that, in the context of my response, I'd like to say that I did sponsor one bill that pertained to another constitutional office that the committee felt was apparently redundant to some other considerations they had but I think was different in several regards and I think that we have to take these issues up one at a time. Right now we're dealing with one issue, L.D. 354 and the choice that we have is whether or not we think this issue and the changes that it specifies are worthy enough to pass the two-thirds vote here and send to the voters for their ultimate confirmation of the process. I would prefer to see several options presented to the voters because I do think that the way that the Attorney General, Secretary of State and the State Treasurer are chosen is flawed. I do think that it is a problem that needs fixing. Prior to my being a Senator, prior to my being in this legislature at all, I traveled to Augusta one day to testify on this very bill before a previous legislature. I've heard from constituents on the issue of the Attorney General's election. There's a lot of sensitive issues that the Attorney General has to deal with that pertain to members of the legislature or candidates for the legislature. I think that in the spirit of putting accountability where it should lay, directly with the people, not with legislators in another branch of government, we ought to reject the Ought Not to Pass Report and go along with the majority committee recommendation which is Ought to Pass as amended. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you Madam President, men and women of the Senate. I just have to get up briefly a second time and respond to something the good Senator from York, Senator Libby said about our recent election of our Attorney General, that it was a one party controlled election. I was in the House of Representatives. I remember full well that there were nominating speeches given for our current Attorney General by elected members of both parties and that our current Attorney General was elected by a wide margin and had to have gotten many, many votes from both political parties, not just one. Thank you.

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

Senator **CLEVELAND:** Thank you Madam President, men and women of the Senate. I wanted to rise to speak to the issue because I think there are a couple of points that are important to be made and I think it's also important that we look at this issue, not as a partisan issue, not as an issue of who perhaps may control majority votes but really what our responsibilities are as public policy makers to get the best people in this particular office. Really, that's our objective. We need the best Attorney General with the best experience, fair, objective with integrity beyond question. That's the kind of individual who you want to be the chief law enforcement officer of this state and that's what you're looking to appoint. Is this current system we have perfect? No, it isn't. But, the replacement that we're being asked to vote for now suggests that we ought to have a statewide election for that individual. What might be the consequences of a statewide election? First of all it would require an individual to raise substantial sums of money to run a statewide election. Hundreds of thousands of dollars would not be out of line for that kind of position. It would favor those kinds of individuals who are well financed, well connected or could raise large sums of money. It also would tend to favor those individuals who come from large populated areas of this state. It would act to narrow the pool, rather than looking at the qualifications of an individual who may come from a more rural area of this state, perhaps an area where they're not as well known statewide. It would really skew that. But more importantly, it would require that that individual, most likely, raise substantial sums of money. Go to major business interests, go to major interest groups and ask for their contribution to fund that individual's campaign. Having done that, to what degree do we put that individual in the position where as a chief law enforcement officer they may have to enforce environmental laws that may be detrimental to that corporation, or may have to enforce a law that has to do with monopoly interests and controlled market prices, or control some other major interest within this state and go and look at their contribution list and see who's giving them the money? Is that individual going to be as independent, as fair and as objective, recognizing that they're going to have to go back out to those same sources and ask for that money to run for the next election? I think we see too often that individuals who are involved in law enforcement and the judicial system ought to be fair, ought to be objective and often times have to make decisions that are unpopular. I don't think it's in our best interest to put in place a system that may compromise that individual's

integrity or character, or raise it to question simply because they're required to raise money from so many interest groups to get re-elected. Is there a better way? I think there is. I think that what we ought to do is put in place a system that we have to have the appointment of other major, judicial or department heads where we have individuals who are nominated and those individuals go to the committee of jurisdiction where their qualifications, background and experience can be examined in detail to see whether there are the qualifications, experience or any defects in that individual's past that can be fully examined in public view, fully exposed and then that individual could be voted on by the legislature as a recommendation from the Committee of Jurisdiction. That would allow a public review. It would allow a variety of candidates backgrounds to be examined and allow a vote to be taken by the legislature on whom the individual from that committee is. That's not what's before us but I say that because we were challenged to say, "Is there a better way?" I think that there is. I don't think this is it and I hope that you don't vote for this alternative.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you Madam President. Madam President and members of the Senate. I have a problem with the independence, true independence, that an Attorney General would have. During the last session I, on two occasions, had to write to the Attorney General to get an opinion on something that was a very pressing matter at the time of each one of these two letters and I asked if I could get a reasonably fast opinion. The first opinion that I got came five weeks after I sent the letter and the second one came six weeks after I sent my second letter. So, I quit sending letters because by trying to get to seven, eight, nine and ten weeks, we would have been adjourned by the time I got an answer. I prefer to have a non-independent Attorney General who is responsible to all of government, not just himself. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Madam President, women and men of the Senate. I'd like to speak briefly in response to some of the discussion that I heard earlier. First of all I would like to remind some of the members of this Body that I remember, in the past, as a member of the other Body, elections for these positions, constitutional officers, where the potential appointee only gave their speech to one of the parties and not the other. Think about that for a minute. I think that's wrong and that is wrong. It begs a change. It begs a change. Secondly, I think we need to talk a little bit about who might be best to decide who the Attorney General ought to be and I would never want to insinuate that the people of Maine can't decide this issue. I know that the people of Maine can decide this issue. First of all, they can decide whether or not they want to elect an Attorney General and second of all, if they decide that they want to elect an Attorney General via referendum, if they decide that, then they can decide, I think and very well, who that Attorney General might be. I think we need to think about how some of these other members of the law enforcement community and other similar positions are chosen. Sheriffs, in my county anyway and I'm sure in yours, are chosen via election. The District Attorney is chosen through

election. Judge of Probate, chosen through election. So, you can't really tell me, at least in the governance of my county, that these people can't be chosen through election and that they can't do a good job. They do a good job. I think we need to start thinking about how these people are chosen? What's the best way? Is there a perfect way of doing it? Well of course, the answer is no, but if there's the next best thing, it would be to let the voters of Maine decide who their Attorney General ought to be. Thank you very much.

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

Senator **BUTLAND:** Thank you Madam President, ladies and gentlemen of the Senate. I just wanted to take a moment to respond to some of the comments of the good Senator from Androscoggin, Senator Cleveland. He has concerns about having a general election impose certain restrictions upon the pool of people, men and women who would be eligible to run for Attorney General being constricted, either by geography or by wealth. I might remind the good Senator from Androscoggin, Senator Cleveland that we already have a tremendous restriction upon the pool. It is my recollection that there's somewhere between 3,000 and 3,500 lawyers here in the State of Maine and of that pool, all probably qualified, to some degree, to be the Attorney General. Of that pool, maybe 100 of them have served in the legislature which seems to be the most important qualification for someone to be Attorney General. If you have 100 out of a pool of 3,000 to 3,500, it's hard for me to believe that you are going to get the best person to be the Attorney General. I certainly don't have any particular complaints with those folks that I've served with whether it be Jim Tierney, Michael Carpenter or Drew Ketterer, but I think if we opened it up to every attorney in the State of Maine who might have the ability and the willingness, we would find that there are some tremendous men and women of talent out there who would do a great job. I just find it hard to believe that all of the best lawyers are going to decide that at some point in their career that it's advantageous for them to run for the State Legislature. Thank you.

On motion by Senator **RAND** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: ABROMSON, CAREY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, HARRIMAN, JENKINS, KILKELLY, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

NAYS: Senators: AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, FERGUSON, HALL, KIEFFER, LIBBY, MACKINNON, MITCHELL, SMALL

ABSENT: Senator: RUHLIN

22 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **PINGREE** of Knox to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

The President Pro Tem requested that the Sergeant-at-Arms escort the Senator from York, Senator **LAWRENCE** to the Rostrum where he resumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Knox, Senator **PINGREE** to her seat on the floor.

Senate called to order by the President

The Chair laid before the Senate the following Tabled and Later (4/1/97) Assigned matter:

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Require That Constitutional Officers Be Appointed by the Governor.

S.P. 121 L.D. 400

Majority - Ought Not to Pass (10 members)

Minority - Ought to Pass as Amended by Committee Amendment "A" (S-76) (2 members)

Tabled - April 1, 1997, by Senator **NUTTING** of Androscoggin.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, April 1, 1997, Reports **READ**.)

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

Senator **NUTTING:** Thank you Mr. President, men and women of the Senate. We just finished debating a report that called for the popular election of the Attorney General. This bill, the ought to pass as amended version, calls for the Governor to appoint the Attorney General. I'm not going to go forth with the same arguments I've already stated twice today. I feel the executive branch of government has enough power and does not need to be given more. Thank you.

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

Senator **HARRIMAN:** Thank you Mr. President, good morning ladies and gentlemen of the Senate. I hope you'll join me this morning in voting against the pending motion. I ask for your support for a couple of reasons. First, as we've already heard debated this morning on a number of items that came before us, clearly there is, I'll use the word, discomfort on how we choose our constitutional officers. On the one hand we hold these positions and indeed, in my view, the people who occupy these places in very high regard. They have positions of honor and of great responsibility. Yet we seem to, from time to time, want to pause and ask ourselves, "Are we putting people in these positions in a manner in which the public can look to these people as though they've been awarded these positions based on their expertise?" Yet we all, from time to time, recognize that while they may deserve that reputation having great expertise, in the end is to come political position. So, my view, and I hope it is yours, is that we would bestow upon the Governor the responsibility of selecting the very best people, regardless of party affiliation, with the best of credentials and experience in these very high offices and then, once he or she has made the selection, that they would come before us, that they would come before the legislature, the entire legislature, House and Senate, for confirmation. Then, I believe, at the end of the day when these high officers are sworn in, they will have earned the support of the House, the Senate, the majority party, the minority party, the independent party and most importantly, the Maine people. I would ask you to pause for just a moment before we vote and ask yourself this question. If you ran a nonprofit organization or a small family health business here in the State of Maine, would you want your customers to tell you who your accountant, who your lawyer, who the person who is going to handle your very important documents are going to be? Yet, that's how we run state government. We tell the Chief Executive Officer of the State of Maine that he or she has the responsibility for all these areas in the executive branch, yet, we tell him or her who's going to be their attorney, who's going to be their Treasurer, who's going to be their Secretary of State. I think, going forward, it would serve this institution, the executive branch of government and certainly the people of the State of Maine, to know that we are putting the very best people in these very high offices of public trust in a manner in which we can all, at the end of the day, tell the people of Maine that they're being well served. Thank you Mr. President.

The Chair ordered a Division. 19 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **NUTTING** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (4/3/97) Assigned matter:

HOUSE REPORT - from the Committee on **STATE AND LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Change the Manner in Which the Legislature Calls Itself into Special Session.

H.P. 336 L.D. 458