

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

**One Hundred And Fourteenth Legislature**

OF THE

**State Of Maine**

**VOLUME I**

**FIRST REGULAR SESSION**

December 7, 1988 to May 10, 1989

Ought to Pass As Amended

Senator BUSTIN for the Joint Select Committee on CORRECTIONS on Bill "An Act to Make Technical Changes to Provisions Related to the Probation and Parole and Intensive Supervision Program Functions"

S.P. 223 L.D. 539

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-37).

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-37) READ and ADOPTED.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

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

COMMITTEE REPORTS

Senate

Ought to Pass As Amended

Senator BOST for the Committee on EDUCATION on Bill "An Act to Ensure Coordinated Investigations of Complaints Regarding Special Education"

S.P. 117 L.D. 183

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-36).

Which Report was READ and ACCEPTED.

The Bill READ ONCE.

Committee Amendment "A" (S-36) READ and ADOPTED.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

Senator CLARK of Cumberland was granted unanimous consent to address the Senate off the Record.

Senator WEBSTER of Franklin was granted unanimous consent to address the Senate off the Record.

On motion by Senator PEARSON of Penobscot, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Allow the Governor to Veto Items Contained in Bills Appropriating Money and Retaining the Power in the Legislature to Override those Line Item Vetoes

H.P. 10 L.D. 4

Majority - Ought Not to Pass.

Minority - Ought to Pass as Amended by Committee Amendment "A" (H-32).

Tabled - April 10, 1989, by Senator CLARK of Cumberland.

Pending - ACCEPTANCE OF EITHER REPORT

(In Senate, April 10, 1989, Reports READ.)

(In House, April 6, 1989, Majority OUGHT NOT TO PASS Report READ and ACCEPTED.)

Senator PEARSON of Penobscot moved to ACCEPT the Majority OUGHT NOT TO PASS Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Mr. President. Mr. President, men and women of the Senate. I rise today

to urge you to defeat the pending motion so that we may go on to Accept the Minority Ought to Pass Report. L.D. 4 will send to referendum an amendment permitting the Governor of Maine to have Line Item Veto rights on appropriation matters. Forty-three other Governors already have Line Item privileges and I believe that if presented to the voters of the state of Maine, that they would extend this privilege to Maine's Governor as well. I truly respect and appreciate every member of our Appropriations Committee. My support for the Line Item Veto is no reflection on the lack of their ability or judgement, they do a tremendous job and I am very proud of each one of them.

I support the Line Item Veto because of the fiscal check and balance it provides between the Executive and Legislative Branches of government. I believe our Governors, both present and future, would be judicious when vetoing Line Items, recognizing the need for cooperation between the Executive and Legislative Branches of government. I believe the Line Item Veto would help lift the burden, which currently exists, on the Appropriations Committee, because items would be excluded from the Appropriations Bill if they could not stand on their own merit. Now, we have a sort of take it or leave it process and it really doesn't give us an opportunity to reconsider questionable items that sometimes get squeezed into the Appropriations Bill at the last minute. The Line Item Veto would make each and everyone of us better Legislators because frivolous money items would have to cross one more hurdle before being enacted and put out to be paid for by the taxpayers dollars. The Line Item Veto is prudent fiscal management and I ask you to vote to reject the motion before us so that we can Accept the Minority Ought to Pass Report.

On motion by Senator CAHILL of Sagadahoc, supported by a Division of at least one-fifth of the Members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. We have before us today a Bill that seems to go to the heart of the democratic system in this state and even in America. It is an alteration of the checks and balances that exist in the government of this State. If this were to pass, the Governor of the State, be him James B. Longley or Joseph Brennan or John McKernan, or anybody else who may come in the future, would have the power to write the Appropriations Act from beginning to end. In the way the government operates now, the Governor proposes a budget, it is a very extensive document. Sometimes in the process of the Appropriations Act there are changes made not by the Legislature, but by the Governor, and I can tell you that it is all too often in the Appropriations Committee's mind anyway. We have down in our Committee right now on the Part I budget, which is just a simple budget to keep the store open, and we are trying to keep it absolutely clean that way just a budget to keep the store open, I am going to say conservatively thirty pages of changes the Governor's office has submitted to us. Most of those changes if not all of those changes have been integrated into the budget process. It has always been that way, we tried to discourage these added changes as much as we possibly can, because it makes our job more difficult, but we always accept them. The Governor already has a way of involving himself at the very beginning, while the process is going on, and at the very close of each one of the budgets. That has been that way ever since I have been here, through three

Governors. Some people in this Chamber have been here through more Governors than I have, but I am told that it was that way even under Governor Curtis, Governor Clauson, and Governor Reed and all the rest of them.

As you probably noticed on the Report, it is not a partisan Report. Some Republicans, some Democrats have signed different ways. It has always been that way since I have been here and the vote that is taken on it has always been somewhat mixed. It will be interesting to me today to see if it is going to be that way in the future, because this is not a Republican or Democratic issue, or it should not be. It should be a Legislative prerogative type of Bill so that the powers of the Legislative Branch of government are not weaned away from us. Not only those of us who sit in this particular session, but those who are yet to come. We will not all be here forever you know, although some people may think they may be, it is not going to be happening.

An interesting story was told to me just a little while ago. It seems that everybody who has ever been Governor has favored the Line Item Veto. Everybody who feels that they are headed to the Governorship favors the Line Item Veto, even the Presiding Officer of the other Body has voted in favor of the Line Item Veto. Now, if that gives the people of this Body, who are members of the opposite party from myself, some solace, take it. If you wish to give everybody who is going to come in the future a Line Item Veto regardless of their politics you are free to vote that way.

I want you to understand that the Governor not only controls the introduction of the budget, the main document and all the research that goes into it, but he also controls the revenue figures. That is an extremely powerful position to be in. You can limit the amount of money that is spent by this State by saying that the revenues are going to be at a certain level, even if you think they are higher. If you want to be conservative, which is what we found to be the case last year, you can limit the Legislatures ability in this State to appropriate more than that amount. That is a very powerful position.

The Governor also has probably the most power, although maybe most subtle power, of the press. Senator so and so can get up in this Chamber and speak, and speak, and speak, and if he comes from northern Maine it will be covered in southern Maine, if he comes from southern Maine, it will be covered in northern Maine, but not both. The Governor walks out of his door from his office to go to lunch and what he says on the way to lunch is covered in all the newspapers in the state. He has the power of public opinion. If you think that the Governor is weak because he doesn't have a Line Item Veto, I think you are wrong, I think he is very, very strong. I wouldn't have said that if I thought there was still a Governor's Council, but under the situation that we have today, I believe the Governor of Maine is in an extremely strong position.

I ask those of you who have been here before in the weaning days of the Legislature to remember how many times you have been told to wait, issues are being discussed, compromises are being worked on. Who do you suppose those issues are being discussed with and those compromises are being worked on with? It's the Governor, with the Legislature. I have been involved in some of those meetings. If the Legislature was all powerful, we wouldn't have to meet with the Governor. The point is, we are not. The checks and balances are in proper position and perspective the way they ought to be right now. This, my friends it seems to me, would tilt it too

far in the other direction. So, I urge you to vote with the Majority Report.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Collins.

Senator COLLINS: Thank you Mr. President. Mr. President, men and women of the Senate. The good Senator from Penobscot made his case so well that he almost, but not quite, convinced me that I in my view was wrong. However, I have noted that the many times that this Bill has appeared before the Legislative Body and it has in fact had the support of the Governor and it has also traditionally always been opposed by the Committee on Appropriations. It seems to me that we make a case both ways. I tend to favor the importance of the Executive's position on this particular matter, because, as you recall, in order for a Bill to become law it has to pass not only both Body's of the Legislature, but it has to pass approval and muster of the Governor and he must sign it in order for it to become law. It seems to me when he faces a laundry list, which is what the Appropriations Bill, is with monies for all the Departments of State government and all of the various programs that we fund, it places him in a very awkward position when he finds items in that budget that he feels should not be there. At the present time, his only choice is to veto the Bill or to sign it and he cannot remove line 12 or line 16 that perhaps deals with items that he feels ought not to be included in the budget. It seems to me that he has to fade away into the sky a bit and not perform the function that we really look for him to perform. Now, I suspect that if this Bill had gone to a Committee other than Appropriations it might have fared much better, but Appropriations, in their wisdom, views this from their particular parochial point of view. While I tend to think they do an excellent job and I know that they work extremely hard, it seems to me that they remove a little balance of power when they know that anything that they finally put in that Bill and agree upon is in a position where it will have to advance to final enactment.

Now, my constituents told me in a poll that I recently took that they would favor by a majority of fifty-six percent the Line Item Veto. I think most of our citizens understand what they are talking about. The issue is not new, it has been around for a long time and discussed many times. It seems to me that they are saying to us, "yes, we would like the Chief Executive to have the opportunity to remove an item in the budget without cancelling the effect of the entire document." Mr. President and members of the Senate, I hope you will defeat the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. I did make a mistake in my remarks a few minutes ago in saying that everybody who was headed for the Governor's Office was in favor of the Line Item Veto. I guess what I really meant to say was that everybody who thought that they were at the time, was in favor of it because the gentleman who occupies the second floor at the present time, as a member of the Legislature did not favor it at that time. The good Senator from Aroostook, Senator Collins, has suggested that the Governor draws up the budget, presents the budget, negotiates the budget, passes the budget, and then alters the budget. Where does that leave us? It leaves us with no power whatsoever, is that where you want the Maine Legislature to be in the year 2000 or even this

year? I don't think you should want that. I don't think that if you are concerned about checks and balances and Constitutional government in this country, that you should want a reappearance of George III.

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

Senator DILLENBACK: Thank you Mr. President. Mr. President, men and women of the Senate. This has been a very interesting debate and I have enjoyed it, but it seems to me that we don't have the greatest wisdom in the world here within this Senate or in the Legislature. It seems to me that if this is going out to the referendum that the people of this State are in a position to make a decision whether this is a good thing for the State or not.

It is unfortunate that we hold the control here to even give them an opportunity to vote on it. I would be very happy to vote in favor of having this Bill passed and let my constituents make the decision rather than we here. I will vote for this issue. Thank you.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I do not ordinary rise on matters that are outside my Committee's jurisdiction, but I think this issue really does speak to the heart of Executive-Legislative relationships, as I think the Senator from Penobscot, Senator Pearson, addressed in his comments to this Body. My concern is that perhaps this issue will be perceived to some as being indelibly interwoven into partisan politics, but the reality is that we will be here for a short time period, there will be subsequent Legislators and I think we have to have a historical perspective on this issue and not a short-term perspective. I have always philosophically opposed a Line Item Veto, it matters not at all to me what the partisan orientation is of the individual who occupies the Blaine House or the Governor's Office. It does seem to me that if we lived in a perfect world and if logic and truth governed all activity of human kind, perhaps an issue such as this might be resolved differently. But, the reality is that we are a disparate group as a Legislature, we represent a variety of philosophies, of regions, of perspectives, of points of view and that somehow through this process we do annually rise to the occasion and craft common sense, reasonable solutions to very difficult problems which face our state and our society. We do so by way of the Legislative enactments we adopt and the budget in concert with the Governor's Office we Enact. Clearly, we need a majority of both Body's to pass our budget into law. If we were to approve this measure and if this were to become a Constitutional Amendment approved by the voters of our state, we as a Legislative Body, would in fact be ceding very important authority to the Governor's Office. Whereas, by a majority we can pass the budget out and we all recognize that the budget in fact is a document which reflects compromise, which reflects hard fought-for consensus. If we were to allow this initiative to become law, than any Governor can ferret out, one, two or three items that he or she might deem objectionable and then that would have the effect of disturbing a compromise consensus which was crafted, because then one would have to go to two-thirds support to override that Line Item Veto. That would be a very, very difficult task indeed, it is hard enough for us to attain two-thirds consensus on an overall budget document. So, I do think that this issue, as portrayed by the editorial writers of

our State, is much different at first blush than it is upon discrete analysis.

Legislators have very important and vital roles to play in democratic societies, we ought not to fall prey to this incipient royalism movement which is running across our country; that we ought to cede all authorities to Chief Executives. It is not by accident that in our respective State Constitutions the power of the Legislative Branch of government are integrated first, that was an intentional choice, crafted by the founders of our state and our nation. So, I would join with the Senator from Penobscot, Senator Pearson and take a long term historical perspective at this initiative and would hope that it would not be yet another issue which would fall into the bathos of partisan politics and instead would look at the long-term implications of this measure. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator PEARSON of Penobscot to ACCEPT the Majority OUGHT NOT TO PASS 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?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators ANDREWS, BALDACCI, BERUBE, BOST, BRANNIGAN, BUSTIN, CLARK, DUTREMBLE, ERWIN, ESTES, ESTY, GAUVREAU, HOBBS, KANY, MATTHEWS, PEARSON, THERIAULT, TITCOMB, TWITCHELL, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BRAWN, CAHILL, CARPENTER, COLLINS, DILLENBACK, EMERSON, GILL, GOULD, HOLLOWAY, LUDWIG, PERKINS, RANDALL, WEBSTER, WEYMOUTH, WHITMORE

ABSENT: Senators None

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, with No Senators being absent, the motion by Senator PEARSON of Penobscot, to ACCEPT the Majority OUGHT NOT TO PASS Report, in concurrence, PREVAILED.

Senator CAHILL of Sagadahoc was granted unanimous consent to address the Senate off the Record.

Senator MATTHEWS of Kennebec was granted unanimous consent to address the Senate off the Record.

Senator HOBBS of York was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

THE PRESIDENT: The Chair would note, with unanimous consent, that Joint Rule 32 on the Signing of Bills, Resolves and Amendments, in that Rule, "the presenters of Bills have five working days from the time of notification with the Revisor of Statutes of changes that are necessary." The Presiding Officer requests unanimous consent for the suspension of this Rule in keeping with the last sentence of that Rule that the "Presiding Officers may suspend the Rule within thirty days before the statutory adjournment date." That the Presiding Officers be granted that