

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Sixth  
Legislature*

OF THE

STATE OF MAINE

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Index

KENNEBEC JOURNAL  
AUGUSTA, MAINE

to the Clerk of the House by some member of his or her intention to move reconsideration, the Clerk was authorized today to send to the Senate, thirty minutes after the House recessed for lunch and also thirty minutes after the House adjourned for the day, all matters passed to be engrossed in concurrence and all matters that required Senate concurrence; and that after such matters had been so sent to the Senate by the Clerk, no motion to reconsider would be allowed.

On motion of Mr. Birt of East Millinocket,

Recessed until eleven o'clock this morning.

#### After Recess 11:00 P.M.

The House was called to order by the Speaker.

#### Orders of the Day

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

Bill "An Act to Provide Elected District Attorneys" (S. P. 474) (L. D. 1569) (C. "A" S-183).

Tabled — June 8, by Mr. Simpson of Standish.

Pending — Passage to be engrossed.

On motion of Mr. Simpson of Standish, tabled pending passage to be engrossed and later today assigned.

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

Bill "An Act Providing Full-time Prosecuting Attorneys and Public Defenders" (H. P. 1380) (L. D. 1861) (C. "A" H-484).

Tabled — June 8, by Mr. Simpson of Standish.

Pending — Passage to be engrossed.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Mr. Cooney.

Mr. COONEY: Mr. Speaker, I would ask that this lie on the table until later in today's session.

Thereupon, Mr. Simpson of Standish requested a vote on the motion.

The SPEAKER: The pending question is on the motion of the gentleman from Sabattus, Mr. Cooney, that this matter be tabled until later in today's session. All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

40 having voted in the affirmative and 49 having voted in the negative, the motion did not prevail.

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

Mr. MARTIN: Mr. Speaker, I wonder if the majority floor leader would indicate what the procedure is that is being followed so that all of us could realize where we are going and what he is attempting to do so we will know what we are doing?

The SPEAKER: The gentleman from Eagle Lake, Mr. Martin, poses a question through the Chair to the gentleman from Standish, Mr. Simpson, who may answer if he chooses.

The Chair recognizes that gentleman.

Mr. SIMPSON: Mr. Speaker, Ladies and Gentlemen of the House: I would be delighted to help the gentleman out if he doesn't know where he is going.

I would say that we have got three district attorney bills before us, and we would like to take and debate this one right here before we take action on the other two.

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

Mr. MARTIN: Mr. Speaker and Members of the House: I thank the gentleman for being funny, but I wonder why he would table the first one until later in today's session. Why didn't we use that approach?

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

Mr. SIMPSON: Mr. Speaker, Ladies and Gentlemen of the House: I personally happen to support full-time prosecuting attorneys being appointed by the Attorney General, and also the public defender system which we have in this particular bill. I be-

lieve that the best interest of the state is to get the elected Attorney General or the elected county attorneys or the district attorneys away from the election process and put them under the Attorney General's office for continuity and in the best interest of the prosecution system in the State of Maine.

It is about time we started to take and work along these lines. The Governor's message itself said that he goes along with appointment of a public defender, especially at the state level. I believe we have got the two vehicles right here which would do exactly what we are looking for, and I would urge that you would pass this bill to be engrossed and that we continue the bill on its way and put it into enactment.

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

Mr. MARTIN: Mr. Speaker and Members of the House: I am going to let other people discuss the merits and demerits of the proposal, but I do thank the gentleman for at least telling us what his feelings were and why the first one was tabled and not the second one. It didn't matter in what order we discuss them, but apparently it mattered to the gentleman from Standish.

I would hope now, at this point, now that the issue is in front of us, that members of the legislature would debate the issue as to which one they prefer.

The SPEAKER: The Chair recognizes the gentleman from Sabatius, Mr. Cooney.

Mr. COONEY: Mr. Speaker, Ladies and Gentlemen of the House: I am sorry that the political parties seem to be taking rather hard lines on whether we should have elected or appointed district attorneys. I think it is good that the two political parties have represented differing academic positions on this idea, but I am sorry to see that the majority party refuses to discuss or refuses to in any way consider the real importance of putting the election of at least part of our prosecuting system out to the people.

As I look at prosecution, it seems to me that either we have to elect our prosecutors on the local level and have our attorney general appointed, or we have to do it the other way around. We have to have our attorney general elected by the people and allow him to appoint district attorneys. But it seems to me that the public must have an input. That is the most important thing.

I spoke previously about the election of the attorney general, and I spoke against it for several reasons. I still do not favor that as a first choice myself. But I would be willing to consider it in conjunction with appointed district attorneys.

But that is not the question we have today. We have the question of whether or not we are going to get some meaningful reform in our county attorney system. And I think we know that unless the two political parties make some effort to resolve their differences, what I consider to be a rather academic debate, then we are not going to make these reforms.

I think it is also important to realize that although our court systems have problems, we certainly don't have the acute problems that other states are facing. So we should take every bit of time necessary to reach the best possible conclusion.

Now, when I make my decision, I not only do my own thinking, but I make up my mind on advice and counsel I get from people who are involved. I have here a couple of pieces of information that I would like to share with you. One is an article that says Maine prosecutors back the elected county attorney bill. I also have here a letter which I am going to read to you which I think represents that position. I would like you all to listen to it because I think it does represent the feeling of our prosecutors on the county level.

"Dear Mr. Cooney:

The Maine Prosecutors Association" that is all of our prosecutors "comprised of county attorneys and their assistants from throughout Maine, has attempted to take an active role in securing a full-

time prosecutorial system for Maine. We endorse and support L. D. 1569 (as amended) which we believe will provide Maine with the best and most effective of all proposals now before the 106th Legislature."

That is not the bill we are now taking action on, and I hope we will have a chance to take action on it.

They go on to say: "L. D. 1569 (as amended) will provide all courts and law enforcement agencies with access to the services of full-time prosecution offices. In addition, we believe that this bill constructs the best foundation on which to build a full-time prosecution system.

"L. D. 1569 (as amended) calls for the election of district attorneys to serve four-year terms at an annual salary of \$23,500."

And those, of course, are important features, the four-year term and an adequate salary.

"The Maine Prosecutors Association firmly believes and supports the concept of elected district attorneys. Your support on this issue will be greatly appreciated.

"The Maine Prosecutors Association is comprised of prosecutors throughout the state, including eleven Republican and five Democratic county attorneys. We believe election of prosecutors on the local level best serves the interest of the people and the state.

"Local prosecutors exercise a large degree of power and discretion in setting priorities, establishing policies and procedures, in initiating investigations, in deciding to bring charges and in recommending disposition of cases. Each should be free to set goals necessary for his locality and not be subject to broad general powers from one central office. Law enforcement problems differ throughout the state and only prosecutors operating independently in the area can adjust to meet required needs. If the local district attorney does not act effectively to meet the local needs or abuses his power, he should be subject to review and removal by local voters, similarly he should be rewarded by re-election by local voters for a job well done.

"In establishing a full-time prosecutorial system, one goal is to secure persons willing to make a career of the position or at least remain on the job for several terms to avoid the turnover of past years. With this idea in mind, any District Attorney should rise and fall on his own merits and not depend upon appointment from one man. Appointment by the Attorney General or Governor would create a complete turnover of prosecutors each time there was a new Attorney General or Governor. It would generate into the system more politics than is already present. Election of the District Attorney would provide more job security for a qualified and experienced person in that he is not dependent on the rise and fall of another. He makes it on his own.

"In 1972, eleven counties had no contest for the position of county attorney in the general election and thirteen counties had no primary contest. No county had a primary contest on both Republican and Democratic ballots. An attractive salary would enable qualified and experienced attorneys to seek the positions without extreme personal hardship and sacrifice. An expanded jurisdiction, i.e. creation of districts by combining counties would open the position to more persons.

"We urge the adoption of a full-time prosecutorial system which provides for election of prosecutors to four year terms and creates prosecution districts providing the whole state with improved services. It is our opinion that L. D. 1569 (as amended) is the only proposal that adequately fills the needs of Maine and implements a practical, efficient and effective system.

"Your support is appreciated. Very truly yours, Thomas E. Delahanty, II, Androscoggin County Attorney, President, Maine Prosecutors Association."

Now, I could not have said it any better than Mr. Delahanty, so that is why I read you the letter.

I am sorry that we come to this position where we have to take

party line positions on what really is an academic debate of whether we want elected or appointed county attorneys. What we really want is district attorneys and a better, more efficient system. I don't like the idea of putting this thing off. And if we allow this thing to be politically maneuvered as seems to have been the case this morning, it is very possible that we might lose our opportunity to improve our prosecutorial system in this session.

I hope very much that we will not pass the bill before us, that we will take the opportunity to go back when we come to the tabled until later in today's session, L. D. 1569, and that we will give it the consideration and the passage that it really deserves.

The SPEAKER: The Chair recognizes the gentleman from Perham, Mr. Bragdon.

Mr. BRAGDON: Mr. Speaker and Members of the House: Before this debate gets too involved, I think perhaps I would like to throw in my five cents worth.

Briefly, I subscribe to the idea of elected fulltime prosecuting attorneys. I think I am kind of up tight against such a group of prosecuting attorneys and being appointed by one man. I think my feeling is that they are going to be slanted all in one direction. Now this may be good; it may be bad. It all depends on how you want to see this thing slanted.

I also have a great deal of faith in the elective process which we have participated in over the years, and certainly we may get some—if we elect these full-time attorneys—we may get some that are not as competent perhaps as appointed ones would be, but on the whole, I think it is a pretty darn good system to stick to. Politics or not, I am going to stick with it.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Emery.

Mr. EMERY: Mr. Speaker, Ladies and Gentlemen of the House: The only reason that I am getting into this debate this morning is because I was the sponsor of L. D. 82, which has been given a leave to withdraw by the committee. My

bill also called for elected district attorneys.

I agree very much with the remarks just made by the gentleman from Perham, and also the remarks made by the gentleman from Sabattus. I feel that although I might not personally agree with all the decisions that the voters make; I think generally they do a pretty good job. I feel that the people ought to be given the opportunity to say yes or no when a candidate comes up for election. I feel that the office of prosecuting attorney, regardless of what the official title might be, is a job which is much more important than merely an administrative position. It differs tremendously from some of the other county offices.

Law enforcement, law and order, and justice are issues that we read about in the paper every day. I feel that the people ought to be given an opportunity on a regular basis to select those who will be prosecuting on their behalf.

I am going to support the legislation which has been tabled. It provides for elected district attorneys and I would certainly hope that the House would consider that action too.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mr. LaCharite.

Mr. LaCHARITE: Mr. Speaker, Ladies and Gentlemen of the House: The county attorneys are presently elected and I believe that the people should retain this right. And for that reason I move the indefinite postponement of this bill and all accompanying papers, and ask for a roll call.

The SPEAKER: The gentleman from Brunswick, Mr. LaCharite, moves the indefinite postponement of L. D. 1861 and all accompanying papers, and requests a roll call.

The Chair recognizes the gentleman from Old Town, Mr. Binnette.

Mr. BINNETTE: Mr. Speaker, Ladies and Gentlemen of the House: I think in the past we have had very good results in electing our county attorneys. I don't see any rhyme or reason why we should not continue to elect a full-

time attorney. I think the public defender is a good system, and I think the people in different parts of the state would have their own ideas as to who they would like to see serve. If we had it as an appointive position, be it Democrat or Republican, that thing could be slanted from top to bottom all the way through, it all depends upon your Attorney General.

I think right now that the only thing we should do is to continue doing as we have been doing. Let us elect our officials.

The SPEAKER: The Chair recognizes the gentleman from Bath, Mr. Ross.

Mr. ROSS: Mr. Speaker, Ladies and Gentlemen of the House: I have always been opposed to appointments rather than elections, except once, when I sponsored a bill in this House to have the clerks of court appointed rather than elected. This was enacted into law, but the very next year it was repealed. However, this time I approve of the Attorney General appointing district attorneys for two reasons. We are going to go to districts rather than counties, it would be more difficult to campaign there and they would not be as close to the people as they are in counties.

The second reason, we are talking about professionals who as lawyers should be the best qualified and not the most popular. I believe this method makes for better and more competent court procedures.

The SPEAKER: The Chair recognizes the gentleman from Brunswick, Mr. McTeague.

Mr. McTEAGUE: Mr. Speaker and Members of the House: I think at least we have arrived for the second session, that I can recall, having been here, at a consensus on one very important point; that is the need for full time prosecution. It is too bad, that although we share I think almost unanimously those views that we have differed in the past, possibly somewhat on political lines. The original argument, I recall, was whether the Governor or the Attorney General should appoint the individuals involved. At the time,

in the last legislative session when that was a hot issue, we were also dealing with the fact that we had an incumbent Governor and a legislative minority of that party, an incumbent Attorney General in the ball game running for governor of the other party.

Fortunately, in this legislative session we have, if you will, a lame duck Governor, and we have an Attorney General, who although in many ways is a very fine gentleman and I am certain we all aspire to other posts and higher posts, he does not seem to be the leading candidate of the Republican party for even higher office.

So, I would hope there may be something we can do this session that would achieve what we all want to, because we do need full-time prosecution.

I think that there is a technical aspect, as the gentlemen from Bath, Mr. Ross, has pointed out, to the work involved. But it is not technical in the sense that say the work of a chemist is when he analyzes a sample. It does involve the exercise of significant amounts of judgment and discretion. And this has been mentioned before, but I would like to repeat it. It seems to me there are two fundamental areas of discretion. Number one, when to prosecute and when not to prosecute an offense and at what level to prosecute, as a felony, misdemeanor or as a heavy felony or not so heavy one.

A system, in order to work, must repose that degree of discretion in the prosecuting officer. But it is a matter of judgment and it isn't always the man who has the highest grade on the bar exam, if you will, who is the most competent man in doing the job.

We have seen in the two counties in which I primarily experienced, Cumberland and Sagadahoc, Republican and Democratic prosecutors almost alternately. In Sagadahoc now we have a second term prosecutor who happens to be of the Republican faith who, by the way, was unopposed, frankly he was kind of a consensus candidate.

We have now in Cumberland County a Republican prosecutor who is a competent man, experienced in the field. Previously we had a Democrat of the same high quality.

It seems to me, though, that there is one potential danger in terms of appointment and really control all this discretion in all our counties by one man, whether that man be the Governor or the Attorney General or whomever, and that is this. I am certain there have been in our past histories at the federal level of Democrats who have occupied the office of Attorney General who have not been all they should be. We have had in the more recent past a former Attorney General, John Mitchell of New York, now under indictment, as you all know, there. Our federal district attorneys are not elected; they are appointed. They are kept, I believe, on a rather tight rein out of Washington.

If you have an individual who is involved in the recent unfortunate situation which happens to involve one party now, but in other times in our history has involved the other party, you are able to get on the telephone or have one of your aides do it in Washington or Augusta and spread the word there will be no prosecutions, don't look into this area, it is politically censored, you have got a problem.

You have tremendous power inherent in prosecution. It is perhaps true, at least from an abstract point of view, that you could erect a more perfect system if it were a completely unified system under the dominion of one man. But it is also true, and here I think there is risk involved, that if it is under the dominion of one man, and it matters not in this sense whether he be Governor or Attorney General or Auditor, or Treasurer, if there is a problem, and if there is a problem perhaps in corruption, that problem can be confined under our present system to the individual, to the area involved, and we have the Attorney General as a check, if you will, on a basis of discretion and even corruption on the individual prose-

cutors. But if all power flows out of Augusta, it seems to me that although you have the possibility of an administratively more perfect system, you also have the possibility that if there are actions which should not occur, corruption or some other type action at the top level, that it will inevitably spread down to everything else.

I should note, Mr. Chairman, if I may, because obviously if we are going to pass anything in this legislature, it is going to take not a partisan effort but a bipartisan one, with no one seeking to place blame or grab credit. But these views are not views that I have discussed in our Democratic caucus, and the views that I have expressed are those of an individual.

I think the fact brought out by the gentleman from Bath, Mr. Ross, about the rather sad history of the matter of appointments of clerk of courts, how that was passed at one legislative session and killed in another, should be a warning to us. I don't think we should put all these eggs in one basket, and I have the greatest admiration for the gentleman involved. Jon Lund has served in this legislature with many of us for a number of terms. I think he is an excellent man, he is a qualified man with experience himself in prosecution. I have a great deal of confidence in Jon.

But we shouldn't pass a Jon Lund law or Jim Erwin law or Ken Curtis law. We should pass a law for all times and all seasons that will give us full-time prosecution without the possibility of state-wide abuse.

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

**MR. CURTIS:** Mr. Speaker, Ladies and Gentlemen of the House: This is a matter which has been debated in previous legislatures as we remember, those of us who were here before.

Two years ago we came very close to having unanimity in this body in favor of the type of bill that is now before us. Unfortunately, as we know that particular



proposal, although passed by the legislature, never became law.

We have four possibilities now, as I see it. First of all, we can do nothing and continue the present county attorney elected, part-time, underpaid system in which perhaps in most cases the county attorney is paid less than his assistants even, and we can continue exactly the same type of prosecution as we have at the present.

Secondly, we can provide for a full-time county attorney, still elected, pay him a substantial amount of money — we have the bill pending before the legislature which would provide for the more populous county attorneys full pay of up to \$23,500 a year.

Thirdly, we can have a new arrangement, new districts, a district attorney, either one of two possibilities, either elected, as has been discussed here somewhat, or appointed. The advantages to either one of those bills are that a larger area would be served, more expertise could be developed, the district attorney would be full-time and would be provided with full pay.

I am going to suggest that there are a couple of problems with the elected system. First of all, the high turn-over rate which now exists might continue, even with increased pay. Secondly, if the pay is one standard sum, as it would have to be for each elected official as a county attorney, it would never increase based upon his tenure in that office or his improvement in his ability. And finally, I would suggest that the qualities which result in success at the polls may not result in success in the courts or prosecuting in the name of the people of this state.

It is understandable, of course, that the present incumbents would perhaps prefer that provision, and that is why letters have been written by a Cumberland County attorney supporting that particular type of proposal. They, after all, have been successful at the polls, and they naturally would like to be paid more for a job that all, most of them, at least, deserve more money.

But finally, the proposal that we are now really debating that is before us, L. D. 1861 as amended, would indeed provide what many people have talked about, but I don't think any other system, any other bill would provide, and that is a system, a real state-wide prosecution system, in which there could be one standard, substantial training of personnel, expertise developed throughout this state, and as provided in this bill, a local resident prosecutor who could be backed up by further expertise available at the direction and discretion of the attorney general.

The compensation could, indeed, be a standard arrangement and be similar to our classified pay increases, depending partly upon expertise and tenure and success in the job. I think that that system would tend to lead to a higher retention rate than we presently have either in the counties among the prosecutors there or in the Attorney General's office and among the assistants there.

Finally, I think it would be worthwhile to remember that many of the crimes that are developing now in the state are indeed state-wide crimes, and in order to properly combat them, we ought to have a single direction provided from the State House here in Augusta.

I would say, if I had my way, which I obviously couldn't, we would also provide that the Attorney General of this state would be popularly elected by the people. That would answer, I think, the one criticism that I really think we ought to try to answer, and that is, how do we make the person at the head of any system truly responsive to the will of the people? Unfortunately, that bill was considered by the legislature and was defeated rather overwhelmingly. It is a change in the Constitution and it would require the two-thirds vote, anyway. But I suggest any alternative that the legislature is indeed responsive to the people and that the Attorney General, under our present system, is elected by the legislature.

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 Brunswick, Mr. LaCharite, that this Bill "An Act Providing Full - time Prosecuting Attorneys and Public Defenders" House Paper 1380, L. D. 1861, and all accompanying papers be indefinitely postponed. All in favor of that motion will vote yes; those opposed will vote no.

#### ROLL CALL

YEA — Albert, Berry, P. P.; Berube, Binnette, Boudreau, Bragdon, Bunker, Bustin, Cameron, Carey, Carrier, Carter, Chonko, Churchill, Clark, Conley, Connolly, Cooney, Cote, Cottrell, Crommett, Dam, Deshaies, Donaghy, Dow, Drigotas, Dunleavy, Emery, D. F.; Evans, Farley, Farrington, Faucher, Fecteau, Fraser, Gahagan, Gauthier, Goodwin, H.; Goodwin, K.; Greenlaw, Hancock, Hobbins, Jacques, J albert, Kelleher, Kelley, Keyte, Kilroy, LaCharite, LaPointe, Lawry, LeBlanc, Lewis, J.; Lynch, Mahany, Martin, Maxwell, McHenry, McNally, McTeague, Mills, Morin, L.; Morin, V.; Mulkern, Murray, Najarian, O'Brien, Palmer, Peterson, Pontbriand, Ricker, Rolde, Sheltra, Smith, D. M.; Smith, S.; Talbot, Tanguay, Theriault, Tierney, Webber, Wheeler, Whitzell.

NAY — Ault, Baker, Berry, G. W.; Birt, Bither, Brawn, Briggs, Brown, Chick, Curtis, T. S., Jr., Davis, Dudley, Dunn, Dyar, Farnham, Ferris, Finemore, Flynn, Garsoe, Good, Haskell, Henley, Herrick, Hoffses, Huber, Hunter, Immonen, Jackson, Kauffman, Kelley, R. P.; Knight, Lewis, E.; Littlefield, MacLeod, Maddox, McCormick, McKernan, McMahon, Merrill, Morton, Murchison, Parks, Perkins, Pratt, Rollins, Ross, Shaw, Shute, Silverman, Simpson, L. E.; Snowe, Sproul, Stillings, Strout, Susi, Trask, Trumbull,

Tyndale, Walker, White, Willard, Wood, M. E.

ABSENT — Cressey, Curran, Genest, Hamblen, Norris, Santoro, Soulas.

Yes, 81; No, 62; Absent, 7.

The SPEAKER: Eighty-one having voted in the affirmative and sixty-two in the negative, with seven being absent, the motion to indefinitely postpone does prevail.

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

Mr. MARTIN: Mr. Speaker, having voted on the prevailing side, I would move we reconsider our action and ask you to vote against my motion.

The SPEAKER: The gentleman from Eagle Lake, Mr. Martin, moves the House reconsider its action whereby this Bill and all accompanying papers were indefinitely postponed. All in favor of that motion will say yes; those opposed will say no.

A viva voce vote being taken, the motion did not prevail.

Sent up for concurrence.

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

Bill "An Act to Increase Benefits and Reduce Waiting Period Under Workmen's Compensation" (H. P. 618) (L. D. 816) (C. "A" H-463).

Tabled — June 8, by Mr. Martin of Eagle Lake.

Pending — Acceptance of the Committee Report "Ought to pass."

On motion of Mr. Martin of Eagle Lake, retabled pending acceptance of the Committee Report and tomorrow assigned.

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

Bill "An Act Relating to Medical Treatment of Persons at State Operated Facilities" (H. P. 1527) (L. D. 1957).

Tabled — June 8, by Mr. Simpson of Standish.

Pending — Passage to be engrossed.

Mr. Simpson of Standish offered House Amendment "A" and moved its adoption.