

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME V

SECOND REGULAR SESSION

House of Representatives

January 5, 1994 to April 14, 1994

Administrative Courts I would have been voting in the negative and I would appreciate as being recorded as such.

The House recessed until 2:00 p.m.

(After Recess)

The following items were taken up out of order by unanimous consent:

REPORTS OF COMMITTEES

Ought to Pass as Amended

Representative KNEELAND from the Committee on Agriculture on Bill "An Act Regarding the Inspection of Maine Potatoes" (H.P. 1273) (L.D. 1717) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1059)

Report was read and accepted. The bill read once. Committee Amendment "A" (H-1059) was read by the Clerk and adopted.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (H-1059) and sent up for concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the First Day:

(H.P. 1473) (L.D. 2001) Bill "An Act to Establish a Catastrophic Health Expense Program" (Governor's Bill) Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1061)

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objections, the Bill was passed to be engrossed as amended and sent up for concurrence.

BILLS IN THE SECOND READING

Resolve, Authorizing the Examination of School Finance and Taxation Proposals (S.P. 776) (L.D. 2003) (Governor's Bill)

Was reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was Passed to be Engrossed in concurrence.

ENACTORS

Emergency Mandate

An Act to Revise the Salaries of Certain County Officers (H.P. 1476) (L.D. 2004)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 103 voted in favor of the same and 0 against, and accordingly the Mandate was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Permit Collection of Public Assistance Overpayments by Administrative Process (S.P. 471) (L.D. 1463) (Governor's Bill) (H. "A" H-1027 to C. "A" S-532)

An Act to Ensure Quality Psychological Services (S.P. 580) (L.D. 1624) (H. "A" H-1022 to C. "A" S-504)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

Bill "An Act to Authorize Applied Technology Regions to Borrow Funds for Necessary Repairs to Existing Buildings" (H.P. 1479) (L.D. 2005) (Presented by Representative WHITCOMB of Waldo) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Under suspension of the rules, and without reference to a Committee the Bill was read twice, passed to be engrossed, sent up for concurrence and ordered sent forthwith.

MATTERS PENDING RULING

The SPEAKER: The Chair will now rule on four matters that were tabled in the House pending ruling of the Chair.

The Chair has had under consideration L.D. 1891, L.D. 1912, L.D. 1933, and L.D. 1893 relative to a request for a ruling by the Representative from Waterville, Representative Joseph, as to the applicability of Joint Rule 37.

Joint rule 37 reads as follows: "No measure which has been introduced and finally rejected in any regular or special session shall be introduced in any subsequent regular or special session of the same Legislature except by vote of two-thirds of both Houses."

The Chair is aware that all four of these pieces of legislation have been introduced by the Chief Executive. The two sections of the State Constitution that provide for the introduction of legislation by the Executive are as follows:

ARTICLE IV, PART THIRD, SECTION 1...."that the business of the second regular session of the Legislature shall be limited to" (among other items) "legislation in the Governor's call"...

ARTICLE V, PART FIRST, SECTION 9 says, "The Governor shall from time to time give the Legislature information on the condition of the State, and recommend to their consideration such measures, as the Governor may judge expedient."

The Constitution also provides in: ARTICLE IV, PART THIRD, SECTION 4, that "Each House may determine the rules of its proceedings"...

The Chair has researched rulings of his predecessors and cannot locate a case on direct point to this situation before us.

The Chief Executive of this state has traditionally been afforded a great deal of latitude by this institution for the purposes of introducing his or her legislation agenda. The Chief Executive has been traditionally granted an exemption to cloture rules even though that exemption is not expressly granted in the State Constitution. I do not disagree with that exemption. It is, however, not appropriate to waive all rules that this body is governed by when considering the Executive's Legislative agenda. The Executive can always propose, but the Legislature must always dispose of legislation under its constitutionally granted authority to "determine the rules of its own proceedings."

On point and with specific reference to these four bills, the First Regular Session of the 116th Legislature dealt with no less than seven pieces of legislation that address the subject matter contained in L.D. 1891, L.D. 1912, L.D. 1933 and L.D. 1893. L.D.'s 551, 698, 743, 1032, 1255, 1292 and 1296 are substantially the same as the four bills submitted by the Executive.

Though these bills are substantially the same as the items rejected in a previous session, it is at best unclear to the Chair, as to the applicability of Joint Rule 37 to bills that are sponsored by the Executive. To quote a ruling of the Chair of March 29, 1984

"After reviewing the rulings, the principles appear to be applied as follows: First, that Rule 37 has been narrowly construed to allow the greatest possible consideration of legislation by the Legislature, and to limit procedural blocks to that consideration. In simple terms, the Chair has ruled that it has followed the principle that if there is doubt concerning the question, then the bill should be admitted."

There is doubt in the Chair's mind. Therefore, it is the opinion of the Chair and I hereby rule that the provisions of Joint Rule 37 do not apply to these four bills in question.

The Chair would take this opportunity to suggest that this Legislature should review its rules to

clarify this rule at some point in the future. The Chair believes that Joint Rule 37 should clearly state if it applies to measures submitted by the Executive.

The Chair would therefore lay before the House L.D. 1891.

RESOLUTION, Proposing an Amendment to the Constitution of Maine Providing for the Direct Election of the Secretary of State (H.P. 1394) (L.D. 1891) (Governor's Bill)

(Committee on State and Local Government suggested)
TABLED - February 18, 1994 by Speaker GWADOSKY of Fairfield.

PENDING - Ruling of the Chair.

The SPEAKER: It is the opinion of the Chair and I hereby rule that the provisions of Joint Rule 37 do not apply to L.D. 1891.

Subsequently, the pending question is reference. Representative JOSEPH of Waterville moved that the Resolution be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Norway, Representative Bennett.

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I am proud to be the prime sponsor of this measure and I would encourage the House to vote against the pending motion of indefinite postponement so we could go on as we did with a similar (not exactly the same but similar) measure last year and follow the lead that we created there and vote a positive vote on this bill.

I have been proud to sponsor this legislation this year, similar legislation last year, similar legislation a couple of years before that and, in fact, come to the legislature when I was an ordinary citizen and advocate for the popular election of the Secretary of State.

I am pleased with the opportunity to come before this legislature one last time and ask for your consideration of this measure.

I will be brief.

You will recall that last year both the State and Local Government Committee and this House voted favorably on a similar measure to have the Secretary of State popularly elected. Let me recap the points that the House considered and the State and Local Government Committee considered when we looked at this issue then.

When this country was founded it was common practice to have indirect elections; to have the legislature, for instance, elect the United States Senators, as well as many other positions such as these Constitutional Officers. It wasn't until the progressive movement in the early 1900's when that practice became out of vogue, we went to the direct election of the U.S. Senators and, most other states (after around 1860) did turn to the current model of having these positions directly elected or, in some cases, in fewer cases actually, have Constitutional Officers like the Attorney General and the Secretary of State appointed by the Governor.

This bill would call for the popular election of the Secretary of State and, in so doing, it follows a large number of other states. The Secretary of State is currently elected by the public in 36 states. In just eight states the Secretary of State is appointed by the Governor. Only the Legislatures in Maine, New Hampshire and Tennessee choose their respective Secretary of States by the Legislature. Utah, Alaska

and Hawaii have no Secretary of State.

I think there are good reasons that many other states have sought to broaden accountability to this position because, by far, the most significant argument for this bill and for this practice of electing popularly the Secretary of State is not the history albeit it speaks for this bill or what other states are doing. It is the fact that only through popular election can we have the improved accountability that is imperative for an effective, credible, Secretary of State.

The Secretary of State, as we all know, serving as legislators, as we all know, the Secretary of State often has to rule on matters which pertain to the legislature or to individual legislators or, as we all know, to legislative candidates. This position ought to be above reproach and we have been fortunate that we haven't had a lot of serious problems regarding the Secretary of State, although there have been questions raised in recent months and recent years about the Secretary of State. We have been very fortunate that this has not impeded the ability of the person who is serving in that position to do his job. But, if anything, we have been warned by events that it could happen, that we could have a problem in this area. I think that we should take this opportunity to improve the accountability of that office and ensure incredibility, integrity for in perpetuity by amending the Constitution.

There is no more appropriate time than this year to deal with this matter and to send this issue to the people for their consideration. It is a Constitutional Amendment and will require the peoples consideration. This November the people will be electing a new Legislature and a new Governor. It is time for a change and it is a time for overdue reform measures such as this one to be debated publicly and voted by the people.

It is my hope that if we do this we can go a long way to help restore the faith and the trust that is so desperately needed for the people and their government for this government to work.

I encourage you to vote against the pending motion of indefinite postponement so we can go on as we did and have done in previous years to support this concept.

Mr. Speaker, I request 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. Those in favor of a roll call will vote yes; those opposed will vote no.

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

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I will not try to delay this too much longer. It was a year ago when many of these same points were made by my colleague, Representative Bennett, and myself. The hour was late, I believe; the month was June or so. I will just remind you that it was back in 1988 when I, in fact, was a candidate for Secretary of State myself, against then the yet to be Secretary of State Bill Diamond. It was a process that, as I told you before, I suffered from no illusions of what the

eventual outcome will be. When you are your party's nominee and your party is in the minority in both the House and Senate there can be very little question about what the outcome will be when the process is chosen in that manner.

You have been told that we are one of only three states in this country to choose the Secretary of State in this manner. Years ago the members of this body used to choose our U.S. Senators but then in an effort to make them more accountable to the people for whom they are responsible we subjected them to general election as well.

The part that I think is most relevant in this case is the fact that the Secretary of State is responsible for the elections process by which all of us are sent here to represent our constituencies and that to me is enough to make that individual (he or she) accountable to all the people of Maine and not just the members of one party or another.

I hope that if for no other reason than to assure that there not be questions, right or wrong, that there just not be question about the process, that we can go ahead and make sure that accountability is going to be the issue as we go forward.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: I, too, urge rejection of the motion before us so we can go on and pass this measure as we did last year, or, one very similar to it. Pass it as was recommended by the present Secretary of State, by the Secretary of States' Commission that looked at matters that were of great concern to us a year ago and, I think rightfully wanted to remove the elements of suspicion that were surrounding that office, his office, and it appears that someone else might have that position at some other time.

I think those of you in the minority and majority party both have to gain from this measure. (It is not hard to tell that someone other than just the Speaker was here until two o'clock this morning.) The matter before us is one of great concern to two individuals in this body who are running for another office. It tells you how being in that position can lead to suspicion. As recently as last week a matter of petitions filed from people in this body seeking gubernatorial nominations — in one party, petitions that did not qualify were allowed to go through. In another party, petitions that were done exactly the same were ruled upon exactly the opposite.

I don't think the Secretary of State needs to be put in a position where they are subjected to suspicions by members of either political party. I think that this would just simply remove the presence of potential partisan conflict and allow, as we all say we want to do, the people to vote for high political office, the people to make choices. So, I urge your rejection of the motion before us and to go on and accept this measure as we have before.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Joseph of Waterville that L.D. 1891 be indefinitely postpone. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 318

YEA - Adams, Ahearne, Aliberti, Caron, Carroll, Cathcart, Chonko, Clark, Clement, Coles, Constantine,

Daggett, DiPietro, Dore, Driscoll, Erwin, Faircloth, Gamache, Gean, Gould, R. A.; Hale, Hatch, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Gara, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Richardson, Ricker, Rotondi, Rowe, Rydell, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, G.; Townsend, L.; Walker, Winn, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bowers, Brennan, Bruno, Cameron, Campbell, Carleton, Carr, Chase, Clukey, Coffman, Cross, Dexter, Donnelly, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Gray, Greenlaw, Heino, Joy, Kneeland, Lemke, Lemont, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Michael, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Plowman, Reed, G.; Reed, W.; Robichaud, Saxl, Simoneau, Small, Spear, Stevens, A.; Taylor, Thompson, Tracy, Treat, True, Tufts, Vigue, Wentworth, Whitcomb, Young, Zirkilton.

ABSENT - Beam, Cashman, Cloutier, Cote, Fitzpatrick, Hillock, Kutasi, Martin, H.; Nadeau, Ruhlén, Saint Onge, Tardy.

Yes, 70; No, 69; Absent, 12; Paired, 0; Excused, 0.

70 having voted in the affirmative and 69 in the negative, with 12 being absent, the Resolution was indefinitely postponed and sent up for concurrence. Ordered sent forthwith.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Require That the Attorney General Be Appointed by the Governor (H.P. 1403) (L.D. 1912) (Governor's Bill)
(Committee on State and Local Government suggested)
TABLED - February 18, 1994 by Speaker GWADOSKY of Fairfield.
PENDING - Ruling of the Chair.

The SPEAKER: It is the opinion of the Chair and I hereby rule that the provisions of Joint Rule 37 do not apply to L.D. 1912.

Subsequently, the pending question is reference.

Representative JOSEPH of Waterville moved that the Resolution be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from York, Representative Ott.

Representative OTT: Mr. Speaker, Men and Women of the House: This is another proposal that is part of the Governor's package for good government reforms. This proposal is a Constitutional Amendment to change the process of selecting the Attorney General so that the post is appointed by the Governor subject to confirmation by the Legislature. If this measure were approved the Constitutional question would be on the November ballot and the first Attorney General appointed by the Governor would then follow the 1998 election.

Maine is the only state which elects its Attorney General by the legislature itself. There are other states — in fact the majority of them, some 43 in fact, elect the Attorney General but it is by popular election. Five other states have a similar method as is being proposed here and that be that those state, the Attorney General is appointed by the Governor. One state, Tennessee, appoints its Attorney General

by the Supreme Court.

If you look at the concept of our government with the three branches having a balance of power and seeing that we now elect the Attorney General from our branch of the Government it seems to me that we set up an inherent conflict here where the Attorney General, who is supposed to be the Governor's lawyer because most of the work done by the Attorney General is for the Executive Branch, we have a situation where the boss or the client is really in fact the legislature where it should be the Governor's office.

If this resolve were accepted it is my understanding that the Governor's office would set up a process that would allow the creation of an office where attorneys that would be devoted to the work for the legislature. As it stands now we almost create a situation where if a conflict arises and a policy issue has to be resolved by the Attorney General and it is a question being posed by the legislative branch the Attorney General then works for the legislature, the Executive branch is then forced to hire independent council outside which, on many occasions, has run into considerable expense. Having an appointment by the Governor's office would certainly provide, I think, for a more fluid form of administering those problems that arise where legal council is required.

This Resolution is an effort to move the state forward with good government reform. We have talked about that in the past and we talk about it sometimes back home. We have an opportunity here, I think, to make a positive statement. This Legislature, the 116th, that it is prepared to act on what it talks about as good government reform. I ask that you defeat the pending motion to indefinitely postpone this resolve.

Representative BENNETT of Norway requested a roll call on the motion to indefinitely postpone the Resolution.

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

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

The SPEAKER: The pending question before the House is the motion of Representative Joseph of Waterville that this Resolution be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 319

YEA - Adams, Ahearne, Aliberti, Bowers, Brennan, Bruno, Cameron, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Coffman, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Dutremble, L.; Erwin, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heeschen, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Kilkelly, Kontos, Larrivee, Lemke, Lord, Martin, J.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Norton, O'Gara, Oliver, Paradis, P.; Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Richardson, Ricker, Rotondi, Rowe, Rydell, Saxl, Simonds, Skoglund, Spear,