

MAINE STATE LEGISLATURE

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One Hundred and Nineteenth Legislature
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(In House, May 18, 1999, Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-580)** READ and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-580)**.)

(In Senate, May 18, 1999, Reports **READ**.)

On motion by Senator **GOLDTHWAIT** of Hancock, Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-579)** **ACCEPTED**, in **NON-CONCURRENCE**.

READ ONCE.

Committee Amendment "A" (H-579) **READ** and **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

Senator **PINGREE** of Knox was granted unanimous consent to address the Senate off the Record.

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

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

On motion by Senator **PINGREE** of Knox, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **CRIMINAL JUSTICE** on Resolve, to Enhance Fire Protection Services throughout the State
H.P. 1017 L.D. 1428

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-557)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-557) AS AMENDED BY HOUSE AMENDMENT "A" (H-586)** thereto.

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

READ ONCE.

Committee Amendment "A" (H-557) **READ**.

House Amendment "A" (H-586) to Committee Amendment "A" (H-557) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-557) as Amended by House Amendment "A" (H-586) thereto, **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on **RESOLUTION**, to Amend the Constitution of Maine to Elect 2 Senators from Each County
H.P. 452 L.D. 615

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-408)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - May 18, 1999, by Senator **GOLDTHWAIT** of Hancock.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**

(In House, May 18, 1999, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 18, 1999, Reports **READ**.)

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

Senator **PENDLETON:** Thank you Mr. President. Men and women of the Senate, I hope that you will vote against the Ought To Pass As Amended Committee Report. The reason I voted the way I did on the Minority, is because although this piece of legislation does have some redeeming factors, such as a four year term for Senators, the problem is that in the amended legislation it would require that our districts be solely by county line. There would be two Senators elected from each county. Therefore, it's questionable whether this piece of legislation is actually constitutional. In our deliberations the Committee found that, I have summaries here, many court decisions that speak

against this piece of legislation. So I hope that you will vote with me against accepting the Majority Report.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I am willing to share my county with one other Senator. This Bill, I think is an excellent vehicle to raise a very important debate for our State regarding issues that we have talked about at some length that we sometimes call the other Maine, and the two Maine's and all those things. This is a Bill that is an honest effort to address the fact that there is a bit of an imbalance of power regarding the regions in our State. I was thinking as the good Senator from Cumberland, Senator Pendleton's microphone cut out there for a second, what a sad thing it is to not have a voice. This is a Bill that would give us a stronger voice on a more equal footing to all areas of our State. I recognize that this Bill faces an uphill battle. It actually started out of our Committee with a 12 to 1 Report, and after a series of re-thinking we are now down to an 8 to 5 Report. Nevertheless, it still is the Majority from the Committee. I would venture to guess that there would not be a soul in this building or in the State of Maine who would advocate changing the Federal system to correspond to our State system, and have the Senators elected by population because that would probably mean about 10 from New York and 10 from California, and one representing all of Maine, New Hampshire, and Vermont. And for the very same reasons and fears that, that would create in the mind of the public of Maine, namely that we would have a very inadequate voice in the federal level of government. So too, do we feel that having representation for person, is appropriate for one body of the Legislature, but can be equalized in terms of regional representation by electing two Senators from each county. It is true that a Federal Constitutional issue has been raised regarding this Bill, in that, the Federal Constitution does require one man, and I'm quoting, one vote. However, they notwithstanding themselves and therefore are able to have a system that flies in the face of that provision. Although we are allegedly proscribed from so doing. However, that is a decision that was upheld by a court case some 40 years ago, by a court that is vastly different in profile than the existing court. And there are a number of court decisions which actually question the validity of that decision. So I would submit that this matter is not entirely resolved, and by passing this Bill we may be able to get it resolved by an updated court decision on that. And certainly, the matter is unclear enough to persuade me that it is still worth supporting this Bill, which would give a much more adequate voice to all regions of our State. If there is a constitutional issue I am sure it will be raised down the line. It does, as the good Senator from Cumberland mentioned, have some other assets including a four year term for Senators, and I would urge you to support the Majority Ought To Pass decision of this Committee. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I too rise in support of this legislation with my colleague, the good Senator from Hancock, Senator Goldthwait. When in 1776, our fore fathers built our Constitution and fashioned our national government, they clearly understood that the power of the government had to be distributed as evenly

and fairly as possible. And in doing so, they fashioned our National Congress with the House of Representatives based upon population. However, having the foresight they fashioned the Senate, the United States Senate, to be two people, two Senators per state. That has worked very well for over 200 years. And in fact, it still stands today, as you all know, that the more popular states, such as California, and New York, have unyielding influence in the House of Representatives. However, when it comes to influence in the United States Senate, the State of Maine holds equal with them. The counties are not indifferent to the states. I represent all of Piscataquis County, eight towns in Penobscot Country and three towns in Somerset Country. And yet there are eleven of you that represents parts or all of Cumberland County. I dare say that the interest of Piscataquis County is secondary in most of your minds. The same counties also had numerous Representatives in the House of Representatives. I'm not sure of the count in Cumberland County, but I can tell you in Piscataquis County we have three. And I'm sure that Cumberland County is far more than the three that we have in Piscataquis County.

There are many reasons to do this. In the national congress, there are what I refer to as the so-called cosmopolitans. From California they are referred in Nevada, Colorado, and Wyoming as the, 'fly over states'. Not to be bothered with until such time as it comes to pass legislation then they have to be listened to. I think the same should be for Aroostook, Piscataquis, Washington, and Franklin County, which now has just three Senators. I think the debate would do our State good. We constantly hear of the two Maine's, The farther north you go, the more you hear of it. Of the economic imbalance and everything that occurs. Same as the south. A equal representation in one of the body's of the legislature would make the difference.

Mention was made that, perhaps, it is unconstitutional. In 1963, Baker versus Kerr, the Court did rule the one man - one vote. However, today it is a different court, and a new challenge might prove differently. Just as in 1898, separate but equal was upheld. But 50 years later in Brown versus The Board of Education it was struck down and changed. Maine has a long history of doing what is right. The bottle bill referendum was voted down by the people. In 1971 the people of our State voted to retain the state income tax, because they felt it was the right thing to do. I believe that the people, given a proper debate, might very well embrace this notion of two senators per county. I would like to see it happen. Think of how Maine would be today, when in the 1960's, the good citizens of this State eliminated the big box at the top of the ballot. Prior to that we were a one party dominated State. And the box was eliminated and it opened up the elections. I would urge you all to support the Senators motion. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate, sending this question out to the people, which is what this Bill proposes to do, means that there will be considerable expense to the people of the state on a question that on its face, is clearly illegal. It's unconstitutional, and we all know it in this chamber. I've heard some expression today that while a court 40 years ago did this, and some judges today may be different. I would suggest to you that's a complete waste of time trying to read the minds of judges. I'm not passing legislation on that basis. I think it is a folly. I think you're headed in the wrong

direction and I say that respectfully. We should not be enacting laws and trying to mind read. I'm disappointed that the Committee didn't go to the Attorney General and get some kind of a ruling given that this is going to be, or could be, an expensive situation to send out to the public. Maybe that happened, and if the Committee does have an opinion of the Attorney General that this is, if enacted unconstitutional fine, but I haven't heard anything yet. I think as a condition precedent to sending this out to the expense of the people and so forth, that given the importance of this, we ought to have an opinion of the Attorney General that this is valid. And I think when you get this measure looked at by counsel, looked at by the constitutional scholars, it will be determined that this is an unconstitutional effort. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President. Men and women of the Senate, as a Senator from a small county I'd have to say this Bill is particularly appealing to me, and I'm going to spare the Senate any discussion of those large counties with excessive numbers of Senators who may perhaps not want to vote for this Bill. But I do want to take a moment to ask a Parliamentary Inquiry of the Chair.

THE PRESIDENT: The Senator may pose her Parliamentary Inquiry.

Senator **PINGREE:** There has been some discussion as to if this Bill were to pass, which Senator from Franklin County would stoke the fires during the first day we're here?

THE PRESIDENT: The Chair is not allowed to inquire into the motives of the Senator from Franklin, Senator Benoit, in making his vote, so the Chair chooses not to answer that question.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President. Colleagues in the Senate, I can't help myself, I apologize. I'm a history, teacher and I heard a misfact about the election of the U.S. Senate. I appreciated the history most of which was accurate, but basically it's the 17th Amendment that allows for two U.S. Senators per state, just to correct the Record. And thanks for letting me try to make sure we get our history right. Thank you.

On motion by Senator **BENNETT** of Oxford, 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 opened the vote.

ROLL CALL (#109)

YEAS: Senators: **BENNETT, CASSIDY, DAGGETT, DAVIS, FERGUSON, GOLDTHWAIT, KIEFFER, PINGREE**

NAYS: Senators: **ABROMSON, AMERO, BENOIT, BERUBE, CAREY, DOUGLASS, HARRIMAN, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MILLS, MURRAY, NUTTING, O'GARA, PENDLETON, RAND, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

ABSENT: Senators: **CATHCART, MICHAUD, MITCHELL, RUHLIN**

EXCUSED: Senators: **KILKELLY, KONTOS, PARADIS**

8 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 4 Senators being absent, and 3 Senators being excused, the motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Require Testing for HIV and Blood-borne Pathogens of All Prisoners in the Maine Correctional System"
H.P. 658 L.D. 914

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-478)** (4 members)

Tabled - May 18, 1999, by Senator **FERGUSON** of Oxford.

Pending - motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**. (Division requested)

(In House, May 18, 1999, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-478)**.)

(In Senate, May 18, 1999, Reports **READ**.)

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

On motion by Senator **LONGLEY** of Waldo, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**. (Roll Call Ordered)

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