

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Fourth Legislature
State of Maine

Volume II

First Regular Session

May 28, 2009 – June 12, 2009

Second Regular Session

January 6, 2010 - March 23, 2010

Pages 609-1214

FINALLY PASSED in the House on June 2, 2009. (Having previously been **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-353)**)

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-353) AS AMENDED BY SENATE AMENDMENT "A" (S-330)** thereto in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

Non-Concurrent Matter

An Act Regarding the Pay of Tribal Representatives (EMERGENCY)

(S.P. 512) (L.D. 1428)

PASSED TO BE ENACTED in the House on June 3, 2009. (Having previously been **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-256)**)

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-256) AS AMENDED BY SENATE AMENDMENT "A" (S-331)** thereto in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

ENACTORS

Emergency Measure

An Act To Improve Opportunity in the Maine Woods

(H.P. 1049) (L.D. 1492)

(S. "A" S-333)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 143 voted in favor of the same and 1 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

SENATE PAPERS

Non-Concurrent Matter

An Act To Implement the Recommendations of the Ad Hoc Task Force on the Use of Deadly Force by Law Enforcement Officers Against Individuals Suffering From Mental Illness

(H.P. 805) (L.D. 1166)

PASSED TO BE ENACTED in the House on June 2, 2009. (Having previously been **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-413)**)

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-413) AS AMENDED BY SENATE AMENDMENT "A" (S-337)** thereto in **NON-CONCURRENCE**.

On motion of Representative HASKELL of Portland, the House voted to **RECEDE AND CONCUR**.

Non-Concurrent Matter

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Reduce the Size of the Legislature

(H.P. 123) (L.D. 144)

FAILED OF FINAL PASSAGE in the House on June 3, 2009. (Having previously been **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-135) AS AMENDED BY HOUSE AMENDMENT "A" (H-252)** thereto)

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-135) AS**

AMENDED BY SENATE AMENDMENT "A" (S-322) thereto in **NON-CONCURRENCE**.

Representative BEAUDETTE of Biddeford moved that the House **RECEDE AND CONCUR**.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Beaudette.

Representative **BEAUDETTE**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Yes, I'd like to provide a little bit of information. The other body has attached an amendment to LD 144 and the effect of that amendment is to not prescribe that anything be done immediately to reduce the size of the House of Representatives, but instead it seeks to get that authority from the people of Maine. In its amended version, it facilitates a 2010 ballot question requesting the legislative authority from the people, which the House currently does not have, to keep the number of Representatives in the House the same, or to change it to either 141 or 131. The Legislature would make the call. This is modeled after the Senate's current constitutional authority to self regulate at either 31, 33 or 35 Senators. This amendment is not originating from the Appropriations' table, and I suspect that the sponsor of LD 144, the good Representative from Winthrop, will provide more detail on this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Flood.

Representative **FLOOD**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Thank you to the Representative from Biddeford, Representative Beaudette. He covered some of the things that I was going to cover with you. I mostly wanted to say to the body thank you for the good debate about a week and a half ago on this topic. I learned a great deal. I learned a great deal about the very legitimate concerns that people had for this bill and spent a lot of time trying to find a way that would accomplish two things: One, get seven more votes in this chamber; two, to recognize the public's concern that we should consider this idea and think about this idea and show some activity on this premise of the size of the Legislature. I think that's a public expectation and I would like to see us achieve something there. But I also recognize the very legitimate concerns that members of this body had about being prescriptive in nailing down a certain number by a certain date, and I understood those concerns. What I tried to put together was something mimicking the other body, whereby they, in around 1969 or 1970, asked the same question of the public and got the constitutional authority to have a body that has a range of either 31, 33 or 35 members, and that decision is left to the Apportionment Commission, which is really a reach of the Legislature itself.

In developing this, I thought that using the numbers that we had already come up with—131 as kind of a low end, 141 as a middle ground, and 151, our current size—might make a lot of sense, and it's the same type of range that is in the other body, about a 10 or 12 percent flexibility range.

The comments that I heard from good colleagues in this building indicated to me that there was discomfort with prescribing something immediately, and that's why I've struggled to try to find a way that would accomplish my goal of sending a message to the public that we've listened, but also accomplished the goal of this Legislature and maintaining some control over this matter. And actually what will happen here, if we enact this and the public supports it in a referendum, we'd actually be granting to this body a right or an authority that we currently do not have, and I think that's probably a good way to leave this. The ballot question then would read, as a handout I've given to you might indicate, the ballot question then would say: Do you

favor amending the Constitution of Maine to alter the size of the House beginning in 2015 from the current 151 members to a number of members equal to 131, 141 or 151, the specific number to be determined by the legislative Apportionment Commission?

I do want to spend a little time talking about the commission itself. They do the work in the year 2013, the year 2023 to 2033, 2043, they do that work and then they bring that back to the Legislature. We second their activities with a two-thirds vote in both of the chambers, so we would still have that authority.

I hope this amendment indicates to you that I listened very carefully to your concerns, I'm still listening very carefully to the public concerns, and I hope that this way we can find a good common ground solution. I thank you very much, and I believe I'd like to have a roll call.

Representative FLOOD of Winthrop **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Valentino.

Representative VALENTINO: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I rise today to oppose the motion currently on the floor. I find the amendment insulting, insulting to this chamber, insulting to the voters. I've seen a lot of bills in the last five years be watered down, some have been half aloof, some have been so watered down it's barely like the bill. This, to me, should not be put out. We're going to send a question out to the voters in 2010: Do you favor amending the Constitution of Maine to alter the size of the House of Representatives to a number equal to 131, 141, 151, the specific number to be determined by a legislative apportionment commission? We're going to send a referendum, a constitutional referendum out to the voters? We're going to spend our money, we're going to spend the taxpayers' money to send this out because we were seven votes short to do something that we all know they want us to do, because we couldn't vote, rather we did vote the other day and I praise every person in this chamber, we voted to save \$11 million to do something about the House. This is an insult to send this out to the voters, when this chamber should be able to vote and do something itself. I do not see us spending a penny on this, not a single solitary penny until we can have something that the voters absolutely understand and know what they're voting on, and I urge all of you to vote against this motion so we can adhere and at least let it die in non-concurrence. Because the only thing that we are going to accomplish today is, if we vote to Recede and Concur, is to spend taxpayers' money and then go out and put all of it on our campaign brochures, we passed LD 144, we passed a resolution to reduce the size of the Maine Legislature, and that is phony and I am not going to vote for this. This is why we should slow things down and know what's on our desk in the last few days, so I'm glad everyone's paying attention. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Dill.

Representative DILL: Thank you, Madam Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative DILL: I noticed with the amendment, the fiscal note just talks about the savings that we would have if in fact the Legislature was reduced, but there is no fiscal note associated with the cost of the referendum and I'm wondering if anybody has that figure for us to consider. Thank you.

The SPEAKER: The Representative from Cape Elizabeth, Representative Dill has posed a question through the Chair to

anyone who may care to respond. The Chair recognizes the Representative from Winthrop, Representative Flood.

Representative FLOOD: Thank you, Madam Speaker. The general way that all these questions have been dealt with by the Office of Fiscal and Program Review is that, generally, they'll have a phrase in there that says something about if this requires an additional ballot at the time that it's sent out, it would cost \$107,000. I think that's the standard language, and I think they say it that way because they have no way of knowing whether there's going to be an extra ballot or not. Thank you.

The SPEAKER: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative CAMPBELL: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I think everybody's getting all riled up over nothing. I have a good suggestion. It received a favorable vote in the other body, 30-5, and in the House, 89-54. So I suggest that we put an amendment to get rid of the 30 Senators down there that was favor vote and get rid of Representative Flood and 89 others that voted for it here, and we'd be down right where we should be. So my suggestion is that I'll probably put an amendment to get rid of the 30 Senators and 89 Reps, and everybody will be happy.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative SYKES: Thank you, Madam Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative SYKES: Does the Senate Amendment (S-322) make any procedural changes? Do we still need to put this out to the voters, a two-thirds vote in the House and the other body?

The SPEAKER: The Representative from Harrison, Representative Sykes has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Thank you, Madam Speaker. I was not planning on getting in the middle of this one again, but I guess so willing to ask questions. I'll give you a little history. Remember that the other body was set at 33. A number of years ago we went through this concept and being concerned, once *Reynolds v. Sims* was announced by the Supreme Court, that some of us were concerned that the rural counties would get no representation, especially Piscataquis County. And so we decided that perhaps there is a way in which we could deal with that and let the Apportionment Commission decide the future of what would happen, and so we asked the voters to accept 31, 33, 35 concept. And so then the Reapportionment Commission, taking a look at what would happen if you were to go to 31, or to 33 that was then in existence, what would happen to Piscataquis or Washington or eventually Somerset and probably Aroostook, at the rate things are going, and so we decided that we ought to go that particular year, this would be two apportionments ago to 35, and that's why we structured that. Now some people have asked me about this proposal and the reason I'm going to vote for it, because that matter would be left up to the Apportionment Commission, that it could be 131, 141, 151, and the voters can decide whether or not they want to accept that.

As I told you last time that one of my greatest concerns is that whatever meeting I go to, whatever issue we talked about, that the issue is always raising, and I don't know who's raising it but it's being raised: Why don't you cut the size of the Maine House? And what this does is it allows the Apportionment Commission to take a look at what ought to be the right size and you have the flexibility then to do that at that time. The decision would be made by the Apportionment Commission and, subsequently, by

the Legislature every ten years. That's why I think it makes some sense, and it would finally get the issue out of here and out of the newspapers, and people would then feel as if they have some ability to control what happens with the size of the Maine Legislature, that simple. And it's not rocket science. You're either for or against it. It's whether or not you want to let the people vote for it.

The SPEAKER: The Chair recognizes the Representative from Blue Hill, Representative Schatz.

Representative **SCHATZ**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. I rise in opposition to the Recede and Concur motion. I won't spend much time on that. It seems to me we've discussed this fully last week, or whenever that was, and all we can do I think at this point is create a tar baby, and it seems to me we need to save our tar for the roads. So I would hope people will support the resistance to Recede and Concur.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Berry.

Representative **BERRY**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. I rise in opposition to the pending motion and with great respect for those that have worked very hard on this bill and on the amended version of the bill as well. I want to compliment the Representative from Winthrop, Representative Flood, for his very, very tenacious efforts in this regard, and I also want to compliment the good Representative from Eagle Lake, Representative Martin, and both of them are certainly my elders and my betters in many respects and I, above all, do not question their good intentions with respect to this proposal. But I have to say that in reading the bill and the amendment specifically that I am reminded of another Yogi Berra quote that says you have to be very careful if you don't know where you're going, because you might not get there.

First of all, I think that reapportionment is complex and political enough as it is without throwing this additional complexity and lack of certainty into the mix for the Legislature that would be affected by it.

Secondly, I'll be repeating myself here, but I've talked about how this body is truly the body of direct democracy and direct access to one's elected officials in Augusta. We are the most accessible legislators, the most accessible state policymakers, and the reduction, even to 131, would save 68¢ per Maine citizen—68¢. At what cost? At a cost of 15 percent to representation, 15 percent accessibility, your Representatives.

And third and finally and very importantly, I think that there is a significant error in the amendment that's being put forward. The amendment currently reads that the Legislature that convenes in 2015 and thereafter would consist of 131, 141 or 151 members. Madam Speaker, Men and Women of the House, there is no Legislature that convenes in 2015. There is a Legislature that convenes in 2014, but I think, as written, unfortunately this amendment would have no meaning, it would need to go back to the drawing board and I think it's a little late in the session for doing so, so I hope that those that have read it carefully and thought about that. That Legislature, again, would convene in December 2014, would give that some thought as well and vote against the pending motion. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from New Gloucester, Representative Van Wie.

Representative **VAN WIE**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I rise with regret. I cannot support the motion on the floor and I apologize to my very good colleague, Mr. Flood, the Representative from

Winthrop, I know he's worked very hard on this and I've grown to know him and respect him very much through this process. My concern is this just does not send a clear message to the voters that we've made up our minds that we want to do this. I am concerned that the proposed amendment would be very confusing to the voters and that it would lead to quite a bit of confusion over how and why we're doing this, and I'm afraid that it could actually backfire. So I will not be supporting the motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Martin.

Representative **MARTIN**: Thank you, Madam Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **MARTIN**: I just would like to ask a point for clarification of the Representative from Winthrop, Representative Flood, when he talked about the cost of putting this out to a ballot. Did he say \$107,000 or \$170,000?

The SPEAKER: The Representative from Orono, Representative Martin has posed a question through the Chair to the Representative from Winthrop, Representative Flood. The Chair recognizes that Representative.

Representative **FLOOD**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I am quite sure that all the fiscal notes that I've seen that deal with these ballot questions say \$107,000, if an extra ballot needs to be turned out. I believe that's right, I'm going from memory there but I think that's right.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cain.

Representative **CAIN**: Thank you, Madam Speaker. Regardless of the specific amount, I think the bottom line is to understand that anything that goes out to the people has a fiscal note potentially because it makes the assumption that we may or may not be having an election anyway at that particular time. If there is already an election and there is already a ballot, the cost is relatively insignificant, if at all, to print another question on the ballot. The real issue comes if a second ballot is needed, or if a special election is needed, just to simply hold it for this particular question. For example, if it was going out this coming November, where we know there's already things that are going to be on the ballot, it would likely have little to no impact on the cost. It would really depend on if there was another ballot or not and we are not able to make that determination at this time. Thank you, Madam Speaker.

Representative **MARTIN** of Eagle Lake moved that the House **RECEDE**.

On further motion of the same Representative, **TABLED** pending his motion to **RECEDE** and later today assigned.

REPORTS OF COMMITTEE Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Clarify the Role of the Public Advocate"

(H.P. 657) (L.D. 954)

has had the same under consideration, and asks leave to report:
That the House **RECEDE** and **CONCUR** with the Senate.

Signed:

Representatives:

WAGNER of Lyman

THIBODEAU of Winterport