

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Sixth
Legislature*

OF THE

STATE OF MAINE

Volume II

April 23, 1973 to June 5, 1973

KENNEBEC JOURNAL
AUGUSTA, MAINE

On motion of Mr. Haskell of Houlton tabled pending reconsideration and tomorrow assigned.

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

Bill "An Act Relating to the Appointment of Active Retired Judges of the District Court" (H. P. 566) (L. D. 745)

Tabled — May 15, by Mr. Perkins of South Portland.

Pending — Acceptance of Committee Amendment "A" (H-365).

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, I would move indefinite postponement of Committee Amendment "A" and would speak briefly to my motion.

The SPEAKER: The gentleman from South Portland, Mr. Perkins, moves the indefinite postponement of Committee Amendment "A".

The gentleman may proceed.

Mr. PERKINS: Mr. Speaker and Ladies and Gentlemen of the House: Committee Amendment "A", it was brought to the attention of the committee that the statute with the amendment was still going to be unclear as to what active retired judges were going to be paid. Therefore, we took it back to committee and a new amendment has been drawn. It is on your desks and will be introduced at the appropriate time.

Thereupon, Committee Amendment "A" was indefinitely postponed and the Bill assigned for second reading tomorrow.

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

Bill "An Act Relating to Membership on the State Board of Barbers" (H. P. 844) (L. D. 1118) (C. "A" H-336).

Tabled — May 15, by Mr. Simpson of Standish.

Pending — Motion by Mr. LeBlanc of Van Buren that the House reconsider their action whereby they voted to recede and concur.

Thereupon, the House reconsidered its action whereby it voted to recede and concur.

On motion of Mr. LeBlanc, the House voted to recede.

The same gentleman offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-390) was read by the Clerk.

On motion of Mr. Dyar of Strong, tabled pending the adoption of House Amendment "A" and specially assigned for Friday, May 18.

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

Bill "An Act to Revise the Election Laws" (S. P. 613) (L. D. 1916) (H. "A" H-377).

Tabled — May 15, by Mr. Binette of Old Town.

Pending — Motion by Mr. Jalbert of Lewiston to adopt House Amendment "C" (H-382).

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

Mr. ROSS: Mr. Speaker, Ladies and Gentlemen of the House: One of the chief recommendations of the Municipal Clerks Association — and at the public hearing, the clerks were well represented, both from large cities and the smaller towns — and this recommendation was that absentee ballots could be counted at central places if the municipalities so desired. This was to save time and assure accuracy.

Remember, it is voluntary by municipalities. The procedures will be monitored by members of both parties. And in that way, more people will observe these procedures than now do in the individual wards.

This House Amendment "C" eliminates all of this procedure, and I now move the indefinite postponement of House Amendment "C".

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: I have an amendment that will correct the situation as was discussed by the gentlewoman from Portland, Mrs. Boudreau, which will be explained by more learned people than I. I hope that you don't postpone this amendment, so that I can present

the other amendment, which will correct the situation.

The SPEAKER: The Chair recognizes the gentleman from Casco, Mr. Hancock.

Mr. HANCOCK: Mr. Speaker and Ladies and Gentlemen of the House: I think there are a few things I would like to call to your attention, although the gentleman from Bath, Mr. Ross, and certainly the gentleman from Lewiston, Mr. Jalbert have emphasized many of the points here.

One, this legislation, as is presented in the Omnibus Election Laws Bill, is, as Mr. Ross indicated, permissive. No municipality need exercise this unless its municipal officers — its city council elects to do so. The situations that might pertain in a City like Lewiston they handle by themselves, in Portland by themselves, and in smaller communities that have only one voting precinct it is not a factor.

It is also — with the amendment that was offered and adopted by this House, it is underlined in the bill that members of both political parties will be present when these absentee ballots are counted. So if the political parties are operating effectively, I am sure that they will have their own watchers present.

Now, I hate to disagree with my good friend, the gentleman from Lewiston, Mr. Jalbert, but as I read his Amendment "B" to L. D. 1916, he is striking out the underlined punctuations in Section 51, and in the amendment it is stated what they are. But in House Amendment "C" he has eliminated item 51 in its entirety, and I don't see how you can amend something that is not there to be amended.

So, I think that I will go along with the motion of the gentleman from Bath, Mr. Ross, for indefinite postponement; and perhaps between us all we can work out a suitable amendment that will be pleasing to all parties.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: I hope that the gentleman from Casco, Mr. Hancock, can do that. I would like

to thank him for saying that I had covered the situation quite well. Frankly I didn't think that I had said too much.

The SPEAKER: The pending question is on the motion of the gentleman from Bath, Mr. Ross, to indefinitely postpone House Amendment "C". All in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken. 75 having voted in the affirmative and 15 having voted in the negative, the motion did prevail.

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

Mr. MARTIN: Mr. Speaker, I present House Amendment "B" and move its adoption and would speak briefly to my motion.

House Amendment "B" (H-381) was read by the Clerk.

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

Mr. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: This issue was debated at some length some time ago.

Basically, the issue is very simple. The way that the committee reported out the bill, it says that a distinguishing mark is one where the signature is used or initials are used. Anything else is not a distinguishing mark. This amendment would revert it back to the old law that we presently are now using as to what a distinguishing mark ought to be.

It seems to me that there are other ways than signatures or abbreviations on how a distinguishing mark can be made on a ballot, so that someone else knows how the ballot is being used by someone either being paid or returning a promise.

So I would ask you to vote for adoption of House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Oakland, Mr. Brawn.

Mr. BRAUN: Mr. Speaker, Ladies and Gentlemen of the House: This is part of my bill that I had put in here; and because up in my district they go in at

eight and ten o'clock in the morning and are there until six o'clock the next morning — and I saw a recount here with a girl that had used just her pencil, and she didn't turn the pencil over every time. As she picked up the ballot, it made a short mark upon the back of that ballot, the reverse side. This threw those ballots out.

Gentlemen, I don't care if they draw Santa Claus on the back of that ballot. I don't want them to have to look at the back of that ballot whatever. But if they want to have, just as it is now, the name or the initials to throw it out, I will go along with that.

I hope you go along with not accepting Amendment "B", because every clerk or counter must turn that ballot over. The way the law reads now, if there are any smudges on the back of that ballot or any marks at all, I don't care how big, that ballot has got to be thrown out. So, I hope that you will go along and not accept Amendment "B".

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

Mr. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: There is a provision in this bill that says that if whenever election workers are counting, they shall use only red pencil so there won't be any way that that is going to occur again.

Secondly, in reference to the Santa Claus issue, I think that is just the point. Someone could say, look, for every Santa Claus that appears on that ballot, I am going to give you five bucks, and in that process there is a distinguishing mark, there was a promise made, there is a payoff. That, as far as I am concerned, is a way of deceiving and paying off for votes. It seems to be a way we should not allow.

There are many many ways of seeing to it that election workers are told what is a distinguishing mark. I can just think of a star for example on the top of the ballot that can be used to indicate that they voted for "X" candidate or they voted for "X" party, and I

don't think that we ought to allow that type of situation to occur.

The SPEAKER: The Chair recognizes the gentleman from Oakland, Mr. Brawn.

Mr. BRAUN: Mr. Speaker, Ladies and Gentlemen of the House: The person marking this ballot is not the person who is going to count it or ever see it again. So, I don't think this argument will hold up.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker and Members of the House: Maybe the gentleman from Oakland will understand one argument that will stand up. We had someone in the past in the Waterville area who would take out absentee ballots and would number the back of the ballot with a small number. He kept a log as to who was getting what particular ballots, so that at any time that they were going through an inspection of ballots or a counting of the ballots, all he had to do was have an election worker — and in some of these communities that is quite simple to do — have one of these election workers keep track of what number was voting which way. Then all he had to do was check in his book to see if they voted the way he had wanted them to vote or not.

Now, I think that is a little more sophisticated than the Santa Claus.

The SPEAKER: The Chair recognizes the gentleman from Casco, Mr. Hancock.

Mr. HANCOCK: Mr. Speaker and Ladies and Gentlemen of the House: My very good friend, the able gentleman from Eagle Lake, Mr. Martin, and myself are in basic disagreement on this issue. And apparently also my friend from Waterville disagrees with me too. I am one of those who is not concerned about distinguishing marks on the ballot. The reason that I am not concerned is this: Distinguishing to whom? In the process of counting ballots, in the process of recounts, it becomes very difficult and it is a very tenuous thread that leads from the person who has sold his vote, if such a person literally exists, and the person who is buying it.

Distinguishing to whom? How is it pinned down and how is the guy paid off? I think we are just creating an awful lot of trouble.

I would like to have you also examine the other side of the issue, the one that the gentleman from Oakland, Mr. Brawn, has touched on. When we get into recounts, particularly when we get into statewide recounts, any mark on that ballot, any mark at all, may well be challenged by one of the attorneys from either side. Once an attorney challenges a particular type of ballot, the other side has to challenge that ballot also. I have been through many recounts, both local and statewide and I am sure that there are many in this House who have had the same experience. And we all know of the number of ballots that can be put to one side because they have been challenged as having distinguishing marks.

I would maintain to you, ladies and gentlemen, that there are very very few marks made to distinguish a ballot for the purpose of indicating, yes, you bought my vote, and yes, I delivered it to you. But what does happen is that many legitimate voters are disenfranchised because of the fact that there is some mark, some smudge, some indication on that ballot that is challenged by one of the attorneys.

I hope very much that this amendment is not adopted. At this time, I would move for the indefinite postponement of House Amendment "B".

The SPEAKER: The Chair recognizes the gentleman from Oakland, Mr. Brawn.

Mr. BRAWN: Mr. Speaker and Ladies and Gentlemen of the House: My good friend from Waterville, Mr. Carey, whom I do admire, I am wondering if he watches these people what they vote and if they are counted, when these are thrown in the box and taken out, how he knows whose vote was whose?

The SPEAKER: The pending question is on the motion of the gentleman from Casco, Mr. Hancock, that House Amendment "B" be indefinitely postponed. All in

favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

Thereupon, Mr. Martin of Eagle Lake, requested a roll call vote.

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 Chair recognizes the gentleman from Standish, Mr. Simpson.

Mr. SIMPSON: Mr. Speaker and Ladies and Gentlemen of the House: I rise this morning to oppose the indefinite postponement of the amendment and to support the gentleman in the far corner for a change.

We discussed this quite considerably the other day after the bill came out. You know, there are many discrepancies here and I realize that there are many ways and different things that can involve the ballots and interfere with elections. But really, if you take a look at the bill the way it is, without the amendment, it just comes down to the point that the only way a ballot could be thrown out is by the use of somebody's initials or by the signature. That would not preclude me from going in the ballot box and writing somebody else's name or signature on that, I don't know why I could want to destroy my own ballot, but it could be.

I believe that we ought to leave the law as it is and we ought to have the amendment on the particular bill.

The SPEAKER: The Chair recognizes the gentleman from Oakland, Mr. Brawn.

Mr. BRAWN: Mr. Speaker and Ladies and Gentlemen of the House: I would like to ask a question of our floor leader. Is he speaking as a floor leader or for himself?

The SPEAKER: The gentleman from Oakland, Mr. Brawn, poses a question to the gentleman from Standish, Mr. Simpson, who may answer if he wishes.

Mr. SIMPSON: Mr. Speaker, I am speaking as a floor leader.

The SPEAKER: The Chair recognizes the gentleman from Oakland, Mr. Brawn.

Mr. BRAWN: Mr. Speaker and Ladies and Gentlemen of the House: Then I think we should be advised ahead of time. If this was told to us it never would have happened.

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

Mr. MARTIN: Mr. Speaker and Ladies and Gentlemen of the House: I perhaps should have said the same thing. This is something that we discussed at great lengths. Everyone seemed to feel that this was the right approach. We had already taken a House vote on the bill presented by the gentleman from Oakland, Mr. Brawn, that had been soundly defeated. It seemed clear to me, anyway, that the position of the House, of this full House, was to go in that sense in offering that amendment.

Let me just respond one step further. I am really concerned that we take every opportunity we have available to protect the right of the people who vote and we have to protect the secrecy of that ballot.

It seems to me that whatever is going to allow someone to write numbers on a ballot, to make stars, to give them any opportunity where they can actually find out how someone has voted, then we are going beyond what we ought to be doing. So I would ask you to vote against the motion of indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Chelsea, Mr. Shaw.

Mr. SHAW: Mr. Speaker and Ladies and Gentlemen of the House: I agree with my good friend from Casco, Mr. Hancock. It gets to be ridiculous when you get into a recount and somebody passes the word along that it is getting close and all of a sudden perfectly good

votes are being thrown out because the Secretary of State's name isn't printed correctly maybe or a piece of ink slipped on it or something and for no reason at all, they will throw 50 ballots out so the lawyers can fight over it.

It is ridiculous to have something like this in here.

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

Mr. MARTIN: Mr. Speaker and Ladies and Gentlemen of the House: I have been in a number of recounts. I have never seen a ballot thrown out because the Secretary's name was not properly printed on the front of the ballot. It is a problem, however, when the person who is doing the counting signs someone's name or when the voter signs their name. But that is altogether a different issue.

The SPEAKER: The Chair recognizes the gentleman from Casco, Mr. Hancock.

Mr. HANCOCK: Mr. Speaker and Ladies and Gentlemen of the House: We have knocked this thing around almost enough I guess. I would like to emphasize again that this business of distinguishing marks where a person has literally sold his vote and somebody has literally bought it occurs very very rarely. And the process of tracing it through so that someone can determine that the vote that he has bought has actually been produced is almost impossible to do. But what does happen under our present law and what we are trying to correct is the disenfranchisement of voters for whimsical reasons, this is what we want to get rid of.

The gentleman from Chelsea is entirely correct. When these recounts get close and when there are issues concerning the chance marking on the ballot by anyone's pencil, any one of the counters, any one of the ballot clerks, the voter himself, this can be thrown out for that reason. I have been involved in recounts and I have seen this happen and I do not think this is the right approach. I do not think it is right to disenfranchise the people who are voting in all honesty. I think that

we should be allowed to keep their vote.

The SPEAKER: The pending question is on the motion of the gentleman from Casco, Mr. Hancock, to indefinitely postpone House Amendment "B". All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Baker, Boudreau, Bragdon, Brawn, Briggs, Carrier, Chick, Churchill, Cottrell, Deshaies, Dunn, Farrington, Faucher, Ferris, Fine-more, Good, Hancock, Hoffses, Hunter, Immonen, Jackson, Jacques, Lawry, McMahon, McNally, Norris, Pratt, Ross, Santoro, Shaw, Sproul, Strout, Talbot, Tierney, Trumbull, Willard.

NAY — Albert, Ault, Berry, P. P.; Berube, Binnette, Birt, Bither, Brown, Bustin, Cameron, Carey, Carter, Chonko, Clark, Conley, Connolly, Cooney, Cote, Cressey, Crommett, Curran, Curtis, T. S., Jr.; Dam, Davis, Donaghy, Dow, Dunleavy, Dyar, Emery, D. F.; Farley, Fecteau, Fraser, Gahagan, Garsoe, Gauthier, Genest, Goodwin, H.; Goodwin, K.; Greenlaw, Hamblen, Haskell, Hobbins, Huber, Jalbert, Kauffman, Kelleher, Kelley, Kelley, R. P.; Keyte, Kilroy, Knight, LaCharite, LaPointe, LeBlanc, Lewis, E.; Lewis, J.; Littlefield, Lynch, MacLeod, Martin, Maxwell, McCormick, McHenry, McTeague, Merrill, Mills, Morin, L.; Morin, V.; Morton, Mulkern, Murchison, Murray, Najarian, Palmer, Parks, Perkins, Peterson, Pontbriand, Ricker, Rolde, Rollins, Sheltra, Shute, Silverman, Simpson, L. E.; Smith, D. M.; Smith, S.; Soulas, Stillings, Susi, Tanguay, Theriault, Trask, Tyndale, Walker, Webber, Wheeler, White, Whitzell, Wood, M. E.

ABSENT — Berry, G. W.; Bunker, Drigotas, Dudley, Evans, Flynn, Henley, Herrick, Maddox, Mahany, McKernan, O'Brien.

Yes, 36; No, 101; Absent, 12.

The SPEAKER: Thirty-six having voted in the affirmative and one hundred one in the negative, with twelve being absent, the motion does not prevail.

Thereupon, House Amendment "B" was adopted.

The Bill was passed to be

engrossed as amended in non-concurrence and sent up for concurrence.

The Chair laid before the House the following matter:

Bill "An Act Relating to the Advertising of Drug Prices" (S. P. 506) (L. D. 1590) which was tabled earlier in the day and later today assigned.

The SPEAKER: The Chair recognizes the gentleman from Strong, Mr. Dyar.

Mr. DYAR: Mr. Speaker and Ladies and Gentlemen of the House: I apologize to the membership for being off the floor when this bill came up this morning. I understand that presently it has been moved that the "ought to pass" report be accepted — the minority "ought to pass" report.

Last week, we had discussion on a similar bill which came out of committee in the same manner, three signing the minority "ought to pass" report and the majority of the committee signing the "ought not to pass." In committee, when we discussed these two bills which are very similar in content — basically the same thing — it was requested that we pass out one bill leave to withdraw and come out with a divided report on the second bill. The minority members decided to sign both bills out with the minority reports.

Presently you have two bills with basically the same content on the floor of the House. One, I believe, has had its second reading and has been passed to be engrossed and went to the other body. This morning, you have before you L.D. 1590, which permits the advertising of prescriptions by pharmacists but it goes one step further. It says that each licensed pharmacy in the State of Maine shall maintain on its premises in a conspicuous place, a list of the 150 prescription drugs most frequently ordered and the pharmacist's current retail price on such drugs.

Both pieces of legislation mandate that a pharmacist must advertise. I would suggest that this mandate does not suggest that they may advertise, it suggests that they shall advertise. L. D. 1590 does not say that this posting of