

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Sixteenth Legislature
OF THE
State Of Maine

VOLUME I

FIRST REGULAR SESSION

House of Representatives
December 2, 1992 to May 13, 1993

Conference of Commissioners on Uniform State Laws
(H.P. 74) (L.D. 104) (C. "A" H-26)

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.

The following items appearing on Supplement No. 2 were taken up out of order by unanimous consent:

SENATE PAPERS

Bill "An Act to Amend the Maine Hunting Laws to Prohibit Discharges of Firearms across Paved Ways" (S.P. 282) (L.D. 853)

Came from the Senate, referred to the Committee on Fisheries and Wildlife and Ordered Printed.

Was referred to the Committee on Fisheries and Wildlife in concurrence.

Bill "An Act to Ensure the Timely Resolution of Complaints under the Maine Human Rights Act" (S.P. 283) (L.D. 854)

Bill "An Act Concerning Victims of Stalking" (EMERGENCY) (S.P. 284) (L.D. 855)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

Were referred to the Committee on Judiciary in concurrence.

Bill "An Act to Prohibit Voter Registration on Election Day" (S.P. 281) (L.D. 852)

Came from the Senate, referred to the Committee on Legal Affairs and Ordered Printed.

Was referred to the Committee on Legal Affairs in concurrence.

The following item appearing on Supplement No. 1 was taken up out of order by unanimous consent:

SENATE PAPER

The following Joint Order: (S.P. 285)

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Monday, March 15, 1993, at four o'clock in the afternoon.

Came from the Senate, read and passed.

Was read and passed in concurrence.

ORDERS OF THE DAY

UNFINISHED BUSINESS

The following matter, in the consideration of which the House was engaged at the time of adjournment yesterday, has preference in the Orders of the Day and continues with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

Bill "An Act to Amend the Confidentiality Provisions of the Maine Juvenile Code" (EMERGENCY) (S.P. 251) (L.D. 770) (Governor's Bill) TABLED - March 9, 1993 (Till Later Today) by Representative GWADOSKY of Fairfield. PENDING - Passage to be Engrossed.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be engrossed and specially assigned for Monday, March 15, 1993.

TABLED AND TODAY ASSIGNED

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

HOUSE ORDER relative to Propounding Questions to the Justices of the Supreme Judicial Court. (Relative to I.B. 1, L.D. 751) TABLED - March 9, 1993. (Pursuant to House Rule #40) PENDING - Passage.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: The Order before us is an Order asking the opinion of the Supreme Judicial Court in regard to L.D. 751. Article VI, section 3 of the Constitution provides for the Justices of the Supreme Judicial Court to render their opinion from time to time when so requested by the members of the House and Senate. Many of us believe this is one of those times.

As you know, we are dealing with L.D. 751 which is the citizens initiative to limit terms on all legislators as well as constitutional officers.

The concern has been raised by many people including the Attorney General of this state that there may be some questions of legality regarding this particular measure which in fact would change state statutes dealing with eligibility requirements for legislators heretofore thought to have been the purview of the Constitution which is very specific in terms of the requirements and eligibility of any member as well as the Constitutional Officers.

The three questions - I presented this on Friday but I indicated to Representative Whitcomb I wanted to table it in order to give people an opportunity to read this and if they had suggestions to talk about that. Yesterday it was tabled pursuant to the rules which require any request of the Justices to be tabled.

Let me repeat for the Record the three questions that we would like to ask the Justices for some guidance on these technical matters. Question number

one, "If Legislative Document 751 becomes law, would its limitations on the terms of legislators be valid in light of the lack of those limitations in the Constitution of Maine, Article IV, parts first and second?" Question number two, "If Legislative Document 751 becomes law, would its limitations on the terms of the Secretary of State, Treasurer of State and Attorney General be valid in light of the lack of those limitations in the Constitution of Maine, Article V, parts second and third and Article IX, section eleven?" Finally, question number three, "If the answer to questions one or two is negative, must the initiative nevertheless be submitted in its current form to the voters at a referendum pursuant to the Constitution of Maine, Article IV, part three, section 18?"

Traditionally, when we receive initiated referendums, our options are either to enact them into law or to send them out to referendum. We have no ability to kill these, to make them go away, we have to deal with them when we are provided with initiated referendums.

This is a little bit of a twist because it deals with provisions that many people felt were dealt with in the Constitution and what we are asking today is some clarification, some guidance on these technical matters from the members of the Supreme Judicial Court.

My intention then would be to table L.D. 751 which is next on our calendar unassigned until we are able to get some reference back from the Supreme Judicial Court and then act promptly on that as soon as we hear from the members of the Supreme Judicial Court.

There are many members in this chamber who are ready to vote on this now, I understand that. There are many other pieces of legislation that will have an almost identical effect depending on how they come out of committee. I am sure that the opportunity will be presented. There is a precedent that is potentially being set and it was the concern of many members of this House that there ought to be some sort of clarification as to whether or not we actually have legal standards in moving at this point. This mechanism allows us to get the opinion of the Supreme Judicial Court and then use that knowledge to proceed.

Once again, it is not an attempt to slow down or delay this in any stretch of the imagination, it is simply to discern what the intent of the law is and, once again, to know what our parameters are, what our options may or may not be.

I hope you will support this measure.

Subsequently, the Order was passed.

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

Bill "An Act to Impose Term Limitations on Legislators, Constitutional Officers and the State Auditor" (I.B. 1) (L.D. 751)

TABLED - March 9, 1993 by Representative GWADOSKY of Fairfield.

PENDING - Reference.

On motion of Representative Gwadosky of Fairfield, tabled Unassigned pending reference.

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

HOUSE DIVIDED REPORT - Majority (8) "Ought Not to Pass" - Minority (3) "Ought to Pass" as amended by Committee Amendment "A" (H-34) - Committee on Business Legislation on Bill "An Act to Revise the Reciprocity Provisions for Licensing of Barbers and Cosmetologists" (H.P. 121) (L.D. 162)

TABLED - March 9, 1993 by Representative MURPHY of Berwick.

PENDING - Motion of the same Representative to Reconsider whereby the Majority "Ought Not to Pass" Report was read and accepted.

Subsequently, the House reconsidered its action whereby the Majority "Ought Not to Pass" Report was accepted.

The SPEAKER: The Chair recognizes the Representative from Kittery, Representative Lemont.

Representative LEMONT: Mr. Speaker, Ladies and Gentlemen of the House: As sponsor of L.D. 162, I would like to share with you the reasoning behind this bill.

This bill changes a word, "may" to "shall." Let me read to you now in context how that would read. "The board shall waive the examination and grant a license to any applicant who presents proof of current licensing in another state or other jurisdiction in the United States or another country that maintains professional standards considered by the board to be equivalent to or higher than those set forth by the state."

This bill is not asking to lower standards but simply to recognize licensed barbers and cosmetologists from other states that are already qualified and allow them to work in Maine without going through the examination process. This is already working concerning some states. If you were licensed in Massachusetts, relocate to Maine to work, no examination, license granted. Maine to New Hampshire, no examination, license granted. New Hampshire to Maine, there is where the problem is. One year ago, this was not a problem, but New Hampshire raised their standards and Maine had a problem with that.

As a Representative of a border community, I am only too aware of the problem facing my community. Let me give you one example. I represent a hair salon in my community who six months ago lost a licensed hair cutter. This individual went to New Hampshire, drove to Concord, filled out the necessary paper work, was granted a license and was cutting hair within 24 hours after receiving that license, less than two miles from the hair salon which she left. The hair salon in my community that I just mentioned made every attempt to fill that seat. They hired an individual who started through the licensing process. To this day, the individual is still fighting with the red tape and the bureaucracy here in the State of Maine. This is a serious problem when we are trying to hire people and put people to work in the State of Maine.

I might also add that the individual in question who is fighting the bureaucracy here is a life-long resident of Maine and would like to relocate and work, once again, in the State of Maine. This is the problem this bill addresses.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to put a little human being in the place of the person that Representative Lemont spoke about. The girl in question is a constituent who has lived in my town since the day her mother brought her home from the hospital. Her father is a businessman there, he is a contractor. She went through our local school system and graduated from Noble High School. She went to New Hampshire and went to cosmetology school. She served her year that you have to serve in New Hampshire under someone else and then she opened her own shop and ran it for five years. She decided to close that shop and she came back to Maine to get a job. She went to Kittery and got a job. When she found she had to apply for a Maine license — when she applied, they told her that she would have to take the test. She thought that was a little unusual but not too big a problem. They sent her an application, she filled it out and paid \$20, they gave her a temporary permit. Her appointment was February 28th (I believe that is the correct date) to take her test. She had to have a model, which we all know they do. The model that was coming up with her to have her hair cut and done became very ill and that morning and could not come. The girl had to postpone her appointment and they gave her another appointment of April 5th to take her test. This is when the problem really began. They said there was no problem in canceling, they would send her a new application in the mail. They said she was to send it back to them with \$20 and that she would be all set. So, she kept on working and finally she didn't get the application and her temporary permit was expiring so she called the Board of Cosmetologists and they said, "Oh, we put that in the mail." She said, "Well, I haven't received it."

We are talking from Augusta to Berwick, approximately 105 to 110 miles where she lives. Finally she called them back and said, "My permit is running out, what can I do?" They said, "Oh, it is our oversight, we did not put your application in the mail, but you cannot work." So, last week that girl could not work. She had customers but she was denied the right to work because of an error of the Cosmetologists Board here in Augusta.

On Wednesday night, her mother called me. Thursday morning, I called the Cosmetologists Board and I asked them if they would send an application over here to me. I suggested they leave it on my desk, in my post office box, or in the Minority office so that I could hand deliver this application to this young lady on Thursday night and bring it back so on Monday morning of this week at eight o'clock (and I would bring it back with \$20) so she could start working. They said they would try to get it over here to me. I got out of the Taxation Committee at 4:30-4:35 p.m., I came up and couldn't find it. I called them and said, "Well, we don't know, we sent it over." So I said, "What time do you close?" They said, "Five o'clock." I said, "I will try to be there in Gardiner by five o'clock to pick it up. If I don't make it, will you wait for me? I am getting ready to leave, I will leave shortly." The girl said, "I will wait in my car for five minutes after five o'clock." Well, I rushed over there, I made it three minutes of five. I got the application and took it home to her.

In the meantime, she had gone down to the supply place in New Hampshire. She heard about a job opening in Portsmouth so she went down and applied for that. Whether she took the job in New Hampshire, I am not sure, but the idea is that I asked them if they couldn't (over the phone) tell her she could work last week, that I would bring the application up and the money. They said, "No, they could not give her that permission." I feel as though this person is a Maine resident, she wants to work, support herself, pay taxes to the State of Maine and all she asked was the privilege to work. It was their oversight that she lost a week's pay. I don't know about anybody else in here but a week's pay means a lot to most of us. I have certainly been in the same situation that she is in. She needed that week's pay. So, we denied her a week of work because of an oversight in the Board of Cosmetologists.

I feel that things are not being handled right and maybe we ought to look into some of these boards because they are denying people the right to work when, in my opinion, all they had to say was, we will have that application. Needless to say, I have not received the application here yet and that was a week ago tomorrow that I called them (around nine o'clock in the morning) so I don't believe they ever sent it over here. They may have, I can't say for sure.

So, these are the things — we would just like to put a little human feeling into this bill. All we ask is that the Cosmetologists Board have the right when someone comes in here and their qualifications are higher than our requirements, not lower, we are not lowering our standards any. New Hampshire raised theirs to the point where you had to be a high school graduate, for whatever reason, I don't know. I don't think it is all that bad and if Maine doesn't want to do it, that is the choice of this Legislature. But do not deny our Maine citizens the right to work who have got better qualifications than actually what we ask for in this state.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Ladies and Gentlemen of the House: As one of those on the Minority Report, I want to add my support to what has been said here already. The thing that made me vote in the Minority on this particular bill was that this is the type of bill that I don't like the way you are playing so I am going to take my ball and go home. That is exactly what the State of Maine has done in this case.

A year ago, if this young lady had applied to work here, it would not have been a problem.

I don't like the message being sent that we don't like higher standards. New Hampshire raised their standards a little higher, we said we don't like the higher standards, so rather than adjusting to a higher standard, we said, you can't work here anymore.

The other thing that bothers me is, as Representative Lemont pointed out, had this young lady come from another state that did not require Maine residents to take a test going there, there never would have been a problem. So, we have a double standard. Depending on the state you come from determines whether or not you have to take a test to work here. What I think that really says is that the test is irrelevant because if it was important, it would be required from every state in the union, not just those who require us to take a test.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Hoglund.

Representative HOGLUND: Mr. Speaker, Men and Women of the House: This issue, in all good respect to Representative Murphy, it is a hardship for this particular woman but we did not deny her a license. What we said was she had to do what was expected of every other young man and woman who come out of cosmetology school, you have to take a test and you get licensed. It was as simple as that. It was nothing to do with the standards, the woman was very qualified, over-qualified, but we cannot change the law for one person. Evidently, the Board in miscommunications somewhere along the line where the application was sent out, misplaced or whatever — that did happen. They guarantee that it wouldn't happen again and we have to go on their trust. But, what they did say in this particular case with this woman was, if she appealed it, they were willing to give her a license and let her work in the State of Maine. That is the issue, it is not the standards. We had reciprocity with New Hampshire up until a year ago. New Hampshire raised their standards and their standards are higher than Maine but whether we accept each other's standards or not, it really has to be looked at if we want to change our own education standards in the State of Maine.

So, I would ask you to stay with the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion to accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

54 having voted in the affirmative and 47 in the negative, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on Business Legislation reporting "Ought Not to Pass" on Bill "An Act to Establish Hours of Education for the Practice of Public Accountancy" (S.P. 52) (L.D. 73) and the Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-33) on same Bill (came from the Senate with the Reports read and the Bill and accompanying papers recommitted to the Committee on Business Legislation) which was tabled earlier in the day and later today assigned pending the motion of the Representative from Portland, Representative Hoglund, that the House accept the Majority "Ought Not to Pass" Report.

Subsequently, the Majority "Ought Not to Pass" Report was accepted in non-concurrence and sent up for concurrence.

The following Order was taken up out of order by unanimous consent:

On motion of Representative HICHBORN of Howland, the following Order:

ORDERED, that Representative Marge L. Kilkelly of H-252

Wiscasset be excused February 25 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Edward L. Pineau of Jay be excused March 11 and 12 for legislative business.

AND BE IT FURTHER ORDERED, that Representative James G. Skoglund of St. George be excused March 2 for health reasons.

AND BE IT FURTHER ORDERED, that Representative Mary E. Sullivan of Bangor be excused March 8 and 9 for personal reasons.

Was read and passed.

(Off Record Remarks)

On motion of Representative Anderson of Woodland, Adjourned at 11:16 a.m. until Monday, March 15, 1993, at four o'clock in the afternoon pursuant to Joint Order (S.P. 285).
