

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1456

H. P. 1157

House of Representatives, March 30, 1977

On motion of Mr. Curran of South Portland, referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Beaulieu of Portland.

Cosponsor: Mr. Laffin of Westbrook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

RESOLUTION, Proposing an Amendment to the Constitution to Provide that the Secretary of State be Elected by Popular Vote and to Establish the Duties of That Office.

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendments to the Constitution of this State be proposed:

Constitution, Art. II, § 1, 1st sentence, as amended by CR 1973, c. 3, is further amended to read:

Every citizen of the United States of the age of eighteen years and upwards, excepting persons under guardianship for reasons of mental illness, having his or her residence established in this State, shall be an elector for Governor, **Secretary of State**, Senators and Representatives, in the city, town or plantation where his or her residence has been established, if he or she continues to reside in this State, unless barred by the provisions of the second paragraph of this section; and the elections shall be by written ballot.

Constitution, Art. II, § 4, 1st sentence is amended to read:

The election of Senators and Representatives shall be on the Tuesday following the first Monday of November biennially forever and the election of Governor and **Secretary of State** shall be on the Tuesday following the first Monday of November every four years.

Constitution, Art. V, Pt. 1st, § 3, as amended by CR 1975, c. 5, is repealed and the following enacted in its place:

Section 3. Election; votes to be returned to Secretary of State; provisions in case of time. Beginning with the election of 1978, the meetings for election of Governor and Secretary of State shall be notified, held and regulated and votes shall be received, sorted, counted and declared and recorded, in the same manner as those for Senators and Representatives. Any person whose name is to appear on the ballot at a general election for the office of Governor shall no less than 60 days prior to that election name a person to serve as his Secretary of State. The Governor and Secretary of State shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices, and the Legislature shall by law provide the manner by which the choice shall be made. Copies of lists of votes shall be sealed and returned to the secretary's office in the same manner and at the same time as those for Senators. The Secretary of State for the time being shall, on the first Wednesday after the first Tuesday of January then next, lay the lists returned to the secretary's office before the Senate and House of Representatives to be by them examined, together with the ballots cast if they so elect, and they shall determine the number of votes duly cast jointly for the offices of Governor and Secretary of State, and in the case of a choice by plurality of all the votes returned they shall declare and publish the same. If there shall be a tie between two persons having the largest number of votes for Governor, the House of Representatives and the Senate, meeting in joint session and each member of said bodies having a single vote, shall elect one of said two persons having so received an equal number of votes. The person so elected by the Senate and House of Representatives shall be declared the Governor and the person who appeared on the election ballot jointly with the Governor shall be declared the Secretary of State.

Constitution, Art. V, Pt. 1st, § 14, as last amended by CR 1975, c. 5, is repealed and the following enacted in its place:

Section 14. Vacancy, how supplied. Whenever the office of Governor shall become vacant because of the death, resignation or removal of a Governor in office, or any other cause, the Secretary of State shall assume the office of Governor until another Governor shall be duly qualified. When the vacancy occurs more than ninety days preceding the date of the primary election for nomination candidates to be voted for at the biennial election next succeeding, the Secretary of State shall assume the office of Governor until the first Wednesday after the first Tuesday of January following the biennial election. At the biennial election, a Governor shall be elected to fill the unexpired term created by the vacancy. When the vacancy occurs less than ninety days preceding the date of a primary election, the Secretary of State shall fill the unexpired term.

Whenever the offices of Governor and Secretary of State are vacant at the same time, the President of the Senate shall assume the office of Governor for the same term and under the same conditions as the Secretary of State.

Whenever the offices of Governor, Secretary of State and President of the Senate are vacant at the same time, the Speaker of the House of Representatives shall assume the office of Governor for the same term and under the same conditions as the Secretary of State. The Legislature shall have power,

by appropriate legislation, to provide for the circumstances of vacancies simultaneously in the offices of Governor, Secretary of State, President of the Senate and Speaker of the House of Representatives.

Whenever for six months a Governor in office shall have been continuously unable to discharge the powers and duties of his office because of mental or physical disability, such office shall be deemed vacant. Such vacancy shall be declared by the Supreme Judicial Court upon presentment to it of a joint resolution declaring the ground of the vacancy, adopted by a vote of two-thirds of the Senators and Representatives in convention, and upon notice, hearing before the court and a decision by a majority of the court that ground exists for declaring the office to be vacant.

Constitution, Art. V, Pt. 1st, § 15, as enacted by CR 1975, c. 3, is repealed and the following enacted in its place:

Section 15. Inability of the Governor to discharge the powers and duties of his office. Whenever the Governor is unable to discharge the powers and duties of his office because of mental or physical disability, the Secretary of State, or if that office is vacant, the President of the Senate, shall exercise the powers and duties of the office of Governor until the Governor is again able to discharge the powers and duties of his office, or until the office of Governor is declared to be vacant or until another Governor shall be duly qualified.

Whenever the Governor is unable to discharge the powers and duties of his office, he may so certify to the Chief Justice of the Supreme Judicial Court, in which case, and upon notice from the Chief Justice, the Secretary of State, or if that office is vacant, the President of the Senate, shall exercise the powers and duties of the office of Governor until such time as the Governor shall certify to the Chief Justice that he is able to discharge such powers and duties and the Chief Justice shall so notify the officer who is exercising the powers and duties of the office of Governor.

When the Secretary of State shall have reason to believe that the Governor is unable to discharge the duties of his office, he may so certify to the Supreme Judicial Court, declaring his reasons for such belief. After notice to the Governor, a hearing before the court and a decision by a majority of the court that the Governor is unable to discharge the duties of his office, the court shall notify the Secretary of State, or if that office is vacant the President of the Senate, of such inability and he shall exercise the functions, powers and duties of the office of Governor until such time as the Secretary of State or the Governor shall certify to the court that the Governor is able to discharge the duties of his office and the court, after notice to the Governor and a hearing before the court, decides that the Governor is able to discharge the duties of his office and so notifies the officer who is exercising the powers and duties of the office of Governor.

When the President of the Senate shall exercise the office of Governor, he shall receive only the compensation of Governor, but his duties as President of the Senate shall be suspended; and the Senate shall fill the vacancy re-

sulting from such suspension, until he shall cease to exercise the office of Governor.

Constitution, Art. V, Pt. 3rd, § 1 is repealed and the following enacted in its place:

Section 1. Term of office; reelection eligibility. Beginning with the election held in 1978, the Secretary of State shall be elected by the qualified electors at the same time and for the same term as the Governor. The person who has served two consecutive popular elective four-year terms of office as Secretary of State shall be ineligible to succeed himself.

Constitution, Art. V, Pt. 3rd, §§ 1-A, 1-B, 1-C, 1-D and 1-E are enacted to read:

Section 1-A. Election. Beginning with the election held in 1978, the Secretary of State shall be elected as provided in Article V, Part First, section 3.

Section 1-B. Qualifications. The Secretary of State shall, at the commencement of his term, be not less than thirty years of age; a citizen of the United States for at least fifteen years, have been five years a resident of the State; and, at the time of his election and during the term for which he is elected, be a resident of said State.

Section 1-C. Disqualifications. No person holding any office or place under the United States, this State, or any other power, shall assume the office of Secretary of State, nor shall any such person exercise the office of Secretary of State except as provided by this Constitution.

Section 1-D. Vacancy. Whenever the office of Secretary of State shall become vacant, the Governor or the officer acting as Governor shall appoint a person to act as Secretary of State for the remainder of the unexpired term.

Section 1-E. Secretary of State to act in Governor's absence. Whenever the Governor shall be absent from the State for any reason, the Secretary of State shall act in his stead during his absence and shall exercise all duties and powers of the office of Governor.

Constitution, Art. IX, § 1, last ¶, as amended by CR 1975, c. 4, is further amended to read:

The oaths or affirmations shall be taken and subscribed by the Governor and Secretary of State before the presiding officer of the Senate, in the presence of both Houses of the Legislature, and by the Senators and Representatives before the Governor and Secretary of State, and by the residue of said officers before such persons as shall be prescribed by the Legislature; and whenever the Governor and the Secretary of State shall not be able to attend during the session of the Legislature to take and subscribe said oaths or affirmations, such oaths or affirmations may be taken and subscribed in the recess of the Legislature before any Justice of the Supreme Judicial Court and provided further that, if the Governor shall be unable to appear and administer the oath to the Senators and Representatives, such oaths shall be administered by the Chief Justice of the Supreme Judicial Court or in his absence, by the senior Associate Justice of said Supreme Judicial Court pres-

ent at the State Capitol on the first day of the term for which said Senators and Representatives shall have been elected.

Constitutional referendum procedure; form of question; effective date. **Resolved:** That the city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at the next general election in the month of November or special statewide election on the Tuesday following the first Monday of November following the passage of this resolution, to vote upon the ratification of the amendments proposed in this resolution by voting upon the following question:

“Shall the Constitution be amended as proposed by a resolution of the Legislature to provide that the Secretary of State be elected by popular vote and to establish the duties of that office?”

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the words “Yes” or “No.” The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns, and, if it appears that a majority of the legal votes are in favor of the amendments, the governor shall proclaim that fact without delay and the amendments shall become part of the Constitution on the date of the proclamation.

Secretary of State shall prepare ballots. **Resolved:** That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purpose of this referendum.

Effective date. Article V, Part First, section 3, and Article V, Part Third, sections 1 and 1-A, shall become part of the Constitution on the date of the proclamation. The remainder of these constitutional amendments shall become part of the Constitution on the day preceding the first Wednesday after the first Tuesday of January in the year 1979.

STATEMENT OF FACT

These constitutional amendments would provide that the office of Secretary of State be an elected office and that the secretary assume the office of Governor whenever the office of Governor is vacant.