

MAINE STATE LEGISLATURE

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L.D. 1421

DATE: 3/31/94

(Filing No. S- 569.)

STATE & LOCAL GOVERNMENT

Reported by: Senator Berube of Andruscoggin

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STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 454, L.D. 1421, Bill, "An Act to Separate Cushings Island in Casco Bay from the City of Portland and to Create the Cushings Island Village Corporation as Part of the Town of Long Island"

Amend the bill by striking out the title and substituting the following:

'An Act to Establish Procedures for Secession and Annexation'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-L, sub-§11 is enacted to read:

Table with 3 columns: 11. Commission on Secession, Not Authorized, 30-A MRSA §2167

Sec. 2. 30-A MRSA c. 113, first 2 lines are repealed and the following enacted in their place:

CHAPTER 113

COMMITTEE AMENDMENT

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CONSOLIDATION, SECESSION AND ANNEXATION

SUBCHAPTER I

CONSOLIDATION

Sec. 3. 30-A MRSA c. 113, sub-c. II is enacted to read:

SUBCHAPTER II

SECESSION AND ANNEXATION

§2161. Secession of territory from a municipality

Territory that is situated within a municipality may secede from the municipality in accordance with this subchapter.

§2162. Initiation of secession procedure

A secession proceeding must be initiated by submitting to the municipality a petition signed by 10% of the registered voters within the secession territory, requesting a municipal meeting for the purpose of discussing whether a specified territory should begin the secession procedure. The petition must set forth the physical boundaries of the secession territory, the resident population, the nonresident population and a list of no more than 5 people who will serve as representatives of the secession territory. For purposes of this subchapter "secession territory" means that area described in a petition for secession.

§2163. Initial secession meeting

The municipal officers shall call and hold a special meeting, in the manner provided for the calling and holding of town meetings to discuss secession, which must be conducted in accordance with the following:

1. Meeting advertised. The municipal officers shall publish notice of the meeting in a newspaper of general circulation in the area. One notice must be published as close to the 14th day before the meeting as possible and the 2nd notice must be published as close to the 7th day before the meeting as possible;

2. Secession meeting. The meeting must include a formal presentation by those initiating the petition and must include the reasons for secession; and

3. Nonresidents eligible to participate. Nonresidents may participate in the meeting at the discretion of the moderator.

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2 **§2164. Petition for continuation of procedure**

4 After 30 days from the initial meeting, the secession
6 procedure may continue. The proceeding must be initiated by
8 submitting to the municipality within 7 months following the
10 initial petition meeting, a petition of the registered voters
12 within the proposed secession territory, requesting the creation
14 of a local secession committee. The petition must include 50% of
16 registered voters for a secession territory with a population of
18 500 or less, 35% of registered voters in a secession territory
20 with a population of 501 to 1500 and 25% of registered voters in
 a secession territory with a population greater than 1500. The
 population is determined at the initiation of the petition
 process according to the last Decennial Census. The number of
 registered voters is determined by the registrar in accordance
 with Title 21-A, chapter 3, subchapter IV. The petition must set
 forth a physical description of the proposed secession territory
 as well as a summary of the reasons for secession.

22 **§2165. Creation of local secession committee**

24 If the required number of voters sign a petition, a local
26 secession committee must be created to develop the secession
28 procedure. The local secession committee consists of the
30 following 7 members: 3 representatives of the municipality that
32 the secession territory is proposing to secede from, elected by
34 the municipal officers; 3 representatives of the secession
36 territory chosen by the representatives established in section
38 2162; and one representative selected jointly by the selected
40 municipal representatives and the selected secession
42 representatives, who serves as chair of the proceedings.

34 **§2166. Local secession committee procedure**

36 The local secession committee, with the assistance of the
38 Commission on Secession, shall develop a secession procedure
40 that, at a minimum, consists of the following components.

40 1. Effective date. The secession procedure must establish
42 a date on which secession will be effective.

44 2. Provision of educational services. The secession
46 procedure must include a plan for the provision of educational
48 services, including school transportation services for all
50 students in the proposed secession territory.

48 3. Distribution of tangible assets and liabilities. The
50 secession procedure must provide for the fair and equitable
 distribution of all real and personal property and other tangible

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2 assets of the municipality and the proposed secession territory
3 in accordance with the following guidelines:

4 A. The secession territory must retain all real municipal
5 property located within its boundaries and all personal
6 municipal property that has been regularly stationed within
7 its boundaries;

8
9 B. The parent community must retain ownership of all other
10 real and personal property owned by the municipality;

11 C. The only assets that may be allocated to the secession
12 territory are a percentage of the parent community's liquid
13 assets. Liquid assets include cash, receivables other than
14 endowments and other assets that can readily be converted to
15 cash. The secession territory must be awarded a municipal
16 asset allocation that is calculated by multiplying the
17 parent community's liquid assets times the ratio of the
18 separating territory's taxable property divided by the
19 taxable property in both the parent community and the
20 secession territory; and

21 D. The secession territory shall pay to the parent
22 community a portion of the parent community's adjusted debt
23 determined by multiplying the adjusted debt times the same
24 ratio as shown in paragraph C. Adjusted debt includes all
25 long-term debt, except that associated with revenue bonds,
26 that the parent community pays with property taxes.

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29 4. Information about municipality. The local secession
30 procedure must include, at a minimum, the following information:

31
32 A. Present population, past population growth and projected
33 population for the secession territory;

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35 B. Quantity of land within the secession territory proposed
36 for incorporation; the natural terrain of the area including
37 general topography, major watersheds, soil conditions; and
38 such natural features as rivers and lakes;

39
40 C. Present pattern of physical development in the secession
41 territory including residential, industrial, commercial,
42 agricultural and institutional land uses; and the present
43 transportation network and potential transportation issues,
44 including proposed highway development;

45
46 D. Land use controls and planning presently being utilized
47 in the secession territory, including comprehensive plans
48 for development in the secession territory;

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2 E. Present governmental services being provided to the
4 area, including water and sewer service, fire protection,
police protection, street improvements and maintenance,
administrative services and recreational facilities;

6 F. Existing or potential problems of environmental
8 pollution and the need for additional services to resolve
these problems;

10 G. Fiscal data of the secession territory, including the
12 net tax capacity of the proposed secession territory and the
impact on the municipality from which the territory proposes
14 to secede; the present bonded indebtedness; and the local
tax rates of the county, school district and municipality;

16 H. Effect of the proposed incorporation on communities
18 adjacent to the secession territory and on school districts
within and adjacent to the secession territory; and

20 I. Adequacy of town government to deliver services to the
22 secession territory.

24 In developing the secession procedure, the local secession
committee shall work closely with the Commission on Secession.
26 The local secession committee shall submit the proposed secession
procedure to the Commission on Secession for review.

28 **§2167. Commission on Secession**

30 The Commission on Secession, as established in Title 5,
32 section 12004-L, subsection 11, and referred to in this
subchapter as the "commission," shall assist local secession
34 committees in formulating secession procedures. In addition, the
commission shall review these secession procedures as provided in
36 this subchapter.

38 1. Membership. The commission consists of the following 5
members:

40 A. The Commissioner of Education or the commissioner's
42 designee;

44 B. The State Auditor or the auditor's designee;

46 C. The State Tax Assessor or the assessor's designee;

48 D. The Commissioner of Environmental Protection or
commissioner's designee; and

50 E. A commissioner from the Public Utilities Commission or a
commissioner's designee.

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2. Responsibilities. The commission shall:

A. Assist municipalities in preparing the secession procedures as required in section 2166;

B. Review each secession procedure and provide comments and suggestions with respect to the procedure;

C. Recommend alternatives to secession if the commission finds that feasible alternatives exist; and

D. Within 30 days after receiving the proposed secession procedure, provide copies of its review and comments on the secession procedure to the municipal officers, the local secession committee and to the Executive Director of the Legislative Council, who shall provide it to the joint standing committee of the Legislature having jurisdiction over local government matters.

3. Chair. The commission members shall annually elect a chair from among its members.

§2168. Arbitration

If the local secession committee does not reach consensus, it shall submit any matters remaining in dispute to a panel of arbitrators and shall reduce to writing all agreed-upon matters. The panel of arbitrators consists of one arbitrator selected by the municipality, one arbitrator selected by the secession group and one neutral arbitrator selected jointly by the 2 other arbitrators. The local secession committee shall pay its chosen arbitrator, the municipality shall pay its chosen arbitrator and the municipality and the local secession committee shall each pay half of the cost of the neutral arbitrator. Determination of disputed matters by the panel of arbitrators is final and binding on the parties. The arbitration must be administered under the auspices of the American Arbitration Association and, except for the selection of arbitrators, is governed by the commercial rules and procedures of the American Arbitration Association, and the concept of "last best offer" must be used. These issues must be resolved no later than 90 days before a referendum.

§2169. Secession final report

The local secession committee may incorporate the comments and suggestions received from the commission into the secession procedure. In its report the local secession committee shall note those areas in which it did not incorporate the comments or suggestions of the commission along with a rationale for not doing so. The local secession committee shall immediately notify

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2 the municipal officers when the secession procedure has been
3 completed and shall provide a copy of the final report to the
4 Executive Director of the Legislative Council, who shall provide
5 it to the joint standing committee of the Legislature having
6 jurisdiction over local government matters.

8 **§2170. Final approval by the voters**

10 The question concerning secession must be presented to the
11 voters of the secession territory in the next general election to
12 be held in November. The election must be conducted according to
13 the following procedures.

14 1. Question posed to voters. The municipal clerk shall
15 prepare the ballots on which the following question must appear:

16 "Do you favor the separation of (name of secession
17 territory) from (name of municipality) and its incorporation
18 as a separate town?"

20 2. Requirements for approval. The voters shall indicate
21 their opinion on this question by a cross or check mark placed
22 against the word "Yes" or "No." Before becoming effective, the
23 secession must be approved by at least 2/3 of the voters.

26 3. Declaration of results. The municipal officers shall
27 declare the result of the vote. The municipal clerk or the
28 assessor of the plantation shall file a certificate of the
29 election result with the Secretary of State within 10 days of the
30 election.

32 **§2171. Advisory referendum**

34 The municipality from which the secession has been proposed
35 may conduct an advisory referendum on the question of secession
36 in the same manner as in section 2170.

38 **§2172. Approval by the Legislature**

40 Any municipality that has approved a secession procedure
41 under this subchapter shall request before the effective date of
42 secession approval by the Legislature in order for the secession
43 to become effective.

44 **§2173. Concurrent secession and annexation**

46 Property of one municipality that abuts another may
47 concurrently secede and be annexed in accordance with this
48 subchapter, except that the following also applies.

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2 1. Petition. An area proposing to concurrently secede and
3 be annexed must indicate on the petition in section 2164 the
4 community to which it wishes to be annexed.

6 2. Inclusion in secession procedure. A petition for
7 concurrent secession and annexation under this section must be
8 included in any information required by sections 2166 and 2167.

10 3. Approval by voters; secession territory. The question
11 concerning concurrent secession and annexation must be presented
12 to the voters of the secession territory in place of the question
13 set out in section 2170 for the proposed secession territory in
14 the following manner.

16 A. The municipal clerk shall prepare the ballots on which
17 the following question must appear:

18 "Do you favor the separation of (name of secession
19 territory), which now lies within (name of
20 municipality), to become incorporated into the (name of
21 municipality) ?"

24 B. The voters shall indicate their opinion on this question
25 by a cross or check mark placed against the word "Yes" or
26 "No." Before becoming effective, the secession and
27 annexation must be approved by 2/3 of the voters.

28 C. The municipal officers shall declare the result of the
29 vote. The municipal clerk shall file a certificate of the
30 election result with the Secretary of State within 10 days
31 of the election.

34 4. Approval by voters; municipality. The question
35 concerning concurrent secession and annexation must be presented
36 to the voters of the municipality to which the secession
37 territory proposes to be annexed in the following manner.

38 A. The municipal clerk shall prepare the ballots on which
39 the following question must appear:

42 "Do you favor the acceptance of (name of secession
43 territory), which now lies within (name of
44 municipality), to become incorporated into the (name of
45 municipality) ?"

46 B. The voters shall indicate their opinion on this question
47 by a cross or check mark placed against the word "Yes" or
48 "No." Before becoming effective, the secession must be
49 approved by a majority of the voters.

50 C. The municipal officers shall declare the result of the
51 vote. The municipal clerk shall file a certificate of the
52 election result with the Secretary of State within 10 days
53 of the election.

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2 election result with the Secretary of State within 10 days
3 of the election.'

4 Further amend the bill by inserting at the end before the
5 statement of fact the following:

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7 **FISCAL NOTE**

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9 This bill requires municipalities to employ certain
10 procedures in the event of the initiation of secession by a
11 territory within the municipality. The additional costs of this
12 state mandate will depend on the number of secessions and
13 annexations initiated under the procedures of this bill, which
14 can not be estimated at this time. Pursuant to the mandate
15 preamble, the 2/3 vote of all members elected to each House
16 exempts the State from the constitutional requirement to fund 90%
17 of the additional local costs.

18
19 The additional costs to participate on the Commission on
20 Secession can be absorbed by the Department of Education, the
21 Department of Audit, the Bureau of Taxation, the Department of
22 Environmental Protection and the Public Utilities Commission
23 utilizing existing budgeted resources.'

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27 **STATEMENT OF FACT**

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29 The amendment replaces the original bill. The amendment
30 establishes standards and procedures for secession and
annexation. This amendment also adds a fiscal note to the bill.