



HOUSE OF REPRESENTATIVES

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Testimony in Support of LD 1209

"An Act to Require Legislative Hearings on Citizen-initiated Legislation"

Senator Claxton, Representative Martin and distinguished members of the Joint Standing Committee on State and Local Government:

Good morning! I am Representative Dick Bradstreet, and I represent House District 80, which is comprised of my home town of Vassalboro, Windsor, Somerville, the Unorganized Township of Hibberts Gore and part of Augusta. I would like to present to you LD 1209, *"An Act to Require Legislative Hearings on Citizen-initiated Legislation."*

The impetus for my presenting this bill arose out of several events during the 128th Legislative session. One was the legalization of marijuana referendum in 2016, which was passed by the voters, and the other was last year's referendum that sought to add an income tax surcharge on high earners, which the voters defeated. The passage of the marijuana legalization referendum presented the 128th Legislature with many concerns, to the point that we had to create a select legislative committee to deal with a myriad of issues that the referendum question did not address. I think most of us are familiar with some of these issues, and many of them are still in the process of being worked out.

After the Secretary of State certified last year's tax surcharge referendum, there was a bill proposed to hold a legislative public hearing. The hope was that there would be more understanding of the issue if there were a public forum where the pros and cons of the question could be discussed and debated. That bill was defeated by, as I recall, one vote, and the process was quite politically charged.

There will be two main benefits with the passage of LD 1209. First, a public hearing will enable all of us to understand more fully just what passage of a referendum question really would do. Often, these proposals are many pages long, and yet the voting public gets only a short synopsis of what the proposal entails, making it difficult to cast a more fully informed vote. A public hearing may not answer all the questions that should be answered, but it would be better than

not having any real discussions at all. We would be able to hear the pros and cons in an orderly fashion and be able to recognize what some of a proposal's unintended consequences may be. That's what we're doing here today, it's what you'll be doing when you get to work session on all of your bills, and that's a good thing. It's why we utilize the process we have. The default is leaving it up to special interests on both sides of an issue, telling us only what they want us to hear and leaving us with a cacophony of competing claims. That's not conducive to good, informed decision making.

The other benefit of requiring a public hearing would be to take the politics out of whether or not there should even be a hearing. The answer would be simply, "yes, there will be a public hearing because the law requires it." Just the way we do with all of OUR bills! There will be no need to debate the issue, and no political pressure to vote to hold or not to hold a hearing. It's already been decided away from the heat of the moment, the way it should be.

The right of the people to petition for referendum questions should not be compromised, and this bill respects that. Its enactment will enable them to become better informed as they cast ballots on matters that are extremely important to them and have serious and long-lasting ramifications for all of Mainers. I urge you to work on and come out with a unanimous "ought to pass."

I'd also like to say that if anyone coming after me is in opposition to LD 1209, pointing out what they deem to be flaws and warning of unintended consequences, or that it needs to be tweaked to comply with any other current laws, then they are making my case for me! This public hearing process is designed for that, and so should the process be for citizen-initiated legislation. It is a simple, common sense proposal, and I hope you consider it seriously. Thank you.

Dick Bradstreet
State Representative

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (4/12/18) matter:

JOINT RESOLUTION - Merton G. Henry, of Scarborough, an attorney, veteran of the United States Army and stalwart Republican who served as a longtime advisor to Senator Margaret Chase Smith and the chairman of all Susan Collins's Senate campaigns. Mr. Henry served in the Army during World War II and was stationed in the Philippines. As a Bowdoin College student, he volunteered on then-United States Representative Margaret Chase Smith's 1948 Senate campaign. One of his earliest jobs was working for Republican Senator Frederick Payne in Washington, running Senator Payne's unsuccessful reelection campaign against Democrat Edward Muskie in 1958. Mr. Henry helped to found Jensen Baird Gardner and Henry in 1961 and served on various boards, including the Morton-Kelly Charitable Trust and the advisory board of the Margaret Chase Smith Policy Center. He was a longtime parishioner at Trinity Episcopal Church, in Portland. Mr. Henry will be long remembered and sadly missed by his family and friends and all those whose lives he touched;

HLS 1120

Tabled - April 12, 2018 by Senator **MASON** of Androscoggin

Pending - **ADOPTION**

(In House, April 11, 2018, **READ** and **ADOPTED**.)

The Joint Resolution was **READ**.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Waldo, Senator Thibodeau.

Senator **THIBODEAU**: Thank you. Ladies and gentlemen of the Senate, I just wanted to take just a few minutes to remember the life of Mert Henry. It certainly was an eventful life. He played such a key role in Maine politics, and I'm not talking about Republican politics, I'm talking about Maine politics. What a tremendous man. I had the good fortune of meeting Mert over the past winter. Certainly an iconic name when it comes to Maine politics. The Chief of Staff for Margaret Chase Smith. You know, none of us are successful without really, really good people helping us and, make no mistake, I think that Senator Smith benefited greatly from Mert Henry and his advice, his council. You know, I got to meet with Mert last winter and spent probably close to an hour with him. Ninety-two years old, sharp as a tack. Knew everything that was going on at the State House, far more than probably even I did, which was amazing. No it's not that amazing. But just a wonderful guy, and while we were visiting he told me, he said, 'Yah,' he says, 'If you have a few minutes,' he says, 'downstairs, Ken Curtis lives down there.' I thought, 'Wow, Mert Henry and Ken Curtis in their 90s still friends.' You know something, pretty amazing guy. He sent me an e-mail, actually. It was dated March 27, 2018, so just a few days ago. I just want to read you just one little snippet out of it. It says, 'At 92 I know there is more to life than politics, to say the least.' I would

challenge each and every one of you to think about that for just a few minutes. We've got a rugged week in front of us and I think Mert gave us something to really remember on - to remember - and something to work with here. There is more to life than just politics. We're going to work hard. We're going to make sure we, you know, do our best to pass the best bills that we can. But at the end of this coming week - when maybe I'm 92 and Senator Deschambault's in her 80s, she'll live downstairs and we'll still be friends. Okay? So pretty amazing guy. I didn't think that it was appropriate that we pass this without remembering the life of somebody that really shaped the State of Maine in so many ways. Mert Henry was a wonderful man. Thank you.

Off Record Remarks

The Joint Resolution was **ADOPTED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (4/9/18) matter:

Bill "An Act To Establish Universal Home Care for Seniors and Persons with Disabilities"

I.B. 3 L.D. 1864

Tabled - April 9, 2018 by Senator **COLLINS** of York

Pending - **FURTHER CONSIDERATION**

(In Senate, April 2, 2018, **REFERRED** to the Committee on **TAXATION** in **NON-CONCURRENCE**.)

(In House, that Body **INSISTED** on its former action whereby the Bill and accompanying papers were **INDEFINITELY POSTPONED**.)

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Cumberland, Senator Diamond.

Senator **DIAMOND**: Mr. President and ladies and gentlemen of the Senate, I'm deeply concerned about what I see happening, and that is the change regarding how we handled Citizen Initiatives. I think we all should be very concerned about this change. For decades Citizen Initiatives were routinely referred to Legislative Committees. Public hearings and work sessions and reports from committees. In fact, from 1977 through 2011, 34 years, 41 Citizen Initiatives, 41 were referred to committees for public hearings and it didn't matter which party was in the majority. They both - both parties adhered to that routine because it was very important about how we handled transparency. A process was designed to inform the public, inform legislators, just like all other legislation that we deal with, making it transparent and making sure that the priority was the public's right to know. It was a routine process that was suddenly stopped, the door slammed, in 2012. From 2012 to 2017 there have been 11 Citizen Initiatives and none of them had a public hearing except one, and that was the York Casino. Look at the

problems that were discovered there. I would also point out to you that those that did not have public hearings, those initiatives, there were a lot of problems that we had to deal with, and I hold up as Exhibit A the marijuana initiative. Thirty pages. Yes or no vote. No public hearing. No discussion. No debate. Why would we want to be part of stifling such a discussion? Why would we want to put a stop to information for the public? Why on earth would we do that? There are no arguments. I've not heard one argument that we should close public hearings. This is about the public's opportunity to express their concerns, raise their questions, and also for legislators to do the same. It's about work sessions and the opportunity for certain officials that are critical to us, our non-partisan professional staff, to provide information for us to see and for the public to see.

The initiative before us, Mr. President, is L.D. 1864. This is a 3.8% tax on earnings and income above the Social Security tax level of \$128,400. The preliminary fiscal note prepared last fall, before the petition signatures were gathered, estimates the bill would raise approximately \$310 million. Imagine one of us putting in a bill like that that would raise over \$300 million in revenue and we, at the same time, blocked any public hearings, any comments. Doesn't make sense. Without a public hearing, the public won't know what members, we, think about this particular initiative, what the committee members think, because there will be no record; what the proponents feel, very helpful; the opponents feel, very helpful. We won't know what - how this proposed legislation would fit into our existing laws. We won't know what the Health and Human Services Committee would feel about this; about how the Taxation Committee would feel about this; about LCRED. All of these committees have interest in this bill. Or what Appropriations would think about how it affects our finances.

Ladies and gentlemen, we have a process for informing ourselves and the public on details about legislation, the very process that we find and see and believe is vital to good decision making, and we've used that same process for decades, for decades until 2012. I believe we should always give the voters the benefit of a public hearing to ask questions, to make sure that everything is out in the open. It's a matter of good legislative process. It's a matter of good government and we owe the public nothing less, and we owe ourselves nothing less. How could we possibly deny that? Thank you, Mr. President.

Senator **MASON** of Androscoggin moved the Senate **INSIST**.

On further motion by same Senator, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'll be brief. Echo the - emphasize the words of my seatmate, Senator Diamond. I think the first time we began to see the multiple flaws in the York County Referendum was at the public hearing. It was the first time we began to dig into the source of the funding. It was immensely helpful, and don't underestimate the value of having our non-partisan, incredibly professional staff dig into these bills. And if the voters of Aroostook County return me here for the next term, I would propose legislation that not only will require there be a public

hearing but require that there be two public hearings in each Congressional District, out in the hinterlands, so the folks who are going to vote on these initiatives can hear and see what's going on. The press would accompany those, if you had one in Presque Isle and one in Lewiston in the Second District, and one in Portland and one in Bath in the First District, I think it would be immensely helpful. Also it would take away from the folks who oppose the particular initiative saying, 'Well, they didn't know what they were voting for. They didn't know what they were voting for.' We hear that all the time and it's not fair. Not fair to the people of Maine. So I would urge you to join in sending this bill to a public hearing as soon as possible so we can begin to understand what this initiative is about. Thank you, Mr. President.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President and men and women of the Senate. I rise in agreement with my two colleagues about the importance of the public hearing process, and as we were talking about two giants of the Republican and Democratic party earlier in Mert Henry and Ken Curtis that the President had a chance to meet with I can't help but think that both of them would say this is a no brainer. You know, we use public hearings to give us a better understanding of what we're expected to vote on when a bill shows up on our calendar. I think, in the same way, we owe it to the voters to provide a public hearing so they'll have a better understanding when an initiative shows up on the ballot and, as Senator Diamond pointed out, we did this routinely until a few years ago. I think when all of us see a legislative proposal a few questions pop into our heads. Why is this being proposed? What problems is it attempting to fix? How is it fixing the problem? How will this effect Maine people and what will it cost and where will the money come from? It's the best way to fix the problem, and so forth, because most bills which come before us are not no brainers. They require a great deal of thought. I've heard it said in the era of social media and YouTube and other information outlets that we don't have to have public hearings anymore to inform the public about a referendum proposal. I really disagree with that. It's more important than ever. Hearings are important exercises even when we don't pass a bill. I'm going to say something which I think is true, that all of us agree, hearings uncover facts. TV ads distort facts.

It'd be easy to talk about the recent referendums and the lack of hearings and what that's meant for policy making for the State. But I think, as my colleagues have, it's more constructive to talk about the lone, single referendum that has had a public hearing in the last few years, the York County Casino one, and how much we really learned as a result of that. With 20-20 hindsight, would anybody today seriously argue that the York County Casino hearings were a waste of time? I don't think so.

So talking about this particular referendum, I'm not arguing in favor of it or against it, but it's a complicated, complicated subject. The referendum sets up a brand new State Board to run a brand new State program funded by a brand new State tax. I don't know how it gets any more complicated than that. We've never had hearings on any of that stuff. We need input, as the good Senators said, from DHHS, from the Department of Labor, from Maine Revenue, as well as professional and financial regulation. There are so many questions and, again, I'm not suggesting the answers. But with respect to the tax piece, what about people who make less than the Social Security cut-off. Do they still have

to pay the tax if they file jointly? Does it apply to pensions and other retirement income that our elderly rely on? Does it really force independent homecare givers to be represented by the State Union? Are family caregivers required to be represented by the State like individual providers are? I'm asking these questions because the answers are not apparent from reading the referendum. There's a whole new board which is created. Does the board conform with Maine's laws on how new boards are organized? Is there really - it doesn't appear to be - but is there really no prohibition on self-dealing like there is for other boards? Is there really no requirement for a third party independent audit of how the \$300 million in taxpayer money is being spent?

With respect to the private health information, I'm getting into this, there are significant HIPAA issues here and I'm not saying that they are to the point where this becomes a legal problem or not, but there are significant HIPAA issues that I don't think any of us really understand completely. Is the information going to DHHS or this board or both? Can that private information really be shared for the purposes other than providing care and is it even legal? I think that the voters have a right to have our assistance in creating the forum to answer these questions.

You know, referendum voters are angry and they have a point. I don't think anybody has defended the role of the Legislature and the responsibilities of the Legislature to responsibly implement referenda, not just blindly take exactly what we get, more than I have. But we've heard the cry over the last 18 months or so that the Legislature doesn't respect the will of the people and, while I defend the Legislature and the role we play, the voters do have a point. We aren't voters on notice that there are problems with a referendum question. We aren't being fair to the voters in the same way we're fair to ourselves. We're not providing them with the traditional method of airing the pros and cons of a referendum question in a public hearing. The time to respect the voters is not just after the vote. I think it's just as important before the vote. You know, public policy through 30 second TV ads is a lousy idea. At least let's do our job and do what we here in the Legislature and our staff does best, which is to engage in a thorough and public vetting of an issue before we decide. So I hope that this will have the support, Mr. President, of members on both sides of the aisle. Thank you.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY:** Thank you, Mr. President Pro Tem. You know, I rise in agreement with everything that's been said today and disappointment that we are not in concurrence with the other Body. You know, I - none of us are mind readers. We can't know why we're in this situation and, you know, but we do have before us a referendum which purports to be one of, if not the biggest, tax increase in Maine history. I know in my work on the Health and Human Services Committee, working with some of the homecare providers, I've heard from some of those homecare providers that they don't even support that. You would think that they did support this but I've heard that they don't. There are a lot of outstanding questions and I don't know why we are in this situation of non-concurrence. I'm going to extend the benefit of a doubt to everyone that's not, you know - that no one wants less transparency. Perhaps it's they don't - perhaps there's a lack of agreement about what committee it should go to. If that is the case, then I'm sure that we will be happy to hold the public hearing in the Health and Human Services Committee because

this does deserve a public hearing. There are unanswered questions that need to be answered and I think we all, and the Maine people, deserve better than this. Thank you very much, Mr. President.

Off Record Remarks

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Knox, Senator Miramant.

Senator **MIRAMANT:** Thank you, Mr. President Pro Tem. Men and women of the Senate, I don't disagree with our stand on this bill. I just believe that it's - each bill probably should be looked at individually and that's why I may not support a grander change to what we have right now. I talked to many members of the public who feel that sometimes our hearing process isn't as open as it could be. We know that it seems like it, but when we get crunched near the end our time period for giving notice about public hearings first diminishes and then goes away. Hearings can pop up quickly. If I hadn't sat through several hearings in different committees over the years and listened to people lie to us because they're not sworn in, maybe unintentionally, sometimes not, but I've caught a couple of people at it and called them on it, then I would think that our hearings were the place where great information was passed and the best decision was made. If I had not been one of the people - one of the eight people who brought minimum wage bills and watched what that committee did with them I might now think that it would be better to skip that committee if that's where that bill had to go and then watch some competing measure come out against them. Also what I heard out in the public. It's hard for some people who really believe in this to get time off from their jobs to come up during the week to a hearing. You'd say, 'Well, if it's that important to them.' Well so is the day that they need to take off to take care of their kids or a sick spouse or parent. They might just save it for that, as important as they think this is. So that might not be the best way to get all the information for whether a bill will pass. I believe many of - maybe the increase in these referendums, again what I've heard, is that the Legislature is not responding to the community in what it thinks is important and so maybe they should be out there. So the final part that I heard, and believe, is that when we put something out to referendum it not only goes out to the whole state, it doesn't restrict it to Monday through Friday 10 to, well sometimes midnight, but hopefully 10 to 3 or 4. It doesn't restrict it to one person's opinion or any particular lawyer's opinion. Our own are great and they know how to fit things into Maine law but so do a lot of other lawyers, and then they'll all disagree with each other anyway because that's what you're trained to do when you're a lawyer, to kind of keep digging in. So they have TV ads, meetings, letters to the editor, home parties. Many of us are invited to them, to express our opinion even if we disagree with what's going on. We get to express that. I don't think there's a better public hearing than a citizen's referendum and I don't think we have the final say in getting perfect language for bills, from what I've experienced here in my six years now. So to say that it will be better once a committee looks at it, it's another great thing to think about when we're sitting here and it all sounds good and we're

Initiated Legislation - Legislative Action
1977-2018

| LEG | Year | Election | LD | ComRef | Hearing | Report | Title |
|-----|------|-----------|------|--------|-----------|--------------|--|
| 128 | 2018 | 11/6/2018 | 1864 | - | - | - | An Act To Establish Universal Home Care for Seniors and Persons with Disabilities |
| 128 | 2017 | 11/7/2017 | 719 | VLA | 3/29/2017 | - | An Act To Allow Slot Machines or a Casino in York County |
| 128 | 2017 | 11/7/2017 | 1039 | - | - | - | An Act To Enhance Access to Affordable Health Care |
| 127 | 2016 | 11/8/2016 | 1701 | - | - | - | An Act To Legalize Marijuana |
| 127 | 2016 | 11/8/2016 | 1660 | - | - | - | An Act To Establish the Fund To Advance Public Kindergarten to Grade 12 Education |
| 127 | 2016 | 11/8/2016 | 1662 | - | - | - | An Act To Require Background Checks for Gun Sales |
| 127 | 2016 | 11/8/2016 | 1661 | - | - | - | An Act To Raise the Minimum Wage |
| 127 | 2016 | 11/8/2016 | 1557 | - | - | - | An Act To Establish Ranked-choice Voting |
| 127 | 2015 | 11/3/2015 | 806 | - | - | - | An Act To Strengthen the Maine Clean Election Act, Improve Disclosure and Make Other Changes to the Campaign Finance Laws |
| 126 | 2014 | 11/4/2014 | 1845 | - | - | - | An Act To Prohibit the Use of Dogs, Bait or Traps When Hunting Bears Except under Certain Circumstances |
| 125 | 2012 | 11/6/2012 | 1860 | - | - | - | An Act To Allow Marriage Licenses for Same-sex Couples and Protect Religious Freedom |
| 125 | 2011 | 11/8/2011 | 985 | VLA | 4/25/2011 | ONTP OTPA | An Act Regarding Establishing a Slot Machine Facility |
| 125 | 2011 | 11/8/2011 | 1203 | VLA | 4/25/2011 | ONTP OTPA | An Act To Amend the Laws Governing the Deadline and Conditions for Municipal Approval of a Second Racino and To Allow a Tribal Racino in Washington County |
| 124 | 2010 | 11/2/2010 | 1808 | LVA | 5/11/2010 | ONTP OTPA | An Act To Allow a Casino in Oxford County |
| 124 | 2009 | 11/3/2009 | 974 | TAX | 3/26/2009 | ONTP | An Act To Decrease the Automobile Excise Tax and Promote Energy Efficiency |
| 124 | 2009 | 11/3/2009 | 975 | HHS | 4/13/2009 | ONTP | An Act To Establish the Maine Medical Marijuana Act |