

79TH GENERAL ASSEMBLY

SECOND SPECIAL SESSION

NOVEMBER 19, 1975

1. PRESIDENT:

2. The Second Special Session will come to order. Reading
3. of the Journal. Senator Lemke.

4. SECRETARY:

5. Thursday, November the 6th, 1975.

6. SENATOR LEMKE:

7. Mr. President, I move that the Journal just read by the
8. Secretary be approved unless some Senator has additions and
9. corrections to offer.

10. PRESIDENT:

11. You heard the motion. All in favor will say Aye. Opposed
12. Nay. The motion carries. Senator Lemke.

13. SENATOR LEMKE:

14. Move that the reading and...and approval of the Journal of
15. Tuesday, November 18th, 1975, be...postponed pending arrival of
16. the printed Journal.

17. PRESIDENT:

18. You heard the motion. All in favor will say Aye. Opposed
19. Nay. The motion carries. Senate Bills on 3rd reading in the
20. First Special Session. Senate Bill 1, Senator Dougherty. Second...
21. Second Special Session, this is. Senate Bill 1, Senator Dougherty.
22. Senator Knuppel...Nudelman, for what purpose do you stand?

23. SENATOR NUDELMAN:

24. I think the Chair's inability to count indicates our need for
25. funds for special education.

26. PRESIDENT:

27. Thank you very kindly. You are really a gentleman and scholar,
28. and I'm going to bring you something back from Israel.

29. SECRETARY:

30. Senate...Senate Bill No. 1.

31. (Secretary reads title of bill)

32. 3rd reading of the bill.

33. PRESIDENT:

1. Senator Dougherty.

2. SENATOR DOUGHERTY:

3. Mr. President, on...on the Clerk's Desk, you'll find Amendment
4. No. 2. I was giving it to him yesterday and I understand that he
5. still has it there. It has only to do with the date. It just
6. amends the date to 1970...the present date is still 1976. I have
7. a copy of that.

8. PRESIDENT:

9. Senator Dougherty seeks leave to move Senate Bill 1 from the
10. order of 3rd reading to the order of 2nd reading for the purpose
11. of an amendment. Is there leave? Leave is granted. The bill is
12. on 2nd reading. Senator Dougherty is recognized.

13. SENATOR DOUGHERTY:

14. I move the adoption of Amendment No. 2 to Senate Bill No. 1
15. of the Second Special Session.

16. PRESIDENT:

17. You heard the motion. All in favor...yes, Senator Wooten, for
18. what purpose do you arise?

19. SENATOR WOOTEN:

20. I...I think I may have missed an explanation of that amendment.

21. PRESIDENT:

22. It relates to the date, that's all.

23. SENATOR WOOTEN:

24. Relates...

25. PRESIDENT:

26. Senator Dougherty, would you explain it again, please?

27. SENATOR DOUGHERTY:

28. It...it relates only to the date. It said the...the bill as
29. originally printed says of 1976. This just deletes the year 1976.
30. Senator Netsch has a copy of the amendment.

31. PRESIDENT:

32. All in favor of the adoption of the amendment say Aye. Opposed
33. Nay. The amendment is adopted. Any further amendments? 3rd reading.

1. Senator Dougherty, for what purpose do you arise?

2. SENATOR DOUGHERTY:

3. Has time passed deciding whether Senate Bill No. 1 of this
4. First...Second Special Session after the adoption is amended or
5. must we have other business? It's 2.

6. PRESIDENT:

7. Is there leave to leave the order of Senate Bills on 3rd reading
8. in the Second Special Session for the purpose of intervening business?
9. Leave is granted. Senator Egan has a resolution.

10. SENATOR EGAN:

11. Thank you, Mr. President and members of the Senate. This is
12. a congratulatory resolution for a...every time I do this, the
13. recipient leaves. Senator Mike Brady, it's his birthday. Yes,
14. Senator and...in behalf of the entire Body present...you're to
15. be congratulated on your birthday, and, indeed, if I was in better
16. voice, I'd sing. But, everyone has joined in, and may you have
17. many more, Senator.

18. PRESIDENT:

19. Senator Egan, the Chair...appreciates your doing this formally.
20. Senator Palmer did it a little earlier. I was very afraid he was
21. going to call him Senator Brody. Senator Netsch.

22. SENATOR NETSCH:

23. Mr. President, my only question was directed to the sponsor
24. of the resolution, and it was along that line. Since we have
25. already adopted one, why do we have one in this particular Special
26. Session after we've already voted one in the Regular Session?
27. It couldn't be for the purpose of developing intervening business,
28. could it, Senator Egan?

29. PRESIDENT:

30. Oh, we didn't have one, Senator...Senator Netsch. So that the
31. record will be accurate, we did not have a resolution. Senator
32. Palmer mentioned it and alluded to the fact of his birthday, but
33. there was not a resolution.

1. SENATOR NETSCH:

2. I, Mr. President, I stand corrected on that point, and I...
3. I guess I would simply repeat the question - why in the Special
4. Session? Why not in the Regular Session, which is why we are
5. all here in the first place?

6. PRESIDENT:

7. We take them as we get to them. All in favor of the suspension
8. of the rules...the motion is for the suspension of the rules for
9. the immediate consideration of this resolution. All in favor will
10. say Aye. Opposed Nay. The rules are suspended. Senator Egan now
11. moves for the immediate adoption of this resolution. All in favor
12. will say Aye. Opposed Nay. The resolution is adopted. Is there
13. leave to return to the order of Senate Bills on 3rd reading? Leave
14. is granted. Senate...Senate Bill 1. Read the bill.

15. SECRETARY:

16. Senate Bill 1.

17. (Secretary reads title of bill)

18. 3rd reading of the bill.

19. PRESIDENT:

20. Senator Dougherty.

21. SENATOR DOUGHERTY:

22. Thank you, Mr. President. Senate Bill No. 1 of the Second
23. Special Session was introduced by myself and others for the purpose
24. of clearing up the confusion that exists in the...in the Election
25. Laws Commission...the Election Laws...State Board of Elections
26. as a result of the Ackerman decision and the decision of the United...
27. of the Illinois Supreme Court regarding the validity of the Board.
28. That is the make-up of the Board. Now, these are serious questions.
29. We'd like to resolve them at this time if we can. Therefore, I've
30. introduced this bill and the bill briefly does this. I think every-
31. body is aware of what it does, but it creates the new State Board
32. of Elections under another method of selecting the membership. It
33. provides, it's also...amends the Election Laws Commission. It provides

1. for a five member State Board of Elections, for members are to be
2. appointed respectively by the four Legislative members of the General
3. Assembly. They'll be appointed for a term of four years and the
4. four members will be appointed for a term of four years, the fifth
5. member will be appointed for a term of five years. The members ...
6. the appointment of the members, the fifth member, would be in this
7. manner that a committee of eight members of the Election Laws Commission
8. would select, by a vote of sixty-eight, a party, a person to be elected
9. the fifth member who would be...who would be the chairman and the
10. executive officer of the Commission. It provides that when they ...
11. the selection process takes place, it will be ... have to be approved
12. by a vote of three - fifths members of both Houses in order to make it.
13. It bars the ... the nomination for chairman must be made by this bi-
14. partisan commission ... committee. It bars the chairman from political
15. affiliations or activities during his term of office. It ... it
16. provides the ... that this method is legal. It is suggested this is the
17. only way we can clear up this matter of such a pressing nature. Here
18. they have ... if we do not enact some legislation, we'll have no where
19. to go due to these two decisions. Therefore, it's the the opinion
20. of the ... myself and the other sponsors this is the cogent way, the
21. only sensible way by which it can be done. There are those who may
22. question the validity of it, but if you'll realize and we ... and the
23. legislation under the Constitution says that the Legislature shall
24. provide the means of naming the membership. And this is what we have
25. done. We have selected the legislative ... the legislative leaders.
26. All four will each select a member to act as a member of the State
27. Board of Elections. The fifth member to be selected in the manner of
28. which ... I instructed. The ...

29. PRESIDENT:

30. Senator Graham. Pardon Me. Had you finished, Senator Dougherty?

31. SENATOR DOUGHERTY:

32. No, I was just going to ...

33. PRESIDENT:

1. I'm sorry. Continue.

2. SENATOR DOUGHERTY:

3. ...read the second part of the explanation. The vacancies of
4. the chairmanship are filled in the manner in which we had and it
5. will complete a new term of which will be for five years and then
6. thereafter will be for four years. And during a vacancy of chair-
7. manship due to death, resignation and so forth, the vice-chairman
8. presides over the Board and the chief ... record chief administrative
9. officer. And there is a provision for party rotation of vice-chairman.
10. The chairman that the salaries to be paid is twenty thousand dollars
11. a year for the chairman and the board members are to receive a hundred
12. fifty dollars per day not to exceed twenty-two thousand, five hundred
13. dollars a year. They've also ... received expansions. Three members
14. will constitute a quorum, affirmative vote of three is required for
15. action and proxies retained. Members are subject to removal by
16. impeachment and they're also subject to disqualification as provided
17. for by the Constitution. The effective date is immediately. Current
18. members of the State Board of Elections are to continue serving
19. until all five new appointments are made and completed. New appoint-
20. ments will replace the present board simultaneously as soon as all five
21. members are appointed. I think this is as brief an explanation as I
22. could give in the time allowed, but I do believe in the vital necessity
23. of this bill, for the reason when we go with salary, we have somewhere
24. to go, and I believe that this is the most cogent manner in which we
25. could. I have faith in the members of the ... the Legislative leaders that
26. they will do all that they can to provide the proper leadership in
27. selection of members to clear up this question. We've heard the question
28. of malfeasance mystery. Let's get it cleaned up once and for all, and
29. I think it's constitutionally possible. I ask favorable consideration.

30. PRESIDENT:

31. Senator Graham.

32. SENATOR GRAHAM:

33. Mr. President and members of the Senate ...

1. PRESIDENT:

2. Senate...Senators, would you hold your voices down. Hold you
3. voice down, Senator Chew. Hold your voices down a little bit,
4. please.

5. SENATOR GRAHAM:

6. Mr. President and members of the Senate...

7. PRESIDENT:

8. I wish.

9. SENATOR GRAHAM:

10. Charlie, I'm ready when you are. Members of the Senate, we have
11. done...made a constant effort to respond to what we believe is the
12. demand upon the Legislature to do something with regard to the con-
13. duct of establishing a State Board of Elections during this term.
14. There are those who don't agree with that concept. To those, I say
15. they are wrong. It is our duty, it's our responsibility and we can
16. do it. I know there are some...there's some constitutional lawyers
17. that disagree with the format of this proposal. There are those who
18. say that one person should be directly responsible for appointing all
19. of the members. I say to them - what does he do when he has control
20. of an Election Board that is supposed to investigate the conduct of his
21. election. Gentlemen, that will not stand up. I don't think there's
22. really any use for me talking and trying to explain this when there's
23. no one listening except for Senator Netsch and she's already memorized
24. it. In the back of the room, we have a considerable caucus, and some
25. of those will be called upon to vote on this and they're not listening,
26. and I'm sorry for that.

27. PRESIDENT:

28. Any further discussion? Senator Netsch.

29. SENATOR NETSCH:

30. Mr. President, I rise in opposition to Senate Bill 1 in the
31. Second Special Session and my reason is really twofold, but first
32. and foremost without doubt, is the fact that this bill is clearly
33. and without equivocation, unconstitutional. It flies absolutely

1. squarely in the face of Article V, Section 9 of the Constitution
2. of the State of Illinois, which says - The General Assembly shall
3. have no power to elect or appoint officers of the Executive Branch.
4. This is part of the Executive Branch, the State Board of Elections.
5. It would be, under any circumstances, if you look at the case law
6. in Illinois which describes what constitutes a part of the Executive
7. Branch, the powers and duties that belong to the State Board of
8. Education, clearly fall within that domain. They are administrative.
9. They involve a major part of the exercise of supervision over the
10. election process, and that is, indeed, an Executive and administra-
11. tive function. It is not a Judicial function and it is not a legis-
12. lative function. Even if there were any doubt in terms of the func-
13. tions and duties of the State Board of Elections that it does, indeed,
14. fall within the Executive Branch. That issue was set to rest in the
15. very Constitutional Convention which mandated a State Board of Elections.
16. In the debates on the proposal for that provision in the Constitution,
17. the question was asked by Delegate Kayman. I have one further question
18. and that is - in what branch of government is the State Electoral
19. Board? The response of Delegate Keegan, who was the principal sponsor
20. of the proposal to create the State Board of Elections was as follows:
21. Well, I think it would lie within the Executive Branch. There is no
22. way, absolutely no way that a court or this Body, the General Assembly,
23. can escape that conclusion. The State Election Board is within the
24. Executive Branch of government. Its officers are, in that sense,
25. Executive officers and they are clearly subject to the prohibition
26. in the Illinois Constitution, Article V, Section 9, which prohibits
27. the General Assembly from appointing officers of the Executive Branch.
28. I would say that there is one other reason why this bill should not be
29. passed. And that is in terms of the...the conduct both of the present
30. Election Board which has had appointment in effect by members of the
31. Legislature, and in terms of that fifth person who is so crucial to
32. the future functioning of the State Election Board. It seems to me
33. that the responsibility for appointment should be clearly pinpointed

1. in one person subject to review by the State Senate. I personally
2. feel that that person who makes the appointments should be the
3. Governor, because he is the most visible person in the State of
4. Illinois and the one, who in no way, can escape the responsibility.
5. But, there clearly are alternative approaches that could be used.
6. If this legislature so decided, it could give that appointing power
7. to the Secretary of State, if we determine who he's going to be
8. at some time in the future, or to the Attorney General or to a com-
9. bination of state elected officers. The one thing that it cannot
10. do, and this is the opinion of Judge Ackerman, in the case involving
11. the...the State Election Board is as follows: the Constitution says -
12. permits the Legislature to choose whatever manner of selection it
13. wishes except appointment by itself. That is clear and unequivocal,
14. and it is also Constitutionally correct. It seems to me that we have
15. an opportunity to...to devise a State Election Board which would,
16. in fact, fulfill the intent of the sponsors of that proposal in the
17. Constitutional Convention, and that is to make it a strong independent
18. agency. I would suggest that there should be a fifth person on that
19. board, not just as a tie-breaker, which this proposal would...would
20. bring about, but as a voice for the thirty-five percent of the elector-
21. ate who do not belong to either established political party. That
22. is the real importance of that fifth person on the board. It is not
23. simply to break ties, it is to represent a point of view that, in
24. fact, is a...the point of view of more than one-third of the electorate
25. in the State of Illinois and throughout the nation. Those people
26. have a right to make sure that their interests are protected in the
27. very important business of the administration and enforcement of the
28. Election Laws of the State. So, for two reasons then, both as a matter
29. of substance and as a matter of Constitutionality, it seems to me that
30. this bill is absolutely wrong. Indeed, it is an exercise in futility.
31. It will be invalidated by the courts, and there's no point in our taking
32. our time to pass it in this form.

33. PRESIDENT:

1. Senator Knuppel.

2. SENATOR KNUPPEL:

3. Mr. Chairman and members of this Body, the Elections Commission
4. was created as a joke on the first reading in the Constitutional
5. Convention. It's still a joke, but it's a very sick joke when we
6. look at the patronage and everything that's happened. I just say if
7. Betty Keegan were here today, she'd be sorry that she ever proposed it
8. and ask that we go back to the old method. And I... I really regret it.
9. I'm going to support this legislation, but it's really ... it started
10. as a joke. It'll always be a joke. They'll always be overladen with
11. patronage. They'll always be undue time consumed here in this Senate
12. and other places, trying to work out problems that were well attended
13. before this.

14. PRESIDENT:

15. Senator Bloom.

16. SENATOR BLOOM:

17. Yes, I rise in opposition to this legislation, cause let's face
18. it, this Board of Elections is the biggest rip-off that's come down
19. the Pike. Before, the Index Division could handle our elections for
20. sixty thousand dollars, budgeted. Now, we have something with three
21. and a half million dollars budget, sixty times that. I think if that
22. weren't problem enough, we all know the board reeks with patronage.
23. I'd like to see this General Assembly offer the voters an amendment
24. that would abolish that section of the Constitution, and let's get
25. back to the way the Index Division ran it. I urge you to vote No
26. on this.

27. PRESIDENT:

28. Senator Don Moore.

29. SENATOR MOORE:

30. Thank you, Mr. President. I have some... some reservations about
31. the lady from Cook that recently spoke as far as this being unconstitu-
32. tional. To respond to this, the General Assembly is given the power
33. by law, and I quote, "to determine the manner of selections of the

1. Board", closed quote. It's in Article III, Section 5. This pro-
2. vision does not say, except as prohibited in Article V, Section 9,
3. therefore, the elementary rule of statutory and constitutional
4. construction would dictate that the general provision must yield
5. to the particular authority to determine the manner of selection
6. of these officers. I submit to you that this bill is constitutional,
7. and whether it is or isn't is none of our damn business. I know that
8. when I went to law school, there was three branches of government,
9. the Legislative, the Executive and the Judicial. The Legislative
10. passes the laws, the Judicial interprets them and the Executive
11. enforces them, and for us to stay here and act as the Supreme Court
12. on this thing, this is not our proper function. It's our job to
13. pass the law. I also recall reading the minutes of the Constitution-
14. al Convention when the original Board...or bill that created the
15. State Board of Elections. We went on and stated that it should be
16. an independent board and where many quotes from Senator Netsch,
17. Senator...Keegan other members of the Con Con that stated that they
18. felt it should be independent. I felt when I introduced that bill
19. and it was a committee bill that came out of this Body that we had
20. created an independent board. Apparently, a circuit court judge has
21. deemed to differ with our opinion. The Supreme Court has not specif-
22. ically ruled on this question, and I think to rely upon a circuit
23. court judge of this State as dictating what action we should take
24. would be highly improbable. Gentlemen, the Legislative Branch of
25. government is the closest branch of government to the people. As
26. long as we don't have a half-breed type Board of Elections, such as,
27. and by that I mean with the Legislative appointments being recommended
28. by the Legislative Branch, and the appointment by the Executive Branch,
29. here we get into the half-breed thing. I think that this Body has the
30. authority to give the power to the Executive Branch, if they see fit,
31. to give it to the Legislative Branch, if they see fit. I think this
32. is the proper function. I think we'll eliminate this problem of having
33. a half-breed deal intermingling both the Legislative and the Executive

1. Branch of government. And this is one Senator that thinks this is
2. a good bill. I have faith in the Legislative Branch of this State
3. Government, and I think the people of the State of Illinois are going
4. to be better off placing this authority in this Body rather than in
5. the Executive Branch of government, whoever the chief executive may
6. be. I urge support of Senate Bill 1.

7. PRESIDENT:

8. Any further discussion? Senator Fawell.

9. SENATOR FAWELL:

10. Well, very briefly, if one attorney makes his view and it never
11. fails that another attorney rises and says just the opposite. But
12. I've read the Lunding decision and the Judge Ackerman opinion, and
13. I agree with Senator Dawn Netsch. I don't think that there's any way
14. of construing it otherwise. You have the Constitution creating the
15. State Board of Elections. It... it ain't a Judiciary. It...it's
16. certainly not a Legislature. It has to be the Executive Branch of
17. government, and then you have another Section that says - the General
18. Assembly shall have no power to elect or appoint officers of the
19. Executive Branch. Now, I ... I don't have any quarrels with the Legislature
20. having these responsibilities, but it just ... if we want to avoid more
21. problems, and we've got enough right now, apparently, with these court
22. decisions, the safest thing to do is to go towards something like the
23. Kempiners' Bill or the bill that Senator Netsch has and work in that
24. direction. And I think that we have to be concerned about whether
25. what we're doing is constitutional or not. We can't close our eyes
26. to that. I know we pass a lot of things that are unconstitutional,
27. but we must look at it and here, I think, it's so clear that we're
28. again spinning our wheels and wasting time, and one ... one nice thing
29. about all things that we do is we create a lot of work for attorneys.
30. That's why we're not on the unemployment roll, I guess, because we keep
31. on throwing things like this out, we just have a lot of attorneys come
32. back with a lot of big fees and eventually of course, the courts will ...
33. will knock us down again. And here, I think, we're just asking for it.

1. PRESIDENT:

2. Senator Harber Hall.

3. SENATOR HALL:

4. Mr. President, I just have one short point to make with apologies
5. to the many of you who are attorneys and that I am not an attorney.
6. But, I rise in support of this bill and in making one point, I think
7. that it's a mistake as Senator Netsch pointed out she would like to
8. do is to put a premium on those voters, those citizen voters in the
9. State, who do not choose to validate their franchise and honor their
10. franchise for voting and choose not to vote in any primary. I think
11. the fact that this chairman of the Election Board would be a so-called
12. independent and, thereby, at a high salary entice people to stay away
13. from the polls so that they would not be shown as supporting any party,
14. is a real mistake in government. And that is the point that I wanted
15. to make and suggest to you that by virtue of the fact that Senate Bill
16. 1 is before us in a Special Session, that the urgency of the matter must
17. be important. I thought it was before we came down here. I still have
18. to assume that it is, and this bill meets the criteria, as I see it, with
19. ...with the due apologies I've already made for not being a lawyer, and
20. therefore, I support the bill.

21. PRESIDENT:

22. Any further discussion? Senator Dougherty. He's requesting a
23. roll call. The question is shall Senate Bill 1 pass. Those in favor
24. will vote Aye. Opposed Nay. Secretary will call the roll.

25. ACTING SECRETARY: (MR. FERNANDES)

26. Machine cut-off...Bloom, Brady, Bruce, Buzbee, Carroll, Chew,
27. Clarke, Course, Daley, Davidson, Demuzio, Donnewald, Dougherty, Egan,
28. Fawell, Glass, Graham, Harber Hall, Kenneth Hall, Harris, Hickey, Hynes,
29. Johns, Joyce, Knuppel, Kosinski, Lane, Latherow, Lemke, McCarthy, Merritt,
30. Mitchler, Howard Mohr, Don Moore, Morris, Netsch, Newhouse, Nimrod,
31. Nudelman, Ozinga, Palmer, Philip, Regner, Rock, Roe, Romano, Savickas,
32. Schaffer, Shapiro, Smith, Sommer, Soper, Vadalabene, Weaver, Welsh,
33. Wooten, Mr. President.

1. PRESIDENT:

2. For what purpose does Senator Bell rise? Aye, Senator Bell, Aye.
3. Senator Merritt, Aye. On that question the Ayes are 40, the Nays are
4. 9. Senate Bill 1 having received the constitutional majority is
5. declared passed and the bill having received affirmative vote of
6. three-fifths of the members elected is effective immediately upon
7. its becoming a law. Any further business to come before the First...
8. Second Special Session? If there's no further business to come before
9. the Second Special Session, the Second Special Session will be standing
10. in adjournment until 10:45 tomorrow morning.

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