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Senate Acts to Clear Way
For Saxbe's Appointment

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WASHINGTON, Nov. 28.—The Senate approved today a bill designed to remove a constitutional barrier to the nomination of Senator William B. Saxbe, Republican of Ohio, to be Attorney General.

Despite arguments that it was unconstitutional, the bill passed 75 to 16, with Mr. Saxbe voting "present," and was sent to the House.

President Nixon has said that he will formally submit Mr. Saxbe's nomination to the Senate for confirmation immediately after enactment of the legislation.

After the Senate vote today, the House Post Office and Civil Service Committee agreed to forgo hearings on the bill and asked the House leadership to schedule the measure for a vote on the floor next week.

The bill would reduce the salary of the Attorney General from the present \$60,000 a year to \$35,000, the level that prevailed before the Senate approved a pay increase for Cabinet officers in February, 1969.

This would enable Mr. Saxbe, who entered the Senate Jan. 3, 1969, and who subsequently voted in support of the pay increase, to serve as Attorney General at the old pay scale.

Constitution Is Cited

Under Article 1, Section 6 of the Constitution, no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office for which the salary was increased during that time.

Mr. Nixon announced Nov. 1 his intention to nominate the 57-year-old Mr. Saxbe to be Attorney General, succeeding Elliot L. Richardson, who had resigned instead of carrying out the President's order to discharge Archibald Cox, the Watergate special prosecutor. Mr. Saxbe had previously announced that he would not seek re-election to the Senate next year.

Mr. Saxbe, who did not participate in the Senate debate today, sat at his desk chesing tobacco and gazing out over the Senate chamber as the roll-call took place. Several Senators stopped by his desk to shake hands after the vote had been announced.

"It's like the lodge voting 75 to 16 to send you a get-well card," Mr. Saxbe reportedly said later.

Opposition to the bill was led by Senator Robert C. Byrd of West Virginia, the Democratic whip, who denounced the measure as "legislative legerdemain" aimed at circumventing a provision of the Constitution.

Mr. Byrd stressed that he was not questioning his colleague's ability to be Attorney General but contended that "the constitutional prohibition against the appointment of Mr.

Saxbe is complete, final, absolute and beyond remedy by legislation enacted by a majority of both houses."

Mr. Byrd added at one point: "We should not attempt to perform a caesarean section on the Constitution in order to bring the Senator from Ohio into the President's Cabinet." Senator Sam J. Ervin Jr., Democrat of North Carolina, said, "I think this bill does little credit to the intelligence of the men who wrote the Constitution."

But supporters of the bill, including Senators Hiram L. Fong of Hawaii, Roman L. Hruska of Nebraska and Robert P. Griffin of Michigan, all Republicans, argued that the bill met the intent of the Constitution because Mr. Saxbe would not benefit from the salary increase voted in 1969.

Mr. Hruska contended that Congress had created the obstacle to Mr. Saxbe's nomination by approving the pay increase in 1969, "and Congress can remove that obstacle."

By a vote of 87 to 1, the Senate approved an amendment by Mr. Byrd that would expedite any court challenge of the constitutionality of Mr. Saxbe's appointment. The amendment provided that any challenge would be heard by a three-judge Federal court with a direct appeal to the Supreme Court.

Mr. Byrd said that there was "little doubt" that there would be a constitutional challenge and said this could "cast a shadow" over Mr. Saxbe's actions as Attorney General.

By voice vote, the Senate also approved another amendment declaring that Mr. Saxbe's \$35,000 salary as Attorney General could not be raised until the expiration of his current Senate term on Jan. 2, 1975. Mr. Saxbe now receives \$42,500 as a Senator.