

MAINE STATE LEGISLATURE

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Senator **MARRACHÉ** of Kennebec moved to **INDEFINITELY POSTPONE** House Amendment "E" (H-959) to Committee Amendment "A" (S-523), in **NON-CONCURRENCE**.

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

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN:** Thank you, Madame President. I urge you to reject the pending motion. The bill, as brought out of the committee, seemed a bit over-broad and has been worked on by several committee members to bring forth this amendment. The amendment makes it so that you still have quite a bit more reporting than you used to but this amendment now looks at it and asks how much does the constituent, the state, or the public need to know about you. This amendment that you are seeking to indefinitely postpone says that pieces of real estate located throughout the state and stocks and bonds you own will not have to be enumerated. That seems like an awful lot of information for people to be able to find out about you on the internet, keeping in mind that all of this information will be posted on the internet, including the value of your properties and investments. When you make out a bank application you do put all of that information on that. You wouldn't make a photocopy of that and leave it in every restaurant in the state of Maine so that people would know what you have for assets. You would probably hold that pretty close and hand it to your bank and hope that it stays in your file. This amendment says that this is personal information, that you want to hold it back, but you are perfectly willing to say where you work and what you do, but to have to explain every piece of paper, every piece of property, and stock investment or savings account, whether in your name, your spouse's name, or your child's name, seems a little bit intrusive. I believe that we should be responsible and disclose our conflicts of interests and apparent investments, but I don't think that it should be out there for everyone. I would ask you to hold onto this and do not vote for the indefinite postponement. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Marraché to Indefinitely Postpone House Amendment "E" (H-959) to Committee Amendment "A" (S-523). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#436)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, HOBBS, MARRACHE, MARTIN, MITCHELL, NUTTING, ROTUNDO, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PERRY, PLOWMAN, RAYE, ROSEN, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, TURNER, WESTON

13 Senators having voted in the affirmative and 22 Senators having voted in the negative, the motion by Senator **MARRACHÉ** of Kennebec to **INDEFINITELY POSTPONE** House Amendment "E" (H-959) to Committee Amendment "A" (S-523), in **NON-CONCURRENCE, FAILED**.

House Amendment "E" (H-959) to Committee Amendment "A" (S-523) **ADOPTED**, in concurrence.

Committee Amendment "A" (S-523) as Amended by House Amendment "E" (H-959) thereto, **ADOPTED**, in concurrence.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-523) AS AMENDED BY HOUSE AMENDMENT "E" (H-959) thereto, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Establish a Uniform Building and Energy Code"

H.P. 1619 L.D. 2257

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-983)**.

Signed:

Senators:
BROMLEY of Cumberland
SCHNEIDER of Penobscot

Representatives:
BEAULIEU of Auburn
SAMSON of Auburn
MacDONALD of Boothbay
SILSBY of Augusta
SMITH of Monmouth
BEAUDETTE of Biddeford
CLEARY of Houlton

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-984)**.

Signed:

Senator:
COURTNEY of York

Representatives:
AUSTIN of Gray
PRESCOTT of Topsham
RECTOR of Thomaston

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983) AS AMENDED BY HOUSE AMENDMENT "B" (H-1005)** thereto.

Reports **READ**.

Senator **BROMLEY** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY:** Thank you, Madame President, men and women of the Senate. What we have before us is an act to establish a uniform building and energy code. If any of you have been in or around or near the BRED Committee you will know this has been an issue that has been debated in the past eight years, although the Senator from Cumberland, Senator Brannigan, told me it's been 20 years. We are one of 11 states that don't have a building code and it has an impact in ways that many of us might not realize. It adds costs to housing. It makes the unpredictability of planning an issue for developers. Something that I learned rather recently is that if you are applying for an SBA loan for construction on your small business expansion you have a much more difficult path than if your municipality has an enforced building code. The issue of the adoption of a code is not controversial. It was some years back. The committee was unanimous in its belief that a uniform code is important and the Maine Municipal Association supported that as well, which we were very grateful for.

Where the committee divides, and where some of us may as well, is whether or not it is important to enforce this code. I will give you a couple of examples why I'm going to support enforcement forcefully. You may not know this, if you have served on the BRED Committee you do, we already have a voluntary building code and a voluntary rehab code. Those are not enforced for a couple of reasons. One is because the code officers have not been trained in this code. The fact that it is not required makes it an option. Some of the several businesses and groups that are supporting this remind us that if we're not going to enforce the code it won't have the benefits that are so important to all of us. I want to quote a upstanding businessperson and retail lumber dealer who says, 'Adoption of a uniform statewide building code with mandatory enforcement sends a strong signal to business that Maine is serious about addressing some of the longstanding complications of building and developing in Maine.'

Another issue that is near and dear to almost of us in this Chamber is downtown rehab. It's particularly upsetting and

demoralizing, actually, for many of us when we see beautiful historic buildings disappear from the landscape. One of the reasons, and we've all grappled with this, is to build, add on, or rehab a historic building to a modern code is almost impossible. This code includes a rehab code that relaxes some of the provisions that would make it impossible to bring a historic building up to code. As we coupled together some of the work we've done around historic preservation, this rehab code is a very important piece of that.

I also want to talk to you for a moment about how the committee did not take lightly the issues of municipalities who were worried about how they might implement this and talk to you a little bit about it. Actually there is a paper, hopefully, going around to you about this. I'll make sure that you all have a chance to see it before you vote. I want to give you a list of some of the things that we did to be helpful to municipalities. The first thing to notice is that if a municipality has under 2,000 residents this bill does not apply to them. The code does not apply. Also local code enforcement officers will receive free training and certification at the State's expense. When I say at the State's expense it is actually from the developers who supported this bill agreed to a 4¢ per square foot surcharge on commercial buildings because of their awareness of the importance of this code. That money will be used to fund the training and the board. Code enforcement will be phased in slowly; July 2010 for towns that already have a code and not until 2012 for towns that do not have a code.

It's easy for us to say up here that a uniform statewide code will save towns the expense and hassle of having to update and amend the code each year themselves. We estimate a \$3,000 per adoption savings and we're sure there are other savings in terms of how codes are harmonized, that was a word we were using. If some codes come in conflict with the State, a board of experts will work very diligently to make sure that the codes are harmonized. When it comes to enforcement, we understood that this was a particular issue for towns and cities so we've laid out in this bill four options. Towns that are like my city of South Portland who are already doing this will not be impacted. They may choose to enforce the codes with enforcement officers they have on staff. That is what my city is doing. They may contract for enforcement. They may also join together with other towns and do it as a group. We still realized there might be towns that weren't in a position to hire people and also might not have the budget to contract out. We added a forth option of third party inspectors which would mean that the builder and the owner could share the cost of the inspection and the only requirements of the municipality would be to simply file that report before they issue an occupancy certificate, which they are already doing. If number four on this list is chosen, the only additional thing that a municipality will have to do is simply file a piece of paper. We think the benefits of having a uniform code and a uniform energy code certainly outweigh the minor additional activity at the municipal level and I would urge you to support the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Courtney.

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. First of all I want to thank the good Chair for outlining what's gone on in the BRED Committee quite accurately. I guess I want to be real clear that the reason that I'm

not supporting this motion is because it's pushing this mandate onto municipalities. While the good Senator outlined how the mandate may have been reduced, I'm not sure that it is reduced completely, or eliminated it. I'm surprised to actually see this come up here without a mandate preamble, but maybe that will happen downstairs if it goes that far.

We talked about the enforcement and when the State instructs the municipalities to do this enforcement. The good Senator mentioned using the existing structure, which is fine, contracting it, or join with another towns. It all sounds good. The fourth part really concerns me because it has the third party inspectors. That part is very troublesome because those third party inspectors have to be paid. If a community chooses to do so, they could actually have the contractor or the homeowner pay for that expense. That is taking a mandate on the municipality and putting it on the people at home. Will the phones ring off the hook if that happens and we pass it and go home? No, but they will ring off the hook in a couple of years when it goes into effect.

The other piece that concerns me greatly is that we've tried to take a big step here. Maine Municipal has gone on record as being supportive of this statewide uniform building code. They are supportive of the other report, which I won't talk about. They are taking a big step. There are people who have been committed to moving this code forward so we have uniformity for a number of years. There are some pieces in it that try to grasp it a little bit too much, like what we haven't heard anything about yet, the statewide energy code which certainly needs to be vetted properly and separately from the initial building code. While the goals are to improve energy efficiency for all of us, I think that this really hasn't had an extensive discussion in the committee about the details and the process. I would just ask you to take a good look at this and decide whether or not we think that we know more up here than the people at home. I have confidence that the people at home will make the right decision if we choose to just put the code out there and give them the opportunity to use it. The argument of the supporters, saying that we absolutely have to have this mandatory code, is undone by the very essence of their report. When you look at it, they exempt the communities up to 2,000 people. If you represent a community of 2,000 or less, I guess what I'd suggest, if you're going to vote for this report, is that you trust the government not to come back in a couple of years and change what is required of you.

In summary, Madame President, I just would request that you oppose this motion so we have an opportunity to look at something else. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President, men and women of the Senate. I rise in support of the pending motion. I wanted to talk for a moment about a couple of things, one being the enforcement options that were chosen and the other being the importance of the energy code, and to address some of the concerns that have been raised.

In terms of the enforcement, when we were looking at building codes, both the general building codes and the energy efficiency codes, we knew that enforcement was a key element, as the good Senator from Cumberland, Senator Bromley, pointed out. Unless you have some sort of enforcing mechanism in place you will not get the uniform application that is hoped to be achieved by implementing the code. In doing that we responded

to the very legitimate concerns that were raised by MMA and others who were concerned that a one-size-fits-all approach was not appropriate for the many communities in Maine. We listened to the concerns and came up with a range of options. One of those options is for a traditional code enforcement at the local level, which some municipalities favored. I've heard from a number of communities who like that approach and believe that this is the approach that we should be taking. Other communities, though, don't have any code enforcement officers at present, do not want to hire folks to perform that function, and so we said we'd give those communities an option for third party enforcement so that they can allow independent third parties to do it and have the certificate provided to the town. This is designed to minimize the cost to the town and the fee to obtain those inspections is no different than permit fees that you pay to municipalities so they can hire the code enforcement officers to go out and do the work. Those are the options we offered and brought forward in response to the concerns we heard. It was my understanding, quite frankly, that MMA was supportive of having these options included in there to make sure that it was not a one-size-fits-all approach.

With respect to the energy building codes, the code has been well vetted. We, in the Utilities and Energy Committee, have been talking about it for a long time. We've put in place the voluntary energy building code in a previous session, so we were well aware of it and it has been well vetted and this is the code that has been chosen. The reason that an energy code is important, and it's important to understand, is because we're not looking to make our homes the most efficient possible with this code. Far from it. This is a very baseline standard. Most consumers, when they buy new homes, assume that there is some minimum floor standard that is being met in terms of the insulation, the windows, and so forth. The reality is that 84% of the time they will be disappointed when they get their energy bills. Of the new homes that are being constructed in this state 84% don't even meet a very basic level of energy efficiency.

What does this mean in terms of cost? The number one issue that does get addressed is the insulation of the foundations. If you were to go and do that, in building a new home, you would spend in the range of \$1,200 to \$1,500. That's total with the increase to make it meet code. You will save far more than that over a very short period of time. We did calculations that concluded that even if you had to build that extra cost into your mortgage, in the energy savings you would achieve, you would be making \$4 a month. By making that simple investment you will be making \$4 a month net profit as a result of doing that. It's important to understand that these codes do not cost you money. In the term of the course of owning your home it is saving you money every single month from day one. That is what this is about. Achieving a minimum floor to make sure you are saving money. I think this past winter is a good example. People have been spending thousands and thousands of dollars on their heating oil. With minimum standards in place, they will be saving \$50 to \$100 a month in heating costs. That is very real money in the pockets of Maine people. Given the fact that we are the only state in New England without an energy efficiency code and we are only one 11 states nationally, I would ask, why is it that Maine consumers do not deserve, when they are building their homes, the same level of efficiency and low cost operation that is achieved in every other New England state and in most other states around the country? That's all we're doing with this code.

It has been well vetted. It is an appropriate step and it will not cost folks money in the operation of their homes.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bromley to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-983) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#437)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, WESTON

18 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion by Senator **BROMLEY** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-983)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-983) **READ**.

House Amendment "B" (H-1005) to Committee Amendment "A" (H-983) **READ** and **ADOPTED**, in concurrence.

On motion by Senator **BRYANT** of Oxford, Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bryant.

Senator **BRYANT:** Thank you, Madame President, ladies and gentlemen of the Senate. Back in the 1900's we had eliminated, or had exempted, 2,000. What I propose here today is an exemption of 5,000. I have a number of towns within my district that certainly do not like this mandate. They don't mind a statewide code but they don't necessarily believe that the State ought to be mandating them to do that. What I present to you is an amendment that exempts populations of 5,000 and less. As I said, probably 70 or 80 years ago the 2,000 was put in there and the population has grown. I think it is within reason, 5,000 is a

reasonable number to allow towns under that population to make their own decisions. I would appreciate your vote.

Senator **BROMLEY** of Cumberland moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983).

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY:** Thank you, Madame President. We wrestled with the right number to exempt and some of us thought it was 1,000 and some of us thought it was 1,500, so we went to 2,000 somewhat reluctantly. I think there are only 85 towns that are over 5,000 and most of them are already enforcing the code. This would pretty much gut the bill. We have put in place a graduated system so that towns that don't have a code don't have to adopt it and don't have to put it into place until 2012. There will be lots of resources and lots of support to help them. There are a handful of people who simply don't want to have to be told to do anything. I certainly understand that. Those people are probably never going to support this. For all the reasons I mentioned before, it would be very important to defeat this amendment and support Indefinite Postponement. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Courtney.

Senator **COURTNEY:** Thank you, Madame President, men and women of the Senate. I'll be opposing the Indefinite Postponement motion. One thing I'm not sure that everybody completely understands is that the code is the code whether you are 2,000, 1,000, or 500. The code that was just passed is a statewide building code and it's in place. The threshold is the threshold that requires the mandatory enforcement. I'll be supporting raising the threshold for mandatory enforcement for some of my rural friends that don't want to take that on. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Turner.

Senator **TURNER:** Thank you, Madame President. I'm going to ask that you support the motion before us, Indefinite Postponement. My numbers may be off precisely, but I think some 40 states currently have mandatory building codes. They are all being enforced in some fashion or another at this point. For those of you who have medium term memories, I will refer you back to Florida in 1994. One of the large hurricanes came blowing across the peninsula and gutted the lower core of that state where they had a building code on a statewide basis that was not enforced. Where there should have been 16" between 2 x 4s and the like there were sometimes 3'. Enforcement is always a good idea and I would encourage you to vote in favor of the pending motion of Indefinite Postponement.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bromley to

Indefinite Postpone Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#438)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, NUTTING, PERRY, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, DOW, GOOLEY, HASTINGS, MCCORMICK, NASS, PLOWMAN, RAYE, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator BROMLEY of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-613) to Committee Amendment "A" (H-983), **PREVAILED**.

Committee Amendment "A" (H-983) as Amended by House Amendment "B" (H-1005) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#439)

YEAS: Senators: BARTLETT, BOWMAN, BRANNIGAN, BROMLEY, DAMON, DIAMOND, DOW, GOOLEY, HOBBS, MARRACHE, MARTIN, MILLS, MITCHELL, PERRY, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BENOIT, BRYANT, COURTNEY, HASTINGS, MCCORMICK, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, WESTON

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, was **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (4/11/08) Assigned matter:

Bill "An Act To Amend the Axle Weight Laws for Trucks Transporting Unprocessed Agricultural Products and Forest Products" (EMERGENCY)

H.P. 1576 L.D. 2209
(H "A" H-888 to C "B" H-872)

Tabled - April 11, 2008, by Senator **MARTIN** of Aroostook

Pending - motion by Senator **DAMON** of Hancock to **RECONSIDER** whereby the Senate **RECEDED** and **CONCURRED**

(In House, April 8, 2008, that Body **INSISTED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-872) AS AMENDED BY HOUSE AMENDMENT "A" (H-888)** thereto.)

(In Senate, April 10, 2008, on motion by Senator **MARTIN** of Aroostook, **RECEDED** from **ACCEPTANCE** of Report "A", Ought Not To Pass, in **NON-CONCURRENCE**. On further motion by same Senator, **CONCURRED** to **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-872) AS AMENDED BY HOUSE AMENDMENT "A" (H-888)** thereto, in concurrence.)

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

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. I'll be very brief. I urge all my colleagues to vote against the motion to Reconsider.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. I would urge all my colleagues to vote in favor of the motion to Reconsider and I would do that so we could get to the position where we could take the right action on this bill and not the harmful action on this bill. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. For the record, the Senator from Hancock, Senator Damon, wants to kill the bill. I want to save it.