

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Eighth Legislature
State of Maine

Daily Edition

Second Special Session

beginning June 19, 2018

beginning at page H-1739

regards to the errors bill as it applied to the clean election money, per se; and so that essentially this is a, sort of, I would call it a clean errors bill absent that, and I think that's the purpose of your amendment. If you can just provide the caucus some information on that, I'd appreciate it.

The SPEAKER: The Representative from Newport, Representative Fredette, has posed a question through the Chair to the Representative from Ellsworth, if the Representative; the Chair recognizes the Representative from Ellsworth, Representative Luchini.

Representative LUCHINI: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House, that's exactly what this amendment does, as the good Representative from Newport said. This removes reference from the original errors bill to the clean election system, and we're doing it in response to both the court action that we've seen recently, as well as the agency action from the agency of oversight, the Ethics Commission, that they are able to disburse funds without a legislative fix. And so, given the difficulties in passing the errors bill, we have moved that portion out.

Subsequently, **House Amendment "D" (H-809) to Committee Amendment "A" (H-782) was ADOPTED.**

Subsequently, **Committee Amendment "A" (H-782) as Amended by House Amendment "D" (H-809) thereto was ADOPTED.**

Subsequently, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-782) as Amended by House Amendment "D" (H-809) and Senate Amendment "A" (S-494) thereto in NON-CONCURRENCE** and sent for concurrence. **ORDERED SENT FORTHWITH.**

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following item which was tabled and today assigned:

House Order, Propounding a Question to the Supreme Judicial Court

(H.O. 72)

TABLED - July 9, 2018 by Representative BEAR of the Houlton Band of Maliseet Indians.

(Pursuant to House Rule 513)

PENDING - **PASSAGE.**

The SPEAKER: The Chair recognizes the Representative from the Houlton Band of Maliseet Indians, Representative Bear.

Representative BEAR: Thank you, Madam Speaker and Ladies and Gentlemen of the House. I am pleased to rise and ask that you consider favorably the resolve that I Tabled on July 9, when we were in the process of considering LD 1201, and having this session and the past several sessions that I've been in this chamber over the past six years, the tribal gaming bills that have been considered then. Today, I have the opportunity to invite you to consider two things, a very serious and important legal question, but also a very somber and solemn circumstance of a remotely located population, members of my tribe and generally people of remote locations throughout the state and of other tribes, because this speaks to that as well.

What I'm going to begin by saying is that this issue, this effort to remedy a situation of joblessness, of depression, of health impacts and the highest levels of mortality, suicide, and morbidity in the state, that this effort to provide a remedy for those circumstances is worth taking time now to consider. There have been several hearings because of the various bills that the Legislature has considered that I mentioned, and the

facts of our circumstances are -- have been established. The other thing that came out of the hearings is that there is laws that I believe can help the Legislature as we consider this question, that can provide guidance, and that's what this resolve is asking us to consider doing, is sending the simple question to the Maine high court of whether or not we will have an answer that can provide guidance to the Legislature and to the tribe, to the state, that can support the effort of the tribes to remedy the circumstances I described by starting businesses, including gaming, on tribal land. The United States has a policy that is working across the country that does recognize these types of businesses as being successful; that since 1987 and the Supreme Court ruling in Cabazon, the tribes have improved their condition, and what this resolve does is ask the Court to confirm, with their guiding opinion, that the Supreme Court ruling that is currently applicable to all other 49 states is also applicable here in the State of Maine.

I believe, and the experts that I've consulted believe, that it does apply. And, so, I'm asking you, this body, Madam Speaker, to see this as an important legal question that can help this Legislature and future Legislatures in accommodating this proposed remedy for serious conditions that exist, and that you also take note of a handout that was distributed to everybody today, and this is to be added to what you've received in the past. But it's clear that there is a lot of support, of recognition of our situation, or a lot of support in the remote region where we as a tribe propose to conduct gaming, including the town of Houlton, where there was a unanimous resolution supporting this business proposal, and also the Aroostook County Commission unanimously supported this business proposal and also recognized the condition of our tribal members with the high unemployment rates and joblessness and depression and health impacts. The -- I'll just refer you to the Supreme Court ruling itself, which says that if a form of gaming is illegal in a state, Indian reservations may not engage in that form of gaming, and if a form of gaming is legal in a state, Indian reservations may engage in that form of gaming. Essentially, what the court is saying is that the Federal Government's policy of extending this type of support to tribes to conduct gaming is good, and that we're missing out on that in this state and we're suffering the consequences of missing out on what the rest of the states currently are accommodating on Indian reservations; and that is permitting and allowing and not interfering with, not opposing and not resisting, this type of business effort. It would seem that we would celebrate, that we would have the initiative to try to demonstrate that we can -- that we can handle this type of business, that we can make it on our own, and that we can fund ourselves, health care needs and housing needs, educational supports, childcare supports; we can fund it ourselves, plus create jobs that are desperately needed in this remote region and where the tribes are currently situated, which essentially are in the most remote parts of the state. So, it would seem that we would want to celebrate and encourage that on the one hand, but recognize that there's a serious situation that this question can help resolve, in that the state will then -- the Legislature will then see that there is a basis for quickly supporting and accommodating the various bills and proposals that the tribes have put forward for the Legislature to consider.

Now, nearly every tribal gaming proposal that has been brought to this chamber has been supported by a majority of votes in this chamber, and then ultimately it bogs down and doesn't -- they don't succeed. The Passamaquoddy, the Penobscot, the Maliseets, and the Mi'kmaq have all put

forward tribal gaming, specifically class III gaming proposals, and these just don't make it through. And so, ultimately, the default position is that the Supreme Court has said that states need to recognize that they cannot prevent tribal gaming on reservations given the need, but also because once they allow gambling of any sort in the state, including lottery, that they don't have jurisdiction to prevent tribes from conducting gaming. It must be totally criminal for all forms of gambling, otherwise the state cannot prevent tribes on reservations from conducting gaming. So, this resolve, without continuing any further, has wide support, addresses a serious ongoing situation. It can provide necessary funding for capped health programs that will benefit the people in these remote areas and also create jobs that will address the joblessness and the depression. So, I'm asking the people, my friends in this chamber, to support this simple referral to the Court and let them decide if this is important. Let them decide if, in fact, there is something to this court ruling of 1987 which resulted in over 385 tribal casinos across the country to come online, and Maine being one of the few states where it hasn't happened. Thank you very much, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Monticello, Representative Johansen.

Representative **JOHANSEN**: Thank you, Madam Speaker. I rise today in support of this House Order. This enterprise would be very good for the tribe and for the local community, and it has the backing of the town of Houlton. The City of Houlton has met and they are in support of this enterprise that the tribe would like to do, so I would ask everybody to support this.

Representative **FREDETTE** of Newport **REQUESTED** a roll call on **PASSAGE**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Brooksville, Representative Chapman.

Representative **CHAPMAN**: Thank you, Madam Speaker, Friends and Colleagues of the House. I rise briefly to discuss just the procedure. This is a somewhat unusual procedure to be taken up in the House, that is, to ask a question of the Justices of Maine's Supreme Judicial Court.

It's only -- should we pass this House Order now, this would be only the second time in the eight years that I've been here that we would have done such a similar thing, and I'm aware of only four times in which the Justices, in the past eight years, have been asked by some other branch of government for their individual opinions, to provide advice to another branch of government. I won't detail what those other circumstances were except to say that it's up to the Justices of the Supreme Judicial Court whether or not to answer the question, but the question here, and the reason why I believe this is a solemn occasion that requires them to answer the question, is because the Legislature has routinely and continually addressed a question of regulating gaming on tribal lands, and yet the Supreme Court -- the US Supreme Court decision of 1987, a simple reading of that suggests that the state does not have the authority to regulate gaming on tribal lands, and that makes a huge difference as to whether or not we go down the path of trying to regulate it or not trying to regulate it or leaving it in the hands of the tribes themselves. And, so, it's an important question that has to be answered. This is a way in which we can ask for the assistance of the individual opinions of the Supreme Court Justices. If they take up the question and if they answer it, it does not affect law. It's not a court decision. It would be advice of the individual Justices, but it's important advice, and I fully support that we

proceed to ask them this question. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Hanington.

Representative **HANINGTON**: Thank you, Madam Speaker, Ladies and Gentlemen of the House. Do I support gambling? Well, I have my own personal opinion of that, but a few weeks ago I got a printout that was sent in the mail, and it listed the top 10 most depressed cities in the state. Danforth was one of them, there was a few in Washington County; and, as you know, that Representative Fredette and I, we did go to Danforth. But I support this House Order because of the impact that it might have, but to allow the process to work. If I had my way, I think, gambling, I would do away with all of it. But it is here, we need to support the -- I myself, we need to support the process, so I would like to ask those to support this, and at least give the courts the chance to give an opinion and see once and for all what can and cannot happen in the state. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative **FREDETTE**: Thank you, Ladies and Gentlemen of the House. I'm going to be voting in opposition to the order today. The issue of gaming in Maine, I think we are all very aware, has had a very controversial history. Currently, we essentially have two casinos right now, and many a time these issues have gone out to referendum and, ultimately, the people of the State of Maine have had a say on what happens with gaming in the State of Maine. Now, for example, the United States Supreme Court recently decided on betting on sports games. Now, there's a whole new -- there's a whole new issue that's going to be coming before this Legislature, I guess, or I would bet in the next -- no pun intended -- in the next four months we're going to be looking at that issue. But I don't think the gaming issue is an issue that we should be giving to the courts to look at. I think it's an issue for the Legislature to make a decision on, on gaming issues. There's huge amounts of complexities that goes with each of these, huge amount of issues that need to be looked at. I think this is fundamentally a legislative issue, an issue that we need to decide and we need to work on, and, at the same time, I also believe I think the people of the State of Maine have a fundamental right to have a choice and a say in this in regards to, if there's going to be another casino, that there's a referendum process and that the people of the State of Maine have a real say in that.

Look, I come from I think it's the fifth poorest town in the State of Maine in the most recent listings of towns where I grew up. So, yes, would this be a help possibly? That may be. But it's not the way to solve the problem, by bypassing the process to ask the courts to look at this when I believe this is fundamentally a legislative issue, something that we need to decide here in the Legislature on behalf of the people of the State of Maine, and, ultimately, if it were -- if I had any say in it, something that should be decided by referendum in the final analysis. And, so, I will be voting against the House Order and ask that you follow my light.

The SPEAKER: The Chair recognizes the Representative from Sinclair, Representative Martin.

Representative **MARTIN**: Thank you, Madam Speaker. Madam Speaker, I'd like your permission to pose a question to the good Representative from the Houlton Band of Maliseet Indians through the Chair.

The SPEAKER: The Representative may proceed.

Representative **MARTIN**: Thank you, Madam Speaker. Madam Speaker, to the question to my good friend of the Houlton Maliseets, did I hear you correctly when you stated that this House Order was in fact supported by both the Houlton Town Council and the Aroostook County Commissioners?

The **SPEAKER**: The Representative from Sinclair has posed a question to the Representative from the Houlton Band of Maliseet Indians, if he cares to answer. The Chair recognizes the Representative from the Houlton Band of Maliseet Indians, Representative Bear.

Representative **BEAR**: The -- what I was referring to was the repeated resolutions of both the Houlton Town Council and the Aroostook County Commission, including Mr. Beaulieu and the other members, the chairs, that they supported the Houlton Band's efforts to establish gaming on our 52 acres of land on Route 1 in Houlton, across from the Tractor Supply business, where the town has invested in upgrading the water and the sewer and the power to our property, the tribal lands, that have been set aside by the United States as trust lands for the specific purpose of conducting tribal gaming.

So, in answer to your specific question as to this question, no, I haven't needed to go and ask if the -- if they also agree with my taking this forum to get the support for the tribal gaming. No, is my answer to the good Representative; however, included in their support was a clear message that all efforts that we could make towards bringing this about was supported. They support the increase in jobs by a hundred -- the increase in net revenue to the region of 13-20 million that will significantly benefit southern Aroostook regions. So, I couldn't imagine that if I were to ask the specific question as to whether or not they support this question, it is clear that they want this to come about. So, no, I didn't talk to Doug or to the chairman of the Houlton Town Council as to this specific question, no. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Fairfield, Representative Picchiotti.

Representative **PICCHIOTTI**: Yes, I just would like to say I rise in support of this and will be voting for it.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Passage of the House Order. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 742

YEA - Alley, Austin B, Bailey, Battle, Berry, Bickford, Blume, Brooks, Bryant, Campbell, Casas, Cebra, Chapman, Collings, Corey, Daughtry, DeChant, Denno, Devin, Doore, Dunphy, Farnsworth, Fay, Fecteau, Gattine, Golden, Grant, Grohman, Hamann, Handy, Hanington, Harrington, Herbig, Hickman, Hymanson, Johansen, Jorgensen, Kumiega, Longstaff, Madigan C, Madigan J, Malaby, Marean, Martin J, Martin R, Mastraccio, McCrea, McCreight, McLean, Monaghan, Moonen, Parker, Picchiotti, Prescott, Reckitt, Rykerson, Sanborn, Sheats, Spear, Stanley, Sutton, Sylvester, Talbot Ross, Tepler, Tipping, Tucker, Vachon, Warren, Zeigler, Madam Speaker.

NAY - Ackley, Austin S, Babbidge, Black, Bradstreet, Cardone, Chace, Cooper, Craig, Dillingham, Duchesne, Espling, Foley, Fredette, Frey, Gillway, Ginzler, Guerin, Hanley, Hawke, Head, Herrick, Hogan, Hubbell, Kinney J, Kinney M, Kornfield, Lockman, Luchini, Lyford, Mason, O'Connor, Ordway, Perkins, Pierce J, Pierce T, Pouliot, Reed, Sanderson, Schneck, Seavey, Sirocki, Stearns, Stetkis, Stewart, Strom, Theriault, Timberlake, Tuell, Turner, Wadsworth, Wallace, White, Winsor.

ABSENT - Beebe-Center, Farrin, Fuller, Gerrish, Grignon, Haggan, Harlow, Harvell, Higgins, Hilliard, Lawrence, McElwee, Melaragno, Nadeau, O'Neil, Parry, Perry, Pickett, Riley, Sampson, Sherman, Simmons, Skolfield, Terry, Ward, Wood.

Yes, 70; No, 54; Absent, 26; Vacant, 1; Excused, 0.

70 having voted in the affirmative and 54 voted in the negative, 1 vacancy with 26 being absent, and accordingly the House Order was **PASSED**.

COMMUNICATIONS

The Following Communication: (S.P. 757)

**MAINE SENATE
128TH LEGISLATURE
OFFICE OF THE SECRETARY**

August 21, 2018

Honorable Michael D. Thibodeau

President of the Senate

128th Legislature

Honorable Sara Gideon

Speaker of the House

128th Legislature

Dear President Thibodeau and Speaker Gideon:

On August 20, 2018, 3 bills were received by the Secretary of the Senate.

Pursuant to the provisions of Joint Rule 308.2, the following bills were referred to the Joint Standing Committee on Health and Human Services:

Bill "An Act To Modify the Expungement Requirements for Records under the Child and Family Services and Child Protection Act" (S.P. 754) (L.D. 1920) (Sponsored by Senator KEIM of Oxford) (**GOVERNOR'S BILL**)

Bill "An Act To Grant the Department of Health and Human Services Access to Criminal History Information To Achieve the Purposes of the Child and Family Services and Child Protection Act" (S.P. 755) (L.D. 1921) (Sponsored by President THIBODEAU of Waldo) (**GOVERNOR'S BILL**)

Bill "An Act To Amend the Child and Family Services and Child Protection Act" (S.P. 756) (L.D. 1922) (Sponsored by Senator DIAMOND of Cumberland) (**GOVERNOR'S BILL**)

Sincerely,

Heather J.R. Priest

S/Secretary of the Senate

Robert B. Hunt

S/Clerk of the House

Came from the Senate, **READ** and **ORDERED PLACED ON FILE**.

READ and **ORDERED PLACED ON FILE** in concurrence.

The Following Communication: (S.P. 759)

**MAINE SENATE
128TH LEGISLATURE
OFFICE OF THE SECRETARY**

August 23, 2018

Honorable Michael D. Thibodeau

President of the Senate

128th Legislature

Honorable Sara Gideon

Speaker of the House

128th Legislature

Dear President Thibodeau and Speaker Gideon:

On August 22, 2018, one bill was received by the Secretary of the Senate.