

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fifteenth Legislature
OF THE
State Of Maine

VOLUME VI

SECOND REGULAR SESSION

House of Representatives
March 10, 1992 to March 31, 1992

Senate
January 8, 1992 to March 9, 1992

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED.**

Sent down for concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

JOINT ORDER - relating to adjunct members to the Joint Standing Committee on State and Local Government for bills concerning governmental restructuring.

SP 913

Tabled - February 11, 1992 by Senator **CLARK** of Cumberland.

Pending - **PASSAGE**

(In Senate, February 11, 1992, **READ.**)

Which was **PASSED.**

Sent down for concurrence.

On motion by Senator **DUTREMBLE** of York, the Senate removed from the Unassigned Table, the following matter:

SENATE REPORTS - from the Committee on **STATE & LOCAL GOVERNMENT** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Provide State Funding of any Mandate Imposed on Municipalities
S.P. 42 L.D. 66

Majority - **Ought to Pass as Amended by Committee Amendment "B" (S-527)**

Minority - **Ought Not to Pass**

Tabled - January 23, 1992 by Senator **DUTREMBLE** of York.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, January 23, 1992, Reports **READ.**)

On motion by Senator **CLARK** of Cumberland, the Majority **UGHT TO PASS AS AMENDED** Report was **ACCEPTED.**

The Bill **READ ONCE.**

Committee Amendment "B" (S-527) **READ.**

On further motion by same Senator, Senate Amendment "A" (S-535) to Committee Amendment "B" (S-527) **READ** and **ADOPTED.**

On motion by Senator **GAUVREAU** of Androscoggin, Senate Amendment "C" (S-547) to Committee Amendment "B" (S-527) **READ.**

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As is apparent to all those within the sound of my voice, this particular piece of Legislation has received extensive scrutiny and work over the past several months. First, by the Committee of Jurisdiction, the Committee on State & Local Government, and also by many people in this Chamber as well as in the Hall. I commend all those who have worked on this Bill, for their efforts. I think the Bill we have before us is far more improved than it was in its initial form last spring. However, when I arrived back in the State House this year and reviewed the proposed work product and I understand this Bill at one point came to the floor and was referred back to Committee and is now back before us to accept the Committee Report. There was one clause in the Bill which aroused my concern. The section in the Bill which

requires if the voters do, in fact, adopt a constitutional amendment there will be a need for us to implement legislation to effectuate the Constitutional Amendment. The language in the Committee Bill presently is that we would require a 2/3 vote of members in both chambers to accept the implementing legislation. I well understood, when this issue was debated last spring, why that language was offered. In fact, municipalities were gravely concerned that the Legislature might in some way take action to avoid the constitutional mandate and thrust additional costs to local governments on unfunded state mandates. I must say that I am fully sympathetic with the concerns and pressures of our friends in local government and I understand the pressures they are operating under financing governments on a truly regressive means of financing, that is the property tax. I think peoples perspective might be a little off. I think there might have been an over reaction, perhaps too much distrust of those who are elected to serve in our State Legislature. All of us are certainly aware of the concern on the property tax and I think if the voters of the State approve a Constitutional Amendment we will honor their will.

The events of last summer changed my perspective a little bit as far as the 2/3 requirement. It is a very painful process for all of us. I spoke, probably too often, on my philosophy that a minority should be heard and their concerns considered but the Majority elected by the people of our State ultimately have a duty as well as a right to express their opinion. The Majority should in fact rule. It seemed to me to require a 2/3 vote in both the House and the Senate to implement the Legislation is a bit drastic. My initial temptation, quite honestly, was to eliminate the 2/3 requirement in its entirety and have a simple majority required to implement the amendment if, in fact, the voters approved it. In the spirit of compromise, I am offering a 60% threshold. A 3/5 threshold requires a substantial vote in both bodies of the Legislature and yet it would not put the majority in the situation where they would have accede to a minority in order to have the Legislation implemented. It is for that purpose that I am offering Senate Amendment "C" (S-547) to lower the threshold slightly on implementing Legislation from 2/3 to 3/5. I would urge you to consider this legislation carefully. We are trying to balance the burden on local taxpayers on the property tax with the duty that all of us have in State Legislature to accede to the requirements of majority rules. This concern is not a transient concern. It is, in fact, the very essence of our society and we should give it very careful concern. Although local official criticize this, we have to listen to our local officials. We also have to listen to our conscience and our intellect and we have to provide a system of Constitutional Law which is fair. In that process we have to allow the majority to make difficult decisions. I would urge your very careful consideration of this amendment. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am remiss in not having been doing my research to notice in my document book that there was a Senate Amendment. I had no idea that was being presented. It changes a

little bit some of the reasons those who support limiting the number of mandates that we send home to our tax payers. Because of that I would like some time to think about this and I ask your indulgence if someone would be good enough to table this one Legislative Day. Thank you.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending the motion by Senator **GAUVREAU** of Androscoggin, to **ADOPT** Senate Amendment "C" (S-547) to Committee Amendment "B" (S-527).

The Chair laid before the Senate, the Tabled and Later Today Assigned matter:

Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Liability Actions."

H.P. 253 L.D. 344

(C "A" H-875)

Tabled - February 13, 1992 by Senator **CLARK** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED** in **NON-CONCURRENCE**.

(In House, February 6, 1992 the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, February 13, 1992 **READ A SECOND TIME**.)

On motion by Senator **BALDACCI** of Penobscot, Senate Amendment "A" (S-545) **READ**.

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

Senator **BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Very quickly this Bill is purely public policy. This Bill is not being presented or pushed by any particular interest. As a matter of fact I think they are both opposed to this amendment. I have been dealing with this cap issue too long. I think, in my own mind as far as public policy, I felt the \$250,000 cap was too low. I felt also from the studies I have seen or heard about that caps don't work and caps do work in some locations. I thought the way we should proceed, at least for myself if I was going to proceed on the issue, was to have it reviewed by the Committee have it for one year and see if there was a change in the insurance or the charges or whatever impact it had. That would be the only way I could proceed. So, Mr. President that is the spirit in which I offer this amendment and I would move passage. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would like to congratulate the good Senator from Penobscot, Senator Baldacci for his amendments although I will ask this body to oppose the amendments. I don't agree but I certainly respect the spirit in which the amendment is being offered. I appreciate him joining his voice to this discussion on Medical Malpractice. As I understand it the amendments before us would impose a cap of \$500,000 on noneconomic damages in Medical Malpractice actions. It would further require that the Committee having jurisdiction over the Judiciary in this Legislation review the efficacy of the cap and report back November 1, 1992.

Let me explain briefly, why I oppose the amendment. We have studied intensively the efficacy of caps in medical malpractice actions. Although as mentioned in the somewhat lengthy debate earlier this week on the issue, some studies are hypocritical on the efficacy of caps. We have commissioned a two

year study in Maine chaired by the ubiquitous former Senator from Androscoggin, Richard Trafton which is known here and after as the Trafton Commission. The Trafton Commission found there was no relationship at all between caps and medical malpractice rates. I hesitate to pause there was a Minority Report of two or three folks who thought there was a relationship so it was a divided recommendation. The majority of the recommendation was there was no such relationship. I already cited to you Tuesday of this week the Danzon study and the Rand study, but I did not mention to you the study of the Association of Attorney General and they all found there was no relationship between caps on noneconomic damages and malpractice rates. Therefore, although I sincerely respect the spirit in which the amendment is being offered, I for the reasons I cited at great length on Tuesday, I don't believe there is any value in opposing the caps at any level. I would respectfully urge the Body to resist the offered amendments so we can go on hopefully and put this Legislation in its rightful resting place. Thank you.

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

Senator **BALDACCI:** Thank you Mr. President. Ladies and Gentlemen of the Senate. In twenty words or less the cap issue has been studied but we have not had a cap in Maine to look at and review its impact. We have looked at other States and at a National issue. Some people tell me in California the cap that has been in place has rolled the rates over twenty years and some tell me in other states it goes blip and then goes back to where it was before that. We have had only one cap in Maine Statute and that was upheld by the Maine Supreme Judicial Court which some lawyers, and I am not referred to as a enomolee which is under the Dramshop law which allowed for server liability cap which was upheld by the Supreme Judicial Court. Realizing it is an enomolee and not getting into the debate saying replace a cap in Maine which is not there and then have it reviewed, not other states, countries, or the world, just here in Maine. That is why I thought it would be reviewed. I appreciate the comments from the good Senator from Androscoggin, Senator Gauvreau. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Holloway.

Senator **HOLLOWAY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. It is awfully difficult to resist an amendment such as this since we do not have any cap whatsoever on noneconomic damages. I must remind you that many other states do. For instance, in Michigan there is a cap of \$225,000 and there is a cap of \$250,000 which we considered the other night in Kansas, Colorado, Utah, Alabama, and Idaho. In Missouri it's \$300,000 and in Maryland \$350,000, Minnesota \$400,000 and Hawaii \$375,000. I do hope you can reject this amendment so we can keep the cap at \$250,000. Thank you.

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

Senator **DUTREMBLE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. The good Senator from Penobscot, Senator Baldacci started his remarks by saying that he would put a cap of twenty words on his speech and I just want to get up to say caps just don't work.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **BALDACCI** of Penobscot to **ADOPT** Senate Amendment "A" (S-545).