Senate Legislative Record

One Hundred and Twenty-Eighth Legislature

State of Maine

Daily Edition

First Regular Session
beginning December 7, 2016

beginning at Page 1

Senator DOW for the Committee on **TAXATION** on Bill "An Act To Provide a Definition of 'Primary Residence' for Purposes of Property Tax Abatements Based on Hardship or Poverty"

S.P. 401 L.D. 1180

Reported that the same **Ought to Pass**.

Report **READ** and **ACCEPTED**.

Under suspension of the Rules, Bill **READ TWICE** and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Adjust the Lifetime Limit for the Receipt of TANF Benefits"

S.P. 12 L.D. 33

Reported that the same **Ought Not to Pass**.

Signed:

Senator:
CHIPMAN of Cumberland

Representatives:
HYMANSON of York
DENNO of Cumberland
HAMANN of South Portland
MADIGAN of Waterville
PARKER of South Berwick
PERRY of Calais

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (S-103)**.

Signed:

Senators:
BRAKEY of Androscoggin
HAMPER of Oxford

Representatives:
CHACE of Durham
HEAD of Bethel
MALABY of Hancock
SANDERSON of Chelsea

Reports **READ**.

Senator **BRAKEY** of Androscoggin moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

On motion by Senator **MASON** of Androscoggin, **TABLED** until Later in Today's Session, pending the motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

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

ORDERS OF THE DAY

Unfinished Business

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (5/16/2017) matter:

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Support Death with Dignity"

S.P. 113 L.D. 347

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-90)** (5 members)

Tabled - May 16, 2017, by Senator **BRAKEY** of Androscoggin

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

On motion by Senator **KATZ** of Kennebec, 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 Kennebec, Senator Katz.

Senator **KATZ**: Thank you, Mr. President. Men and women of the Senate, some policy issues we deal with are easier than others and issues involving end of life are, I think, among the most difficult we face. It's impossible to think about this bill, Mr. President, without each of us reflecting backwards to experiences in our own lives with our grandparents, with our parents. I also think it's impossible to think about this bill without thinking forward to our own mortality. I appreciate your indulgence to explain what this bill does and what the experience has been in other states. The premise of this is really very simple, that a competent adult ought to have control over his or her own life, generally free from government interference. We recognize that principle and we honor that in many ways currently. We all have the right to make medical decisions for ourselves during our lives and also to refuse treatment. Even if a doctor and our family members think that a particular treatment would benefit us, we have the right to refuse

because it's our life and it's our body. Life is a continuum, and just as we respect the right to make decisions during our life, we should have that same ability at the end of our lives. From my perspective, Mr. President, it's about personal dignity. It's about self-determination. It's about the right to choose one's own path, not the path that others might choose for you.

The bill is very simple in its goal. If a competent terminally ill patient does not have long to live they can make a decision to end their life sooner rather than later. It should be each individual's right to make that decision because it is our life. That option existed for Brittany Maynard. You remember her. She was the poster child, if you will, for this issue several years ago. A beautiful 29 year old woman from the State of Oregon, from California who moved to Oregon to be able to take advantage of their law. She made a video on the last day of her life and this is what she said: "Goodbye to all my dear friends and family that I love. Today is the day I have chosen to pass away with dignity in the face of my terminal illness, this terrible brain cancer that has taken so much from me, but would have taken so much more." She said, "For people to argue against this choice for sick people really seems evil to me. They try to mix it up with suicide and that's really unfair because there's not a single part of me that wants to die, but I am dying."

I'd like to just walk through the bill, which is modeled after legislation in other states, and I want to emphasize a number of things in the bill and all the safeguards that are there. First of all, no one can use this process, or participate in this process, unless they are competent, unless they are capable of making intelligent decisions. A doctor, a physician, has to make that call, and if the doctor has any question whatsoever the doctor refers the person to a psychologist or other mental health professionals for making that decision. The person has to physically appear before their doctor and make a request orally for the oral medication that can end their lives. That's not the end of it. The person must go back no sooner than fourteen days later and make the same request. That is not the end of it. The person must now go back a day after that and make a request in writing to be witnessed by two witnesses who are disinterested; not family members, not the doctor, but other people who can determine whether the person is acting in their own free will. Even that, Mr. President, doesn't end the process. The doctor is under an obligation under the law to advise the patient of the full range of other options which may be available to the patient in terms of hospice care, surgery, or other procedures that they might undergo. The doctor, if not the primary care physician, must consult with the primary care physician and then, and only then, can the doctor write a prescription for the life ending medication. I want to emphasize that no doctor is ever under any obligation to do this if he or she doesn't want to, ever. No hospital, no nursing home, no pharmacist has to participate in this process if they don't choose to, ever.

I know that there are colleagues in this Body who have religious objects to this bill and I honor that and I appreciate that. For others of you who might have reservations based upon your fear of unintended consequences or some kind of a slippery slope, I'd like to address that because this is already the law in Oregon, Washington, Montana, Vermont, California, Colorado, and now Washington D.C. We have that experience, and I particularly point to the State of Oregon. It hasn't been the law there for one year or two years or five years or ten years; it's been the law in Oregon now, Mr. President, for 19 years and they have a tremendous range of experience with this law. A few things, I believe, are interesting about their experience. First of all, the median age of the person, or people, who has chosen this process is 73. They come from mostly upper socially economic sectors of society. Eighty percent of the patients who have used this have cancer. In all these years, in 19 years in the State of Oregon, which has many more people than Maine, about 1,750 people have gotten a life ending prescription. What's particularly interesting, I think, is that only about 1,100 of those people have actually taken the medication. That is, it's been a comfort to folks to know that they had this option available to them, whether they choose to exercise it or not.

When I started learning about this bill I, frankly, had reservations about this in terms of unintended consequences. For instance, if doctors might prescribe medication for people who really weren't eligible; that disabled people might attempt to use this more than others, and this is certainly a direction we don't want to go; that greedy heirs might attempt to convince their relative to use this as a way of getting at their estate. There have been nine studies in the State of Oregon over the years. Nine studies and every single one of them shows that these legitimate fears, which, frankly, I have or would have, just haven't come to pass in the State of Oregon. It's been studied and studied and studied. Some argue that pain can be controlled by opiates and so this law isn't needed because palliative care and hospice is enough. Well, I'm sure it is enough for most people, but try telling that to someone who is in extreme pain from cancer because palliative care, as effective as it is, is successful at ending suffering for some but not for all. I suggest that in true compassion we should not judge the choice of the dying person about how and when to end their life because each will see, and each of us will see as we get to that point in our lives, our or their own, end of life in a different and personal way. I've also heard concerns, Mr. President, and very legitimate concerns, about the fact that since most of us have insurance or we have Medicaid, or will have Medicare, that because of insurance and third party payer issues, that payers are going to attempt to steer people toward this solution because it's going to be cheaper for insurance companies. I understand that concern, but, again, 19 years history in the State of Oregon and not one documented case that that's ever happened. Not one documented case that's ever happened in the State of Oregon, and if it were starting to happen I think people would start to come down hard on that process.

Some of the former opponents of this law are now its biggest advocates. One of the people who testified at the hearing was a woman named Ann Jackson. She is the former head of the Hospice Association in the State of Oregon. She was a vehement opponent of this bill when it came up in Oregon, worked very hard against it. It passed and since then she has seen how it's worked and she has become a vigorous proponent and came, at her own expense, to Maine to tell us about that. The American Academy of Hospice and Palliative Care, which previously opposed this bill, has now withdrawn their opposition to this bill. This isn't a choice between hospice and this legislation. Hospice, my parents both had hospice care. Those people are angels and they do a tremendous job, but this is - many, many, or most, patients who take advantage of this law in Oregon are, in fact, in hospice at the same time. Doctors' attitudes are changing. The California Medical Association, the Hawaii Medical Association, has withdrawn their opposition to this bill and the Maine Medical Association, which has traditionally been opposed to this bill and has testified in opposition, is now neutral because

their physicians are evenly divided. A national poll of physicians has shown that more than half of physicians in this country now support this legislation. We shouldn't ever make public policy, Mr. President, by public opinion poll but, to the extent it matters, 74% of the people in America favor this kind of option at the end of life and a poll recently in the State of Maine, a professional poll done, which asked people if they support this particular bill, describing what this bill does, again, I think it was 73% supported it.

I'd like to end, Mr. President, with a few words from other people who wrote in as this bill was going through the legislative process. One person wrote: "I understand the objections and, of course, those who have such objections will never exercise this right, but for those who wish to die on their own terms before a crippling incident robs their memory or strength or causes them unyielding pain, we, as a society, are doing more harm than good if we prevent them from access to such methods to end their suffering." Another person wrote: "When a terminally ill patient accepts death it's our turn to be selfless and honor their wishes." Another person wrote, Mr. President: "If you want to fight to the last moment to cheat death go for it. Not my place to judge. But if you want otherwise, what possible business is it of the State of Maine to prohibit me from exercising my right to have a death with dignity?" Lastly, Mr. President, a writing from a Maine person who moved to the State of Washington, an engineer, who suffered from brain cancer and took advantage of Washington's law wrote this, and I'll end with this: "I received some feedback on my thoughts about the death with dignity act. As I said, I have not decided whether to use this option or not, but I feel strongly that it should be legally available to mentally competent and terminally ill people such as myself. As I also said, I do not view it as suicide, although that's a convenient term, because I would not really be choosing between living and dying. I would be choosing between different ways of dying. If someone wishes to deny me that choice it sounds to me like they're saying I'm willing to risk that your death will be slow and painful. Well, thanks a lot. That's very brave of you." Those are the words of Ethan Remmel shortly before he passed away. Thank you, Mr. President.

Senate at Ease.

The Senate was called to order by the President.

Off Record Remarks

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

Senator **GRATWICK**: Thank you very much, Mr. President. Ladies and gentlemen of the Senate, I wish to just get up and very briefly tell you about my perspective, as a physician, caring for patients near the end of life. I've had patients who have had death with dignity and patients who had death without dignity. Patients who have said to me; "I realize I'm going to die and I want to die at home, to sit under an apple tree, on my couch, with familiar sounds and surrounds, with my family, with my dog close by." They want support as they go. They don't want to be in strange, foreign, places. They want the doctor, they wanted me, to be there with them at the end, to listen to them, listen to their needs, and their wants. People die and, in essence, it was a good death. Then I've had patients who have not done well, who have not had good deaths. Really very few for whom I could have made a big difference but I could not, and they still stay with me. I've only had two or three patients who fall into this latter category. I have perhaps 25,000 over the 45 years of medical practice. Only two or three but they are really very real. With apologies, I'm going to tell you of one, a very unpleasant tale but I think it's an important one for us as we talk about this. A man in his late 50s. A very strong fellow. A logger. He had been a farmer. He became a very good friend of mine over time. I had enormous respect for him. He developed bowel cancer. Obstructed. He had surgery. Colostomy. He did actually fairly well, but the problem was there was lots more cancer in his belly. They didn't get it out. He went home. He knew that he probably had two or three months to live and he wanted help, in one way or another, to die. I could not do that. That was not within our law at that time. He lived. He gradually went downhill but he was still brain intact. Then he obstructed again. In case you don't know, bowel obstruction is really horrible, horrible. In other words, nothing goes through. The cancer has obstructed your bowel. Gas. Gas pains times ten, times a hundred, hundreds of thousands. He was howling with pain at home. They had to bring him to the hospital. There was nothing they could do. When you go to the hospital your life is out of your control in one sense. They operated, he was operated on. They relieved the obstruction. Off to the ICU. But then the disaster really happened because he was dying. His tissue would not heal. He wounds opened back up. He began to lose feces through his wound. He was in the ICU. When you would go into the ICU you could smell it. You knew he was dying. You could smell it there because it was a smell of death there. His skin - when you haven't bathe, when you've had a high fever of 105 or 106, your skin is just different at that time. It was the noise, the noise of the respirators and the monitors, everything going on there. There was a tactile part of that death that still stays with me. He was unconscious. Eventually his family decided that enough was enough and they pulled the plug after five days. But it's a death that stays with me. It was the last thing that this independent man would have wanted to have and, as I said, he is one of perhaps two or three people that I saw in a long practice and I failed him. I failed myself. I feel bad for this. So I am voting for this and I thank the good Senator from Kennebec for bringing it forward. I'm for this because I think I could have done much better by this man, who was both my patient and my friend. Thank you, Mr. President.

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

Senator **VOLK**: Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I completely respect everybody in this Chamber and this is a very difficult subject, more difficult for some than others, but certainly difficult for everybody. I expect this to be one of the more interesting votes that we take in terms of party delineation. I do want to talk a little bit about my colleague from Kennebec, discussed to some length the Oregon law. The Oregon law is quite interesting in that the data that they have been collecting has not been completely accessible to the public, or at least that is the understanding that I have. This lack

of oversight and meaningful safeguards in the Oregon law, which is similar to the legislation before us today, should actually give us great pause. Indeed, in the years since the law's implementation the media has uncovered cases of abuse or complications in both Oregon and Washington and we also had a woman here a month or two ago from California who is terminally ill and who's insurance company had offered to pay for the drugs for her to die with dignity and denied her some other medications that she felt would have been helpful in her treatment. That was very disturbing to hear. According to the Disability Rights Education and Defense Fund, which has compiled a list of these abuses and complications, there have been questionable and complicated cases such as an elderly patient with early dementia receiving a lethal prescription despite psychiatric concerns and possible coercion, failure to refer a patient for psychiatric evaluation despite a medical history of acute depression and suicide attempts, and violation of the law's self-administration requirement without any legal consequences. Finally, the most recent reports from Oregon revealed some troubling trends. Over 96% of patients are given the lethal drugs without a psychological or psychiatric evaluation. The prescribing doctor is absent in 90% of cases and no healthcare provider is present in 80%. Diagnoses that qualify patients for the drugs include less predictable conditions like chronic respiratory or cardiac disease, diabetes. Nineteen patients who died from the drugs in 2016, as well as seven in 2015, and eleven in 2014, had been diagnosed as having less than six months to live in previous years. So they had been diagnosed, survived, and now felt that they were on the road to dying again. In 2016, patients taking the drugs are known to take as long as nine hours to die. At least 30 patients in Oregon have regurgitated some or all of the drugs. In all, six regained consciousness after taking them, dying later. Seventy percent of the patients taking the drugs in 2016 had no, or only governmental, health insurance.

I actually had the interesting opportunity to go to a forum hosted by the Maine Medical Association where people from both sides were presenting, you know, both the case for and the case against physician assisted suicide or death with dignity, depending on how you look at it. It was a very, very interesting discussion and I was actually there to read the testimony from a colleague, in the other Body actually, who has lived his entire life largely dependent upon others. One of the arguments for death with dignity, or physician assisted suicide, tends to be: "Well, I don't want to be a burden. I don't want to be dependent upon others." What does that say to the person that lives their entire life dependent upon others? Does that say that their life has no meaning, no purpose, and that they should consider suicide? I'm very uncomfortable, as the mother of a child with disabilities myself, with that position, with that idea and I had the honor of reading, again, one of our colleague's testimony to this room filled with medical providers and it really gave me pause to think. Some people live really, really meaningful lives and have a lot to give and a lot to offer others and are important to others in spite of the fact that they are dependent upon others.

Lastly, the other take-away that I got from that, a couple of other take-aways, were that the physician community is very, very divided on this issue. There are certainly some who feel like, you know, as the good Senator from Penobscot, that this is a helpful thing for patients and a desirable choice, even, for some, but there are a lot of others who are incredibly, incredibly, uncomfortable with being placed in the position of even having to have a conversation with a patient whom they feel they should be taking care of and helping, to even have a conversation about this subject with them. Lastly, and then I'll sit down because I know there are others who want to speak and the afternoon is fleeing fast, there was a palliative care physician there who spoke very eloquently on the fact that in his opinion, and this is what he does day in and day out every day in one of our hospitals here in Maine, I don't remember exactly where, he said there is, given today's medications, no patient that he cannot keep comfortable right up until the end, that there is no need, given modern medical care, for anyone to die in great pain. So that, to me, just really was good to hear, a comfort to hear. I think many of us have heard stories of people dying in great pain, but those may be older stories or perhaps they were not offered the correct medical care and so, in my opinion, we should be ensuring that every Maine resident has access to that kind of palliative care as opposed to concerning ourselves with death with dignity, or physician assisted suicide. So for these reasons, I believe that legalizing physician assisted suicide is just too dangerous for the State of Maine and I ask that you vote in favor of the pending motion.

The President requested the Sergeant-At-Arms escort the Senator from Androscoggin, Senator **MASON**, to the rostrum where he assumed the duties as President Pro Tempore.

The President took a seat on the Floor.

The Senate was called to order by President Pro Tempore **GARRETT P**. **MASON** of Androscoggin County.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Waldo, Senator Thibodeau.

Senator **THIBODEAU**: Thank you, Mr. President. Ladies and gentlemen of the Senate, we're going to make a lot of important decisions on behalf of our constituents over the next month and a half and some of them are financial, most of them probably are, and I know that I say often that each and every member of the Legislature comes here for the right reasons. We're all here trying to do the exact right thing on behalf of our constituents and I know that there are very different opinions in this Chamber today on this issue. I want to say I 100% believe that everybody is sincere in their belief. I didn't want to not at least share my feelings on this. You know, every one of us has lost somebody they care deeply about and felt that pain, and everybody's lost somebody in a different way. For some folks, they see this as a way to ease what can sometimes be a very tough way to die. I want to tell the folks about an experience that I had just a couple of years ago. You know, as President of the Senate you get invited to speak to a lot of different groups and that's a real honor. I was invited to Portland to speak to a group. It was a group of folks that were, what I would say, probably a pretty highly educated group. A lot of them with, what I would guess, law degrees, things of that nature. It was during the time when we were debating this very issue two years ago. After the meeting had broke up we went to Becky's Diner, and most of you have probably been there. It was myself and my Chief of Staff Rob Caverly. I had this man come up to me who was part of the group

that I'd been speaking to. As I remember it, he was an attorney. He wanted to weigh in on this important issue. He wanted me to know, clearly, that there was no reason not to embrace the physician assisted suicide because it would be a great cost savings for our state. I know for a fact that none of you in this room believe that, okay. It's not why I'm saying this. When I was told that I was so taken back I didn't even know how to respond. I don't know how to react to something like that. You know, we worry about elder abuse and I know that we've talked about statistics and the fact that the statistics don't back this up. I'm not sure what that man would have done had his Mom or his Dad been at end of life. I don't know but it makes you pause and wonder what kind of advice he may or may not have given to his own parents. I find that just so sad, and I don't want to put anybody in that position. So I would encourage everybody, I believe this, everybody is going to vote and do what they absolutely believe in their heart is the right thing. I hope today that we don't put any of our constituents in that position. Thank you.

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW**: Thank you, Mr. President. I rise because I can do no other. We've talked about cheating death, but I come from a world where cheating death is a regular thing, a world of biblical understanding and a world where the cross and the resurrection cheats death every day. I come from a world that understands from biblical principles that we're born into this world for special occasions and special reasons and that life is not easy. It's a struggle, and the whole biblical record speaks about this struggle which we go through every day from life until death. And death also is probably the hardest struggle of all; but nowhere in the readings that I do does it say that life is not precious enough that we should take it early, that we should not fight to the last breath to keep our dignity of life. I can do no other than believe these principles. I'd have to be convinced through the arguments of scripture that it would be different. I know that death is difficult for many people and death can be painful, but death can come sudden and quick; but death is as much a part of this life as anything, but I believe that regardless of everything we suffer in this life, or suffer going through our process of death, that we have hope. The word hope is not a verb that Paul uses. Paul speaks of hope as a noun. Hope for Paul is absolute certainty that what God has begun He will finish, and in my world He did finish through the death and resurrection of Christ. I cannot conform to the patterns of this world. That is a major idea and words of Christ himself. So I must stand here today and oppose this bill. Unless I am convinced by the words and arguments of scripture, I cannot support. In the words of Martin Luther, here I stand; I can do no other.

THE PRESIDENT PRO TEMPORE: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Brakey, to Accept the Majority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

Senator **HILL** of York who would have voted NAY requested and received leave of the Senate to pair her vote with President Pro Tempore **MASON** of Androscoggin who would have voted YEA.

Senator **CUSHING** of Penobscot who would have voted YEA requested and received leave of the Senate to pair his vote with Senator **KATZ** of Kennebec who would have voted NAY.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#149)

YEAS: Senators: BRAKEY, CARPENTER, COLLINS, CYRWAY, DAVIS, DOW, HAMPER, JACKSON, KEIM, LANGLEY, MAKER, THIBODEAU, VOLK, WHITTEMORE, WOODSOME

NAYS: Senators: BELLOWS, BREEN, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DILL, DION, GRATWICK, LIBBY, MILLETT, MIRAMANT, ROSEN, SAVIELLO, VITELLI

PAIRED: Senators: CUSHING, HILL, KATZ, PRESIDENT PRO TEMPORE MASON

15 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 4 Senators having paired their votes, the motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report **FAILED**.

The Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-90) **READ** and **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act To Facilitate Substance Abuse Treatment for Certain Applicants for and Recipients of Temporary Assistance for Needy Families Benefits"

H.P. 1111 L.D. 1615

Comes from the House, **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed.

On motion by Senator **BRAKEY** of Androscoggin, **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed, in concurrence.