

MAINE STATE LEGISLATURE

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One Hundred and Twenty-Second Legislature
State of Maine

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May 26, 2005 – June 17, 2005

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Second Regular Session

January 4, 2006 - April 6, 2006

Pages 737-1487

Presented by Representative DAVIS of Falmouth.
Cosponsored by Representative WOODBURY of Yarmouth,
Senator TURNER of Cumberland, Representative DUPLESSIE
of Westbrook.

On **OBJECTION** of Representative DAVIS of Falmouth, was
REMOVED from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative
from Falmouth, Representative Davis.

Representative **DAVIS**: Thank you Mr. Speaker. Mr.
Speaker, Ladies and Gentlemen of the House. I first knew Eddy
Ainsworth when I was coaching baseball and he showed up as
the umpire. I was told not to argue with him, which I did not do.
He was a very tough umpire and a good one. Later I served on
the Greater Portland Labor Council with him. He was into a lot of
things and he was a labor leader and a leader of his community.
He had a very colorful past. He was a welterweight boxing
champion for the State of Maine.

I first met Eddy when I was 23 years old and at one time
when one of my sons was 15 years old I was at an all star game
and who was the coach of the Yarmouth team? You guessed it,
Eddy Ainsworth. He was always glad to see me and he was
very, very fine man and I would say that he was tough and fair
and kind. He will certainly be missed and like so many of that
generation he was an old fashioned Christian gentlemen. I am
sure that his community and his family and all of us will miss him.
Thank you.

The **SPEAKER**: The Chair recognizes the Representative
from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Thank you Mr. Speaker. Mr.
Speaker, Ladies and Gentlemen of the House. I too knew Eddy
Ainsworth, but being a fire fighter I didn't know him from the
service, I knew him from his labor organizations. I first met Eddy
when he was a legislator in the '80s. Eddy served on the Labor
Committee here at the Legislature. I did know him from the
Greater Portland Labor Council and many meetings of it that I
attended. Eddy was a gentleman that didn't ask for much, but
that gave a lot. He was one of those gentlemen that just do
things for the community because he felt that it was the right
thing to do, to be involved with his community. I know that his
family will miss him and that many, especially in the town of
Yarmouth, will miss him. I wish to extend my condolences to the
family. Thank you.

Subsequently, the sentiment was **ADOPTED** and sent for
concurrence.

REPORTS OF COMMITTEE
Committee of Conference

Report of the Committee of Conference on the disagreeing
action of the two branches of the Legislature on Bill "An Act To
Allow Counties a One-year Exemption For Jail Costs from the
Limitation on County Assessments"

(H.P. 1175) (L.D. 1666)

has had the same under consideration, and asks leave to report:

That they are **UNABLE TO AGREE.**

Signed:

Representatives:

BARSTOW of Gorham
GROSE of Woolwich
BISHOP of Boothbay

Senators:

SCHNEIDER of Penobscot
MARTIN of Aroostook
ANDREWS of York

The Committee of Conference Report was **READ** and
ACCEPTED.

Sent for concurrence.

The following items were taken up out of order by unanimous
consent:

UNFINISHED BUSINESS

The following matters, in the consideration of which the
House was engaged at the time of adjournment yesterday, had
preference in the Orders of the Day and continued with such
preference until disposed of as provided by House Rule 502.

**SENATE REPORT - Ought to Pass as Amended by
Committee Amendment "A" (S-348) - Committee on
BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT on
Bill "An Act To Contain Costs, Reduce Paperwork and Streamline
the Regulatory Process for Maine's Small Businesses"**

(S.P. 443) (L.D. 1263)

**TABLED - June 8, 2005 (Till Later Today) by Representative
SMITH of Monmouth.**

PENDING - ACCEPTANCE OF COMMITTEE REPORT.

Subsequently, the Committee Report was **ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (S-
348) was READ** by the Clerk.

On motion of Representative SMITH of Monmouth, **House
Amendment "A" (H-678) to Committee Amendment "A" (S-
348) was READ** by the Clerk and **ADOPTED.**

**Committee Amendment "A" (S-348) as Amended by
House Amendment "A" (H-678) thereto was ADOPTED.**

Under suspension of the rules, the Bill was given its **SECOND
READING WITHOUT REFERENCE** to the Committee on **Bills in
the Second Reading.**

Under further suspension of the rules, the Bill was **PASSED
TO BE ENGROSSED as Amended by Committee Amendment
"A" (S-348) as Amended by House Amendment "A" (H-678)
thereto in NON-CONCURRENCE** and sent for concurrence.
ORDERED SENT FORTHWITH.

Bill "An Act To Make Supplemental Appropriations and
Allocations for the Expenditures of State Government and To
Change Provisions of the Law Necessary to the Proper
Operations of State Government for the Fiscal Years Ending
June 30, 2006 and June 30, 2007" (EMERGENCY)

(H.P. 1186) (L.D. 1677)

**TABLED - June 9, 2005 (Till Later Today) by Representative
DUPLESSIE of Westbrook.**

**PENDING - ADOPTION OF COMMITTEE AMENDMENT "A"
(H-673).**

Subsequently, **Committee Amendment "A" (H-673) was
ADOPTED.**

Under suspension of the rules, the Bill was given its **SECOND
READING WITHOUT REFERENCE** to the Committee on **Bills in
the Second Reading.**

On motion of Representative EDER of Portland, the House
RECONSIDERED its action whereby **Committee Amendment
"A" (H-673) was ADOPTED.**

The same Representative **PRESENTED House Amendment
"A" (H-679) to Committee Amendment "A" (H-673) which was
READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Eder.

Representative EDER: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. House Amendment "A" (H-679) which seeks to strike Part DD from lines 2 to 49 that deals with simple possession of marijuana.

What we are apparently trying to do in this budget is raise revenue by increasing fines for simple possession. The reason that I offer this amendment and the reason that I object to this is that 70% of the people who are sentenced for simple possession in this state are under 25 years of age. What we are doing here is making the fines mandatory and challenging judicial oversight, which, in my opinion, is a policy change. We are making the fines mandatory and are increasing the fines from \$200 to \$400 with judicial discretion to \$400 to \$600. Again, 70% of the people who are busted for simple possession are under the age of 25. What happens when these people are busted and sentenced is that they are now no longer eligible for college loans. What are we saying here? We are saying that we are going to raise revenue to fill the budget gap and we are going to be targeting young people and we are going to be targeting young people under 25 and we are going to deny them the opportunity to potentially attend college. I have a hard time with the fact that this is a way that we are looking at raising revenue because I thought we were all agreed that a college education is the best way for people to achieve higher earnings and it is the light at the end of the tunnel that is going to bring Maine out of this recession that we have been in.

If we are going to target young people and deny them college loans then how are we going to achieve that by blocking people from attending colleges, if we are going to be targeting these young people to raise revenue? Mr. Speaker, Men and Women of the House I offer that this is not the right way to raise revenue and I ask you to just say no to busting young people. Let them be able to get college loans and start on the path to higher earnings rather than creating an incarcerated class. Thank you Mr. Speaker.

Representative BRANNIGAN of Portland moved that the **House Amendment "A" (H-679) to Committee Amendment "A" (H-673) be INDEFINITELY POSTPONED.**

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Brannigan.

Representative BRANNIGAN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The Appropriations Committee spent a great deal of time on Section DD, we wanted to make sure that we were doing it as best as we could and we are doing it as best as we can I believe. So, we are as comfortable as we can be with our amendment and I hope that you will support the indefinite postponement.

Representative EDER of Portland **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-679) to Committee Amendment "A" (H-673).**

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 Freeport, Representative Webster.

Representative WEBSTER: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative WEBSTER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am unaware of this amendment or the consequences and I would like to ask through the Chair if someone could explain to me how this

penalty being increased would preclude people from getting college loans? Thank you Mr. Speaker.

The SPEAKER: The Representative from Freeport, Representative Webster has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This part of the budget does not change the elements of any offense, civil or criminal. There are already mandatory minimum fines on drug paraphernalia possession, which is a civil offense, and on marijuana possession, a civil offense. There are currently no mandatory minimum fines on all other drug offenses. What Part DD does is to increase somewhat the mandatory minimum fines on civil possession of marijuana and on civil possession of drug paraphernalia and imposes some mandatory minimum fines across the board on drug trafficking to children and a lot of serious drug offenses under Chapter 45 of the criminal code. It does not change or add any new offenses to the criminal code, it simply increases the fines that are already on the books and it raises about \$900,000 a year in revenues, which is booked in other parts of the budget and not dedicated to anything in particular, but is booked and I don't know how this would effect people's aspects for college any differently than the laws that are already on the books do.

The theory is, I suppose that I have no idea how much marijuana or any other drug costs, but if someone can afford to buy a drug and sell it or use it or furnish it to somebody else then they probably have the money to pay a fine or should have. That is the theory and I think that the state has a right to book this revenue. Thank you.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Dudley.

Representative DUDLEY: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just want to commend the Representative from Farmington, Representative Mills who did some excellent work on this issue in the Appropriations Committee and I think that it proved something that I was less comfortable with beforehand.

I do want to be on the record that I have heard from a number of my constituents with concerns about this part of the budget and I do want to go on the record and say that I wish there were other ways, but this is what budgets look like when we are in tough times. This is what a difficult decision looks like. This is what cutting looks like. So I will support the motion and the budget, understanding that decisions like these aren't easy.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Gerzofsky.

Representative GERZOFSKY: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is an odd topic for me to get up and debate, but it did come through our committee and we found out from the Department of Public Safety that the federal government was going to cut our MDA funds dramatically.

This year we are going to loose close to \$1,000,000. In the course of the next biennium we are going to loose another couple of million dollars and we thought at committee that this was going to be a way of trying to replace some of those funds to get us through the next biennium and through this one. We are not going to have the federal money coming in and this is another example where the federal government, to help their budget, is cutting some of ours. I am going to support our budget on this and vote against this indefinite postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am a little bit disturbed by the current debate. I would like to tell you why. It has always been my understanding that when we impose fines and penalties upon people it is try to deter them from taking part in things that harm our society as a whole. This debate seems to be more about filling a hole and raising fines to fill a hole and for those people on the Criminal Justice Committee and the Judiciary Committee, this should trouble you as well. I don't have any problem raising fines if I think that it reduces the illegal activity out there in our communities, but I certainly don't support raising fines just to raise money to fill a hole so I am going to be supporting this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Barstow.

Representative **BARSTOW**: Mr. Speaker, may I pose a question through the Chair to the Representative from Portland, Representative Eder?

The SPEAKER: The Representative may pose his question.

Representative **BARSTOW**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. The question is that it is my understanding there are no alternatives in this amendment to fill that hole. Does the Representative have an alternative to fill that funding hole and if this was passed it would, I understand, throw the budget out of balance?

The SPEAKER: The Representative from Gorham, Representative Barstow has posed a question through the Chair to the Representative from Portland, Representative Eder. The Chair recognizes that Representative.

Representative **EDER**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I appreciate the question of the Representative from Gorham. The simple answer is that there wasn't enough time to get that together. I would offer that what I was looking into doing was raising the fines for domestic violence to fill this gap that has been created by my amendment. Thank you for the question.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I had hoped that it wouldn't come to this. I didn't want to talk about this, but I guess that people need to understand. I am going to urge you to vote to indefinitely postpone this amendment. Criminal Justice and Public Safety discussed this issue very extensively. We were faced with what was almost an emergency in Criminal Justice and Public Safety. The Vern Foundation and the federal government have cut off, as of March, the funding for the Drug Enforcement Agency in the State of Maine. There are 28 officers that go around and are paid under federal grants. I can't give you the exact number of municipal police departments and county sheriffs departments that also supply agents that work under the Maine Drug Enforcement Agency. We have thousands and thousands of miles of coastline in the State of Maine. We're a perfect target for drug importation. Drug importation includes marijuana.

Marijuana use is on the rise amongst our young children and in case anybody has a doubt in their mind, the use of marijuana is illegal. Why are we even considering an amendment that would strip this off our budget and allow people to use an illegal substance? This isn't beer, this isn't wine, this isn't cigarettes, that, Lord knows, this Legislature has done a job on taxing and taxing. But, cigarettes are legal and marijuana is not. There is a difference and you know that if somebody can afford to go and

buy, sell, distribute, process and grow marijuana they can certainly afford the increase in the fines. Let's follow the federal government. They said it is illegal. Maine voted a long time ago to legalize marijuana. The chief justice tells us that the federal prosecutors will prosecute. The 121st Legislature chose not to take any action to enforce the vote that was taken in '97 that legalized marijuana in the State of Maine. It is still a federal offense to use, possess, smoke and grow marijuana on this scale so let's defeat this amendment. We have so many important things ahead of us. Protecting lawbreakers should not be a top priority for us. I urge you to follow my light and kill this thing. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. My previous comments were premature and I will tell you why. This is why it is difficult to speak on issues that are before another committee. My concern is for my constituents and the illegal use of drugs in my community, but I understand now from some discussions with people on the committee that if we don't support killing this amendment what will happen is that those folks out in our communities enforcing drug laws will have to be cut and that means less drug enforcement in my community. I apologize for my previous comments. They were uninformed and I guess that I will be supporting the indefinite postponement for that reason, for the protection of my community. Thank you.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative Fischer.

Representative **FISCHER**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Very quickly, what I would like to tell you about is the fact that we have had this discussion in Appropriations for many, many days and weeks concerning exactly what the Representative from Waldoboro just commented on, which is that these increases in fines are specifically meant to go towards restoring funding for juvenile drug court judges and for MDEA agents who had been cut due to some reductions in federal funding so this is what that money is going to go toward. So, a vote in support of this amendment and against indefinite postponement means that you don't want MDEA agents on the ground, that you don't want juvenile drug courts to be effective. I think that the people who break the law should be the ones who help pay for the enforcement of our laws and I think that it is a perfectly reasonable thing and a perfectly reasonable connection and I hope that you will vote to indefinitely postpone this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Frankfort, Representative Lindell.

Representative **LINDELL**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I strenuously object to the assertion that increasing fines on marijuana smokers is a justification that this money is properly used to fund the drug enforcement agencies. Drug enforcement agencies are concerned with far more serious crimes than pot smoking. What we are talking about is oxy-codone, we are talking about methamphetamine, we are talking about cocaine and we are talking about heroine. Those are the dangerous drugs that the Maine DEA is and ought to be pursuing. If you want to increase taxes to pay for that service than increase taxes on heroine use, cocaine use and methamphetamine use. Why go after the pot smokers who, frankly, are an underclass in our society and a sometimes hidden part of our society that is unwilling to come out of the closet and protect their interests from time to time.

Why are we picking on this group that tends to be younger people that tend to be less politically active people in order to

fund a drug enforcement agency that is rightfully protecting our communities against the heroine, the illegal oxy-codone, the methamphetamine and far more dangerous drugs?

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cain.

Representative CAIN: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have a district where a lot of people would be affected by a lot of these things that you are talking about and when we look at the problem of enforcing the laws that we have to prevent drugs from getting into our schools and particularly into our college classrooms and into our college recreational activity.

I would just like to speak to a couple of things. First, to answer the question of the good Representative from Freeport, it is the policy of the federal government, of the State of Maine and of most people who give student loans that if you have any type of criminal record you are not eligible for student loans or you can be discharged from the student loan program. That has been the policy for a very long time and it has been effective, and to the good Representative from Waldoboro, it encourages students not to do illegal things such as deal, use, and support others in using illegal drugs, because student loans should be an incentive to not do those things. I appreciate the discussion and I will be supporting the motion to indefinitely postpone this amendment. I don't believe that this is effective and I certainly want to help keep drugs out of our schools and particularly out of my district. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. A few brief points. One major thing that Part DD does do is to impose, for the first time, mandatory minimum fines on trafficking in heroine, trafficking in methamphetamines and other major drugs. There are major felonies on the books in Chapter 45 that do not now have a mandatory minimum fine. A good piece of this chapter, Part DD does impose those fines. Marijuana is a small player here, but in respect to the marijuana I would say that the fines have been on the books for many, many years and they have not been increased in many years. For the drug paraphernalia offense I don't think that they have been increased for about a dozen years or more and this is sort of an inflation factor going into effect here. With respect to domestic violence we did impose a mandatory minimum fine on assaults including domestic assaults in the Part I budget. That is already there. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-679) to Committee Amendment "A" (H-673). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 303

YEA - Adams, Annis, Ash, Babbidge, Barstow, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Burns, Cain, Campbell, Canavan, Carr, Churchill, Clark, Clough, Collins, Craven, Crosby, Cummings, Curley, Curtis, Daigle, Davis G, Davis K, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Duprey, Eberle, Emery, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Flood, Gerzofsky, Goldman, Grose, Hall, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jacobsen, Jennings, Jodrey, Joy, Koffman, Lerman, Lundeen, Marean, Marley, Marraché, Mazurek, McCormick, McFadden, McKenney, McLeod, Merrill, Miller, Millett, Mills, Moody, Moulton, Muse, Nass, Norton, Nutting, Ott, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Rector, Richardson D, Richardson E, Richardson M, Richardson W,

Rines, Robinson, Rosen, Sampson, Saviello, Schatz, Seavey, Sherman, Shields, Smith N, Smith W, Stedman, Sykes, Tardy, Thomas, Thompson, Trahan, Twomey, Valentino, Vaughan, Walcott, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Austin, Bryant-Deschenes, Cebra, Cressey, Crosthwaite, Eder, Edgecomb, Fletcher, Glynn, Hamper, Jackson, Kaelin, Lansley, Lewin, Lindell, Makas, McKane, Moore G, Plummer.

ABSENT - Beaudette, Greeley, O'Brien, Tuttle, Watson.

Yes, 127; No, 19; Absent, 5; Excused, 0.

127 having voted in the affirmative and 19 voted in the negative, with 5 being absent, and accordingly House Amendment "A" (H-679) to Committee Amendment "A" (H-673) was **INDEFINITELY POSTPONED**.

Subsequently, Committee Amendment "A" (H-673) was **ADOPTED**.

Representative TWOMEY of Biddeford **REQUESTED** a roll call on the **PASSAGE TO BE ENGROSSED as Amended**.

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

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

ROLL CALL NO. 304

YEA - Adams, Annis, Ash, Austin, Babbidge, Barstow, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowen, Bowles, Brannigan, Brautigam, Browne W, Bryant, Burns, Cain, Campbell, Canavan, Carr, Churchill, Clark, Collins, Craven, Cressey, Crosby, Cummings, Curley, Curtis, Daigle, Davis G, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Duprey, Eberle, Eder, Edgecomb, Emery, Faircloth, Farrington, Finch, Fischer, Fitts, Fletcher, Flood, Gerzofsky, Glynn, Goldman, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hogan, Hotham, Hutton, Jackson, Jacobsen, Jennings, Jodrey, Kaelin, Koffman, Lerman, Lewin, Lindell, Lundeen, Makas, Marean, Marley, Marraché, Mazurek, McCormick, McKenney, McLeod, Merrill, Miller, Millett, Mills, Moody, Moulton, Muse, Nass, Norton, Nutting, Ott, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Rines, Robinson, Rosen, Sampson, Saviello, Schatz, Seavey, Sherman, Shields, Smith N, Smith W, Stedman, Sykes, Tardy, Thomas, Thompson, Trahan, Valentino, Walcott, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Brown R, Bryant-Deschenes, Cebra, Clough, Crosthwaite, Davis K, Joy, Lansley, McFadden, McKane, Moore G, Twomey, Vaughan.

ABSENT - Beaudette, Fisher, Greeley, O'Brien, Tuttle, Watson.

Yes, 132; No, 13; Absent, 6; Excused, 0.

132 having voted in the affirmative and 13 voted in the negative, with 6 being absent, and accordingly the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-673)** and sent for concurrence. **ORDERED SENT FORTHWITH**.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.
