

MAINE STATE LEGISLATURE

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ROLL CALL (#215)

YEAS: Senators: BRYANT, COURTNEY, DAMON, DAVIS, GAGNON, HASTINGS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, SAVAGE, SCHNEIDER, SNOWE-MELLO, WESTON, WOODCOCK

NAYS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, CLUKEY, COWGER, DIAMOND, DOW, HOBBS, MILLS, NASS, ROTUNDO, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

ABSENT: Senator: TURNER

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **GAGNON** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-563) **READ** and **ADOPTED**, in concurrence.

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

Senator **STRIMLING** of Cumberland was granted unanimous consent to address the Senate off the Record.

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

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

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** 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

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-535)** (9 members)

Minority - **Ought Not To Pass** (4 members)

Tabled - June 2, 2005, by Senator **SCHNEIDER** of Penobscot

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, June 1, 2005, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-535) AS AMENDED BY HOUSE AMENDMENT "B" (H-617)** thereto.)

(In Senate, June 2, 2005, Reports **READ**.)

Senator **SCHNEIDER** of Penobscot moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. My track record hasn't been really great so far. I'm going to try one more time. Can I give you some background on this bill? During the days and nights of L.D. 1, there was one issue that the committee had difficulty with and it was the cap on county government. I'm sure you have all had calls at different times as a legislator about the unexpected expenses that happen in county government. That was understood and this issue was given to the State and Local Government Committee. I think they do have a solution that is workable and it is in the other report. It recognizes that you cannot, as a county sheriff, ever really do a budget that you can be confident of. A cap that says you will take prisoners that the state is giving you, you will have mandates that you have no idea what is going to happen with, and you are still going to remain under the cap. If you support the Ought Not to Pass report you are saying to your country sheriff and to the county government too bad.

On a Sunday afternoon I got a call from my county sheriff who had a prisoner who had been assessed psychologically as actually needing to come to our state hospital. They said they had no room for him. This is a scenario we're familiar with. I've heard it many times since I've been a legislator. This case was a little different. They said to my sheriff, 'You can bring him in if you post a deputy outside the door.' The sheriff brought the prisoner in and was told that it was going to be for 24 hours. When he arrived he was told it was going to be for 5 days. Could he put that in is budget? A 24 hour deputy patrol outside a hospital room at Riverview? Those are exactly the kinds of things that need some special consideration. It is unlike a school district, where they can prepare a budget and it can be voted up or down as to whether it is going to go over the cap. How does a county sheriff prepare a budget that says, 'I know I'm going to be over the cap by this amount, so you need to vote for that'?

We're asking for special consideration and if we could move on to an amendment that has been passed, I think that we have a good solution to that problem. Otherwise, we are saying we are going to ignore the problem. Even the committee on Taxation saw that this required a solution. To support this motion, we will even ignore their wishes. Thank you.

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

Senator **ANDREWS:** Thank you, Madame President, fellow men and women of the Senate. I am on the minority report. I understand the problem. I realize the jails do have problems,

unforeseen problems, but there is a mechanism in L.D. 1 to allow for an override. If that was not there, I could go along with doing something. The ink is hardly dried on L.D. 1 and they are beginning to line up at the troth to get exemptions. If there truly is a need to override the cap there is a mechanism to do so. I say to you, if we are ever going to promote and accomplish regionalization, people have to learn to work together. In this case, the parties involved have not always worked real well together. If we are ever going to realize and bring down the costs to run all levels of government, everyone has to work together. It just isn't right to exempt one and not others. If there was no mechanism there for overriding the cap, I would not be on the minority report. Let's give L.D. 1 a chance to work. If there is a crisis, if there are problems, there is a mechanism to override the cap. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON:** Thank you, Madame President. The good Senator from York, Senator Andrews, stole much of my thunder, but I did want to add a couple of other points in hoping that we will accept the minority Ought Not to Pass report. In review, there is already a mechanism in place for the override. Again, the ink is not dry on L.D. 1 yet and we are already talking about taking chunks out of L.D. 1 for exceptions and exclusions. It is also my understanding, and please correct me if I'm wrong, that the Commissioner of Corrections has money in the budget. I heard it's something like \$600,000 for a study to look at this entire issue and is obviously encouraging people from county government to join in this effort. All I can say is, if we can make an exception for this, then healthcare issues at the school levels and municipal levels and all of these exceptions are certainly eligible. I also believe that, from what I can see in the majority Ought to Pass report, we are still placing another cap. We're just increasing the cap. Not only are we getting rid of caps, we're tinkering with caps and it's only for some things and not other things. Let the bill work, let it go through its process, and if a cap needs to be overridden then there is a process for that within L.D. 1. Let L.D. 1 work. Thank you.

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

Senator **BARTLETT:** Thank you, Madame President. I rise today in agreement with the good Senator from Waldo, Senator Weston, on this issue, which is not unusual. We served together on the Utilities and Energy Committee and on many reports we have come to find common ground. The concern that I've had with L.D. 1 when we were discussing it was what about county jails. This isn't a new problem that has sprung up and we weren't aware of. This is something that we all predicted when we were dealing with L.D. 1. We knew this was something that had to be addressed. Questions were raised. I've talked to many of my colleagues about this issue. We all felt that we could deal with this L.D. 1 now and then try to resolve the jail issue. I've heard many possible solutions from the state taking over the jails to many other creative solutions in between. No solution has been forthcoming. Therefore the counties are left in the same place they were then. I would say that this issue was thought of in the context of L.D. 1. This isn't a case of the statutory caps being in place, the ink being fairly dry, and us trying to change it. We

knew at the time it was a problem. We talked about the need to change it. It's for those reasons that I will be opposing the pending motion.

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

Senator **DAMON:** Thank you, Madame President, men and women of the chamber. Some months ago I rose and asked you to support L.D. 1. I think in my comments I described it as not being perfect but not being pathetic either. This is one of the imperfections of L.D. 1. I said at the time, and I said during our deliberations in the committee, that, to me, the jails and the problems that they pose to the counties are the exact same problems that schools pose to municipalities in terms of their financial burdens. They maybe even worse because of their unpredictability. The good Senator from Waldo, Senator Weston, has mentioned that. Those stories can be told throughout this state with regards to jail budgets. I really had hoped that the reference of this particular bill to the State and Local Government Committee would have come up with a sound solution to that problem. I don't believe that it has. Failing that, and recognizing that there is money still available to try to come up with a solution to that in terms of a study solution, and also recognizing, as my good friend the Senator from York, Senator Andrews, mentions, that L.D. 1 does provide an opportunity to override a budget for extraordinary circumstances with the vote of the people, I will be rising in support of this motion, which is Ought Not to Pass. Thank you.

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

Senator **SCHNEIDER:** Thank you, Madame President. We spent a great deal of time in our committee working on this piece of legislation and, in fact, though I am supporting the Ought Not to Pass motion, it is with disappointment that we couldn't come to, what I feel, a reasonable solution. This is a huge problem, the jails. I think we all agree with that. I think rushing this at this point in time with a half-baked amendment would be the improper thing to do. I am very appreciative of my good colleague from Hancock, Senator Damon's words, that with the study coming forward this is a much more reasonable way to look at this problem and let L.D. 1 work. Hopefully it will. Hopefully the people in the communities will understand that jails are a tremendous problem and that there are cost drivers that they cannot control. In some ways I'm reaching out to the communities now to say please be reasonable and understand those cost drivers. If it is necessary to lift the caps, vote in favor of lifting the caps as it is proposed in L.D. 1. That mechanism is there. We hope to come forward in the future with a real answer to the jail problem. I would appreciate your support of the Ought Not to Pass motion. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you very much, Madame President, ladies and gentlemen of the Senate. I'm going to make reference to the old school funding formula, if I might, in support of the motion, Ought Not to Pass. I really feel quite uncomfortable in doing so this afternoon because we have an

expert in the chamber in the good Senator from Cumberland, Senator Brennan, who is extremely knowledgeable about the old school funding formula. I am sure he is about the EPS formula also. When we funded the school districts through the old school funding formula, we used to buffer those districts who perceived they had been underfunded. Because of that buffering over the course of several bienniums, we had to arrive at a new funding formula for schools. We now have the EPS formula. I am not, and have not and will not, be a supporter of L.D. 1, because we keep arriving at exceptions to the rules. However, the good Senator from York, Senator Andrews, raises the very interesting point that this problem has been a problem of the jails being unable to communicate and cooperate with one another. It is a unique situation with jails. The state has exacted a heavy cost upon them. A cost for which often they are not responsible, directly, for. However, and I say again, however if we continue to make exceptions to the rules we will be back where we were with the old school funding formula. This buffering does not work. I encourage the jails of Maine, I encourage the administration of this state and the Chief Executive Officer, to examine the jails closely because they continue to be a very cost driven entity, not of their own accord. Thank you, Madame President.

On motion by Senator **DAVIS** of Piscataquis, 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 Penobscot, Senator Schneider to Accept the Minority Ought Not to Pass 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 (#216)

YEAS: Senators: ANDREWS, BRENNAN, BROMLEY, BRYANT, COURTNEY, COWGER, DAMON, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MILLS, MITCHELL, NASS, PLOWMAN, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: BARTLETT, CLUKEY, DAVIS, NUTTING, PERRY, RAYE, WESTON

ABSENT: Senators: MAYO, TURNER

26 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **SCHNEIDER** of Penobscot to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Acts

An Act Regarding Child Protection Proceedings
H.P. 618 L.D. 867
(C "A" H-545)

An Act To Increase Access to Information Regarding Referendum Questions
H.P. 621 L.D. 870
(C "A" H-505)

An Act To Promote Parity in the Laws Governing Smoking in the Workplace
S.P. 294 L.D. 886
(C "A" S-261)

PASSED TO BE ENACTED and having been signed by the President were presented by the Secretary to the Governor for his approval.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Resolves

Resolve, To Encourage Parents To Choose To Dedicate a Portion of Child Support Payments to College Investment Accounts
H.P. 47 L.D. 51
(C "A" H-495)

Resolve, Concerning Temporary Guardianship Laws
H.P. 81 L.D. 105
(C "A" H-541)

Resolve, Directing the Department of Health and Human Services To Study Initiatives for Local Pharmacies Participating in the MaineCare Program
H.P. 437 L.D. 604
(C "A" H-556)

FINALLY PASSED and having been signed by the President were presented by the Secretary to the Governor for his approval.