

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Second Legislature

State of Maine

Daily Edition

Second Regular Session
January 4, 2006 to May 24, 2006

Pages 1382 - 2139

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-654)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - April 28, 2006, by Senator **SULLIVAN** of York

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, April 28, 2006, Reports **READ**.)

On motion by Senator **MAYO** of Sagadahoc, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-654) **READ** and **ADOPTED**.

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

Ordered sent down forthwith for concurrence.

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

Senator **DAVIS** of Piscataquis was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BRENNAN** of Cumberland, **RECESSED** until 5:45 in the evening.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

Bill "An Act To Implement Task Force Recommendations Relating to Parity and Portability of Benefits for Law Enforcement Officers and Firefighters"

H.P. 706 L.D. 1021
(C "B" H-1007)

Tabled - May 22, 2006, by Senator **STRIMLING** of Cumberland

Pending - **FURTHER CONSIDERATION**

(In Senate, April 13, 2006, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1007)**, in concurrence.)

(In House, April 28, 2006, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1007) AS AMENDED BY HOUSE AMENDMENT "A" (H-1028)** thereto, in **NON-CONCURRENCE**.)

On motion by Senator **MARTIN** of Aroostook, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1007)**.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "B" (H-1007)**.

House Amendment "A" (H-1028) to Committee Amendment "B" (H-1007) **READ**.

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** House Amendment "A" (H-1028) to Committee Amendment "B" (H-1007), in **NON-CONCURRENCE**.

On motion by Senator **WESTON** of Waldo, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#484)

YEAS: Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, PLOWMAN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK

ABSENT: Senator: MILLS

EXCUSED: Senator: TURNER

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **MARTIN** of Aroostook to **INDEFINITELY POSTPONE** House Amendment "A" (H-1028) to Committee Amendment "B" (H-1007), in **NON-CONCURRENCE, PREVAILED**.

On motion by Senator **MARTIN** of Aroostook, Senate Amendment "G" (S-660) to Committee Amendment "B" (H-1007) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. Before we left for the recess there was a great deal of concern expressed about the original bill as amended by both the Committee Amendment and the House Amendment to that Committee Amendment. A group of people, some of the firefighters and some of the police, came together to work out what you have in front of you. It accomplishes a number of things. First of all it lowers the cost. Second, it sets an amount of time because there was a concern that someone who had been brought into the department at age 20 and could potentially retire at 45 and be on the system for a long time. What this amendment does is says that the program will begin at age 50. One of the other issues that was raised was the issue of retirees because when retirees come on they could technically come in within a year. Assuming that they are 50 years old, they could potentially have benefits for 15 years. To some degree, that lent into the issue of what happens to a young person who goes into the force and pays in for 25 years and yet you now have a person who's paid in and could draw 15 years. There were some people who felt that this was a disparity.

What has been created here is three classes so that you would have a class of 50 - 55 retirees, 50 - 55, and 55 - 60. Those people, when they come in to buy in, would buy in at a different rate. If you had to buy in for five years if you were at 55, you would pay less than someone who is going to be getting 15 years of the insurance coverage. That's basically what this does. For those who voted for House Amendment A, that first year General Fund cost was \$3.4 million. This amendment lowers that to \$1.3 million. Then in the year 2008 - 2009, that cost will be about \$3 million and will continue about that level.

I think everyone feels that this is a fair compromise and I think it is one that will work well. I refuse to take the credit for it. It really was the work of the firemen and the police who got together, who came forth, and worked to this stage. I want to congratulate them for what they've done. It is something that we owe them and I am firmly convinced that it is the right thing to do.

On further motion by same Senator, 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 York, Senator Andrews.

Senator **ANDREWS:** Thank you, Madame President. I would like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose her question.

Senator **ANDREWS:** Thank you, Madame President. I would like to understand the reason why it's exempting this from the General Fund Appropriation Limitation, please.

THE PRESIDENT: The Senator from York, Senator Andrews poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. This is a really simple answer. It is simply that in the future it will never be

questioned as to whether or not they are entitled to that retirement because I felt so strongly that regardless of what happens in the future of state government and of the state budget that they ought not to be at the whim of L.D. 1.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you, Madame President. At first blush it is really difficult to stand up and speak against this bill. I would love to see every person covered, every retiree covered, but we still have to deal with the financial realities of our budget. Are we doing that? The good Senator from Aroostook, Senator Martin, would indicate that we reduced the cost here. We really haven't reduced the cost. We've taken one year, and looking at the fiscal note for this bill, it estimates there is going to be a one year surge of payments from retirees who are just coming into the program that will cover only a portion of the subsidy for one year. Thereafter, it will balloon right back up to the \$3 million, \$4 million, and who knows where it will go from there. We have to sit here and say we are committing ourselves to another \$3 million or \$4 million per year and I think that's something we should all acknowledge.

I think another thing we have to acknowledge is that there is an unfunded liability that goes with this bill. I understand the Controller has worked on this and an estimated a number as high as \$100 million. We've been talking about the unfunded liability a lot the last couple of years. Sure it's not as big as the \$3 billion unfunded liability for our pension plan or the \$1.2 billion on the teacher retirement plan, but \$100 million is still a lot of money to me. We have not proposed any way to pay for that unfunded liability except that it will have to be added on, if it's a pay-as-you-go thing. It's a problem we will have passed on to future legislatures.

If we don't have the money to pay for this, and I don't think we do, I don't think we should start down this road. If we do we're going to create one more problem for our children. They will have to deal with this in the future. If we're going to pay for something we should pay for it now. We should assess the cost for what it really is today, decide what that number is, and decide if we can afford to pay that number now. If we can't do that, we have to say it's a program we can't move forward with. To take this out of L.D. 1, to me, is no different than any other new program that this legislature may wish to undertake. It's another new program. I don't know how we can justify exempting this new program from L.D. 1 as opposed to any other new program. Are we heading down that road where all new programs will be exempt from L.D. 1 because they deserve to be there? I don't think that's the way to go. I don't think that's what the voters asked us to do with L.D. 1 and I certainly think we should all object to that type of approach for any new program. I urge that we do not pass the motion before us. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I am really amazed by the good Senator from Oxford, Senator Hastings, because the amendment that we just voted to kill but that the good Senator voted for would cost \$7.2 million for the next biennium. My amendment is \$4.4 million. I

would suggest that my amendment costs less than what the good Senator just voted for.

Furthermore, I would simply add that the figures to which the Controller was referring to is the original bill and not the amendment before us. It's a different animal, completely. I understand if people want to vote against it because it's a new program. I understand that, but you should not vote against this amendment because it's going to bankrupt the state.

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

Senator **NASS:** Thank you, Madame President, ladies and gentlemen of the Senate. I'll try to cover new ground and not be too repetitive. I think compliments are in order. It does lower the cost, but it does not lower the cost enough to make it affordable. While we're talking about the costs that we see in these proposals that are in the fiscal notes, these are minor. This is a minor issue. Whether it's this year or next year, the \$3 million or \$4 million costs are insignificant compared to the cost that we're going to pay for not properly funding these kinds of benefits. The problem that the Senator from Aroostook, Senator Martin, at least recognized is that we don't know what those are going to cost us. In the original proposal the Controller weighed in with a \$100 million plus unfunded liability. A term we ought to be familiar with. It's hard to understand, but they weighted down, like an anchor around our neck. These unfunded liabilities will cause to be able to do less in the future for our citizens because we try to do more now and unwilling to pay for it. It was \$100 million on the original proposal. We're sitting here today ready to vote for this thing and we don't even know what the unfunded liability is on this proposal. It is big. It may not be \$100 million. What if it's only \$40 million? Is that something we're willing to without even knowing what it is? That work has not been done on this bill. This is hastily put together, not by virtue of the effort that's been put into this, but by virtue of the results that are in front of us. Nobody is facing up to the real cost of this. We know what those are. We have them in the unfunded liability for the same reason, giving away benefits and not putting aside the money to pay for them. We have a large unfunded liability, \$1.5 billion, for the state employee's health insurance, retiree health insurance, and teacher retiree health insurance. These are huge. How does it manifest itself now, because we've had some experience with this and paying this back? The people got so upset with our unfunded liability in the pensions that they changed the Constitution to force us to face up to that responsibility. How does it manifest itself now? Look at the budget. When it comes time to pay back for that pension, that unfunded liability, we, the state, are paying about 20% to 21% of the employee's salary for our share of this unfunded liability. The employee pays 6.5% to 6.6%. Everybody else out there in the private sector pays about that. The employer about 6.5% and the employee about the same. We are paying, because of our past mistakes, 21.5% of wages to pay on a constitutionally established amortization plan to pay off our past mistakes. We're about to start another one today. Who is responsible for that? I suggest that we are and we should not vote for this. It should be voted down. Thank you.

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

Senator **STRIMLING:** Thank you, Madame President. I won't prolong this for very long except to say that I recognize that there may be lots of questions. Let's be clear about what question is absolutely being answered today. The question that is being answered today is that we are taking care of people who need to be taken care of. We are stepping forward and saying we are going to take care of those who have taken care of us; the people who have saved us from fires and the people who have been there in our times of need. They have asked us for help and we are stepping up to help them. That, I believe, is the most important piece of what we are doing today. We must vote for this. These people have been there for us everyday, every minute, every hour of our lives. They will be there until the end. For us to be unwilling to step up and offer this minor piece to say thank you, to recognize their service, would be a travesty, Madame President.

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

Senator **ROSEN:** Thank you, Madame President, men and women of the Senate. I just want to respectfully disagree with the good Senator from Cumberland when he says this proposal in front of us does, in fact, deliver on a benefit that is sustainable and that will go on in the future. It is poorly designed and it clearly is not sustainable. I'm going to ask the members of this chamber to look at the design of this and to reject it. We have the history, as the good Senator from York, Senator Nass, indicated, as to what these types of promises, which we have made in the past without the ability to fund and to fulfill the obligation, have produced. This is not designed in a way that will be intelligently sustainable in the long run. It is a major expansion to an entirely new class of municipal employees. We're moving now from the state contribution to retirees in the education end of municipal employees to this move, which is clearly is intended to be expanded upon in the future and there is no policy rational to deny that expansion in the future. The base is being laid today and the foundation has to be fiscally sustainable because there will be no retreating. We all know that. Future legislators and legislatures will be obligated to fulfill and to expand this promise.

These are municipal employees that have retired from long and loyal service, yet I don't see anything in this proposal that asks anything from their employer, the municipality. Where are they? There is a contribution from the employee. There is an obligation and a promise in this going on from the taxpayer into the General Fund. Where is the employer, the entity that has benefited on behalf of the community for that 20 or 25 or 30 years of service? They are not in the mix.

Finally, the idea of exempting this from L.D. 1. For the very legislature that came in two years ago, the first order of business was to adopt the spending limitations of L.D. 1, to leave now at the end of the two year session and obligate future legislatures to a brand new benefit and say they will exempt it from the spending limitation requirements in L.D. 1. What is the message that this sends to the counties, to the municipalities, and the school districts that we have asked to live under the requirements of the spending limitations of L.D. 1?

I urge you to reject this measure.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN**: Thank you, Madame President. Just a few things to make corrections on. Let's not forget that when the teachers were brought into the system there was no pay-in. They were brought in at zero. The benefits started there. Second, I think we also ought to remember that the public servants really in this state, the state employees, State Police, game wardens, and etcetera, are getting the benefits from the time they retire. We are setting this system up totally different and they are paying for part of those costs. If we had done that with others we would not be where we are. This is a totally different issue. In addition to that, the pay-in, that 2.5% that employees will start paying, will automatically increase. Obviously the cost of health care will be going up, but so will their salaries. They will be paying in every single year throughout their entire employment. If someone works for 25 years they will have been paying at that rate for 25 years and not collecting. That's going to be available. If we can run it that way, not like Social Security, then we can accomplish that goal. I don't feel uncomfortable at all.

The argument might be that it's a new program. Yes, it is. It's interesting that there is a bill that will be forthcoming shortly that provides healthcare for legislators and former legislators. Some of you may have seen the amendment I've prepared. It will provide that any citizen of Maine can come into the state health plan. If we can give it to legislators we ought to make it available for Maine citizens. The movement, I think, is to provide healthcare to Maine people and this is a step in that direction. I feel proud to be able to do it.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Aroostook, Senator Martin to Adopt Senate Amendment "G" (S-660) to Committee Amendment "B" (H-1007). 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 (#485)

YEAS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, PLOWMAN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: CLUKEY, COURTNEY, DAVIS, DOW, HASTINGS, NASS, RAYE, ROSEN, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK

ABSENT: Senator: MILLS

EXCUSED: Senator: TURNER

21 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **MARTIN** of Aroostook to **ADOPT** Senate Amendment "G" (S-660) to Committee Amendment "B" (H-1007), **PREVAILED**.

Committee Amendment "B" (H-1007) as Amended by Senate Amendment "G" (S-660) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-1007) AS AMENDED BY SENATE AMENDMENT "G" (S-660) thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith 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:

Act

An Act To Amend the Laws Governing the Enactment Procedures for Ordinances

S.P. 507 L.D. 1481
(S "C" S-554 to C "C" S-437)

On motion by Senator **BARTLETT** of Cumberland, 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 Cumberland, Senator Bartlett.

Senator **BARTLETT**: Thank you, Madame President. In light of recent opinion issued by the Attorney General of the State of Maine that indicated that there were potential mandate issues as well as constitutional issues, I just wanted to pose a question through the Chair for anyone who may wish to answer.

THE PRESIDENT: The Senator may pose his question.

Senator **BARTLETT**: Thank you, Madame President. If local elected officials refuse to schedule an election within the 75 day period window provided in this law, an election that could otherwise be lawfully conducted, would that refusal be considered unreasonable? I ask that question because the specific term in 30A, MRSA Section 2521, Subsection 4, which indicates that a town council may not unreasonably refuse to hold an election that otherwise could be held.

THE PRESIDENT: The Senator from Cumberland, Senator Bartlett poses a question through the Chair to anyone who may wish to answer. The pending question before the Senate is Enactment. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.