

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Fourth Legislature
State of Maine

Volume II

First Regular Session

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Second Regular Session

January 6, 2010 - March 23, 2010

Pages 609-1214

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

ORDERS

On motion of Representative MARTIN of Eagle Lake, the following Joint Order: (H.P. 1052)

ORDERED, the Senate concurring, that Bill, "An Act To Clarify Standards by Which Game Wardens May Stop All-terrain Vehicles," H.P. 244, L.D. 308, and all its accompanying papers, be recalled from the Governor's desk to the House.

READ.

The SPEAKER: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative **MARTIN**: Thank you, Madam Speaker. As you may remember, some of you, we had some discussion about this bill some time ago, and it is now before the Chief Executive. There are still some people who were complaining about the fact that the bill was in that posture and so the three of us this afternoon—the Minority Floor Leader, myself and the Representative from Sangerville—met with the Chief Executive and the other parties on the opposite side, and we have reached a clear understanding of the way to proceed. And when it comes back, we'll be offering an amendment which clearly clarifies the law so that game wardens will be treating citizens the same way as other law enforcement officers.

On motion of Representative CLARK of Millinocket, **TABLED** pending **PASSAGE** and later today assigned.

The House recessed until 7:45 p.m.

(After Recess)

The House was called to order by the Speaker.

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

ENACTORS

Acts

An Act To Update Department of Defense, Veterans and Emergency Management Laws

(H.P. 931) (L.D. 1327)

(H. "A" H-467 to C. "A" H-390; H. "A" H-567)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

Acts

An Act To Amend the Charter of the Limestone Water and Sewer District

(H.P. 1050) (L.D. 1494)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

Acts

An Act To Implement Tax Relief and Tax Reform

(H.P. 1051) (L.D. 1495)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative TARDY of Newport, was **SET ASIDE**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

The same Representative **PRESENTED House Amendment "A" (H-578)** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Tardy.

Representative **TARDY**: Thank you, Madam Speaker. Madam Speaker, Members of the House. LD 1495 hasn't had a hearing. The argument that it's similar to LD 1088 and that had a hearing, I don't think cuts it. It's been run through the process, what I hope is the last night of this Legislature, and I believe that there is a risk that in excess of 100,000 families will suffer a tax increase. Now running a bill through that's touted as tax reform, I think, deserves some public input. I think the Representative from Harrison weighed in on some of the criticisms of running such a significant piece of legislation through the process without a hearing.

Last November, the people of Maine overwhelmingly rejected a similar process. A good friend from Bowdoinham likes to quote Yogi Berra, I will now: "Déjà vu all over again." Now let's let the people have some input. If no public hearing, well let's do a referendum, and that's what this amendment does. It tacks on a referendum question. I would say, after a review of the summary of the bill that appeared on our desks a couple of hours ago, that LD 1495 makes things a little better for some families. If you have a \$600,000 home that's on the market and you take off in your fully warranted Lexus and head to Sugarloaf for the weekend, well you do alright. But Joe five-pack, driving the pickup from Newport up to that wood lot in Atkinson, he might have a different opinion. I urge the House to adopt this amendment. Thank you.

Representative WATSON of Bath moved that **House Amendment "A" (H-578)** be **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Every element in this bill has had a full and complete public hearing. We have discussed before the Taxation Committee every element in this: the sales tax broadening, the earned income tax credit. Every change that's made in 1495 from 1088 has been fully vetted. It was not something that came out of the dark of night; it was not something that came out of a backroom deal. Every element in this bill has had a full public hearing and the public has chimed in ad nauseam on every element of it. This bill is the product of at least 10 or 12 years of bipartisan work, not only bipartisan but Independents have joined in this process as well, including my esteemed colleague, the former Representative from Yarmouth, Representative Woodbury. We have worked on this for the seven years that I have been here and for seven or eight years before I arrived. It is our job; this is what we were sent here to do. This is what we were elected to do, not to decide well maybe we ought to send it out for referendum. This is our job and we have done it and we have done it well, and we have done it well enough to be proud of it. It does not need to go out to referendum. I encourage you to

please support the Indefinite Postponement motion. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Tardy.

Representative **TARDY**: Thank you, Madam Speaker. Madam Speaker, Members of the House. Just to clarify, I said Joe five-pack, I meant it. In my district, we can't afford six-packs anymore. In this economy and in this tax burden, I think it is now the state of Joe five-pack, and I would request a roll call.

Representative TARDY of Newport **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-578)**.

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 Bath, Representative Watson.

Representative **WATSON**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I would only point out that LD 1495 has included a new feature directed to the people that the good Representative from Newport, Representative Tardy, are concerned about and that is the earned income tax credit. It is fully refundable now, refundable to an extent to where Representative Tardy's friends and neighbors can certainly pick up a full six-pack and enjoy the benefits of tax reform. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Cushing.

Representative **CUSHING**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I appreciate the comments from the good Representative from Bath as to the public exposure of different parts of this legislation, but to think that 10 years ago we had a hearing on some components on this doesn't necessarily mean that it's valid today. I looked a lot different 10 years ago too, and I think it's imperative that we think very carefully about this because, frankly, the people in Maine are looking to us for the type of leadership and the type of reasoned response that they expect for their elected leaders. To rush something through of this nature before we've had a chance to address the spending issues that are afflicting us, I think, is very unwise. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Giles.

Representative **GILES**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I rise to comment on this discussion. We've had I guess a lot of discussion in a committee, but I just want to share with you one story of a small business that I heard from, and it's an element of this tax that is within 1088, it's within this bill that we're looking at now. And if you travel Route 3, if you've ever gone to Bar Harbor through Belfast, you go by a place called Perry's Nut House. Perry's Nut House has been there since the early '20s, and Eleanor Roosevelt used to stop there and purchase candy on her way to Campobello Island for the summer with her children on her way to see the president who was there, and I worked there years ago. But I got an email from the owner there, and he was very concerned because one of the nicest things you can get when you go to Perry's Nut House is a nice big piece of fudge, and they make the best fudge around, and they are now looking at an 8.5 percent tax on it. It just made me think of all the small business owners and all the candy shops along the way, and it kind of disappoints me that, as we go out of here, we're going to do something to tax something that really is kind of pleasurable from that standpoint. So I would hope that we would give this more vetting and give more opportunity for the small businesses, such as Perry's Nut House, to weigh in on this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Celli.

Representative **CELLI**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. If this is such a well thought out bill and it's been worked on for such a long time, I don't see any problem sending it to the people and letting them decide how well they like it and if it is a well thought out bill.

The SPEAKER: The Chair recognizes the Representative from Ellsworth, Representative Langley.

Representative **LANGLEY**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. As a member of the Taxation Committee, I would like to point out that this bill was properly vetted: Two hours of testimony and support, another six hours of testimony in opposition, with probably another two hours of opposition going home without being heard, and I wish that we would listen to the public. Thank you.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative **SYKES**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. The good Representative from Bath, Representative Watson, said that this bill has been worked on for seven years. Why do we get it at the eleventh hour, now under the cover of darkness?

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-578). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 233

YEA - Adams, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Casavant, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Flemings, Gilbert, Goode, Harlow, Haskell, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kent, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Shaw, Sirois, Smith, Stevens, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Willette, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Campbell, Cebra, Celli, Chase, Clark H, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Finch, Fitts, Fletcher, Flood, Fossil, Gifford, Giles, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, Martin JR, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Strang Burgess, Sykes, Tardy, Thibodeau, Thomas, Tilton, Weaver.

ABSENT - Carey, Flaherty, Hanley, Hayes, Pratt, Rosen.

Yes, 87; No, 58; Absent, 6; Excused, 0.

87 having voted in the affirmative and 58 voted in the negative, with 6 being absent, and accordingly **House Amendment "A" (H-578) was INDEFINITELY POSTPONED**.

Subsequently, the Bill was **PASSED TO BE ENGROSSED**.

Representative TARDY of Newport **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

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 Enacted. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 234

YEA - Adams, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Casavant, Cleary, Cohen, Connor, Cornell du Houx, Crockett P, Dill, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Flemings, Gilbert, Goode, Harlow, Haskell, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kent, Kruger, Lajoie, Legg, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Morrison, Nelson, O'Brien, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Priest, Rankin, Rotundo, Russell, Sanborn, Schatz, Sirois, Smith, Stevens, Stuckey, Sutherland, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Watson, Webster, Welsh, Wheeler, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Campbell, Cebra, Celli, Chase, Clark H, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Cushing, Davis, Edgecomb, Finch, Fitts, Fletcher, Flood, Fossil, Gifford, Giles, Greeley, Hamper, Harvell, Johnson, Joy, Knapp, Knight, Langley, Lewin, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pendleton, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Shaw, Strang Burgess, Sykes, Tardy, Theriault, Thibodeau, Thomas, Tilton, Weaver, Willette.

ABSENT - Carey, Flaherty, Hanley, Hayes, Pratt, Rosen.

Yes, 84; No, 61; Absent, 6; Excused, 0.

84 having voted in the affirmative and 61 voted in the negative, with 6 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Reduce the Size of the Legislature

(H.P. 123) (L.D. 144)

Which was **TABLED** by Representative MARTIN of Eagle Lake pending his motion to **RECEDE**.

Subsequently, Representative MARTIN of Eagle Lake **WITHDREW** his motion to **RECEDE**.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Flood.

Representative **FLOOD**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. My hope was and still is that this moderated version of LD 144 provided recognition of the issues raised and was respectful and responsive to the concerns brought forth by some of my good colleagues here. And I wanted to make some clarification remarks, if I could, to be clear to this body. I wanted to be sure that you all knew that I prepared the amendment that is now before you on this LD 144, and prepared it for the other body to offer because that is the protocol for how items come off the Appropriations' table and go back to the other body, and it's usually the chair of the Appropriations Committee who presents those amendments to the other body, and then they get back in motion that way. So that was a standard protocol, and I wanted to be sure that my colleagues understood that.

I did want to say that I do believe that it still sends a very good message to the public that we've listened. And to the point that others raised earlier, that it would be a confusing issue to the public to look at this question and respond to it, I would say that in 1969 the other body had that concern, that question went out, it was dealt with. The people are smart, they will understand it, and they will be able to deal with the question. They will understand that.

Also, there was a question raised earlier that I wanted to be sure that I responded to regarding the question itself and the year that which is stated, we talk about altering the size of the House of Representatives beginning in 2015, and that is the correct language. I checked that twice before because, to me, also it seemed counterintuitive that that would be the way it should work. But in checking again with the chief revisor, she indicates that that is how we have always dealt with those matters, that is the way, that is the correct language to use in that context. So you can be sure that the phrasing is correct there.

My motivation in this whole process, from a year ago, is to find a way to overcome concerns and get to yes. That's very difficult. You all know that because you all have tried to do that same process as you go through your legislative session. My concern after earlier votes on this matter was the fact that it was so close to an Enactment vote that it was really my duty to try to find a way to get us to yes, and that is why I prepared this additional amendment. Again, I felt duty bound to do that. I hope that this bill would empower the people by asking them a question that I think they would like to respond to, and I think it would also empower this Legislature as well, and I thank you all very much for the opportunity to have presented it. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Ripley, Representative Thomas.

Representative **THOMAS**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I voted for this on the two previous occasions, because I don't think it makes much difference if it's 131 or 151, and I don't believe it's going to save any money. I believe it will cost us more to remodel the House to accommodate 131 than we save, but I believe that the people want it. But I don't think they want us to play games like this, do they? If we want to reduce the size of the House, let's reduce the size of the House. Let's not give it to some other committee to decide for us. If we don't have the courage to do it, then let's not do it. Thank you.

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

Representative **ADAMS**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. The proposal arriving on the wings of night from the other body is very thoughtful, but it is very large, it is very late and it is very sweeping. And for all of those reasons, plus the fact that the Constitution should not be amended casually or quickly or late at night, I believe it best not to adopt this measure at this late hour. But in no respect does that mean disrespect for the probity and sincerity of the good sponsor.

A quick example to show why I think the Senate and the House stories are different and should stay different. The example has been given to us of the Senate Amendment that is now in the State Constitution. Here's how it came about: In Maine's first Constitution, the Senate represented counties. Each county got two Senators. The House represented people. No town got more than seven or less than participating in one. So it remained for 150 years, until a famous United States Supreme Court case called *Baker v. Carr* in the 1960s, which established the famous doctrine of one person, one vote, and it required all states, including ours, to create single member districts for both House and Senate. So now all legislators in the United States and in Maine, and in House and in Senate, represent people not territory.

But later, it was understood that since Maine would grow, the Senate could grow: 31 to 33 or to 35. It was meant to allow for growth, not for shrinking. Two houses, two stories, two different ends, two different paths, with two different chambers.