

MAINE STATE LEGISLATURE

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making, the process and ethics of this, and I think there are some issues there and I think those will be dealt with in a different venue. I also appreciate the good Representative from Hudson, Representative Duchesne's explanation; he did a good job. All of the speakers have said, and I agree, that the Scribner's Mill Historical Preservation Society is a good organization trying to do a very positive thing. But the Representative from Hudson, Representative Duchesne, left an important fact out, and I think we are headed in the wrong direction with a study. This bill will not stop the dam. This bill cannot stop the dam. This bill is something that will be prospective. This is a situation where these folks already had an application before DEP for this impoundment. DEP has denied that application; they have appealed it; it is before the board today. If the board decides, okay, we agree with you, go ahead and do it, then that is going to happen. What this bill will do, unfortunately, and I have been directly involved with some of these meetings and discussions, what this bill will do is to prevent, if it passes, it will prevent some of the other alternatives that the Scribner's Mill Historical Perseveration Society has been negotiating with DEP, and DEP has said, and I have heard this myself, we can live with some of those things. This bill will not stop that impoundment, that dam. That decision is with the board, right now, today. What this bill will do is to prevent some other alternatives for a wonderful, historical perseveration group trying to be probably the only sash saw mill restored in North America. Thank you.

The SPEAKER: The Chair recognizes the Representative from Caswell, Representative Ayotte.

Representative **AYOTTE**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I do want to address a remark made by the good Representative from South Portland, Representative Eberle. I did specifically ask, very specifically ask the people from the Scribner's Mill Historical Preservation Society if any sawdust or chips or bark would be put into the Crooked River, and I was unequivocally told that there would be no debris, no sawdust, no chips, or anything of that sort that would go into the river. So as far as this affecting the water that runs downriver, I was told unequivocally that it would not affect it in any way and would not, in any way, interfere with the drinking water or water used by the people of Sebago Lake or wherever. Thank you.

Representative **HAMPER** of Oxford **REQUESTED** a roll call on the motion to **ACCEPT** Report "A" **Ought to Pass as Amended**.

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 Rockport, Representative Welsh.

Representative **WELSH**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. I would just like to be clear that I am voting with the Majority Report on Ought to Pass with Amendment "A", and I fully support that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Fitts.

Representative **FITTS**: Thank you, Madam Speaker. May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **FITTS**: Thank you, Madam Speaker. It would appear to me that this classification change would be partially intended to stop an activity. What are the classifications below Scribner's Mill and above Scribner's Mill today? Thank you, Madam Speaker.

The SPEAKER: The Representative from Pittsfield, Representative Fitts has posed a question through the Chair to

anyone who may care to respond. The Chair recognizes the Representative from Hudson, Representative Duchesne.

Representative **DUCHESNE**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. In answer to the question, the river is already Class AA, both above and below. The only section that is still A is that section that is now being reclassified to the rest. The historical dam that we are talking about was breached back in 1970; it hasn't actually been a dam for about 40 years.

If I may answer another question too, it was mentioned by the Representative from Harrison, Representative Sykes, that if this bill were to pass and the Scribner's Mill folks win their appeal, the dam could still go forward. It does, however, if this is reclassified AA, the way the rest of the river is, it would preclude future dams on that section of the river. Thank you, Madam Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of Report "A" Ought to Pass as Amended. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 32

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

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Davis, Edgcomb, Fitts, Fletcher, Flood, Fossel, Gifford, Giles, Greeley, Hamper, Hanley, Harvell, Joy, Knight, Langley, Lewin, McFadden, McKane, McLeod, Millett, Nass, Nutting, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Schatz, Strang Burgess, Sykes, Tardy, Thomas, Tilton, Weaver.

ABSENT - Celli, Cornell du Houx, Cushing, Dill, Goode, Johnson, Kent, Knapp, Martin JL, Rosen, Russell, Smith, Stuckey, Thibodeau, Watson, Willette.

Yes, 84; No, 51; Absent, 16; Excused, 0.

84 having voted in the affirmative and 51 voted in the negative, with 16 being absent, and accordingly Report "A" **Ought to Pass as Amended** was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-70)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Tuesday, April 28, 2009.

HOUSE DIVIDED REPORT - Report "A" (6) **Ought to Pass as Amended by Committee Amendment "A" (H-77)** - Report "B" (6) **Ought Not to Pass** - Committee on **STATE AND LOCAL GOVERNMENT** on RESOLUTION, Proposing an Amendment to the Constitution of Maine To Elect 2 Senators from Each County and To Increase the Senate Term from 2 to 4 Years
(H.P. 574) (L.D. 838)

TABLED - April 15, 2009 (Till Later Today) by Representative **BEAUDETTE** of Biddeford.

PENDING - Motion of same Representative to **ACCEPT** Report "B" **OUGHT NOT TO PASS**.

Representative **TARDY** of Newport **REQUESTED** a roll call on the motion to **ACCEPT** Report "B" **Ought Not To Pass**.

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 Biddeford, Representative Beaudette.

Representative **BEAUDETTE**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I moved Acceptance of the Ought Not to Pass Report. This bill does propose to apportion two senators for each county. The reason that I forwarded that particular report is that the change that is suggested would be unconstitutional. In a U.S. Supreme Court decision in 1962, *Baker v. Carr*, the court determined the reapportionment issues are justiciable questions enabling courts to intervene and decide reapportionment questions, and *Gray v. Sanders*, in 1963, the court struck down the Georgia apportionment system, which is what is being suggested here. Justice William Douglass wrote the majority opinion and said the concept of political equality can mean only one thing: one person, one vote. The court found that the separation of voters in the same election into different classes was a violation of the Fourteenth Amendment's guarantee of equal protection. In 1964, in *Reynolds v. Sims*, the court ruled that state legislature districts, in both houses of a bicameral legislature, had to be roughly equal in population. The case determined that the Fourteenth Amendment, the Equal Protection Clause, requires substantially equal legislative representation for all citizens in a state, regardless of where they reside, they represent people not areas.

If this were to pass, you would have a situation where, for example, in Oxford County, which has population of about 50,000 people, if there were two senators, each would represent 25,000 people. In Cumberland County, in comparison, which has a population of about 275,000 people, two senators would represent 137,500 people. This is clearly in opposition to the Supreme Court decisions, and I would recommend that you vote for the Ought Not to Pass Report.

The SPEAKER: The Chair recognizes the Representative from Crystal, Representative Joy.

Representative **JOY**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I am sorry to have to rise and speak against my former committee chair, but I think that just because courts have ruled in the past that something may be unconstitutional, doesn't mean that that court can't change its mind. We have lots of enterprising attorneys in here who should be willing to pick up the challenge and run to Washington and see about fighting this.

One of the reasons that I put this bill in is, many years ago when our country was being founded, our representatives in Philadelphia were at odds as to how they were going to proceed. They were all ready to go home and not come up with any conclusion about how they were going to form the government for this country. A gentleman by the name of Roger Sherman finally saved the day, when he made a proposal that we should have representation in the Senate of our country on the basis of one per state. That created a body of geography and gave a balance between the House and the Senate. That was later changed to two senators per county, of per state rather, and we still have that situation today. The Senate is the body of geography; the House is the body of the people. The same should be in order for our states.

One of the biggest reasons that I affirmed this point is that our Constitution of Maine says that each body should be able to negate the other. It's rare that you will find that the two bodies do not line up on the basis of population. I know that one of the complaints that I have heard in the past is that senators in the southern counties, where it is more populous, would have much larger districts and have to travel a long way. Consider the

Second Congressional District. The Representatives in the Second Congressional District have to travel miles, all the way from Lewiston, all the way up to Fort Kent to campaign in his bids for election and reelection. In my own district, when I go out to pick up my signs at the end of a campaign, I have 400 miles on my automobile, so I can't really accept that argument. Ladies and Gentlemen, I would challenge you to pass this, and let's draft some of our attorneys to go represent us in Washington to straighten this matter out. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Beaudette.

Representative **BEAUDETTE**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I enjoy actually having these conversations and sometimes debates with the good Representative from Crystal, a true gentleman, and I enjoy the repartee that we sometimes have the opportunity to engage in; however, I just wanted to add one more piece of little history here. In the State of Maine, there were actually two senators per county until 1965 and that change in the state constitution was made at that time, essentially in response to the three Supreme Court decisions that I had mentioned earlier in '62, '63, and '64. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of Report "B" Ought Not to Pass. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 33

YEA - Adams, Beaudette, Beaudoin, Beck, Berry, Blanchard, Blodgett, Boland, Bolduc, Briggs, Bryant, Butterfield, Cain, Campbell, Carey, Casavant, Clark H, Cohen, Connor, Crockett P, Dostie, Driscoll, Duchesne, Eaton, Eberle, Eves, Flaherty, Flemings, Harlow, Haskell, Hill, Hinck, Hogan, Hunt, Innes Walsh, Jones, Kaenrath, Kruger, Lajoie, Legg, Lewin, Lovejoy, MacDonald, Magnan, Martin JR, Martin JL, Mazurek, McCabe, Miller, Morrison, Nass, Nelson, O'Brien, Pendleton, Peoples, Percy, Perry, Peterson, Pieh, Pilon, Piotti, Pratt, Priest, Rankin, Rotundo, Sanborn, Shaw, Stevens, Stuckey, Sutherland, Theriault, Treat, Trinward, Tuttle, Valentino, Van Wie, Wagner J, Wagner R, Webster, Welsh, Wheeler, Wright, Madam Speaker.

NAY - Austin, Ayotte, Beaulieu, Bickford, Browne W, Burns, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Crockett J, Curtis, Davis, Edgecomb, Finch, Fitts, Fletcher, Flood, Fossel, Gifford, Gilbert, Giles, Greeley, Hamper, Hanley, Harvell, Hayes, Joy, Knight, Langley, McFadden, McKane, McLeod, Millett, Nutting, Pinkham, Plummer, Prescott, Richardson D, Richardson W, Robinson, Sarty, Saviello, Schatz, Sirois, Strang Burgess, Sykes, Tardy, Thomas, Tilton, Weaver.

ABSENT - Celli, Cleary, Cornell du Houx, Cushing, Dill, Goode, Johnson, Kent, Knapp, Rosen, Russell, Smith, Thibodeau, Watson, Willette.

Yes, 83; No, 53; Absent, 15; Excused, 0.

83 having voted in the affirmative and 53 voted in the negative, with 15 being absent, and accordingly Report "B" **Ought Not to Pass was ACCEPTED** and sent for concurrence.

An Act To Facilitate the Removal of Dams That Pose a Hazard to Public Safety and the Installation and Repair of Fishways

(S.P. 112) (L.D. 348)

(C. "A" S-21)

TABLED - April 15, 2009 (Till Later Today) by Representative PIOTTI of Unity.

PENDING - **PASSAGE TO BE ENACTED.**