

MAINE STATE LEGISLATURE

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give up half of our K-12 education budget? Are we going to slash Health and Human Services? That's the honest discussion we have to have and we have to have that discussion here as a group and part of single package, not simply be passing it on to the Appropriations Committee and imaging that somehow they're going to be able to do what we can't muster the courage to do as a group. I again extend my hand for us to work together. There's still some time left this year, and certainly even more next year, to find constructive ways to lower the tax rate and cut State spending in a responsible way that we all can support. Thank you.

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

Senator **DAVIS:** Thank you, Madame President. Men and women of the Senate, I would cut the Clean Election Fund, all of it. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bliss to Accept the Majority 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 (#143)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, DAMON, DIAMOND, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, NUTTING, PERRY, SCHNEIDER, SIMPSON, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: COURTNEY, DAVIS, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, TRAHAN, WESTON

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **BLISS** of Cumberland to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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

An Act To Protect the Privacy of Maine Residents under the Driver's License Laws

S.P. 492 L.D. 1357
(S "A" S-247 to C "A" S-215)

Tabled - June 2, 2009, by Senator **RAYE** of Washington

Pending - **ENACTMENT**, in concurrence

(In Senate, May 29, 2009, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-215) AS AMENDED BY SENATE AMENDMENT "A" (S-247)** thereto.)

(In House, June 1, 2009, **PASSED TO BE ENACTED**.)

On motion by Senator **RAYE** of Washington, 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 (#144)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, CRAVEN, DAMON, GERZOFKY, GOODALL, HOBBS, JACKSON, MARRACHE, PERRY, SCHNEIDER, SIMPSON, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: COURTNEY, DAVIS, DIAMOND, GOOLEY, HASTINGS, MCCORMICK, MILLS, NASS, NUTTING, PLOWMAN, RAYE, RECTOR, ROSEN, SHERMAN, SMITH, SULLIVAN, TRAHAN, WESTON

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, **FAILED ENACTMENT**, in **NON-CONCURRENCE**.

(See action later today.)

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

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Require Interscholastic Athletic Organizations To Comply with Freedom of Access Laws"

H.P. 909 L.D. 1306

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-470)** (11 members)

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

Tabled - June 2, 2009, by Senator **COURTNEY** of York

Pending - motion by Senator **BLISS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, June 1, 2009, 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-470)**.)

(In Senate, June 2, 2009, Reports **READ**.)

On motion by Senator **COURTNEY** of York, 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 Oxford, Senator Hastings.

Senator **HASTINGS:** Thank you, Madame President. Ladies and gentlemen of the Senate, those of you who have the Committee Report before you can see it was a very one-sided report. I want to explain to you why I oppose the Majority Report and ask you to defeat the motion before you in spite of its one-sidedness. What this bill does is take the Maine Principals' Association, or a little piece of it, and puts it into the Freedom of Access law that is such an important part of our statutory scheme to ensure transparency in government. The Freedom of Access law provides that public proceedings of governmental organizations and the records of the government organizations are open for public inspection but it's intended to cover the people's business and government. Now what happened here was the Maine Principals' Association is not a government. It includes many public school principals and it includes private school principals. Many of its functions deal with just supporting principalships, the concept of, but it's morphed into a group that controls or sets the scheduling for interscholastic athletics. There is no subject probably more controversial or generating more public interest than interscholastic sports. What happened here was, I think it was a year or so ago, the MPA, in its dealing with the overall financial situation that the schools were facing, attempted to shorten the seasons for sports teams, which incurred the wrath and ire of many interested parents and friends of interscholastic sports. Apparently the MPA did not do a very good job of inclusiveness in including and allowing people's input into these events. That was the genesis of this bill. What the bill says is that the committee meetings, subcommittee meetings, and full membership meetings of any association that promote, organize, and regulates statewide interscholastic activities in public schools, or in both public and private schools, are public proceedings. It goes on to say that the records are public records. Then it goes on to limit it because all they were concerned about were interscholastic sports and to say that paragraph only applies to those meetings pertaining to interscholastic sports. So what we've done is we've taken a private organization, albeit substantially publicly funded but not fully publicly funded and substantially made up of public school principals but not entirely made up of public school principals, and carved one little section of it out and said those are public proceedings and those are public records. For the life of me, I can't understand that if we're going to do this, why wouldn't we say that the sections the committees of the MPA that deal with the Maine Jazz Festival and the school drama festivals, why aren't those public proceedings, too? My concern is a misuse of the public access laws. The MPA probably asked for this to some extent and they should have been far more inclusive in their debating on this. I'm afraid we are diluting and weakening the public access law by suggesting that we're going to selectively pick those private groups, private entities, and include them within the definition of public proceedings and public records because we just happen to want to get that information. They're not governmental entities. They're private organizations. The next

bill may be, and I can see us heading down the road, for any organization that receives some public funding, and there are myriads of private organizations that do. There will be an attempt to, by somebody who is disappointed that they weren't able to have access to the meetings or the records of that organization, include those organizations and those meetings within the public records. Rules of the Freedom of Access law, I believe the Freedom of Access law is intended to cover governmental proceedings. We work hard in the Judiciary Committee to ensure it is conducted properly. I hate to see it used for the wrong reason and I do believe this is the wrong reason. I believe we could have handled the MPA under the corporate laws and tailored a law to do that. I think they got the message pretty clearly, Madame President. They sat there and listened to this. I think the MPA realized that they needed to become more inclusive. I think it's a misuse of the Freedom of Access law and for that reason alone I would ask you to vote against the motion before you. Thank you.

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

Senator **BLISS:** Thank you, Madame President. Ladies and gentlemen of the Senate, I absolutely agree with my good friend from Oxford. There is nothing about high school that creates more fervor than athletics. There's nothing that people talk about with more passion than athletics. How much money? How many teams? How many practice days? It is, for many people, the most important part of the high school experience, particularly for the parents of high school students. To say that the Maine Principals' Association is not a public organization, to say that the principals of our public high schools are not dealing with public issues when they meet challenges reality a bit. This is all about dealing with public funds for public institutions and it ought to be done in a public way. I agree with my friend from Oxford that government ought to be open. This is all about increasing the openness of government. This bill came about because two of the youngest members of the other Body came to us with very similar bills asking for increased openness. It is probably true that we should create openness in the Maine high schools for discussions about how much money is going to jazz recitals, for how much money is going to art shows, but the truth is that's not what people are radicalized about. They're in a fervor over issues about high school athletics. So that's what the focus of two bills that were brought to us by the other Body was. That's what we dealt with. I think we made it very clear that this bill does not apply to athletic leagues composed of private schools. This is really only about the Maine Principals' Association and their discussion of athletics. It also excludes discussion of coaches' tenure and eligibility of individual athletes, because those are issues that ought to remain private. For the rest of it, transparency is a good thing and I believe we're doing the right thing. I would ask the Secretary to read the Committee Report.

At the request of Senator **BLISS** of Cumberland, Reports **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you, Madame President. Ladies and gentlemen of the Senate, as the lead co-sponsor of one of these bills, I feel compelled to rise this afternoon and add a few points

onto the record. These bills, unfortunately, have had a long 10-year genesis. A previous speaker said that sure the Maine Principals' Association heard the message and we don't need this bill. Well, I beg to differ. Yes, last year, in a closed meeting, they proposed to shorten the athletic seasons. Four years ago they took the position that cross-country running teams could not go to the New Englands for the New England Championship even if Maine was hosting the New England Championships. We had to put a bill in to force them to allow those cross-country running teams to go to the New Englands. A bill I sponsored 11 years ago was when the Maine Principals' Association was proposing to close the cross-country ski season in the middle of February on time and it was January 20th and we had no snow. The kids were going to have no season at all and the cross-country ski coaches statewide were begging to have a few weeks added on. In a closed meeting 11 years ago, the Maine Principals' Association ruled that no, the season would end on time, snow or no snow. We turned out many athletic teams and the Education Committee at that time told the Maine Principals' Association either they were going to extend the season or the Education Committee was. The Principals' Association did finally extend the season. So these bills, I believe, are very, very much overdue. I alone have an 11 year history with high schools being very frustrated that they can have no input, that the meetings are closed when these types of decisions are being made. So I'd urge you to support the pending motion. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bliss to Accept the Majority Ought to Pass as Amended 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 (#145)

YEAS: Senators: ALFOND, BARTLETT, BLISS, BOWMAN, BRANNIGAN, BRYANT, COURTNEY, CRAVEN, DAMON, DIAMOND, GERZOFSKY, GOODALL, GOOLEY, HOBBS, JACKSON, MARRACHE, NUTTING, PERRY, PLOWMAN, SCHNEIDER, SMITH, SULLIVAN, THE PRESIDENT - ELIZABETH H. MITCHELL

NAYS: Senators: DAVIS, HASTINGS, MCCORMICK, MILLS, NASS, RAYE, RECTOR, ROSEN, SHERMAN, TRAHAN, WESTON

ABSENT: Senator: SIMPSON

23 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BLISS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-470) **READ** and **ADOPTED**, in concurrence.

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

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

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Establish a Wellness Tax Credit"
H.P. 428 L.D. 590

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-423)** (6 members)

Minority - **Ought Not To Pass** (5 members)

Tabled - June 2, 2009, by Senator **BARTLETT** of Cumberland

Pending - motion by Senator **PERRY** of Penobscot to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in concurrence (Roll Call Ordered)

(In House, June 1, 2009, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, June 2, 2009, Reports **READ**.)

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

Senator **NASS:** Thank you, Madame President. Ladies and gentlemen of the Senate, I urge that you defeat the Ought Not to Pass motion so we can go on to pass this. This is a proposal, basically that we've seen in the past that would provide an income tax credit to employers who provide a wellness program, which is defined in the bill, to employees. I think it provides a \$100 credit up to \$2,000 per year for such a program. The unique part of this, this year with this proposal, was that this would be paid for out of the Fund for a Healthy Maine and the cost, I think as we indicated earlier as I recall, was \$350,000 roughly. So that is essentially what the proposal was. I found myself in favor of it and would urge everybody here to vote in opposition to the motion before us. Thank you.

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

Senator **PERRY:** Thank you, Madame President. Ladies and gentlemen of the Senate, that's it. 100 bucks per employee up to 2,000 bucks, up to 20 employees to be spent on gym membership, a treadmill, or what have you. For potentially \$2,000 a year, there's no way to put any controls on this and see that it's used in any sensible way. Who would bother? So take some money from a Fund for Healthy Maine. You know it's a great idea. There's just no way to practically make this work, so I would just kill it right here and right now. Thank you.