

MAINE STATE LEGISLATURE

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

Daily Edition

First Regular Session

beginning December 5, 2012

beginning at page H-1

FOWLE of Vassalboro
GIFFORD of Lincoln
JOHNSON of Eddington
KINNEY of Limington
LONGSTAFF of Waterville
SAUCIER of Presque Isle
SCHNECK of Bangor

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (H-405)** on same Bill.

Signed:
Representative:
RUSSELL of Portland

READ.

On motion of Representative LUCHINI of Ellsworth, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE. Committee Amendment "A" (H-404)** was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-404)** and sent for concurrence.

Eight Members of the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-393)** on Bill "An Act To Protect Maine Food Consumers' Right To Know about Genetically Engineered Food and Seed Stock" (H.P. 490) (L.D. 718)

Signed:
Senators:
JACKSON of Aroostook
BOYLE of Cumberland

Representatives:
DILL of Old Town
HICKMAN of Winthrop
JONES of Freedom
KENT of Woolwich
NOON of Sanford
SAUCIER of Presque Isle

Three Members of the same Committee report in Report "B" **Ought to Pass as Amended by Committee Amendment "B" (H-394)** on same Bill.

Signed:
Senator:
SHERMAN of Aroostook

Representatives:
CRAY of Palmyra
MAREAN of Hollis

Two Members of the same Committee report in Report "C" **Ought to Pass as Amended by Committee Amendment "C" (H-395)** on same Bill.

Signed:
Representatives:
BLACK of Wilton

TIMBERLAKE of Turner

READ.

On motion of Representative DILL of Old Town, **TABLED** pending **ACCEPTANCE** of any Report and later today assigned.

Eleven Members of the Committee on **JUDICIARY** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-387)** on Bill "An Act To Amend the Laws Governing Public Records" (H.P. 86) (L.D. 104)

Signed:
Senators:
VALENTINO of York
BURNS of Washington
TUTTLE of York

Representatives:
PRIEST of Brunswick
BEAULIEU of Auburn
CROCKETT of Bethel
DeCHANT of Bath
GUERIN of Glenburn
MONAGHAN-DERRIG of Cape Elizabeth
MOONEN of Portland
VILLA of Harrison

One Member of the same Committee reports in Report "B" **Ought to Pass** on same Bill.

Signed:
Representative:
MORIARTY of Cumberland

One Member of the same Committee reports in Report "C" **Ought Not to Pass** on same Bill.

Signed:
Representative:
PEAVEY HASKELL of Milford

Representative MITCHELL of the Penobscot Nation - of the House - supports Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-387)**.

READ.

On motion of Representative PRIEST of Brunswick, Report "A" **Ought to Pass as Amended** was **ACCEPTED**.

The Bill was **READ ONCE. Committee Amendment "A" (H-387)** was **READ** by the Clerk.

Representative MORIARTY of Cumberland **PRESENTED House Amendment "A" (H-421) to Committee Amendment "A" (H-387)**, which was **READ** by the Clerk.

The **SPEAKER**: The Chair recognizes the Representative from Cumberland, Representative Moriarty.

Representative **MORIARTY**: Thank you, Mr. Speaker. Good morning, Ladies and Gentlemen of the House. I think that this requires a bit of explanation. This bill would create an exemption from the Freedom of Access Act for a series of non-interactive communications from towns and cities to residents who request to receive them. More specifically, it would insulate the email addresses of the recipients of these non-interactive communications from towns and cities from disclosure to various third parties, thereby protecting the email addresses of the residents who receive them. The basics of the Committee Amendment "A" are as follows. First off, there is no requirement

that any town or city prepare and distribute any sort of non-interactive communication that's entirely within the discretion of a community. There is no duty. There is no mandate. Secondly, there is no requirement that a resident receive any such communication that is entirely within the discretion of a resident. Further, the content of any information sent by a community to a resident is fully part of the public record beyond any question whatsoever and is fully disclosable. To qualify for the FOAA exception, however, a communication must be non-interactive, which means that if you receive it, you can't respond or reply or engage in any sort of electronic communication in response to that particular communication from the town. If you choose to contact someone from the town based upon something that you've read, that communication or exchange would in fact be subject to disclosure under the Act, which I think we all understand.

The differences between Committee Amendment "A" and the proposed House Amendment "A" are as follows: The Majority Report provides for nondisclosure of "notifications, updates and cancellations," which are sent out by the town, again, on a non-interactive, one-way basis. The proposed House Amendment "A" restores the original language found in the LD as presented to committee, which was sponsored by my colleague, Representative Nelson, from Falmouth, and which was cosponsored by members of both parties by adding a key phrase. In addition to the items I just mentioned which would not be subject to disclosure, also newsletters and other similar communications received on a one-way basis would not be subject to FOAA.

The rationale for my amendment is as follows: Towns and cities should be free to prepare newsletters to keep their residents informed of what's going on, if they so choose. Residents, in turn, should be encouraged to choose to receive such email notifications and communications in order to stay informed. Disclosure of email addresses to third parties for their own purposes is a disincentive to residents to sign up to receive these types of communications from their towns and cities. Therefore, it should be our firm policy to encourage voluntary non-interactive communications from towns to their residents, in order to allow the residents to stay abreast of developments within their communities. It should also be our policy to discourage anything that would be a disincentive to residents from receiving such messages. It should be our policy to protect the privacy of those who choose to receive by preventing disclosure of email addresses or recipients to third parties. We should support the amendment that I propose because it broadens the type of non-interactive communications that can be sent to residents without the threat or possibility of disclosure of email addresses. This protects the rights of those who elect to receive information from unsolicited contact from any number of third parties, for any number of purposes, and I urge passage of House Amendment "A" and, if appropriate, would request a roll call.

The same Representative **REQUESTED** a roll call on the motion to **ADOPT House Amendment "A" (H-421) to Committee Amendment "A" (H-387)**.

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 Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker, Fellow Representatives. The committee considered Representative Moriarty's amendment when we did this bill and we rejected it, and I want to tell you why the majority of the committee rejected it. The problem with newsletters as opposed to just

cancellations, notifications and similar items is that newsletters can be political. They can say, "We recommend that this is what you should vote on next time you go to an election." They can say, "This is the action we are going to take and we hope you agree with it." We felt that if the town is going to be able to use a newsletter in that fashion, then other people ought to be able to contact the same people the town has contacted and say, "Wait a minute, there is another side to this. You ought to consider a different view." That's why we did not make newsletters confidential. Obviously, we're talking about FOAA here. We're talking about something that is now public and we're talking about making it private, and we felt that this was not appropriate because it would give the town a great advantage over anyone else who disagreed with the town's policies. Now, can you have newsletters which are political? Of course, you can. But how can you determine that in a statute? You can't. So we did not approve of newsletters being confidential. We did approve of cancellations, notifications and similar items being confidential because that has nothing to do with politics. Mr. Speaker, I would ask that the Committee Report be read.

The same Representative **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER**: The Chair recognizes the Representative from Bethel, Representative Crockett.

Representative **CROCKETT**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Distinguished Members of the House. I rise in opposition to the pending motion. I concur with the analysis done by the good Committee Chair, Representative Priest, of Brunswick. It was a long and arduous process in coming to the conclusion, but the committee did. Not everybody is completely happy with it, but that was the result of the committee and we reached that after a strong analysis. FOAA is a very important portion of our law. It keeps government honest. We need to be very careful when we make changes to the law. The committee came to the right conclusion, as you can tell by an overwhelming report, and I would urge you all to oppose the pending motion.

The **SPEAKER**: The Chair recognizes the Representative from Falmouth, Representative Nelson.

Representative **NELSON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. This is my bill and I do not have a lot of prepared remarks. What I do want to say and want people to consider is that most towns have moved, at least the towns that I am aware of, have moved the notification of citizens of a variety of town information via email at the request of those citizens. Most of the citizens, when they request that email, assume and are told that those email addresses are indeed protected, that they do not create a database which somebody can then go to the town, get that database and use it for commercial or political gain. We have had that situation happen in our town because of the restriction that we had to give out that email address. It was used then for political purposes and the result of that was that many people in the town then withdrew their names from a notification system. A one-way notification is something that you cannot respond to. It does not mean that you can't respond to the town. You can communicate with the town and you can communicate via email, but if you communicate with your selectmen or your school board on political issues, those are not protected, that email is not protected. The list that the town maintains for notification purposes is one which we think should be not available to anybody who wants to use it for political or commercial purposes. Adding newsletters, I think it's your interpretation of what a newsletter is. A newsletter should be, and is in most towns, not a political document advocating for one thing or another. It is

giving news to the town. It is giving news, perhaps, of people who have made an achievement in the town, who have made a contribution to the town. It's a newsletter announcing a variety of meetings so that you don't have to send a notice for each individual event. You can put a town schedule together. A newsletter is just that. It's news of the town. It's not political advocacy. So our feeling to exempt newsletters from this FOAA was a false distinction, distinction without any merit really, and so I would urge you to support the inclusion of newsletters so that towns don't have to decide whether this is a newsletter notice or it's just a notice. I urge you to accept the pending motion for Amendment "A." Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I stand in opposition to the amendment, as I understand the bill, and to simply say that this is another one of those invasions or erosion of the right to know. I can't see any reason why the emails on these political subdivisions should be kept confidential. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Moriarty.

Representative **MORIARTY**: Thank you, Mr. Speaker. Mr. Speaker, Fellow Members of the House. I rise for my final and second time to respond briefly. Once again, there is no question but that the email newsletter is fully public and always will be, and cannot be kept secret from anybody. I hope there is no confusion in that regard. The only issue here is whether the email addresses of the recipients of this one-way communication can be disclosed to numerous third parties for whatever purposes those third parties choose. We should not, under any circumstances, put our residents in the hopeless position of having to choose, on the one hand, between being informed about what's going on locally, and on the other, having to risk disclosure of their email addresses to unknown individuals for unknown purposes. The scenario described by my colleague from Falmouth, Representative Nelson, about those individuals who were forced to withdraw their names from the list of recipients is unfortunate and is exactly the result we would not want to see happen.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Nelson.

Representative **NELSON**: Thank you, Mr. Speaker. I apologize for rising a second time, but I do want to clarify for people one of the reasons why this became of importance to me is that email addresses are a gateway to a lot of information – private, personal information. The world is increasingly doing their banking by email. They are doing a lot of personal business through their email addresses and that is why we thought that just revealing those email addresses without these citizens having a choice, then we thought that that was not wise and certainly would be a threat to those people and would result in people not using that way of informing themselves about what is happening in the towns. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **BROOKS**: Mr. Speaker, my question is, is there any taxpayer money used in the dissemination of any of these newsletters?

The SPEAKER: The Representative from Winterport, Representative Brooks, has posed a question through the Chair

to anyone who may care to respond. The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative **PRIEST**: My understanding is that, in most cases, taxpayer money is used to prepare these newsletters and send them out. If I might speak a little bit more please, I would remind everybody that some newsletters are perfectly innocuous and are not political, but some newsletters are very political and it's impossible to differentiate between the two in statute. So unless, if you want to say nonpolitical newsletters are one thing and political newsletters the other, then you're on your way to the Supreme Court. I advise you, please don't do that. Newsletters are a method of the town dealing with its citizens. If the citizens don't want to receive emails, all they've got to do is open up their junk email and say these newsletters from whatever individual there is goes in my junk pile, you never have to see it. But we have to encourage political debate here and emails are a method of having political debate. So again, I urge you to vote against this amendment. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Moriarty.

Representative **MORIARTY**: Thank you, Mr. Speaker, and Members of the House. I will respond briefly to the question presented by Representative Brooks. We have such an email newsletter in my town. It falls within the job description of the town clerk. Arguably, there are some theoretical costs, but it's something, one of the many things that she does, and therefore I think that the costs are relatively minimal, if they are in fact actual at all.

The SPEAKER: A roll call has been ordered. The pending question before the House is Adoption of House Amendment "A" (H-421) to Committee Amendment "A" (H-387) . All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 240

YEA - Chapman, Dickerson, Dill, Dion, Hamann, Harlow, Hayes, Hickman, Kent, Kornfield, Kumiega, Kusiak, Mason, McLean, Moriarty, Morrison, Nelson, Pringle, Rykerson, Sanborn, Schneck, Short, Stuckey, Treat, Welsh, Winchenbach, Winsor.

NAY - Ayotte, Beaulieu, Beavers, Beck, Bennett, Berry, Black, Boland, Briggs, Brooks, Campbell J, Campbell R, Carey, Casavant, Chase, Chenette, Chipman, Cooper, Cotta, Crafts, Cray, Crockett, Daughtry, Davis, DeChant, Devin, Doak, Dorney, Dunphy, Duprey, Espling, Evangelos, Farnsworth, Fitzpatrick, Fowle, Fredette, Frey, Gattine, Gideon, Gifford, Gillway, Goode, Graham, Grant, Guerin, Harvell, Herbig, Hobbins, Hubbell, Jackson, Johnson D, Johnson P, Jones, Jorgensen, Kaenrath, Keschl, Kinney, Knight, Kruger, Lajoie, Libby A, Libby N, Lockman, Long, Longstaff, Luchini, MacDonald S, MacDonald W, Maker, Marean, Marks, Mastraccio, McCabe, McClellan, McElwee, McGowan, Monaghan-Derrig, Moonen, Nadeau A, Nadeau C, Newendyke, Noon, Nutting, Parry, Pease, Peavey Haskell, Peoples, Plante, Pouliot, Powers, Priest, Rankin, Reed, Rochelo, Rotundo, Sanderson, Saucier, Saxton, Shaw, Sirocki, Stanley, Theriault, Timberlake, Tipping-Spitz, Turner, Tyler, Verow, Villa, Volk, Wallace, Weaver, Werts, Willette, Wilson, Wood, Mr. Speaker.

ABSENT - Beaudoin, Bolduc, Cassidy, Clark, Gilbert, Malaby, Peterson, Russell.

Yes, 27; No, 116; Absent, 8; Excused, 0.

27 having voted in the affirmative and 116 voted in the negative, with 8 being absent, and accordingly **House Amendment "A" (H-421) to Committee Amendment "A" (H-387) was NOT ADOPTED.**

Subsequently, **Committee Amendment "A" (H-387) was ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-387)** and sent for concurrence.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act To Restore to Jimmy J. Soucy the Right To Maintain Existing Structures on Property in Sinclair" (S.P. 95) (L.D. 262)

has had the same under consideration, and asks leave to report:

That the Senate **READ** and **ACCEPT** the Report.

That the House **RECEDE** and **CONCUR** to **PASSAGE TO BE ENGROSSED**.

Signed:

Senators:

JACKSON of Aroostook
BOYLE of Cumberland
SHERMAN of Aroostook

Representatives:

NOON of Sanford
MAREAN of Hollis
BLACK of Wilton

Came from the Senate with the Committee of Conference Report **READ** and **ACCEPTED**.

The Committee of Conference Report was **READ**.

On motion of Representative BERRY of Bowdoinham, **TABLED** pending **ACCEPTANCE** of the Committee of Conference Report and later today assigned.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

196) (L.D. 259) Bill "An Act To Allow a Person Who Owns a Slaughterhouse To Slaughter Poultry for Other People" (EMERGENCY) Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-407)**

(H.P. 284) (L.D. 409) Bill "An Act To Establish a Veteran-to-farmer Training Pilot Program" Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-413)**

(H.P. 613) (L.D. 886) Resolve, Regarding Legislative Review of Portions of Chapter 270: Uniform Reporting System for Quality Data Sets, a Major Substantive Rule of the Maine Health Data Organization (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-411)**

(H.P. 668) (L.D. 955) Resolve, Authorizing the Commissioner of Administrative and Financial Services To Sell or Lease the Interests of the State in Certain Real Property Located in Bangor, Boothbay Harbor and Hallowell Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-412)**

(H.P. 718) (L.D. 1020) Bill "An Act Regarding the Swans Island Lobster Fishing Zone" (EMERGENCY) Committee on

MARINE RESOURCES reporting **Ought to Pass as Amended by Committee Amendment "A" (H-408)**

(H.P. 786) (L.D. 1114) Bill "An Act To Amend the Laws Concerning Parental Rights in Child Abandonment Cases" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-409)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Papers were **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

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

ENACTORS

Emergency Measure

An Act To Exempt Agriculture, Timber Harvesting and Public Employees from Certain Oversight in Shoreland Areas

(S.P. 231) (L.D. 641)
(C. "A" S-164)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 141 voted in favor of the same and 2 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act To Establish a Moratorium on the Approval and Operation of Virtual Public Charter Schools

(S.P. 340) (L.D. 995)

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

Representative WILLETTE of Mapleton **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.

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken.

ROLL CALL NO. 241

YEA - Beavers, Beck, Berry, Boland, Briggs, Brooks, Campbell J, Carey, Chapman, Chenette, Chipman, Cooper, Crockett, Daughtry, DeChant, Devin, Dickerson, Dill, Dion, Dorney, Dunphy, Evangelos, Farnsworth, Fowle, Frey, Gattine, Gideon, Goode, Graham, Grant, Hamann, Harlow, Hayes, Herbig, Hickman, Hobbins, Hubbell, Jones, Jorgensen, Kaenrath, Kent, Kornfield, Kruger, Kumiega, Kusiak, Lajoie, Libby N, Longstaff, Luchini, MacDonald W, Marks, Mason, Mastraccio, McCabe, McGowan, McLean, Monaghan-Derrig, Moonen, Moriarty, Morrison, Nelson, Noon, Peoples, Plante, Powers, Priest, Pringle, Rankin, Rochelo, Russell, Rykerson, Sanborn, Saucier, Saxton, Schneck, Shaw, Short, Stanley, Stuckey, Theriault, Tipping-Spitz, Treat, Verow, Villa, Welsh, Werts, Winchenbach.

NAY - Ayotte, Beaulieu, Bennett, Black, Campbell R, Casavant, Chase, Cotta, Crafts, Cray, Davis, Doak, Duprey, Espling, Fitzpatrick, Fredette, Gifford, Gillway, Guerin, Harvell, Jackson, Johnson D, Johnson P, Keschl, Kinney, Knight, Libby A,