

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION

Senate

December 2, 1992 to May 18, 1993

Bill "An Act to Amend the Charter of the East Pittston Water District" (Emergency)
H.P. 915 L.D. 1239

(In Senate, April 13, 1993, REFERRED to the Committee on TAXATION and ORDERED PRINTED, in concurrence.)

(In House, April 12, 1993, REFERRED to the Committee on TAXATION and ORDERED PRINTED.)

On further motion by same Senator, referred to the Committee on UTILITIES in NON-CONCURRENCE.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

SECOND READERS

The Committee on Bills in the Second Reading reported the following:

House

Bill "An Act to Correct the Boundary Description of the Town of Long Island"
H.P. 721 L.D. 980

Which was READ A SECOND TIME and PASSED TO BE ENGROSSED, in concurrence.

Senate As Amended

Bill "An Act to Protect Consumers when Disconnecting Cable Television Services" (Emergency)
S.P. 195 L.D. 631
(C "A" S-58)

Which was READ A SECOND TIME.

On motion by Senator ESTY of Cumberland, Tabled 1 Legislative Day, pending PASSAGE TO BE ENGROSSED AS AMENDED.

Bill "An Act to Prevent Discrimination"
S.P. 92 L.D. 246
(C "A" S-57)

Which was READ A SECOND TIME.

On motion by Senator HANLEY of Oxford, Senate Amendment "G" (S-66) READ.

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

Senator HANLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. Very simply this amendment before you would send this item out to referendum to have the people of the State of Maine vote on this matter.

Senator CONLEY of Cumberland moved that Senate Amendment "G" (S-66) be INDEFINITELY POSTPONED.

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

Senator CONLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. This amendment is not unlike the amendment that we looked at the other day in relation to another emotional issue which we discussed here at length. That particular issue involved the rights of women and for the same reasons that that item should not go out to referendum this particular issue should not either. I do not think that when you are talking about individual rights or civil rights that it is appropriate that the will of the majority be imposed on the minority who we are seeking to protect. That is again why we are sent here to these chambers, to make these difficult decisions. Another point to raise in reference to going to referendum is that which relates to the money and the influence which would be brought into the State of Maine by the various parties associated with this issue or any other issue, trying to sway the minds of the voters of this State. I don't think it's appropriate to make Maine the battle ground for this type of civil rights issue. That is why we are elected and sent here, to make these tough decisions. If we wanted to go to the people of this State on issues that affected them we would be putting out referendums every other month. We are here to make these tough decisions, this body has voted down a similar provision relating to another matter, showing that it agrees we are sent here to make these tough decisions and I am hopeful that you will join with me today in voting to postpone this amendment. Thank you.

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

Senator HARRIMAN: Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise and ask you not to support the Indefinite Postponement of this amendment. I rise as one of those who, before having the opportunity to serve with you in this chamber, did not understand this issue. I submit to you that many people in the State of Maine do not understand this proposed law. There is too much confusion that I feel the public needs to understand what this legislation seeks to accomplish. By creating public debate via a referendum vote we would accomplish that goal. Like you, I have heard from many, many constituents on this issue. I have before me editorials about how this law will demean marriage. I have correspondence that is beyond discussion because it is so inappropriate. I have communications from churches in my district. I hear from many people who fear that because they own a small business, have a duplex, who hire domestic employees, they're fearful that if they have to confront a Human Rights violation that they will be financially devastated.

The reality is that the public needs to understand why this law is important. I think that it's an opportunity for us to demonstrate leadership, that this issue needs statewide public discussion. Look at what has happened in Portland. Look at what is happening in Lewiston. Look at the groundswell of people who are already organizing to put this out to referendum if we vote on this issue. People feel that this is legislation that we are cramming down their throat. They don't understand. People believe that we are trying to legislate morality. They don't understand. They need to understand and I would ask that you not vote to Indefinitely Postpone this and give the citizens of the State of Maine a chance to understand this issue as well as those of us who voted in favor of this yesterday. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I will support going to referendum with this issue only because at least it will have a chance to survive. I only wish that the Governor had felt this strongly for those people who are yet unborn. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I usually don't disagree with the good Senator from Cumberland, Senator Harriman, but I do on this issue. I think that sending this out to referendum would be the antithesis of leadership on this issue. I don't know about your constituents but my constituents regularly talk to me about not sending so many things out to referendum. If it were up to them they wouldn't even have me send the bond issues out to referendum that we send out for them to vote on. They are very clear and our constitution is very clear about our system here. We are elected to do the people's business. There is a citizen petition system in Maine, they have the right to gather 50,000 signatures to send any measure out to referendum. In fact that is what is happening on this issue. We do not need to abrogate our responsibility to protect the rights of a minority, we are protected already with citizen petition in this State. As to that I want to ask all of us a rhetorical question. How many referendums do we need on this issue? How many do you need? To my count we have already had one, we're going to have another in November 1993 in Lewiston and already there is a statewide effort which is backed by right wing organizations, targeting eleven states, including Maine, with a Colorado style referendum, that with the backing of the right wing you can bet your bottom dollar they will gather 50,000 signatures and that will be on the ballot sometime in the future. That's three, and now you are talking about a fourth. I guess there's something I'm missing here. It seems like we are referendummed to death here on this issue and I would ask you to vote against this and I would ask for a Roll Call. Thank you.

On motion by Senator **MCCORMICK** of Kennebec, 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 Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The only quote that comes to my mind right now is a quote from one of my favorite movies, the Wizard of Oz, where the cowardly lion used to say "Courage". That's what's really at stake here today is courage. What would have happened when the civil rights amendments to the constitution were considered if everyone said let's put it out to referendum first, before we vote. Abraham Lincoln's portrait looks down on us in this hall, what would have happened if he had said, when he decided to abolish slavery, maybe we ought to put it out to referendum. It never would have happened. These advances we have seen in our country that make our country a unique country on this earth, would never have happened. Today we need courage of our convictions to hold to our votes. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would ask this body to support this amendment as presented. I usually would agree with the Senator from Kennebec, Senator McCormick, that we shouldn't be sending all these things to referendum, but you know frankly I've served here for fourteen years and I'm tired of this issue. I was talking to a Rotary Club a couple of days ago and I can't believe we are here on the thirteenth of April and what have we done to create jobs for people in Maine? Tens of thousands of people are unemployed and what have we done? We've spent all our time talking about people riding in the back of pickups, gay rights, abortion. You name it, we've spent time on issues that we shouldn't be talking about. I want to get this over with. I want this issue over with and done. The people in my district don't support this, it's the easiest vote. I had a guy call me last night and he said what are you going to do Senator, why did you vote the way you did? I said because this vote is the easiest vote I ever cast in the Maine Senate. In the district I represent I wouldn't be here if I voted the other way, it's that simple. The legislators in my area who have voted for this issue have not come back, and I could list them. The very first opponent I ran against in 1980 had voted for this issue and did not get re-elected. Ladies and Gentlemen of the Senate it's time that we do the people's business here. I can't explain to you how frustrating it is for me when I go to the local grocery store and I talk to someone who doesn't have a job. Someone who is frustrated and whose business is leaving the State and they say well what are you doing. I say we're talking about abortion, we're talking about homosexual rights, we're arguing whether a child should be in the front of a motorcycle or in the back. Ladies and Gentlemen of the Senate, let us send this to the people, let them decide, let's move on and do the people's business. Thank you.

Off Record Remarks

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

Senator **CLEVELAND**: Thank you Mr. President, Ladies and Gentlemen of the Senate. This amendment that is proposed to us on its face seems to be a democratic proposal, that is what is wrong with letting people decide which laws they like and which laws they don't like and let the general public vote on it. We must go beyond that simple and superficial analysis. What we must ask is what is the general standard on which we require for the public to vote on any particular proposal and let's apply those standards equitably to all issues in a rational way. Not simply because it meets anyone's particular political agenda, but because it is consistent and right to do that. Certainly, a number of individuals have talked about whether the rights of a minority ought to be subject to the majority. Many of us can think of circumstances in the past, whether it's race or a particular religion or one's particular ethnic background, where they are minorities and where their rights may be abrogated by those who come forward and perhaps don't understand the issues clearly or become quite emotional and divisive. We know that in many states this issue has been so divisive that individuals have been assaulted, beaten, and in some cases killed over this issue because people's emotions run so high. We must be careful when we set the agenda for a discussion that we don't do more harm than good. The discussion of this issue will not be abrogated or stopped simply because it goes to a referendum.

Let me speak for a moment if I could, about the standard. I received a copy of the Governor's proposal immediately after our vote, within minutes after our vote we had a letter from the Governor and I'd like to take a moment to read it to you because it sets a standard on which the expectation is for this legislature to act. I think we must speak to that standard. The Governor writes, "I write to you to inform you of my sentiments regarding L.D. 246, "An Act to Prevent Discrimination", currently pending before the Maine Legislature. My position on this Bill remains unchanged. I intend to veto this message, absent the attachment of a referendum clause, or the support of a significant majority of legislators in both parties and in each chamber of the Legislature." Let me repeat that, the support of a significant majority, not a simple majority, a significant majority of legislators from both parties, D's and R's, both parties, and in each chamber of the legislature. Now I took the time last night to review the constitution of the State of Maine. I find nothing in the constitution of the State of Maine that requires such a standard, nowhere. If it exists I would like to be informed of it today. I am not aware of any statutory requirement that sets that standard, that a significant, not simple, majority of both parties in both houses must support it. What that means, if you look at the numbers, and I don't mean to delineate the minority party here, but if what you mean by that is to say that you have to have both, what you are doing is allowing a small minority within this chamber to decide the will of the majority. It could well be that not a significant majority of the Republican party in this chamber would support it. There are fifteen Republicans in this chamber, a majority is eight, that's a simple majority, but what is a significant majority. Is it ten, or eleven, twelve? We would allow a situation where three or four or five members of this entire body, because it fails to meet the Governor's test, not supported by any constitutional provision or any statute, did not meet the significant majority of both parties. Three or four or five people could control the outcome of

what huge numbers want. Is that the standard? Let me ask if this standard applies only to the Governor's personal preferences or does it apply to all legislation. The Governor's Bill, the pro-choice Bill, which was just acted upon, does that apply to that Bill, that was divisive. Many people have strong emotions, it has been a debated issue for a long time. Many folks want to vote on that, have expressed their desire to vote on that yet the Governor does not set this standard for that issue. As a matter of fact if we look at the votes what we find is that in the other body less than 50% of the Republican party voted in favor. Not a significant majority, not even a majority. 43% - 48% of the Republican members of the other body supported the pro-choice Bill, yet there is no request for this standard to be met in that particular piece of legislation. What is the difference? Is this rule by dictatorship or were the founding fathers of this State and this country clear when they wanted the checks and balances. They set up certain procedures for super majorities and two-thirds, they specified how that should be achieved and on what measures. They didn't set up separate standards because there was a particular preference if you didn't like it. If the Governor doesn't support the Bill, let him say so. If the Governor wishes to veto the Bill let him say so. I think we must not begin the precedent of setting standards simply because it is our personal preference or because it sets our own political agenda. Our responsibility is to be consistent, to apply the law equitably to all issues, not simply to choose those which we like or don't like. There is a mechanism on which the people can express their opinion and I fully support it, the initiative process, or the veto process. If there is a significant number of people in this State who wish to cast their ballot on this and can collect a significant number of signatures, the adequate number to make it on the ballot, I support that procedure and I welcome them to initiate it at their own will. But we not here should set a different standard than what we require for anyone else and do it selectively. Thank you.

Off Record Remarks

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

Senator **LUTHER**: Thank you Mr. President, Ladies and Gentlemen of the Senate. I am amused and somewhat amazed at the people I see arguing against putting this out to referendum. My memory may be faulty but it seems to me just a couple of years ago we wanted yes on 8, do not widen the turnpike, and putting it out to referendum was like sliced bread, it was a wonderful idea. So the question has been asked what is the difference. I think it's a good question. Thank you.

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

Senator **PEARSON**: Thank you Mr. President, Ladies and Gentlemen of the Senate. Yesterday I voted in the minority of this particular piece of legislation that we are considering amending today.

The amendment before us today is to put it out to referendum. I, in good conscience, cannot vote to put it out to referendum and I want to tell you why. I think that it would be cruel and disruptive to many people in this state, I think it would bring many people into ridicule that need not be brought into ridicule, and I think it would cause a great deal of gay bashing that need not have to occur. I would like to say that if it were put in a posture that would find myself having to override a veto because it was required to have a referendum, I would override the veto. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Earlier I told you that I would support going out to referendum. I've been given a little information which obviously makes me change my mind. I had a hard enough time with this thing yesterday and this entire debate is even more enlightening to me than what was transpiring yesterday. My good seatmate from Franklin, Senator Webster, made a couple of points which, in my mind are totally outrageous. He's looking towards the next election, I was elected for this particular term of office and I have to face the issues that are coming up in this particular term of office. When we get to reapportionment you will find out how consistent the people who represent the same party that Senator Webster does are concerned about some of you even thinking of coming back to the legislature. One of the messages I got really straightened up my thinking because it brought out the ugliness that would come out in a referendum vote. I would hope that maybe that ugliness won't have to come out. I was supporting the referendum because at least this Bill would have survived the Governor's Office. If it be his choice not to even sign it, then that's his choice, but I feel very strongly that the legislature should do its job and the Governor's Office should be taken care of by the Executive branch. When the good Senator from Franklin spoke about representing his particular district, it's always been my philosophy that the representation of a local district is taken care of by the other body and that this body concerns itself more with the entire state, and that's what I'm going to try to do here so I will not be supporting the referendum question. Thank you.

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

Senator **HARRIMAN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I want to share with you that one of the most difficult decisions I have made in my young career here was to demonstrate the courage that the good Senator from York, Senator Lawrence, asked. I took the courage to co-sign this Bill because I had the time and the desire to understand what this legislation seeks to accomplish and I'm glad that I demonstrated that courage. In doing so I also consistently and continually expressed my desire to have a referendum vote on this issue to the primary sponsors of this Bill. My rising here today in favor of this referendum is not new, it's not because of some other political agenda, I have stated it clearly and continually since this Bill was introduced. Women and men of the Maine Senate I firmly believe that those people who have demonstrated the courage to support this legislation will continue to do so in the event of a referendum. I'm encouraged that the people outside of this chamber, industry, educators and the like, who have stepped forward to express their support of this

legislation will continue to support it in the event of a referendum. What's at issue here, my distinguished colleagues, is that we need to give the citizens of the State of Maine an opportunity to vent their opinions on this issue within the democratic process. This issue will not go away because people do not understand what we are trying to accomplish here. If we do not allow them the opportunity to have a chance to understand this issue and vote on it we're going to put them in the position of venting these public opinions outside of the law. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "G" (S-66).

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators AMERO, BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CAREY, CIANCHETTE, CLEVELAND, CONLEY, ESTY, HANDY, LAWRENCE, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

NAYS: Senators BEGLEY, BUTLAND, CAHILL, CARPENTER, FOSTER, GOULD, HALL, HANLEY, HARRIMAN, KIEFFER, LUDWIG, LUTHER, MARDEN, WEBSTER

ABSENT: Senators None

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, with No Senators being absent, the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "G" (S-66), **PREVAILED**.

Senator **CIANCHETTE** of Somerset was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **HANLEY** of Oxford, Senate Amendment "A" (S-60) **READ**.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This amendment would exempt work places with fewer than ten employees from the provisions included in this Bill. This would include the small logging operation, the fisherman, and most particularly, the homeowner who would hire for either daycare or custodial work in their home. I hope you adopt this amendment. Thank you.

Senator **CONLEY** moved that Senate Amendment "A" (S-60) be **INDEFINITELY POSTPONED.**

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In examining the amendment presented by the Senator from Oxford I would like to inform the chamber that if this amendment were adopted it would exempt some 75,000 employers from coverage by this particular provision of the Maine Human Rights Act. Essentially what it would do is take sexual orientation, that particular status, and make those individuals into sort of a second class of citizens. If we were going to do what the Senator from Oxford is proposing shouldn't it be done for the entire group of protected individuals that are presently covered by the Maine Human Rights Act? Shouldn't blacks be put in this situation, Jews, handicapped individuals, people of Irish descent? What we ought to do, if we want to adopt this, is take every single category which is presently in the Maine Human Rights Act and make it subject to this same amendment. It's not fair, nor is it wise, that one particular group that would be placed in that Act be subject to this. It would essentially gut the Bill if we were to adopt it. Thank you.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise just to make a comment in regards to the statements made by the Senator from Cumberland, Senator Conley, that this would in fact gut the legislation. I was hoping that Senator Conley would say that yes at the Federal level there are certain exemptions made in the Civil Rights Act for employers with 25 employees or less. There is a precedent for this and I know the Senator feels very strongly about this legislation but I was hoping that he would share that with you, that on the national level there are exemptions made in the Human Civil Rights Act. Mr. President I would request the yeas and nays. Thank you.

On motion by Senator **HANLEY** of Oxford, 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 Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose a question through the Chair. I'd like to ask the good Senator from Oxford, Senator Hanley, what those

categories are in the federal legislation that exempts employers of under 25, it certainly is not race, creed, color, gender, disability, ethnicity. Could you explain to us what it is? Thank you.

THE PRESIDENT: The Senator from Kennebec, Senator McCormick has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Oxford, Senator Hanley.

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In response to the question it is, in fact, disabilities that is included as far as the exemption. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to ask the good Senator which law he is referring to, the Americans with Disabilities Act or the Civil Rights Act. There are two different types of legislation and I do not believe, I will stand corrected if you can show me, but that in employment any employer of under 25 is exempted from the obligation to treat fairly people with disability. I do not believe that is the case. He may be referring to ramps or some other thing but I do not think in employment or in housing that persons with disabilities are treated any differently than people of other races, women, men or people of other religions. Thank you.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In fact, Senator McCormick, it is the Americans with Disabilities Act which provides that exemption. It's important to make the distinction as far as disability is included in the Civil Rights Act, this is another act by Congress which would put in statute as far as there is an exemption for those employers of 25 or less. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Yesterday I voted against the Bill and I intend to continue to vote in that fashion, however I will vote against all of the amendments that are going to separate this in any fashion. I firmly believe that this group does not meet the status of those who are already in the Bill and I am certainly not in favor of some being so called discriminated against and not others so I will oppose all of the amendments. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. My apologies to the good Senator from Oxford, in checking with the head of the Maine Human Rights Commission here in Maine it is true that the ADA, the national legislation, does have exemptions for employers of under 20, however the Maine Human Rights Act does not. The Maine Human Rights Act is much stronger on both the subject of people with disabilities and people of different races. In fact all employers are subject to treat people with different races, different religions, different genders, different

disabilities the same, no matter how many employees they have. We are here today talking about the Maine Human Rights Act, it is a document that creates a level playing field in Maine that is very necessary for a sharing of the wealth of this nation and I urge you to vote in favor of the Indefinite Postponement of this amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would just like to say that I am an employer. Sometimes I have eleven employees but usually I have eight to ten so this amendment would affect my business. I believe, as I said yesterday, that this is fundamentally wrong. This is about intolerance and discrimination and what is wrong for Bath Iron Works would be wrong for my business as well so I could not support such an amendment and I would be very disappointed if we separated this out and made it two separate issues. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-60).

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators AMERO, BALDACCI, BEGLEY, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAREY, CARPENTER, CIANCHETTE, CLEVELAND, CONLEY, ESTY, GOULD, HANDY, HARRIMAN, KIEFFER, LAWRENCE, LUDWIG, LUTHER, MARDEN, MCCORMICK, O'DEA, PARADIS, PEARSON, PINGREE, SUMMERS, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

NAYS: Senators CAHILL, HALL, HANLEY, WEBSTER

ABSENT: Senator FOSTER

Senator **BERUBE** of Androscoggin requested and received Leave of the Senate to change her vote from **NAY** to **YEA**.

30 Senators having voted in the affirmative and 4 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-60), **PREVAILED**.

Off Record Remarks

On motion by Senator **HANLEY** of Oxford, Senate Amendment "B" (S-61) **READ**.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. With these amendments, as I pointed out in yesterday's debate, I feel it is very important that we know exactly where this missile is going and where it is going to land. For the attorneys here in the chamber I think it's important that we as a body make it quite clear exactly what the extent of this legislation will do, how it should be interpreted, how we want the Human Rights Commission to interpret it, rather than leaving it up to the courts to say well they meant this or they meant that. This amendment would provide the protections afforded by the Bill that do not extend to non-governmental employers primarily engaged in serving minors. In layman's terms this would exempt, as the Portland ordinance did, the Boy Scouts. It would also exempt summer camps from being controlled by this legislation. Thank you.

Senator **CONLEY** of Cumberland moved that Senate Amendment "B" (S-61) be **INDEFINITELY POSTPONED**.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Like others here in the chamber I wish to rise and compliment individuals on the tenor of their debate today. I also would like to compliment people on being able to be principled by way of being able to oppose the Bill but see amendments for what they are, and to look at amendments as to how it would make, if we ever adopted this Bill, this group of people to be treated differently from other groups of people we seek to protect. I think that's important to note. I think another thing that is important to note is that this is not a partisan issue. The fact that this Bill has two of its co-sponsors as Republican members in this chamber and three of its supporters on its initial vote were Republican members in this chamber show clearly that this is not partisan politics. This is an issue that is about discrimination. In looking at this amendment as proposed by the Senator from Oxford, it is not dissimilar from the other amendments which have been presented, or at least one of them that has been presented, by him. This would seek to take a group that we would say is fit for protection in the Maine Human Rights Act and treat it differently. What the good Senator is really trying to get at here, and it is an argument that has come up in many of the hearings that I have attended for the last ten years, is this fear that gay individuals are somehow going to prey upon you. A member of my Committee who is from the South captured this argument best, I think, particularly being somebody from the north who would not be familiar with this. She related to us the fear that was pervasive in the South that if black men were allowed to work around white women they would prey on them. That myth has been destroyed. This myth must be destroyed. That is why this amendment must be rejected. We have had so many statistics provided to our Committee which shows that there is not an incredible number of people in the gay population who prey upon you. There are far more heterosexual individuals who prey upon you. The statistics bear that out. This myth, if we do not diffuse it, will be carried on in every

debate that is engaged in reference to this subject. This Bill does not in any way protect any sort of behavior towards other individuals. We have laws dealing with sexual harassment, we have crimes that are on the books dealing with people who abuse children, no matter who those people may be. So please do not fall for this amendment. This amendment is trying to perpetuate a myth.

The other thing this amendment does is try to exempt all non-governmental businesses. Again, it would totally gut the Bill and it would treat these individuals as second class citizens. So please, you can be against the Bill and vote against the Bill but do not, please do not fall for the arguments this amendment presents. Thank you.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to pose a question through the Chair to the good Senator from Cumberland, Senator Conley. If I could just be enlightened as far as what the Human Rights ordinance that was passed by Portland includes and were the Boy Scouts, in fact exempted under the Portland ordinance?

THE PRESIDENT: The Senator from Oxford, Senator Hanley has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In answer to the question from the Senator from Oxford, Senator Hanley, I called the city attorney of Portland this morning since you had raised this point in yesterday's debate. I was informed by the attorney for the city of Portland, Gary Ward, that, and it was my understanding to begin with, the language which the city of Portland adopted is the exact same language which is before us here today. In reference to whether or not this language exempts Boy Scouts or the Boy Scout organization, this reflects a conversation which I have had with the good Senator from Somerset, Senator Cianchette. My understanding, as I related to my caucus yesterday, is that in reference to the Boy Scouts and how this Bill would apply to them, den mothers, den dads, den fathers, den people who are not employees of the Boy Scouts are not covered by this Act, they are not covered by this Act. The Boy Scouts can have whatever by-laws they wish to in reference to volunteers that work in their organization. In reference to employees, Gary Ward informed me this morning there is not a case going on presently but there could be a case involving that Council down there. The argument which the Boy Scouts have made and will make, if that case does go anywhere, is that they are a fraternal organization within the meaning of fraternity as defined in the Maine Human Rights Act and that they only hire individuals who are members of their group. If that argument is successful, yes they are exempt. I will be asking the Attorney General as I indicated to Senator Cianchette today, whether or not he can express an opinion as to the status of the Boy Scouts if they are a fraternal organization. We will see what he has for an answer on that. I stand by my opinion as to what the effect is as I've related it to members of my caucus, I will do anything I can for the good Senator from Somerset, to try to clear up this issue as this matter makes its way through the bodies. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-61).

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

24 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-61), **PREVAILED**.

On motion by Senator **HANLEY** of Oxford, Senate Amendment "D" (S-63) **READ**.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would trust that my good colleague from the Judiciary Committee would support this amendment. Basically this amendment clarifies policies or practices that have a disparate impact on persons of a particular sexual orientation are not prohibited as a result of the impact as opposed to intentional discrimination which is prohibited. If you remember from yesterday's debate, the good Senator and I had a discussion regarding the status of health benefits and employee benefits to heterosexual couples and homosexual couples. It was the intention of the good Senator, if I remember correctly, that this would not be interpreted if this law was to pass to give homosexual couples the same benefits if they were given to heterosexual couples in employment scenarios. The reason I raise this question is that a recent case in Ontario, Canada, our neighbors to the north, just in the last few months came through with a ruling. They have an identical Human Rights Act to ours as far as including sexual orientation and in Ontario the court ruled that because there was a disparate impact between the treatment of homosexual couples as compared to heterosexual couples that in fact those benefits had to be extended, even though a marriage between homosexual couples was not recognized by that Province. Thank you.

Senator **CONLEY** of Cumberland moved that Senate Amendment "D" (S-63) be **INDEFINITELY POSTPONED**.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I stand by my remarks made yesterday. In answer to the questions posed by the good Senator from Oxford, Senator Hanley, I would indicate to the chamber that both the representatives from the Maine Human Rights Commission and the Office of the Attorney General have answered in writing questions such as the good Senator from Oxford has posed and has answered that in fact health benefits will not be provided and cannot be ordered to be provided under any interpretation of this particular provision in the Maine Human Rights Act. In reference to what the Ontario law does, I have no idea what the Ontario law says, all I will say is that this proposal has been

examined, it has been substantially the same for ten years. The language that we have looked at in this Act has been substantially the same for ten years and the answer to these questions has been the same for ten years. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-63).

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

26 Senators having voted in the affirmative and 5 Senators having voted in the negative, the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "D" (S-63), **PREVAILED**.

On motion by Senator **HANLEY** of Oxford, Senate Amendment "E" (S-64) **READ**.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This amendment adds a new section to clarify that the prohibition against discrimination does not endorse behaviors or provide protection to behaviors as opposed to a status or tendency. The reason behind this amendment is that there has been a number of court cases across the nation, one in particular, a California court case. If I could just give you an idea of what this California case held, it held that an employee of an office who was making, on the photocopier, invitations to a homosexual group party, that he could not be fired because he was using the photocopier to promote his behavior. California has a similar law as what is being proposed here in Maine. The court ruled that even though in fact he was using his employment to promote his behavior they ruled in favor of that employee to the tune of \$3.3 million. I think it's important and it was discussed in the debate yesterday that this legislation, if passed, will not be used to promote or endorse certain types of behavior. I think that it's important that if that is in fact the intent of this legislation that it should be in statute.

Senator **CONLEY** of Cumberland moved that Senate Amendment "E" (S-64) be **INDEFINITELY POSTPONED**.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This whole Bill is actually about educating people to what is being proposed in reference to sexual orientation. No matter how many times it is said over and over again that this Bill does not endorse any sort of behavior or any sort of lifestyle, the message is still very difficult to communicate. The case which the good Senator from Oxford speaks of, occurred in California, it occurred prior to that state even adopting this particular language. I have no idea what the circumstances were in that case other than I know language similar to what we are discussing in this Bill was not even around in California at the time. In discussing this matter with the Director of

the Maine Human Rights Commission, it is her understanding that whatever that case is about is based on a contract between those specific parties. This language in this Bill has nothing to do with it. Once again I reiterate any sort of conduct which is criminal pursuant to Maine law will remain criminal if this Bill is passed. We are not endorsing any sort of conduct or any sort of behavior. We have a very strong law here in Maine on sexual harassment that will remain on the books, equally enforced against heterosexuals as well as homosexuals. Once again, this particular provision is not needed. Thank you.

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

Senator **LUTHER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. These amendments aren't going to do what I think they are intended to do. I'm not even sure if I know what they are intended to do. I think the amendment to send it to referendum was a reasonable amendment but to pile amendment and amendment on top of a law will just make it difficult to enforce. It's not really a good idea. If this becomes law then we must oppose it, if we're going to fulfill our oath of office. These questions that are being brought up by the amendments will be and should be handled in a court of law. This is, in a lot of ways, the attorney's at law full employment Bill, but that's where they belong and I just feel that we are muddying the waters here and I'm sorry that so many of these amendments are before us. While I'm not changing my position on the Bill I do find that I can't support most of these amendments. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-64).

The Chair ordered a Division.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

28 Senators having voted in the affirmative and 4 Senators having voted in the negative, the motion by Senator **CONLEY** of Cumberland, to **INDEFINITELY POSTPONE** Senate Amendment "E" (S-64), **PREVAILED**.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED**.

Senator **WEBSTER** of Franklin requested a Division.

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

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED**.

A vote of Yes will be in favor of **PASSAGE TO BE ENGROSSED**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators AMERO, BALDACCI, BERUBE, BRANNIGAN, BUSTIN, BUTLAND, CAREY, CIANCHETTE, CLEVELAND, CONLEY, ESTY, HANDY, HARRIMAN, LAWRENCE, MCCORMICK, O'DEA, PARADIS, PINGREE, TITCOMB, VOSE, THE PRESIDENT - DENNIS L. DUTREMBLE

NAYS: Senators BEGLEY, CAHILL, CARPENTER, GOULD, HALL, HANLEY, KIEFFER, LUDWIG, LUTHER, MARDEN, PEARSON, SUMMERS, WEBSTER

ABSENT: Senator FOSTER

21 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent, the Bill was **PASSED TO BE ENGROSSED, As Amended.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Amend the Laws Related to Pawn Transactions

S.P. 65 L.D. 127
(C "A" S-50)

An Act to Amend the Membership of the State Employee Health Commission

H.P. 200 L.D. 262
(C "A" H-82)

An Act to Improve Compliance with the Laws Governing Financial Responsibility

H.P. 312 L.D. 400
(C "A" H-81)

An Act to Transfer the Predetermination of Independent Contractor Status Responsibility in the Workers' Compensation Laws

H.P. 385 L.D. 498
(C "A" H-84)

Which were **PASSED TO BE ENACTED** and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Deter Felons from Carrying Firearms during the Maine Hunting Season

H.P. 150 L.D. 202
(C "A" H-83)

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

Senator **SUMMERS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Very briefly I was wondering if a member of the Committee with jurisdiction over this matter could explain the content of this legislation.

On motion by Senator **CAREY** of Kennebec, Tabled until Later in Today's Session, pending **ENACTMENT.**

Emergency

An Act to Create a Program to Promote the Purchase of State-grown Produce by Needy Persons

H.P. 83 L.D. 113
(C "A" H-86)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication: S.P. 407

116TH MAINE LEGISLATURE

April 13, 1993

Senator John J. O'Dea
Rep. Elizabeth H. Mitchell
Chairpersons
Joint Standing Committee on Education
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has withdrawn his nomination of Natalie C. Graceffa of Augusta for appointment to the Maine Educational Loan Authority.

Pursuant to Title 20A, MRSA Section 11415, this nomination is currently pending before the Joint Standing Committee on Education.