

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Ninth Legislature

State of Maine

Daily Edition

First Regular Session
beginning December 5, 2018

beginning at Page 1

Acts

An Act To Clarify Lobbyist Reporting Requirements and Simplify Registration Requirements for State Employees Who Lobby on Behalf of a State Department or Agency

S.P. 639 L.D. 1867
(C "A" S-389)

An Act To Amend the Laws Regarding the Reserve Funds of Certain School Organizational Structures

H.P. 1366 L.D. 1918
(C "A" H-681)

An Act To Ensure an Efficient Contracting Process for the Department of Health and Human Services

H.P. 1461 L.D. 2057

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

An Act To Support Emergency Shelter Access for Persons Experiencing Homelessness in Maine

H.P. 1363 L.D. 1909
(C "A" H-680)

On motion by Senator **BREEN** of Cumberland, placed on the **SPECIAL APPROPRIATIONS TABLE** pending **ENACTMENT**, in concurrence.

ORDERS OF THE DAY

Unfinished Business

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (2/4/20) matter:

Bill "An Act To Improve Consistency within the Maine Human Rights Act"

H.P. 1218 L.D. 1703
(C "A" H-643; S "A" S-349;
H "A" H-654)

Tabled - February 4, 2020 by Senator **LIBBY** of Androscoggin

Pending - **CONSIDERATION**

(In Senate, June 20, 2019, **PASSED TO BE ENACTED** in concurrence.)

(**RECALLED** from the Governor's Desk, pursuant to Joint Order (H.P. 1426).

(In House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "C" (H-665) in NON-CONCURRENCE.**)

Senator **CARPENTER** of Aroostook moved the Senate **RECEDE** and **CONCUR**.

On motion by Senator **KEIM** 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 Penobscot, Senator Guerin.

Senator **GUERIN:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I ask my fellow Senators to recall the childhood folktale, the Emperor's New Clothes. Wikipedia tells us that the Emperor's New Clothes is a short tale written by Danish author, Hans Christian Andersen, about two weavers who promised an Emperor a new set of clothes that they say is invisible to those who aren't fit for their positions, stupid, or incompetent, while in reality they make no clothes at all, making everyone believe that the clothes are invisible to them. When the Emperor parades before his subjects in his new clothes no one dares to say that they do not see any suits of clothes on him for fear that they will be seen as stupid. Does that sound familiar? Finally a child cries out, 'But he isn't wearing anything at all.'

A few weeks ago the members of this Chamber celebrated with a Joint Resolution recognizing National Girls and Women Day in Sports. This year of celebrating women suffrage, we must not take a step back in women's rights regarding participation in competitive sports. As clearly as the child saw the truth in the Emperor's New Clothes, we must see the truth that God created us male and female and the fact that genetic males have an unfair advantage in competition with genetic females in women sports competitions. The issue of fairness is evident for all to see. Please join me in protecting all women's rights to fair athletic competition by voting red on the pending motion.

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

Senator **KEIM:** Thank you, Mr. President. I rise today to speak in opposition to L.D. 1703. Sometimes legislation comes in front of us that, while we may agree with in intent, we find that it has unintended consequences. This is one such bill. When we create laws, we cannot only consider them narrowly, according to how we wish or envision them to be used. The true impact of laws comes in how they will be litigated. Aspects of the law in front of us today, L.D. 1703, are being litigated around the country. There are aspects of this law that will hurt Maine people and we should balance the need for all Maine people in Maine to be equally respected and ensure their constitutional freedoms. This bill is difficult because in it we see the rights of two people groups in opposition to each other and it requires that we discern the intersection. We have to decide where the lines are drawn and we cannot do so without careful consideration of consequences. This bill further establishes non-discrimination laws that were created as far back as 2005, but no one at that time recognized the issues that these can currently cause and are causing around the nation. Each one of us here absolutely upholds a person's right to gainful and decent employment, free

of unjust discrimination, and also every person's right to services that address their needs for health and safety.

In this Body, we wholeheartedly support non-discrimination to ensure that everyone's rights are protected. However, the designation that is further outlined in L.D. 1703 creates difficult situations in the area of athletic competition as you just heard. Will it be fair to expect biological females to compete against female identifying genetic males? We see a case in Connecticut with high school track athletes taking this very issue to court. Two transgender female high school runners take the top spots from women. This flies in the face of equal opportunity and erases the advances we have made through the federal Title 9 for women to have competitive athletics. With lack of gender criteria shelters, women shelters for abused women, would also be required to house those vulnerable, sometimes traumatized women with biological men. This bill further establishes policies that are being currently battled in court. This equal opportunity requirement is fundamentally unfair to girls who participate in sports and can be further spread to other areas that effect women specifically. As elected officials, we have a duty to protect the privacy, safety, and dignity of all citizens, not pass laws that protect less than 1% of people at the expense of the 99%. We must stand up for women. We cannot create laws that will force them to accept vulnerable situations where they can be mistreated.

L.D. 1703 also contains a decidedly unconstitutional component because it penalizes the free exercise of religion by stipulating that religious institutions are only exempted from this statute if they receive no public funds. Religious organizations have the same right to participate and have the same right of access to any government program as all other organizations. Government cannot discriminate against an organization because of their religious views or in any way hamper their ability to live out their faith. To do so violates the Constitution under free exercise of religion. What would constitute public funding? How could this be litigated? Could it be police protection or fire response? Could it be community improvement grants or historical restoration funds for some of the churches in our towns? The Supreme Court recently ruled 7 - 2 in the Trinity Lutheran Preschool case that Missouri could not discriminate against the school because they were a religious organization and they said that they were allowed the same right to participate in public offerings as any other institution. L.D. 1703 is in direct opposition to that Supreme Court ruling. Government cannot dictate what religious beliefs or views are orthodox or acceptable, nor can it be allowed to discriminate against those of faith. Religious freedom cannot be compromised or sold and that is why we should consider this exemption unacceptable.

So L.D. 1703 would threaten charitable services here in Maine that are undertaken by faith-based organizations. It could force these charitable services to either violate their principles or stop providing the public benefit services that they currently do. For instance, there is the Catholic Charities of Maine and they do receive public funds. There is a Christian school in Bangor that sends its teachers to government sponsored training to equip them for the care of students with special needs. We know that we need more people to care for students with special needs, not fewer. There is a Christian camp in Northern Maine that serves low income young people and it gives them a rural Maine camp experience, but this camp receives state subsidy for providing these young people with meals. There's also a faith-based homeless shelter called New Hope Women's Shelter in Somerset

County, which is one of the poorest counties in Maine. This shelter offers women and their young children a place to regain their lives and offers parenting, nutrition, recovery classes, along with mentoring and case managers. However, New Hope coordinates their services with the State in order to serve the women that they have there and this provision would allow that they be sued. These are just a few of the faith-based organizations that serve our communities.

With these law changes in L.D. 1703, we don't change current law. What we do, however, is we vote that we agree with the underlying policy and then we leave some of most vulnerable people, female athletes, transgender children, to battle this out in court and we push religious organizations who undertake charitable work in all of our communities open to lawsuits where their valuable resources would be wasted in court fighting these laws that we have the option today to change and to send this back to committee and get the law right. L.D. 1703 is a step in crystalizing an extreme interpretation of the law that does not benefit Maine people. In closing I will say that the Chair of the Judiciary Committee definitely heard these concerns, was open to discussion, and I am grateful for being heard. I wish today that we were instead sending this back to committee because I do not believe that we should be passing this today. We should be looking for solutions that protect vulnerable people of Maine and that we, ourselves, take on the difficult conversation even though this isn't clear cut and we don't shift it out to the courts and to the vulnerable people to have to fight there. So I urge you to follow my light. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Arostook, Senator Carpenter.

Senator **CARPENTER:** Thank you, Mr. President. Those of you who don't know it, yesterday I went over to the Veterans Administration and had my hearing checked and I may not have gotten this completely accurate but I believe my friend, the Senator from Oxford, just said this does not change existing law. Let me empathize that. This does not change existing law, L.D. 1703. It gets confusing because what they did in the drafting process was they collapsed a number of categories of existing law, moved them to a different section and, therefore, if you look at the original bill, all the underlining which we are trained to believe or understand is new stuff and new stuff is, in fact, old stuff just moved to a different section and, therefore, it had to be underlined. The mixture of private and public monies issues with religious organizations has been in the law since, I believe, 2009. We had a meeting with the Christian Civic League, Catholic Diocese of Portland, and the Executive Director of the Maine Human Rights Commission and her legal counsel at which time they acknowledged that these cases have come before the Commission before and they have always ruled that they weren't an exception, if you will, to the clergy exemptions, the clerical exemptions, if the primary focus of the entity is religious-based. That I thought was very satisfactory and it was very satisfactory to the Christian Civic League and to the Diocese of Portland, the two primary lobbying organizations here who lobby on behalf, or advocate on behalf, of religious entities. As far as the athletic issue, there is nothing in this law that's new. There's nothing in this law that suggests that it will overturn the carefully crafted policy put together by the Maine Principal's Association with regard to single-sex sports. Their rules are there. They have been there for a number of years. They have not expressed to

us, to me or anybody else as far as I know, that there was any concern by them that this was somehow going to overturn their law. I'm just going to read a statement here that I thought was important to put on the record. There has been consisting concerns raised by the Catholic Diocese and the Christian Civic League regarding the passage of L.D. 1703 with regard to those mixing of the faith-based organizations and the public partnerships, if you will. Because of the meeting we had with the staff of the Maine Human Rights Commission, we foresaw that the impact of L.D. 1703 might effect that but when it was pointed out that this was existing law and that these kinds of mix-use cases have come before the Human Rights Commission in the past and have not been taken up by the Commission because they were primarily faith-based entities, those entities that advocate on behalf of churches, were comfortable. It's not going to change anything. If people want to change the law with regard to the mix-use issues then they should bring forward legislation and do so. This vehicle's not going to do it, no matter what you do with it today, but it's not going to change existing law and it's not going to overturn or effect in any way the Maine Principal's Association. The one change that it does is gender identity, today, included in the definition of sexual orientation. It pulls gender identity out of that and has it as a stand-alone issue. That's all it does. It's in the law today. We just make it stand alone. We bring it out to stand alone. Other than that, I would request that this recodification of existing law that you follow my light. Thank you.

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

Senator **KEIM:** Thank you, Mr. President. One other aspect of this bill, and I would agree with my colleague on Judiciary that, as I said, this doesn't change current law but I disagree with the underlying premise for reasons stated and when it was enacted no one foresaw what is currently being litigated around the country. But one other issue with this bill that doesn't seem to pass the straight face test with me is that this bill was held back because Section 16 needed to be removed and Section 16 would have included public entities under the discrimination law. So, in fact, Section 16 would have meant possibly that our jails and our prisons would also, and whatever public entities that this law could have been deemed to encompass, now has been pulled out of the law. So if we are assuming that churches and private organizations and schools and everyone else should have these discrimination laws, why also wouldn't we want public entities to as well? Thank you.

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

Senator **BELLOWS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I was one of the advocates of Maine's anti-discrimination law in 2005 and I just want it clear for the record that the voters were well aware of all of the implications of passing a non-discrimination law at that time and did so. This law has been in place, passed by the voters, approved by the voters in 2005 and has not led to litigation. The law before us, essentially, is an errors and omissions bill with one exception, that being the exception around pregnancy discrimination because the one substantive piece that this does is prohibit discrimination against pregnant women, which I think is laudable and

noncontroversial goal. But the rest of the bill is simply to clean up and restatement of existing law that was upheld by the voters and has not been subject to undue litigation in the last 15 years. Thank you.

The Chair noted the absence of the Senator from York, Senator **WOODSOME**, and further excused the same Senator from today's Roll Call votes.

THE PRESIDENT: The pending question before the Senate is Recede and Concur. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#408)

YEAS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, CLAXTON, DESCHAMBAULT, DIAMOND, DILL, DOW, GRATWICK, HERBIG, LAWRENCE, LIBBY, LUCHINI, MILLETT, MIRAMANT, POULIOT, SANBORN H, SANBORN L, VITELLI, PRESIDENT JACKSON

NAYS: Senators: BLACK, CYRWAY, DAVIS, FARRIN, FOLEY, GUERIN, HAMPER, KEIM, MOORE, ROSEN, TIMBERLAKE

EXCUSED: Senators: WOODSOME

23 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **CARPENTER** of Aroostook to **RECEDE** and **CONCUR, PREVAILED.**

The Chair laid before the Senate the following Tabled and Later Assigned (2/18/20) matter:

SENATE REPORTS - from the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act To Create Certain Recreational Opportunities on State-owned Land" S.P. 390 L.D. 1270

Majority - **Ought Not to Pass** (11 members)

Minority - **Ought to Pass** (2 members)

Tabled - February 18, 2020 by Senator **DILL** of Penobscot

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED.**