

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 1, 1982 to May 13, 1983

STATE OF MAINE
One Hundred and Eleventh Legislature
First Regular Session
JOURNAL OF THE SENATE

Augusta, Maine
April 26, 1983

Senate called to order by the President.

Prayer by the Reverend Millette E. Cummings of the Bethel United Methodist Church of Bethel.

REVEREND CUMMINGS: Shall we bow our heads! Almighty God, our Heavenly Father, who does govern the world in righteousness and whose judgments are true and righteous altogether. Grant, we beseech Thee, that the Officers and Members of this Senate, who have been elected to legislate for us the citizens of this great State of Maine: may be of one mind to establish justice and to promote the welfare of all of our people; endow each Member of this Legislative Body with right understanding; pure purposes, sound speech and courage to stand for the right as Thou dost give them to see the right; enable them to rise above all self-seeking and party zeal to the nobler concerns of public good and human brotherhood; cleanse public life of every evil; subdue in our State and Nation all that is harmful and make each of us disciplined and devoted people that we may always do Thy will on this earth as it is in heaven.

In this spirit we ask Thy blessings in the Name and for the sake of Jesus Christ our Lord, Amen.

Reading of the Journal of yesterday.

Out of Order and Under Suspension of the Rules:

On motion by Senator PRAY of Penobscot, the following Joint Order: (S. P. 505)

ORDERED, the House concurring, that a Joint Select Committee on Commercial White-water Rafting be established pursuant to Joint Rule 16.

(Cosponsors: Senator USHER of Cumberland, Senator PEARSON of Penobscot and Senator CONLEY of Cumberland)

Which was Read and Passed.

Sent down forthwith for concurrence.

**Papers From The House
Non-concurrent Matter**

BILL, "An Act Relating to the Capitalization and Board of Directors of the Maine Fidelity Life Insurance Company" (H. P. 260) (L. D. 320)

In Senate April 15, 1983 Passed to be Enacted in concurrence.

Comes from the House, Passed to be Engrossed as Amended by House Amendment "A" (H-160) in nonconcurrence, having been recalled from the Governor's Desk pursuant to Joint Order (H. P. 467).

On motion by Senator Carpenter of Aroostook, the Senate voted to Recede and Concur with the House.

Non-concurrent Matter

BILL, "An Act to Give the Maine Association of Retirees Proper Representation on the Board of Trustees for the Maine State Retirement System" (S. P. 481) (L. D. 1447)

In Senate April 19, 1983 Passed to be Engrossed as Amended by Senate Amendment "A" (S-61)

Comes from the House Passed to be Engrossed in non-concurrence.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Dow.

Senator DOW: I move that we Recede and Concur.

The PRESIDENT: The Senator from Kennebec, Senator Dow moves that the Senate Recede and Concur with the House.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you, Mr. President, Mr. President, Ladies and Gentlemen of the Senate, I would oppose the motion being made by the Senator from Kennebec, Senator Dow. This is the bill that we had last week, in which I had offered Senate Amendment "A" under filing number (S-61) which basically made it a generic Bill.

Presently, the Bill as it was reported out of the Committee, it names specific organizations to be represented on the State Retirements Board. In question, my amendment removed the terminology of the Maine State Employees Association and, I believe it was the Maine State Retirees Association. It is my understanding that there are several organizations which represent State employees or retirees and to allow all, which the existing bills do to allow anybody to submit names, but it mentions these two in specific, in particular.

I would request a Division, hope we would defeat it and then it would be my intention to make the motion to Adhere.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Dow.

Senator DOW: Mr. President and Members of the Senate, just to clarify a couple of things, when we had the hearing, of course the hearing was a good hearing, to add the Maine Retirees to the selection on the Board and this amendment actually knocks out the whole of the Bill. It does leave in, some people mentioned, like the Maine Teachers Association. So if, in fact, you want to eliminate all of the organizations to present names to the Governor to be put on the Retirement Board, then they should come in with the Bill and eliminate all of them and not gut the Bill, like this amendment does.

I hope you go along with Recede and Concur and then if they want to change it, have it come in with a bill and do it the way it should be done. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Teague.

Senator TEAGUE: I hope you would support the good Senator from Kennebec, Senator Dow, what he says is absolutely correct. What the amendment does is gut the Bill; it leaves out one whole group of individuals and that is the people that have belonged to the local participating units, that would be the town employees and State employees.

I hope you would go along with the Chairman of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Mr. President, I want to make it perfectly clear that it still allows these organizations to submit names for consideration to serve on the Retirement Board. What the language says in the Senate Amendment, that I offered, it said that "these or any other organization any organizations representing retirees or the Maine State employee or representing State employee has the right to submit names for consideration." What the Bill said was the Maine State Employee Association and the Association of Retired Persons, and any other organizations representing State or retirees had the right to submit a name for consideration. All that my amendment has done was remove the specific language which named those two organizations and left intact the fact that any organization can submit names for consideration.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Violette.

Senator VIOLETTE: Mr. President, Ladies and Gentlemen of the Senate. Mr. President, I would like to pose a question through the Chair to the good Senator from Penobscot.

We had, as I understand it a piece of legislation somewhat similar to this in front of State Government and does the Senator's amendment allow any teachers' organization to submit names, or any bargain unit, to the Governor for his selection? Is that the result of

the Senator's amendment or just exactly what? You're removing the specific references to particular organizations, as I understand it. So, as I understand it, the MTA and the MSEA would no longer select, to place somebody on that Board? Who then would select the teacher representative or the State employee representatives? If I understand your amendment.

The PRESIDENT: The Senator from Aroostook, Senator Violette poses a question through the Chair to the Senator from Penobscot, Senator Pray, who may respond, if he so desires.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you, Mr. President. Mr. President, Ladies and Gentlemen of the Senate, the Legislative Document we're talking is L. D. 1447. On page 2 of that Document, starting on line 30 through 33, it states, "The Maine State Employees Association, the Maine Association of Retirees or other organizations of retired State employees or retired participating local district employees" named specifically as to those who can submit names, to serve on the State Retirement Board.

The reference to the Maine Teachers Association is in the existing language of the law and that you'd find on that same bill on line 4, my amendment did not address the Maine Teachers Association rather that they should have been included or not included, is perhaps a question that could be debated.

My attention was brought to the Bill and to that specific change that was coming in the law, by naming those which as you can see by looking at the Bill is underlined.

If you then turn to Senate Amendment (S-61) which takes that same language that I just quoted, and insert in its place, "organizations or associations which represent State employees or retired State employees can suggest names for appointments". That's what we're talking about. The ability to suggest names for the appointment to the Board of Trustees. I believe that there is more than just the Maine State Employees who represent State employees. I believe that there is potentially more than just the Maine Association of Retirees that represent the State retirees. That was what I attempted to address in my amendment. If someone feels that the amendment should be expanded then we should have addressed that, I believe, at an earlier date.

The question now is, are we going to leave those specific organizations in as was the intent of L. D. 1448, or are we going to expand it and go into other sections of the law, which was not intended to be addressed in this Bill?

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by Senator Dow of Kennebec to Recede and Concur with the House, please rise in their places to be counted.

With all those Senators opposed, please rise in their places to be counted.

17 Senators having voted in the affirmative, and 14 Senators having voted in the negative, the motion to Recede and Concur with the House Prevailed.

Non-concurrent Matter

BILL, "An Act to Protect the Health of Children by Prohibiting the Free Distribution of Cigarettes" (H. P. 395) (L. D. 478)

In House April 19, 1983 Passed to be Engrossed.

In Senate April 22, 1983 Passed to be Engrossed as Amended by Senate Amendment "A" (S-67) in non-concurrence.

Comes from the House, that Body Insisted.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Car-

penter.

Senator CARPENTER: Mr. President, I move that the Senate Adhere.

The PRESIDENT: The Senator from Aroostook, Senator Carpenter moves that the Senate Adhere.

The Chair recognizes the Senator from Penobscot, Senator Hayes.

Senator HAYES: Mr. President, is the motion to Recede and Concur in order?

The PRESIDENT: The Chair would answer in the affirmative.

Senator HAYES: I so move.

The PRESIDENT: The Senator from Penobscot, Senator Hayes moves that the Senate Recede and Concur with the House.

Senator HAYES: May I speak to my motion?

The PRESIDENT: The Senator has the floor.

Senator HAYES: When the Senate last acted upon this Bill we did it without reflection and without debate. We added amendment without any Division or Roll Call. We amended what is probably one of the more significant Bills to be introduced in this session. I think it would be well for us to reflect on the merits of this particular Legislation and what it does.

I find the title of the original Bill somewhat misleading, because it does indicate that this is an act to protect the health of children by prohibiting the free distribution of cigarettes. In fact, if you read the Bill, it's not simply a Bill to protect the health of children, but a Bill to in fact, prohibit free distribution of cigarettes in the State of Maine, by the tobacco interests that are seeking through the process of giving away free cigarettes. I did have a couple of packs that were distributed to the children of one of our Legislators, Representative Harriet Ketover, and its been distributed in streets of Portland, streets of Lewiston, Scarborough Downs and other places.

What I am suggesting to you is this is not a Bill that you should lightly destroy as the amendment attempts to do. The amendment to this Bill is indeed a tricky one; it is designed, in fact, to gut this issue. There is an issue here, it's a health care issue. It's a tremendous cost to our society to pay for the damage of tobacco use, cigarette use and particularly the problem of cigarettes being freely distributed to the population and to windup in the hands of kids. There's indeed much evidence that smoking is injurious to one's health and to even those who are in the immediate area of those who smoke.

This Bill in an unamended status would be a landmark legislation as is the model OUI Bill in this State.

It seems to me it is in the public's interest to prevent the giving away of cigarettes to the public and to prevent distribution of a substance that is both addictive and hazardous to one's health. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate, we are in non-concurrence with the House, primarily on an amendment which does what the sponsor of the Bill had intended this Legislation to do and that was to protect the health of children. The amendment says, "no cigarette samples shall be given to children under the age of eighteen."

I think that this Bill without that amendment is far too intrusive into the lives of adults. My own city has a licensing ordinance which anyone who wants to give out free samples or sell anything on the streets of Portland, they have to first get a license. Anyone giving out free samples would have to get a license and they could be told that there would be a penalty and a fine for giving free samples to anyone under the age of eighteen. Any town in Maine can do that. I don't think we have to Legislate that from Augusta. Representative Ketover should teach her children not to take free samples of cigarettes, if that's what she doesn't want them to do.

I think adults, I admit it's addictive, and the

next they're going to do is prevent the sale of cigarettes altogether in this State. I think everyone has the right to make up their own mind whether they want to smoke or not smoke. I hope that we Adhere on our position.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, this Bill has been kicking around here for awhile. I was the one, a few moments ago, who made the motion to Adhere, and I don't see the purpose in really discussing this among the opponents and proponents much longer.

I stand here today as somebody who does smoke, but I, also, stand here as somebody who supported the rule to ban smoking in the Maine Senate, who supported the no smoking in public meetings last year and will probably be supporting some version of other no smoking bills as they come out of the committee of which I'm a member.

I certainly understand and subscribe to the theory of the gentleman from the other end of the Hall who says that, "my right to smoke ends right at his nose." I subscribe to that, I have no problem with that. I know that smoking offensive and I try, in my own personal life, to ask people who are sitting near me if they mind if I smoke and if they do, I don't.

This Bill just piles on, if you will, it is like a football game, we're piling on. We have a criminal statute today in Maine. That says, if you can't give, sell, furnish supply cigarettes to children sixteen or younger. We all know, and everyone knows that is not enforced. That really is beside the point. The statute is there. If a sampling company, of which there are a few operating in the State of Maine from time to time as I understand it, gives, furnishes, sells or supplies cigarettes to minors, they can be prosecuted as criminals.

This bill just adds on to it, and it says, well instead of sixteen we're going to make it eighteen, excuse me I'm sorry. This Bill in its unamended form says, "everyone in the State of Maine". It falls under this category on the civil side, so we're going to have criminals; you are going to be criminally liable if you furnish to under sixteen; you're going to be civilly liable if you furnish to anyone, the amended version of the Bill is somewhere in between. I'm not crazy about the amended version of the Bill, I'll be honest with you, because it is just piling on. That was the least that I could accept. It just seems to me that if we're not enforcing one statute it doesn't make a great deal of sense to go that much further and I think the arguments that were just made here about adults over the age of eighteen should have that choice, even though we understand that it's injurious to our health. We should still have that choice otherwise why don't we ban the sale of cigarettes altogether. We'll ban the sale of alcohol altogether. The costs are equally astronomical, when associated with that. We could go on and on down through the products that are sold or given away, samples of which are given away in our society. It just doesn't seem to make much sense.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Hayes.

Senator HAYES: I would request a Roll Call please.

The PRESIDENT: A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The pending question before the Senate is the motion by the Senator from Penobscot, Senator Hayes that the Senate Recede and Con-

cur with the House.

A Yes vote will be in favor of Receding and Concurring with the House.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Gill, Hayes, Hichens, Kany, Minkowsky, Pearson, Teague, Wood.

NAY—Baldacci, Brown, Bustin, Carpenter, Charette, Clark, Danton, Diamond, Dow, Durtremble, Emerson, Erwin, McBreairty, Najarian, Perkins, Pray, Sewall, Trafton, Twitchell, Usher, Violette, The President Gerard P. Conley.

ABSENT—Collins, Redmond, Shute.

A Roll Call was had.

8 Senators having voted in the affirmative and 22 Senators in the negative, with 3 Senators being absent, the motion to Recede and Concur with the House, Failed.

On motion by Senator Carpenter of Aroostook, the Senate voted to Adhere.

Communication

The Following Communication: (H. P. 1147)

State of Maine

Inter-Departmental Memorandum

Date April 21, 1983

To Joy O'Brien, Secretary of the Senate
Dept. Executive
From Harold Reynolds, Jr., Commissioner
Dept. Educ. & Cultural Services
Subject Report of Advisory Committee on Medical Education

In accordance with the provisions of 20 MRSA, Chapter 304, it is my duty to annually report to the Legislature and to the Governor a Plan relating to my participation of Maine Contract students in medical education programs. It is my pleasure, therefore, to transmit herewith the fifth Status Report prepared by the Advisory Committee on Medical Education which summarizes the Committee's activities and recommendations for the period January 1982 — December 1982.

Comes from the House, Read and Ordered Placed on File.

Which was Read and Ordered Placed on File in concurrence.

Senate Papers

BILL, "An Act to Clarify the Authority of the Superintendent of the Bureau of Consumer Credit Protection" (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27) (S. P. 502) (Presented by Senator CLARK of Cumberland) (Cosponsor: Representative BRANNIGAN of Portland)

Which was referred to the Committee on Business Legislation and Ordered Printed.

Sent down for concurrence.

BILL, "An Act to Clarify the Law Concerning Certain Appeals from Planning Board Decisions" (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27) (Emergency) (S. P. 503) (Presented by Senator TRAFTON of Androscoggin) (Cosponsors: Senator COLLINS of Knox and Representative LIVESAY of Brunswick and Representative SOULE of Westport.)

Reference to the Committee on Judiciary suggested.

On motion by Senator Trafton of Androscoggin referred to the Committee on Local and County Government and Ordered Printed.

Sent down for concurrence.

Orders

Senator Kany of Kennebec was granted unanimous consent to address the Senate, relative to SLS 171. A Joint Order recognizing the "New England Rural Leadership Program."

Senator KANY: Mr. President and Members