

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

favor will vote yes; those opposed will vote no.
A vote of the House was taken.
89 having voted in the affirmative and 5 having voted in the negative, the motion did prevail.

Divided Report

Majority Report of the Committee on Health and Institutional Services on Bill "An Act to Prohibit Smoking in Indoor Public Waiting Areas" (H. P. 597) (L. D. 741) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Regulate Smoking in Public Buildings" (H. P. 1203) (L. D. 1597)

Report was signed by the following members:
Senator:

BUSTIN of Kennebec
— of the Senate.

Representatives:

MANNING of Portland
PINES of Limestone
CARROLL of Gray
BRODEUR of Auburn
MELENDY of Rockland
RICHARD of Madison
NELSON of Portland
— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:
Senators:

CARPENTER of Aroostook
GILL of Cumberland
— of the Senate.

Representatives:

WEBSTER of Farmington
MAYBURY of Brewer
— of the House.

Representative:

SEAVEY of Kennebunkport
— abstained.

Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, I move that we accept the Majority "Ought to Pass" Report and further move we table this for one legislative day.

Mrs. Maybury of Brewer requested a vote.

The SPEAKER: The pending question is on the motion of the gentlewoman from Portland, Mrs. Nelson, that this be tabled for one legislative day pending her motion to accept the Majority Report. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

52 having voted in the affirmative and 56 having voted in the negative, the motion did not prevail.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Men and Women of the House: I had asked for this to be tabled so that I could take a few moments to get some statistics on non-smoking, so I am just going to have to remind you of the concerns of the Health Committee regarding smoking and non-smoking. Clearly, the majority of the committee believed that we had to set a policy, and that was that we have to be thinking of those people's needs who cannot be in an environment where other people are smoking. That was the concern of the committee; therefore, we ask your support for the "ought to pass."

Mr. Higgins of Scarborough requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentlewoman from Portland,

Mrs. Nelson, that the Majority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Andrews, Benoit, Bonney, Bost, Bott, Brannigan, Brodeur, Brown, A.K.; Callahan, Carroll, D.P.; Carroll, G.A.; Carter, Conary, Connolly, Cote, Cox, Crouse, Crowley, Curtis, Day, Dexter, Diamond, Drinkwater, Erwin, Gwadodsky, Hall, Handy, Higgins, H.C.; Jacques, Joseph, Joyce, Kelleher, Ketover, Kilcoyne, LaPlante, Lewis, Lisnik, Livesay, MacBride, MacEachern, Manning, Martin, A.C.; Masterman, Masterton, Matthews, K.L.; Matthews, Z.E.; McGowan, McHenry, McPherson, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Murphy, E.M.; Murray, Nadeau, Nelson, Paradis, E.J.; Paradis, P.E.; Perkins, Perry, Pines, Racine, Reeves, P.; Richard, Smith, C.B.; Soucy, Soule, Stevens, Stevenson, Theriault, Thompson, Vose, Wentworth.

NAY—Anderson, Armstrong, Beaulieu, Bell, Brown, D.N.; Brown, K.L.; Cahill, Conners, Daggett, Dillenback, Foster, Gauvreau, Greenlaw, Hickey, Higgins, L.M.; Holloway, Ingraham, Jackson, Kelly, Kiesman, Lebowitz, Lehoux, Macomber, Martin, H.C.; Maybury, McCollister, McSweeney, Moholland, Murphy, T.W.; Norton, Randall, Reeves, J.W.; Ridley, Roderick, Salisbury, Scarpino, Seavey, Sherburne, Small, Smith, C.W.; Sproul, Stover, Swazey, Tammara, Telow, Walker, Webster, Weymouth, Willey, Zirkilton.

ABSENT: Baker, Carrier, Cashman, Chonko, Clark, Cooper, Davis, Dudley, Hayden, Hobbins, Jalbert, Kane, Locke, Mahany, Parent, Paul, Pouliot, Roberts, Rolde, Rotondi, Strout, Tuttle, The Speaker.

Yes, 77; No, 50; Absent, 23; Vacant, 1.

The SPEAKER: Seventy-seven having voted in the affirmative and fifty having voted in the negative, with twenty-three being absent, the motion does prevail.

Thereupon, the New Draft was read once and assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Taxation reporting "Ought to Pass" on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Restrict the Period of Retroactivity of Taxation Legislation to no more than One Year (H. P. 849) (L. D. 1099)

Report was signed by the following members:
Senators:

WOOD of York
TWITCHELL of Oxford
— of the Senate.

Representatives:

HIGGINS of Portland
ANDREWS of Portland
CASHMAN of Old Town
KANE of South Portland
KILCOYNE of Gardiner
MCCOLLISTER of Canton
— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:
Senator:

TEAGUE of Somerset
— of the Senate.

Representatives:

DAY of Westbrook
INGRAHAM of Houlton
MASTERMAN of Milo
BROWN of Bethel
— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Day.

Mr. DAY: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will not vote for

the majority report. It is the feeling of some of us that it is unlikely that except in an extreme emergency that the legislature would put in retroactive taxation. There is an example of one state in the nation that did it recently, but some of us feel that we are tying the hands of future legislatures in case they should have to use this method of raising taxes, and that is the main reason for the minority report.

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker, Men and Women of the House: I will speak very briefly because this is a very straightforward position; you are either for this policy or you are opposed to it.

In the earlier part of this session, I became aware, frankly, for the first time that there was really very little limitation on how far back the legislature could reach to tax people. I think it was truly an educational experience for all of us when we came into this session in December and early January. It seemed to me that the resulting decision making that took place in a very bad atmosphere because we were having to do with back tax policy. Going backward in time for tax policy simply cannot be the most prudent way to run the state.

Looking up Supreme Court decision, as I looked back to retroactive tax legislation, they found one case constitutional that went back for two years; one that went back 16 years was unconstitutional, so we concluded that somewhere between two and sixteen years backwards would be okay, at least according to current records.

This bill simply proposes an amendment to the Constitution, which clearly must be voted on by the people if it should survive both bodies here, that says we would prohibit retroactive taxation for a period longer than one year. It is a simple, straightforward policy and, as I said, I brought it to you because I learned about it only in this session when we ended up with the problem of retroactive taxation. I think, frankly, it is better tax policy to plan forward, not to go backwards.

As my good colleague said, Representative Day, it can happen in other states, I believe it was the State of Nebraska who decided they were a little short of change so they put a surcharge on people's taxes for three years back to make up a budget deficit. It could happen, I hope it does not, but I don't think it should even be a possibility because I think it is such bad fiscal planning.

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I, too, will be as brief as possible on this particular issue. I do believe it is one that certainly is straightforward enough, and I guess when I first learned of this piece of legislation, it crossed my mind that it was entered basically as a rationalization of what this legislature did in January relative to the indexing question. I submit to you that we slapped the people in the State of Maine in the face on the indexing issue, and this is clearly an attempt to poke them in the eye now that we have got their attention.

I think this is an unfortunate circumstance. I am opposed to fooling around with the Constitution in an attempt to rationalize and make it appear as though we did something wrong, or the people did something wrong, when they voted for tax indexing.

If legislators that want to come here in subsequent years want to be stupid enough to pass a retroactive tax increase, then I don't think we ought to tell them that they can't do it. I don't believe it is going to happen. I think the fact that we passed a constitutional amendment a year or so ago that changed the procedure for obtaining signatures on initiated referendum questions is going to eliminate any possibility of a similar situation happening in the future. I think we are clutter-