

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

May 16, 1983 to June 24, 1983

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pending Enactment.

An Act to Create a Student Seat on the Board of Trustees of the University of Maine. (H. P. 24) (L. D. 29)

Comes from the House, Failing of Enactment
On motion by Senator Pray of Penobscot, Tabled for 2 Legislative Days, pending Enactment.

Emergency

An Act to Suspend Operation Authority on Motor Vehicles which Fail to Comply with the Gasoline Reporting Law. (H. P. 1183) (L. D. 1576)

This being emergency measure and having received the affirmative votes of 29 members of the Senate, with No Senators having voted in the negative, was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from York, Senator Wood.

Senator WOOD: Mr. President, is the Senate in possession of L. D. 1528?

The PRESIDENT PRO-TEM: The Chair would answer in the affirmative the Bill, "An Act to Require Swimming Pools to be Enclosed" (S. P. 511) (L. D. 1528) having been held at the request of the Senator.

On motion by Senator Wood of York the Senate voted to Suspend the Rules.

On motion by Senator Wood of York the Senate voted to Reconsider its action whereby L. D. 1528 was Passed to be Enacted.

On motion by Senator Pray of Penobscot, Tabled for 1 Legislative Day, pending Passage to be Enacted.

Orders of the Day

The President Pro-Tem laid before the Senate the Tabled for a Time Certain: 9:30 a.m. this mornings matter:

SENATE REPORTS—from the Committee on Judiciary on BILL, "An Act to Include the Term "Sexual or Affectional Orientation" in the Maine Human Rights Act" (S. P. 237) (L. D. 679)

Majority Report—Ought to Pass as Amended by Committee Amendment "A" (S-117)

Minority Report - Ought Not to Pass
Tabled—May 13, 1983 by Senator PRAY of Penobscot

Pending—Motion of Senator TRAFTON of Androscoggin to Accept Majority Report.

PRESIDENT PRO-TEM: The Chair recognizes the Senator from Androscoggin, Senator Traf-

ton.
SENATOR TRAFTON: Mr. President, I request that the Secretary Read the Committee Report.

Committee Report was Read.

On motion by Senator Trafton of Androscoggin, the Majority Ought to Pass, as amended, Report of the Committee was Accepted.

The Bill Read Once.

Committee Amendment "A" (S-117) was Read and Adopted.

The Bill, as amended, Assigned for Second Reading later in today's session.

The President Pro-Tem laid before the Senate the first Tabled and specially assigned matter.

SENATE REPORTS—from the Committee on Health and Institutional Services on BILL, "An Act to Prohibit Smoking in Food Stores and Portions of Restaurants" (S. P. 68) (L. D. 174)

—Six members reported in Report "A" that the same Ought to Pass in New Draft under New Title, BILL, "An Act to Require Signs Relating to Smoking in Retail Food Stores and Restaurants, and to Require a No Smoking Area in Larger Restaurants" (S. P. 549) (L. D. 1591)

—Four members of the same Committee on the same subject matter reported in Report "B"

that the same Ought to Pass in New Draft under New Title, BILL, "An Act to Require Signs Relating to Smoking in Retail Food Stores and Restaurants" (S. P. 550) (L. D. 1592)

—Three members of the same Committee on the same subject matter reported in Report "C" that the same Ought Not to Pass.

Tabled—May 12, 1983 by Senator CARPENTER of Aroostook

Pending—Acceptance of Any Report.

THE PRESIDENT PRO-TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: I move Report "A", the Ought to Pass Report, in New Draft under New Title, Bill, "An Act to Require Signs Relating to Smoking in Retail Food Stores and Restaurants, and to Require a No Smoking Area in Larger Restaurants."

THE PRESIDENT PRO-TEM: The Senator from Kennebec, Senator Bustin moves that the Senate Accept the Majority Ought to Pass, in New Draft under New Title, Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator GILL: Mr. President, I'd like to move Report "B".

The PRESIDENT PRO-TEM: The Chair would state that there's already a motion before the Body.

Senator GILL: Then I would like to ask that you would defeat the prior motion, and I'd like to speak that, please.

The PRESIDENT PRO-TEM: The Senator has the floor.

Senator GILL: Ladies and Gentlemen of the Senate, during this Legislative Session, the Health and Institutional Committee has dealt with a variety of No Smoking issues. There have been separate bills. I think there are five in all, and we have wrestled with them. We have set up a subcommittee of the Health and Institutional Committee to deal with them, and the Committee has unanimously put out some bills and other bills are Divided Reports. This one happens to be a Divided Report, with three Reports.

I'd like to say that I am opposed to the motion that was previously made because I signed the Report "B" out. All Report "B" does, if I may speak to that, is to say that a store or a restaurant will develop their own policy and therefore, post that policy. It is less restrictive than the other Report and it accomplishes, as far as I'm concerned, what we want to accomplish. We want to have people realize that smoking is a hazard to their health, but we didn't want to interject into private businesses. I think this will do it, if we just ask the businesses to develop a policy and post that policy, that's simply what we want to do.

I would ask you to vote against the pending motion so that we could Adopt Report "B".

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Mr. President and Members of the Senate, the essential difference between Report "A" and Report "B" and as I think you heard from the Senator from Cumberland, Senator Gill that most of the members, and I emphasize most of the members, the members of the Health and Institutional Services Committee are for this Bill in one form or another. The essential difference is that in Report "A" we set a standard for No Smoking and to set a No Smoking area in restaurants of seatings of fifty or more.

In Report "B" we allowed them to decide whether or not they have a Smoking or No Smoking area. That moves away from what we have been trying to do for years in Maine and what we have been able to do, that is to convince restaurants that it is in the public interest and in the interest of their business to set up No Smoking areas. This would, perhaps, move them off that and push us back a bit. I

would rather see setting a standard of seating of fifty or more, so that they, at least, supply a No Smoking area.

I would appreciate your support of Committee Amendment "A".

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you, Mr. President and Members of the Senate, as most of you know, I am in the restaurant business, and have been in it most of my life.

The one thing that bothers me in listening to discussion is that to be in business, in the restaurant business, or any kind of business, you have to serve the public. If the public doesn't like the way you serve spaghetti, you're not going to be in business very long. If the public doesn't like the beers you have on tap, you're either going to change those beers to what the public wants, or you're going to go out of business. You know, we're serving the public, and when the public comes in and they're dissatisfied that there's smoking and they're eating. Then we're going to try to arrange seating where it's more comfortable for them, because we want to keep those people there. We're working for the public, and it's the only way we can do business. We'll do business this weekend but we've got to be open next week. It's unfortunate that there are people in State Government would want to restaurants, or any place, you're going to set aside an area. Now what happens in administrating that area, say it's a real busy night and there's a line out in the hallway, and they want to get seated and you have vacancies in a certain section am I going to tell them, the State Legislature has mandated that that section not be seated with anybody that smokes, but it's for people that don't smoke? They're out in the hallway and they want to eat. I'm going to tell them that it's the State Legislature that has mandated this, and if you want to get seating, you have to call Augusta and there's a Senator or a Representative down there that can get you a table much faster than I can.

Mr. President, I would just as soon, you know we try to work with people in this public service oriented industry, because we're all working to keep people happy, keep them in Maine, and keep them coming back to Maine. We just had graduation week at the University; we had ten thousand people come to the University of Maine at Orono for graduation from all over. We want to show them a good time, so that when their sons and daughters go back to the University of Maine, or their other children go back to the University of Maine, that they will want to enjoy coming to the greater Bangor area or the University of Maine at Orono. That's what it's all about is taking good care of people. If we get smoke in peoples' faces, and they're upset with things, we're not going to have them coming back, so good people are going to work and try to develop a policy where we are going to be able to please both parties.

Mr. President, that's why I would like to see that, you know, we defeat this Report "A".

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: I appreciate the comments from the Senator from Penobscot, Senator Baldacci, but his comparison of people making a choice as to whether they want good spaghetti or bad spaghetti is not valid when you're talking about whether people are making a choice as to whether they want to smell side-stream smoke from somebody else's cigarette or not. They're not making the choice of what they're going to consume. They're going to consume that and it is not going to be from a free choice.

Further than that, what this Bill does is ask the restaurants to set aside a No Smoking area: it does not designate how they do it; how many seats they give to that; how many tables they

give to that; how many rooms they give to that. If Senator Baldacci's restaurant wants to designate one table in his restaurant, then he's designated a No Smoking area. I don't think that's a horrible burden for restaurants in this State to handle.

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President, Members of the Senate, I was in the retail business for thirty years, and I've seen a lot of changes in businesses.

Certainly, not being a smoker now, but I can remember I use to sit in this Chamber and go through five packs a day. Now I only go to places where they don't smoke, and where they have smoking sections. I have no problem finding those restaurants, today or in any other retail business. In fact, over the weekend I went into four or five restaurants. The hostess would ask, would you like a smoking or non-smoking section? It's become common practice today in the industry. I don't think we need a law to take and burden some small businessman that has, and you know every restaurant is not ideally built that you can take and put seats to one side where you can say, "No Smoking." They have some difficulty, and you as a customer if you go to that restaurant, and you find yourself being offended by someone else's smoking, you don't have to go there. I know many people that don't go to a restaurant because they serve liquor. They go somewhere else. I really don't think we need these laws. I think people in business today do what they have to do to keep business coming. If they see that there's a demand for a non-smoking area, you can be sure of one thing, that retailer, whoever he or she may be, will do exactly that. They will set up a non-smoking area.

So, Mr. President, if the motion is proper, I would like to move the Indefinite Postponement of this Bill and all of its Accompanying Papers.

The PRESIDENT-PRO-TEM: The Senator from York, Senator Danton has moved that this Bill and All Accompanying Papers be Indefinitely Postponed.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: I would hope that the Senate would vote against that motion, so that we can deal with either Committee Report "A" or Committee Report "B". I think that the Health and Institutional Services Committee has worked extremely hard on all of these no smoking bills. Most of that Committee has told you that they would like one or the other of the Reports. I really feel a little awkward standing up here now arguing for one or the other of the Reports, that doesn't put me in a strong position for Report "A".

I would hope that you would defeat the motion to Indefinitely Postpone and let's get on with the business of deciding whether we're going to Accept Report "A" or Report "B".

The PRESIDENT PRO-TEM: Is the Senate Ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the motion by Senator Danton of York that L. D. 174 and all its Accompanying Papers be Indefinitely Postponed, please rise in their places to be counted.

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

18 Senators having voted in the affirmative, and 13 Senators having voted in the negative, the motion to Indefinitely Postpone, Prevailed.

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President, with regard to L. D. 174, I move that the Senate Reconsider its action whereby it voted to Indefinitely Postpone and hope that you all vote against me.

The PRESIDENT PRO-TEM: The pending question before the Senate is the motion by the Senator from York, Senator Danton, that the Senate Reconsider its action whereby (L. D. 174) was Indefinitely Postponed.

Will all those Senators in favor of Reconsideration please say "Yes".

Will all those Senators opposed, please say "No".

A Viva Voce Vote being had.

The motion to Reconsider, Failed.

Sent down for concurrence.

The President Pro-Tem laid before the Senate the second Tabled and specially assigned matter.

BILL, "An Act to Establish the Third-party Prescription Program Act" (S. P. 518) (L. D. 1539)

Tabled—May 12, 1983 by Senator CARPENTER of Aroostook

Pending—Further Consideration.

(In Senate May 3, 1983, Passed to be Engrossed)

(In House May 9, 1983 Passed to be Engrossed as Amended by House Amendment "A" (H-209) in non-concurrence)

The PRESIDENT PRO-TEM: Is it now the pleasure of the Senate to Recede and Concur with the House?

It is a vote.

The President Pro-Tem laid before the Senate the third Tabled and specially assigned matter.

HOUSE REPORTS—from the Committee on Judiciary on BILL, "An Act Concerning Submerged and Intertidal Lands Owned by the State" (H. P. 952) (L. D. 1233)

Majority Report — Ought Not to Pass

Minority Report — Ought to Pass

Tabled—May 13, 1983 by Senator CARPENTER of Aroostook

Pending—Motion of Senator TRAFTON of Androscoggin to Accept Majority Report.

(In House May 12, 1983 Majority Report Read and Accepted)

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: I request that the Secretary read the Committee Report.

The Committee Reports were Read.

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Mr. President, Ladies and Gentlemen of the Senate, I rise today because I'm one of the cosponsors of this piece of Legislation, and in working with this piece of Legislation, I found some very interesting things.

I have had passed around to your desks the fees for submerged lands for the State, as dated 2/14/83, and the person for whom this Bill was submitted, a certain Mr. Basil Heanssler in the small town of Deer Isle pays twenty-one hundred and sixty-six dollars. Now, it's not my object, like a person who goes and objects to the assessment of his taxes to point of his neighbor and say, "look, I'm paying more than my neighbor, so therefore, bring my neighbor up." I don't think this is the object of Mr. Heanssler. Mr. Heanssler just feels that he is the only lobster pound within the State which is required to pay this assessment. You might, also, note in further reading this that his twenty-one hundred and sixty-six dollars is more than that paid by Maine Yankee; more than that paid by Bath Iron Works; in fact, one of the things that I found was that Bath Iron Works' fee has been set at one-sixth of that being paid by Mr. Heanssler. A special rate for a special corporation. This, I think, is unfair. I think, for no other reason than this, this gives me impetus with which to fight this Bill whose report came out on the downhill side and I've talked with some of the Committee Members, and I don't think that they were aware a special rate was given to Bath Iron Works, or per-

haps we might have been a more favorable Report.

I would hope, today, that we would not Accept the Majority Ought Not to Pass and that we would indeed defeat that motion and Accept the Minority Ought to Pass.

The PRESIDENT PRO-TEM: The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Thank you, Mr. President. Mr. President and Members of the Senate, I recognize that the good Senator from Hancock, Senator Perkins has a real constituent problem, here. In fact, only one person, other than the good Senator did speak in favor of this Bill at the Committee hearing and that was Mr. Heanssler, the owner of the lobster pound.

Unfortunately, there are situations in State Government, particularly in the administration of some of our many bureaus that shed a poor light on State Government and some of the laws that this Legislature has enacted in the past. However, I don't think this is one of them. Let me say that this Bill, this particular Bill before you today is a special interest bill, it would provide substantial savings to Mr. Heanssler and others who are currently paying rent to the Bureau of Public Lands under the Submerged Lands Law.

As you will recall in 1975, when this Submerged Lands Law was passed, the Legislature said that because private individuals are, in fact, using State land they should pay some kind of rent, and the Bureau of Public Lands established by regulation a policy as to what those rents should be.

Currently, Mr. Heanssler pays the same rate as all other renters of submerged land, and that is, three cents per square foot, except, for one instance, Bath Iron Works, as the good Senator from Hancock, Senator Perkins indicated does pay a lesser rate, and I acknowledge that and much to their chagrin the Bureau of Public Lands acknowledged this differential rate. It was not on purpose, and I have on my desk here a file of the correspondence indicating that Bath Iron Works took advantage of a situation where a sixty-day notice was not provided by the State of Maine, Bureau of Public Lands and that sixty-day notice was necessary to change their rate to be in accordance with all the other payers of rent for submerged lands. The Bureau was very careful and assiduous in trying to point out their error and say, "yes, we missed a sixty-day deadline but are you going to take advantage of this mistake on our part? Yes, Bath Iron Works did hold to their guns and they, in fact, are paying a lesser rate, due to an error within the Bureau of Public Lands. That is the only renter, Bath Iron Works is the only renter who pays a lesser rate than Senator Perkins' constituent, Mr. Heanssler.

Let me say that the chart which was distributed to you by Senator Perkins is correct, it does come right from the records of the Bureau of Public Lands. It indicates that Mr. Heanssler pays 10% of the total revenues for submerged lands. There is a reason for this. Mr. Heanssler has, in his possession under lease, 10% of the total lands, submerged lands which the State is collecting rent on. On that basis, it's entirely fair and appropriate. He is the only lobster pound or he owns the only lobster pound which pays rent to the Bureau of Public Lands for submerged lands, because he is the only lobster pound, new lobster pound since 1975, when the Submerged Lands Bill was passed. As you will recall, when that Law was passed existing uses were grandfathered until the year of 2,005, and at that time, the law proposes that leases would be negotiated with those existing users.

Let me say that there's some other factors which were involved in this particular situation which should be brought to light. First, Mr. Heanssler's lease comes up for renewal and