

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

**STATE OF MAINE**

**SECOND REGULAR SESSION**

**January 4, 1984 to April 25, 1984**

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piece of legislation in fact is not very unusual, at least twelve other states have similar legislation. To address his other question of whether or not there may be other means to address the problem aimed at by this particular Bill, in fact, there is another bill pending in the other Body at this moment which attempts to address the enforcement problem of State and local land use ordinances and laws.

This bill has been amended in Committee in such a way that it is much narrower in scope than it ever has been before. It addresses minor land use problems as opposed to major land use law violations, such as air pollution, hazardous waste law violation, water pollution and the like. The purpose of this Bill is to allow a citizen to stop the gaps where local enforcement simply can't by lack of money, or lack of resources address a minor violation within a community. In fact there have been studies of similar legislation in other states, particularly in the State of Michigan which indicate that this type of legislation is not used very frequently.

I would add that this particular bill as amended provides a sixty day notice period which requires a notice to the Attorney General's Office and the State prior to any litigation being filed in court. This sixty day notice provision gives the opportunity to the State and the municipality to take the first step. I believe that in most instances the State and the municipality will use that notice to instigate their own action to ensure compliance with the ordinance. Thank you.

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

SENATOR VIOLETTE: Mr. President and Ladies and Gentlemen of the Senate, I am not really going to argue with the comments of the good Senator from Androscoggin, Senator Trafton, I don't readily attend all of the work sessions and hearings of the Judiciary Committee, I am usually in State Government Committee, but on this bill I made it a point to attend the public hearing and attend the work sessions of the Committee, and in fact as the good Senator suggests the Bill which is basically a result of his commissions work and deliberations, he has substantially diminished the scope of his first legislation.

In answer to the Senator from Penobscot, Senator Baldacci, I guess where I have a problem mine is a basic policy issue. That is that I believe that it is the responsibility of the State to enforce the environmental laws of the State of Maine. It is for that reason when other legislation that came out of the Trafton Commission came before the Senate, last week, I voted for that legislation, and it is for that reason that I am opposed to this legislation and signed the Ought Not to Pass Report. Thank you.

THE PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

SENATOR MINKOWSKY: Mr. President and Members of the Senate, over the past few weeks several pieces of mail have come in relevant to this particular issue, the original bill, itself. I guess that it was basically a great concern that one neighbor could bring an action against somebody else who is violating a part of the statutory law relevant to environmental laws. That brought out the fact of some frivolous suits that could be brought against residents of the State of Maine. One of the letters that I received here brings out one important aspect of it which I would like to put on the Record, "The first disturbing issue is that there are no restrictions regarding that the person who brings the action shows that he or she has been affected by the alleged violation, because of this the potential for harassment and abuse is enormous." I was wondering, possibly, if someone from the Committee on Judiciary could alleviate some of, at least, this particular concern

that number one that we would not have frivolous suits and that there is justifiable cause when a person brings an action against his neighbor insofar as environmental laws are concerned.

THE PRESIDENT: The Senator from Androscoggin, Senator Minkowsky has posed a question through the Chair to any member of the Judiciary who may respond if they so desire.

The Chair is pleased to recognize the Senator from Androscoggin, Senator Trafton.

SENATOR TRAFTON: Thank you, Mr. President. To address the question from the good Senator from Androscoggin, Senator Minkowsky, I would say that there is a provision in this particular bill which does require a person to show that he has been personally aggrieved from any injury for which he is suing for enforcement.

The bill is very narrow in scope, as I indicated before, it does not permit a suit for damages. It only permits a person to go to court for the purpose of having the court declare that the law has been violated or to request the court to order that the violation cease. That type of relief is called "equitable relief", and in order to be entitled to receive this type of equitable relief the court rules require that the person indicate and show and prove in court that there is an irreparable harm or injury resulting to him. That showing must be made before any type of relief under this particular law can be granted. So that I am confident that there will be very few frivolous suits. As I have indicated studies in other states indicate that there are not a number of frivolous suits resulting from this type of statute.

There are sanctions against both attorneys and persons who bring frivolous suits. Courts have the power currently to award sanctions against such a person, and in fact, award attorney's fees for a defendant in those cases where they must appear in court, and hire an attorney to defend such a frivolous law suit. So I am confident that this particular bill will not result in additional court time and frivolous suits and I urge your support of this bill. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Trafton, that the Senate Accept the Majority Ought to Pass in New Draft Report of the Committee.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

SENATOR MINKOWSKY: Mr. President, I request a Division.

THE PRESIDENT: A Division has been requested.

Will all those Senators in favor of the motion by the Senator from Androscoggin, Senator Trafton to Accept the Majority Ought to Pass in New Draft Report, please rise and remain standing in their places until counted.

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

11 Senators having voted in the affirmative, and 17 Senators having voted in the negative, the motion to ACCEPT the Majority OUGHT TO PASS IN NEW DRAFT Report FAILED.

The Minority OUGHT NOT TO PASS Report was ACCEPTED.

Sent down for concurrence.

There being no objections all matters previously acted upon were sent forthwith.

On motion by Senator PRAY of Penobscot the Senate voted to remove from the Table.

HOUSE REPORTS—from the Committee on HEALTH AND INSTITUTIONAL SERVICES on Bill "An Act to Amend the Statute Relating to the Sale and Free Distribution of Cigarettes to Children" H. P. 1694 L. D. 2249

The Majority Report Ought To Pass as Amended by Committee Amendment "A" (H-650).

The Minority Report Ought Not To Pass.

Tabled earlier in today's session on motion by Senator PRAY of Penobscot

Pending—the motion by the Senator from Kennebec, Senator BUSTIN to Accept the Minority OUGHT NOT TO PASS Report in NON CONCURRENCE.

(Comes from the House with the Majority Ought To Pass as Amended Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-650) )

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

SENATOR CARPENTER: Mr. President and Ladies and Gentlemen of the Senate, I would rise in opposition to the pending motion.

As you can see a majority of the Committee on Health and Institutional Services felt that this Bill as amended by House Amendment 650 was a reasonable relaxation, if you will, of a law that we passed here last year.

There has been a great deal of concern expressed by some of the personnel in the Corrections Department that depriving some of the young people of their tobacco products after they have been put into incarceration adds an extra degree of punishment, it adds a great deal more stress, and it makes the job of the corrections personnel, as far as, trying to reorient these people relative to whatever it was that put them there, in the first place, it makes their job a great deal more difficult.

I am not real comfortable standing here this morning advocating this position, but I felt that I had to support my signature on the Committee. This Bill only allows two things, it allows parents or guardians to furnish cigarettes or tobacco to their children. That may sound a bit radical to you, but that is exactly the same thing that is allowed under our liquor laws in the State of Maine. It also allows for the Chief Administrative Officer of a Correctional Facilities with parental or guardians permission to receive tobacco products when the youngster is incarcerated. I know from personal experience that this does add a degree of extra punishment that a court may not have contemplated, may not have anticipated, when they assigned a young person to a correctional facility.

On top of that, I think that we have to be concerned about the concerns expressed by the personnel in the Department of Corrections that this does add an extra degree of stress, there is also, a concern and I am not waving it as a red flag, I am simply saying that it is a concern on the part of personnel who are more knowledgeable than I am, but personnel in the field of corrections who are fearful that if a young person who is incarcerated who is a smoker is deprived of their tobacco products while they are incarcerated that this may be in some way used as barter, they may be induced or coerced to do things in the facility that they would not normally do simply driven by their desire to smoke, to have a cigarette.

I don't think that any of us regardless of whether we be smokers or non-smokers can deny from either our own personal experience or from experience of family or friends that when a person is taken off nicotine there is a severe at least psychological, emotional, stress added to their lives. Therefore, I think that we really ought to give this consideration. Thank you very much.

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

SENATOR BUSTIN: Mr. President, I guess that I can't answer for the rest of the Committee having voted on the other side, except to say that maybe we were misinformed or misdirected or they bought some sob story, but I would like to make a couple of points. One is that don't forget that what you are asking us to do is to allow something to happen in prisons a privilege to happen in prison that does not happen outside lawfully, is that correct? We can

not legally let children smoke outside the prison system, and now what we are saying is but it is okay to let them smoke inside the prison system.

Secondly, I don't think that anybody who smokes in this Chamber really wants to smoke, Mr. President. I think, and my daughter is a smoker and I talk to her all the time and she gets sick of me, I am sure as you people do sometimes when I stand up here, but I say to her do you really want to be a slave to this particular drug? She says, No, but she can't give it up. Here you have an excellent opportunity for rehabilitation, I thought, that was what we talked about when we put kids in prison. That we would try to rehabilitate them. Understand that we are only talking about those people who are under eighteen. As to their being users of the barter system I heard that up in Committee but I could figure out how that was going to be done, seeings that you can only smoke at particular times, in particular places, and if you are under eighteen you are not going to be one of those particular people who can smoke. So how are you going to get a cigarette passed to you? It is not going to happen, you can't do that.

What we are asking for we have canteens set up in these facilities and what we do is we give each inmate \$15.00 per month out of the State coffers that they can buy personal items with. One of those personal items is cigarettes. Do we want to be in the business of helping children to continue or start a habit that is potentially dangerous for them? I would like to quote something from the *Mainely Maine* column by Edmond McDonald a Sun staff writer, when he says, "I heard one law enforcement officer say that kids get nervous and a cigarette helps them calm down. Horsefeathers you get a (blick) of a lot less nervous without dependence on tobacco or other narcotics." That is one thing that he said and then he goes on, to say a number of things and then at the last end he says, "young people under eighteen who are incarcerated are most frequently, but admittedly not always those who have not had the benefit of proper guidance, proposing and enacting a law of this nature which provides special privilege to one segment of society is inappropriate. This maybe a stretch of the imagination but can't you just imagine some sixteen year old now in the poky in the year 2030 taking chemotherapy for lung cancer saying, I started smoking in the county jail when I was sixteen because I was nervous."

A few other points, one in particular Aroostook County has the highest smoking rating in the State for both men and women. I am glad to see that the Senator from Aroostook County, Senator Carpenter is not that strong on his position now that he has had a chance to think it over and maybe read that statistic as I did.

Inpatient hospital claims are inflated at least 6.6 million dollars each year due to smoking. The State loses at least 4.5 million dollars both as an employer and in medicaid pay off. Federal government costs exceed \$10,000,000. for smoking related illness in Maine. I think that that is reason enough to do some rehabilitative work when we have a chance to. Not break the law inside prisons and adhere to the laws the same people have to follow outside of prison.

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

SENATOR GILL: Mr. President and members of the Senate, if you will notice the people who signed the Bill on the Senate, my name was omitted, and it was omitted because I was not present the day that the Bill was signed out.

I, too, during the hearing I was kind of in the middle, I was listening very intently to both sides. I am coming down on the side of Senator Carpenter and the Ought to Pass Report, I'll tell you why. I also want to explain to you that I was co-sponsor of a bill that was past last year that would prohibit cigarettes being distrib-

uted to minors. One of the things that we didn't consider last year was the fact that we have a unique situation in the corrections facility with the minors and at the Youth Center.

With the testimony that we heard this year, during this particular hearing it was obvious that they needed additional work and additional time before we could cut them off cold-turkey. I think that we got some satisfaction from the staff at the Youth Center that indicated that they would be willing to work with the Maine Lung Association, the Maine Cancer Association and work to get the young people at the Youth Center off cigarettes as soon as possible.

We do have a problem with staff there, we have a problem with the people who have been incarcerated there. I think that what we should do is give them a little more time, let this Report go with the Ought to Pass as Amended Bill and we will look at them again. They have promised us that they will work hard and I think that we ought to give them a little time. They are in there they are being rehabilitated. I think that we ought to look at the priorities of why they are there and rehabilitate those first before we take the cigarettes away. Then we can work on that, and I think that this Bill will give us ample opportunity to do that, so that perhaps in another year they can comply with everyone else.

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

SENATOR BUSTIN: I just wanted to clear up one point that the good Senator from Cumberland, Senator Gill said that is to give them more time to work with the Maine Lung Association and get these kids off the habit. In fact, I want you to understand that the prison system has already been breaking the law forever since they have had kids there because they have always let them smoke despite the fact that we had a sixteen year old law, and we now have an eighteen year old law. The problem just got exacerbated when it went to eighteen. So I maintain that they have the ability to get them off the tobacco, right now and they can work with the Maine Lung Association and we don't have to give a special privilege law for those people who are already in prison.

THE PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the motion by the Senator from Kennebec, Senator Bustin, that the Senate Accept the Minority Ought Not to Pass Report of the Committee, please rise and remain standing until counted.

Will all those Senators opposed, please rise and remain standing until counted.

15 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion to ACCEPT the Minority OUGHT NOT TO PASS Report in NON-CONCURRENCE, PREVAILED.

Sent down for concurrence.

#### OFF RECORD REMARKS

#### ORDERS OF THE DAY

The President laid before the Senate:

##### Emergency

AN ACT Concerning the Funding of the Department of Inland Fisheries and Wildlife H., P. 1769 L. D. 2336 (H "E" H-577; H "F" H-581; H "H" H-599; H "M" H-612)

Tabled—April 6, 1984 by Senator PRAY of Penobscot

Pending—ENACTMENT

(In House April 6, 1984 PASSED TO BE ENACTED)

(In Senate April 3, 1984 PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENTS "E" (H-577), "F" (H-581), "H" (H-599) and "M" (H-612) in concurrence)

On motion by Senator PRAY of Penobscot RETABLED until later in today's session, pending ENACTMENT.

The President laid before the Senate:

AN ACT to Increase the Potato Tax H. P. 1645 L. D. 2179 (S "A" S-348 to C "A" H-561)

Tabled—April 6, 1984 by Senator CARPENTER of Aroostook

Pending—ENACTMENT

(In House April 6, 1984 by Senator CARPENTER of Aroostook

Pending—ENACTMENT

(In House April 6, 1984 PASSED TO BE ENACTED)

(In Senate March 29, 1984 PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-561) AS AMENDED BY SENATE AMENDMENT "A" (S-348) thereto)

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

The President laid before the Senate:

Bill "An Act Concerning the Maine Land Use Regulation Commission" H. P. 1837 L. D. 2430

Tabled—April 6, 1984 by Senator DIAMOND of Cumberland

Pending—PASSAGE TO BE ENGROSSED

(In House April 6, 1984 PASSED TO BE ENGROSSED)

(In Senate April 6, 1984 the Ought To Pass in New Draft under same title report READ and ACCEPTED and Under Suspension of the Rules the Bill READ TWICE)

On motion by Senator PRAY of Penobscot RETABLED until later in today's session, pending PASSAGE TO BE ENGROSSED.

The President laid before the Senate:

SENATE REPORT— from the Committee on PUBLIC UTILITIES on Bill "An Act Regarding Franchising and Regulation of Cable Television Systems" S. P. 745 L. D. 2048

Report—Ought to pass in New Draft under same title S. P. 903 L. D. 2423

Tabled—April 6, 1984 by Senator PRAY of Penobscot

Pending—ACCEPTANCE OF COMMITTEE REPORT

(In Senate April 6, 1984 report READ)

Which Report was ACCEPTED.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT ASSIGNED FOR SECOND READING LATER IN TODAY'S SESSION.

The President laid before the Senate:

Bill "An Act Relating to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Laws" (Emergency) S. P. 899 L. D. 2417

Tabled—April 6, 1984 by Senator CARPENTER of Aroostook

Pending—PASSAGE TO BE ENGROSSED

(In Senate April 6, 1984 the Ought To Pass in New Draft report READ and ACCEPTED and Under Suspension of the Rules the New Draft READ TWICE)

On motion by Senator PRAY of Penobscot RETABLED until later in today's session, pending PASSAGE TO BE ENGROSSED.

The President laid before the Senate:

Bill "An Act to Establish Standards and a Policy for the Compensation of Members of Boards, Commissions and Similar Organizations" H. P. 1807 L. D. 2389

Tabled—April 6, 1984 by Senator VIOLETTE of Aroostook

Pending—PASSAGE TO BE ENGROSSED

(In House April 3, 1984 PASSED TO BE ENGROSSED)

(In Senate April 6, 1984 RECONSIDERED ENGROSSMENT)

On motion by Senator PRAY of Penobscot RETABLED until later in today's session, pending PASSAGE TO BE ENGROSSED.

There being no objections all matters previously acted upon were sent forthwith.