

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Thirteenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME II**

**FIRST REGULAR SESSION**

May 26, 1987 to June 30, 1987

Index

An Act Relating to the Cost-of-living Formula for Retirees under the Maine State Retirement System

H.P. 749 L.D. 1012

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

Emergency

An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, Inland Fisheries and Wildlife Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1988 and June 30, 1989

S.P. 202 L.D. 559

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with No Senators having voted in negative, and 33 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency Resolve

Resolve, Establishing the Special Commission to Study the Use of State Valuation in Allocation of State Funding Among Municipalities

H.P. 1115 L.D. 1509

(S "A" S-68)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending FINAL PASSAGE.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act Relating to Terms of Office for Trustees of the Kennebec Water District"

H.P. 1201 L.D. 1638

Tabled - May 21, 1987, by Senator CLARK of Cumberland.

Pending - PASSAGE TO BE ENGROSSED

(In Senate, May, 21, 1987, READ A SECOND TIME.)

(In House, May 20, 1987, PASSED TO BE ENGROSSED.)

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending PASSAGE TO BE ENGROSSED, in concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Prohibit Smoking in Public Areas of Publicly Owned Buildings"

H.P. 270 L.D. 353

(C "A" H-151)

Tabled - May 22, 1987, by Senator CLARK of Cumberland.

Pending - PASSAGE TO BE ENGROSSED AS AMENDED

(In Senate, May 21, 1987, READ A SECOND TIME.)

(In House, May 20, 1987, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-151).)

On motion by Senator DOW of Kennebec, Senate Amendment "A" (S-81) READ.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending the motion of Senator DOW of Kennebec to ADOPT SENATE AMENDMENT "A" (S-81).

Senate at Ease

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Make Available State-owned Land for the Construction of Affordable Housing"

H.P. 1222 L.D. 1666

Comes from the House referred to the Committee on ECONOMIC DEVELOPMENT and ORDERED PRINTED.

Which was referred to the Committee on ECONOMIC DEVELOPMENT and ORDERED PRINTED, in concurrence.

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Increase the Aggregate Limit on Insured Mortgage Loans to \$95,000,000

H.P. 1221 L.D. 1665

Committee on ECONOMIC DEVELOPMENT suggested and ORDERED PRINTED.

Comes from the House referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED.

Which was referred to the Committee on STATE AND LOCAL GOVERNMENT and ORDERED PRINTED, in concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Change the Operating Cost Millage and Provide Additional Funds for Public Schools in Fiscal Year 1987-88" (Emergency)

S.P. 556 L.D. 1664

Tabled - May 26, 1987, by Senator CLARK of Cumberland.

Pending - REFERENCE

(Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.)

Which was referred to the Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS and ORDERED PRINTED.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Prohibit Smoking in Public Areas of Publicly Owned Buildings"

H.P. 270 L.D. 353

(C "A" H-151)

Tabled - May 26, 1987, by Senator CLARK of Cumberland.

Pending - Motion of Senator DOW of Kennebec to ADOPT SENATE AMENDMENT "A" (S-81)

(In Senate, May 26, 1987, SENATE AMENDMENT "A" (S-81) READ.)

(In House, May 20, 1987, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-151).)

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

Senator DOW: Thank you Mr. President and members of the Senate. I have introduced this amendment for one very simple, but very important, reason. The preservation of local control. Without this amendment to L.D. 353, the towns, cities and counties would be precluded from determining their own policy. It is one thing for the state to dictate smoking policies for state buildings, but it is quite another for the state to dictate policies for the towns. This Bill is really not a smoking issue. It

really is an issue of state authority over local authority or interfering with local government. I ask for your passage and I ask you take a look at the letter written by the County Commissioner of Kennebec County where they had asked me to put in this amendment. So, I had it distributed and put on your desk. Thank you for your attention and I ask for your support on this amendment to L.D. 353.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, ladies and gentlemen of the Senate. I am strongly opposed to the amendment, which was offered this morning by the good Senator from Kennebec, Senator Dow, and accordingly, I would urge you today to strongly reject the adoption of the amendment to L.D. 353. I think it was somewhat inevitable, if this Bill were around here long enough, that we would smoke out, so to speak, the opponents to this measure. I think we have succeeded in that endeavor. You should be aware that the proposed amendment, being offered by the good Senator, this morning, would essentially gut the Bill. It is on those grounds that I take a rather strong exception to its' proposed adoption today. Now L.D. 353 is designed, as you may be aware, to restrict, not to ban, to restrict the engaging of consumption or use of tobacco products in public buildings. In this regard, the Bill makes a very important distinction between public buildings, which are used primarily for governmental purposes, as opposed to public buildings which are used primarily for social purposes.

By this I refer to public buildings such as town halls, court houses, public registrars of deeds, clearly these are public buildings designed for the public to transact governmental affairs. In the two tier approach, which was adopted by the Committee on Human Resources in L.D. 353, we clearly restricted the use of tobacco products in public buildings designed primarily for governmental purposes by the public. We did make provisions and did make more modest restrictions on use of tobacco products in civic centers and auditoriums, public properties to be sure by and large are used for recreational purposes for the public. It can be argued, with some degree of force, that a person electing to use these public properties would have some expectation that persons would, in fact, consume tobacco products in the civic centers and what not, as they relaxed and watched whatever program was before them.

The critical point here, of course, is that with respect to public properties, which are designed for use primarily for governmental purposes, here we have a fundamental threshold issue of access. The people, obviously, have a right to use public properties to transact governmental affairs, that is the very core purpose in a democracy. Toward that end, the Committee was mindful of the effects of tobacco smoke upon certain people in our population. We do not want to restrict access of people who had severe respiratory or lung ailments from using public properties. Accordingly, we adopted this two tier approach that I just mentioned. Specifically, as regards public buildings, which are used primarily for governmental affairs, smoking will, in fact, be prohibited in public areas of those buildings. But, and it is important to note, that smoking will be allowed in private offices and it will also be allowed in areas leased to private parties in public buildings.

Furthermore, the Committee made no change whatsoever, with respect to current law regarding smoking in public meetings. I believe, as you are

aware, smoking will be allowed in town hall meetings, public meetings unless there is exception or objection taken. In that regard, the Committee is making no change at all in current law.

With respect to civic centers and auditoriums, smoking will be allowed under this Bill in hallways and lobbies, provided that the main exit or entrance to the auditorium is accessible without one smoke free corridor available, either to access or to leave the auditorium. Furthermore, in putting together the Bill, the Committee was very careful to tailor this law to the current law, regarding restaurants. Accordingly there is an exception in L.D. 353, which provides that restaurants and cafeterias, which happen to be located in an enclosed, indoor public buildings, will be exempt from this particular law, providing that those facilities comply with the law on smoking in restaurants. It is important to note that this Bill was considered very carefully by the Committee on Human Resources, we were certainly aware of the balance we are trying to strike between the rights of public to have unfettered access to public buildings along with the need to accommodate those members of our public who, in fact, use tobacco products.

In structuring this Bill, the Committee was aware that over 70% of the population in Maine does not smoke, does not use tobacco products. We are talking about a minority of individuals and, I might add, a dwindling number at that. Every year it seems that fewer people consume tobacco products. Furthermore, the Committee was aware that for many people the presence of tobacco smoke is, in fact, a significant health hazard. We are talking now about people who have respiratory ailments, lung ailments, it can be argued that for some of us, tobacco smoke might be a mere inconvenience, for others, it is, in fact, a significant health obstacle. You should also be aware that every year over 1800 persons die in Maine, due to cancer or other tobacco related diseases. So, we are dealing with a very significant health hazard. The Committee felt that it is time that this Legislature adopt reasonable measures to safeguard the public at large against a very real health hazard associated with the consumption and use of tobacco products.

Now there is substantial, in fact, overwhelming support for this measure and the public at large. One need only to look at the Committee Report. The Committee Report is 12 persons siding the Ought to Pass jacket, with only 1 opponent. But, more importantly than that, the Committee heard from several individuals and organization regarding this particular measure. This measure is supported by dozens of organizations including: The Maine Coalition on Smoking or Health, that consists of a host of professional organizations and consumer organizations, Blue Cross Blue Shield, The Maine Chiropractic Association, The Maine Dental Association, The Maine Department of Human Services, The Maine High Blood Pressure Council, The Maine Hospital Association, The Maine Labor Group on Health, we could go on and on and on. I could probably take up fifteen minutes reading the proponents on this measure. Now, I would contrast that to the list of opponents, or I should say opponent. There is exactly one, one opponent, which came before the Committee to offer testimony in opposition to this Bill and it is striking to note that one opponent, The Tobacco Institute, testified that there must be a reasonable accommodation made in our society to balance the rights of the non-smoking public with those individuals who, in fact, do consume tobacco products. The Committee attempted,

very carefully, to craft a responsible compromise in accommodation of these competing interests. Mindful of the fact though that the primary interest here is health. We ought not to subordinate the legitimate health interests of the people in our state in order that we might allow a certain minority to continue their habit of smoking tobacco products. Certainly, that concern becomes paramount when we start to restrict access to our public buildings to a significant population in the state of Maine. In spite of the rather overwhelming case to be made for reasonable and moderate regulation of smoking in our public buildings. The opponents of L.D. 353, invite us to subordinate the health interest of the Maine public under the rather simplistic manner of local control. We are told that yes, we do recognize the smoking does constitute a significant hazard for many people in Maine.

In fact, we are well aware of the recent medical evidence; surveys, studies conducted under the office of the Surgeon General, Everett Coop, indicating that second stream smoke, as it was referred to, is a very significant health hazard. That is people who do not smoke, but happen incidentally to consume smoke which is the result of other people who smoke tobacco products are at a significant risk. If we were to adopt the proposed amendment this morning, we would in fact, reject the philosophy which gave rise to our earlier significant legislation regarding smoking. I am referring, of course, to the 1981 Clean Air Act and the 1985 Smoking in the Workplace Act. In those particular pieces of legislation, this Legislature recognized that in order to regulate smoking we had to have a uniform statewide policy and not predicate individuals right to a smoke free environment upon ones particular residence or in the particular buildings that a person happens to transact his or her business in a given day.

If we, in fact, were to adopt the amendment being offered this morning, by the good Senator from Kennebec, we would create several anomalous situations for example, assume, if you will, a resident in the city of Portland is able to persuade his or her town council that there ought to be a rather strict regulation of smoking in municipal buildings. One would think the person, therefore, would have reasonable access to public buildings unencumbered by tobacco smoke. However, it that person happens to transact business in another community which has not adopted a similar type of control on tobacco products, that person is a significant risk. We are talking about people who are a significant risk, people who do have medically, verifiable respiratory ailments and for whom access to public buildings would be substantially impeded if the person had to encounter persons smoking tobacco products. It seems to me that although I respect the arguments of the Tobacco Institute, I certainly respect their right to offer opposition to L.D. 353. I would urge the Senate today not to fall prey to the rather simple argument here that this is really a matter of local control. I was giving some thought over the weekend of how I would best address this issue and best try to point out to the Senate exactly how meaningless the term local control is in this particular context.

If you will bear with me I will make an analogy. It seems to me, you have heard me refer in the past to a play on words to oxymorons, I always wanted to be able to introduce the term oxymoron in legislative debate and I certainly welcome this opportunity. As you know, an oxymoron is simply a deliberate self-contradictory statement. A few of my favorite oxymorons are: military intelligence, arctic summer,

legal ethnics or for the more cynical, Islamic justice and my favorite Red Sox pitching. To this proud list of oxymorons, we can add the concept of local control as it relates to protecting individuals who have respiratory ailments. Because, clearly the interests to be advanced here is not the so-called right of the municipality to adopt ordinances on consumption of tobacco products in public buildings. That isn't their right at all, the right clearly is an individual right. The right of the individual to use his or her public buildings in such a fashion as not to impair or impede that person health. So, it is a personal right.

When we introduce the term local, in this debate, somehow the opponents of this measure would argue that by advancing the term local we would be accommodating the individuals interest, but in fact, we are not doing that at all. If we were, in fact, to adopt the notion of local control and have each town in Maine adopt its' own smoking policy in public buildings, we would, in fact, do major injustice to the person who have health problems. Ironically, people with acute sensitivity to the consumption of tobacco products and who are adversely affected by inhalation of tobacco smoke, would lose their ability to freely access public buildings. So, if we do, in fact, adopt the amendment being offered by the good Senator from Kennebec, under the idea of local control, we will, in fact, be defeating individual rights doing exactly what we don't want to do, which is to protect the legitimate health interests of the majority of people in Maine to access public buildings freely. So, in conclusion, it seems to me that the significant health hazards associated with the consumption of second stream smoke that is incidental exposure to tobacco products are well documented. It is time for this legislature to take reasonable and moderate steps to regulate the use of tobacco products in public buildings. We must never forget that the right of Maine people to a healthy, smoke free environment should never be subordinated to a simplistic political doctrine, such as local control, because, in fact, we are talking about individual rights. The right of the individual to access public buildings throughout the state, without encountering a significant health hazard.

It is for these reasons that I would strongly urge the Senate, this morning, to reject the amendment offered by the good Senator from Kennebec, Senator Dow, so that we can go on to Engross and take a significant step to protecting the overwhelming majority of the Maine people who want and require a smoke free environment in public buildings. Thank you.

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

Senator ERWIN: Thank you Mr. President, ladies and gentlemen of the Senate. The Board of Selectman of the town of Rumford, adopted a Resolution, dated on May 21, 1987. With you permission, I would like to read the Resolution:

WHEREAS, the Maine Legislature is currently considering L.D. 353, "An Act to Prohibit Smoking in Public Areas of Publicly Owned Buildings"; and

WHEREAS, L.D. 353 would prohibit smoking in all municipal buildings; and

WHEREAS, decisions affecting the control and regulation of municipal buildings are the proper province of municipal government; and

WHEREAS, L.D. 353 would infringe on that province of municipal government; now, therefore, be it

RESOLVED: That we, the members of the Board of Selectmen of the Town of Rumford, respectfully oppose

L.D. 353 insofar as it pertains to municipal buildings; and be it further

RESOLVED: That certified copies of this Resolution be forwarded to Senator Edgar Erwin, Representative Phyllis Erwin and Representative Francis Perry.

Thank you, Mr. President.

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

Senator USHER: Thank you Mr. President and members of the Senate. I would like to address a different issue, let's stop and consider the effect of this Bill will have on our county jails. L.D. 353 would prohibit smoking in public areas of prisons. This means that prisoners and visitors would be unable to smoke in the visiting areas.

It is important to remember that, for many prisoners, smoking is one of the very few diversions or pastimes available to them. To deny prisoners this emotional outlet would have far more serious repercussions than the supposed evil this Bill is purportedly designed to eliminate.

As we are all well aware, our prisoners are extremely overcrowded, so much so, in fact, that we passed a bond resolution for the construction of a new facility. It seems silly, if not irrational, for the state to incur such a major expense in an effort to improve prison conditions while, at the same time, proceed to enact legislation which would create unnecessary tension within the prison environment.

Again, this is a problem best handled by those people who are closest to it, the people at the local level. Let the county and municipal officials manage their own buildings. They don't need a "big brother" looking over their shoulders and we have not business insisting on playing that role. I urge you to support the pending motion.

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

Senator GILL: Thank you Mr. President, men and women of the Senate. I rise to ask you to not support the pending amendment before us. A lot of you have worked long hours and have spent a lot of time dealing with cost containment in this Legislature. Senator Gauvreau has made an eloquent appeal to you to look at this Bill and the intent of the original Bill and ask you also to dismiss the amendment. The state of Maine and many municipalities have spent a lot of money, millions of dollars as a matter in fact, to make public buildings accessible to the handicap, we are talking about people who smoke really bothers, either they have asthma, they have medical conditions that their lungs just can't stand the smoke and going into facilities where smoking is going on. What we are doing is asking you to pass this legislation, it is not going to cost millions of dollars, as we have spent in the past for making places accessible to the handicap in public buildings.

This will make the public building accessible to the handicap at no cost to the general public. What we are asking is when people go in and pay for their hunting licenses and their fishing licenses and even in some communities as candidates go into large areas. I know in my community, in South Portland, we have access to the voting records the night of the vote, as the votes come in we all center around the voting place in the municipal building to see how we are doing in the election process. This would mean that it would be free of smoke. There is much business that people have to go into the municipal places and also public offices within smaller municipalities the only area that would be designated

there as non-smoking would be that area that business is conducted.

So, I would ask you not to support this amendment, but we in the past have done shore land zoning from the state level, we have done handicap legislation from the state level and I ask you also to look upon allowing public access to municipalities and public buildings without the fear of going into a smoke filled room.

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

Senator MATTHEWS: Thank you Mr. President, men and women of the Senate. I had to rise today, because this issue and I concur with the good Senator from Cumberland, Senator Gill and the good Senator from Androscoggin, Senator Gauvreau. The attempt is being made today to bring the issue of local control into this debate. I would ask every member of this Body to think about what would happen in this country if we were to raise the issue of local control on every important health care issue before this nation. Certainly today, and we should remember, the most important health care issue before the state of Maine and the country, the hazards of smoking. Don't forget, ladies and gentlemen, we have heard the stories, the fiction from the Tobacco Industry and the lobby. Men and women, citizens of this state are dying, everyday, from smoking and second-hand smoke and we know it. The facts are irrefutable. I will be voting against this amendment today and the ludicrous argument that this is a local control issue because this is a health care issue. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Brawn.

Senator BRAWN: Thank you Mr. President, men and women of the Senate. I rise as a past volunteer for the American Cancer Society and I will be very brief. Presently, as a member of the Board to urge you to reject this amendment. The issue here is public health, the public has to traverse through the halls of public buildings to do their business and I feel it crucial that the air they breathe be smoke free. As has been said already, some are allergic to smoke, some have allergies, asthma, smokers have their rights, I do believe that very much when they are in their designated areas. But, I also believe that it is only common courtesy that the public have clean air when they transact their business. I urge you to vote no on the amendment and pass L.D. 353.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Kerry.

Senator KERRY: Thank you Mr. President, ladies and gentlemen of the Senate. I would like to speak on this issue because, first of all, I completely sympathize with those persons who frame this issue in terms of local control. I think it is a local control issue, I think it does have ramifications for the governmental activities of the municipalities and the county governments. But, I also think the state has to, as we often do, decide what is the most compelling state interest. Local control is a very important issue and those who support this amendment have fashioned it in such a manner that we are debating local control. I think it is prudent and legitimate, it is something that we should definitely consider and I certainly respect the amendment offered by the good Senator from Kennebec, Senator Dow. But, I would like to relate to you a very brief story, brief happening that recently happened to me over this past week. I was very much divided on this issue, because I believed that the local municipalities should determine their own destiny on this issue. I really felt that even though I felt overwhelmingly that this was a health issue. But,

when I was contacted by my local officials, they wanted local control and they made a very compelling argument for it. Not only were they making a compelling argument for it, they were my good friends and they spoke rationally about it, they tried to push the issue of local control. Then, I tried to see what they were really talking about, they were talking about, in particular, that the lure of the local control issue was their personal right to smoke and I appreciated that as well. I do understand that.

But, subsequent to the discussion with this individual, I told him I would think about it very seriously, I told him I had voted this out of committee, but I said, in reality I thought they had a very good argument. Then on Tuesday or Wednesday of this week, my daughter had a very severe health set back. She developed acute pneumonia which the doctors were baffled as to how it happened. Come to find out she had a collapsed lung, was rushed to the hospital was in the hospital for five or six days. She was judged to be an asthmatic. Now I started thinking about that as I walked through the pediatric ward of the Maine Medical Center, and looked at the children that were there that had cancer and various forms of debilitating diseases and if I might add, very severe diseases and I was fortunate enough to receive a report at the courtesy of Senator Gill, which relates to the National Surgeon General's report on the consequences of involuntary smoking. This made me think once again. I know many of you may have made up your minds on this issue and may have made them up because of health issues or you might have made them up because of local control issues. Both of the issues are compelling issues and they are legitimate positions to take. We are setting the state policy for the health of all the men, women and children of this state. Many people are dying from known carcinogens, many people are dying, good friends and family members of ours are dying from inhaling of smoke due to smoking cigarettes.

They know it and we know it, we can't really stop adults from smoking individually, if they so desire, and I don't think we should try unless you sincerely care about them and say it is for your own best health. I understand that, but smoking does effect the other person. The principal we are debating here is a health principal, as well as a local control issue. We have a responsibility to protect the children of this world. From now on my child, who is an asthmatic, the doctor said forever, she is going to be impacted with various types of allergies as well as smoke and other things. It was actually mentioned to me that there are virtually tens of thousands of other people throughout the state who suffer from a variety of diseases that Senator Gill, the good Senator from Cumberland, has pointed out to us. I would just say, and my point is, I want to support Senator Gauvreau, the good Senator from Androscoggin, Senator Gill, the good Senator from Cumberland and Senator Matthews, the good Senator from Kennebec, on the basis of framing the issue. Let's frame the issue for what it really is. It is a health issue. It is a more compelling position than the issue of local control, even though the local control issue is an important issue. Let me speak to those of you who have received letters from their County Commissioners, letters and calls from their town municipal officials, I have received them as well. It is a compelling argument, but I would say this. We must set the example and it is the best example. It is in this case the better example between local control. I would suggest that we defeat this amendment.

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Off Record Remarks

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THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, ladies and gentlemen of the Senate. Two brief points, first of all, we have heard extensive discussion or at least some discussion on concerns focusing around local control. It should be reiterated that there was only one opponent testifying before the Human Resources Committee regarding this Bill and that was the Tobacco Institute. The Maine Municipality Association has no position on this legislation.

On motion by Senator GAUVREAU of Androscoggin, supported by a Division of at least one-fifth of the Members present and voting a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Mr. President and members of the Senate. I don't think the issue today is whether you are against smoking or you are for smoking, or if you are for local control or against local control. I think the real issue here today is that the state is taking a tremendously innovative step. It is going to mandate within state institutions that there be no smoking. That is a tremendous step, but the Legislature in the years gone by has always had a developing close relationship with the communities. It is a good policy. You have done tremendous things on smoking in the restaurants and smoking where ever else and public education, there are tremendous in roads that are going on. But, I think in this particular area where you are making those steps and those in roads it would only be wise to go slowly forward. That is all that is being suggested by the amendment, slowly forward. You know, we have dealt with mandatory seatbelts, which were good for health cost, but we have decided in the past that those issues were more important to work with individuals and communities not to try to shove things down people's throat. It was alluded to earlier that the Maine Health Care Finance Commission and its mandates and cost control within that particular profession were very worthy goals, but we know that problems that has created in the community. You have heard today about Sheriff's Association and local communities and their particular concerns. Yesterday, the city of Bangor banned smoking at the High School and now it is discussing it's labor policy with the teachers, because in that contract with teachers they have it specifically geared so that they may have smoking areas. So, now the students are saying why can the teachers have it and the students can't, well it's because of local negotiations and local contracts.

So, I think before you step into what seems to be a very easy area, I think you should go very slowly and I think that is only the recommendations. This is not going to gut the Bill, you are talking about all of these state institutions and agencies and you are saying to the local communities that it is better if they develop it at that level. Basically, smoking isn't very good and I agree with that, I mean it has been a long time, but our committee has dealt with several bills in that regard and I think we are making progress and I appreciate the comments of the good Senator from Androscoggin, Senator Gauvreau, but I hope that you would support the amendment as a step in the right direction.

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

Senator GILL: Mr. President, men and women of the Senate. We have already attempted to open up areas for the handicap. As I indicated before, we have spent millions of dollars in that area to make places accessible to the handicap. Here we have a piece of legislation before us, that is going to discriminate against a group of people who have one disease. Who have asthma, who have problems with breathing and we are going to limit their access to buildings, buildings where they have to do business. They have to pay for their taxes, they have to notaries sign things sometimes, they have to get their fishing license so they can go out into the great outdoors and fish. They have to do many things in public buildings and all we are trying to do is allow them access to those same public buildings that we have allowed the handicap access to, by providing accessibility to it.

I was moved by what Senator Kerry of York, had to say about his own daughter, because I think that unless a family or unless you have become acutely aware of someone with a problem, that you just don't recognize that it is a problem. It is wonderful for all of us to go around in a healthy state and say that it doesn't bother me, smoking doesn't bother me. But, it does bother a group of people in our society and there is no money attached in making these places accessible. We have spent millions of dollars in the past and here we have an opportunity to allow people in public buildings and we are saying let's think it over, let the locals do it. We, on the state level have, in fact, passed legislation many times allowing the state to set up some rules and regulations and usually they are in the area of health. I think we should continue along this and leave those public areas so that you, I and John Kerry's daughter and anyone else who may have a disability go in and do their business.

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

Senator DILLENBACK: Thank you Mr. President, ladies and gentlemen of the Senate. I agree with every word the good Senator from Cumberland has just said, but the thing that bothers me is that apparently you people think that our local officials do not have the intelligence to agree with her also. I am sure these people know what should be done, I am sure they are very concerned about the other people and I am going to give them credit for knowing something. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President and members of the Senate. I think that one of the issues that seems to be of concern is between local and state control and it hasn't to do with smoking and it shouldn't be interpreted with that. It should be on just local and state issues here. I remember one incident we had here four years ago where a horse was shot in a community and that all of a sudden we were going to have a state law against the discharge of fire arms.

In a lot of communities they go through a lot of controls, a lot of hearings to decide where that line will be and they hold public hearings and finally come to some resolution of that particular issue, rather than the state coming in and saying no discharge at all in that particular area. I always return to that as an issue between the states and the local governments. Here is another one and it just happens to be in smoking. All we are saying is let them have a chance to develop it because there may be

some things there that we don't see now, rather than coming back with amendments and changing the law constantly, lets see what happens and hopefully things will work out better. So, I would hope that you would support the amendment.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Perkins.

Senator PERKINS: Thank you Mr. President, ladies and gentlemen of the Senate. Speaking as the Senator from Senate District 12, I would point out to you that the issue here is second-hand smoke. Now, in many cases in our society second-hand is perfectly acceptable. The second-hand car, I have had several and thought them to be very adequate. As a member of a four children family, second hand clothes, while not always acceptable as a child, were again perfectly adequate. And I think in many other areas, second-hand furniture and second-hand other things grow up to be antiques and I know those are perfectly adequate and increase in value. But, second-hand smoke is not acceptable and becomes less acceptable as your health becomes more impaired. I would ask you today to follow the lead of this Committee which has done a tremendous amount of work in this area and I am hopeful that you would reject the amendment and go for something that would reject the second-hand in this area.

THE PRESIDENT: The pending question before the Senate is the motion of Senator DOW of Kennebec to ADOPT Senate Amendment "A" (S-81).

A vote of Yes will be in favor of ADOPTION.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, CAHILL, CLARK, DILLENBACK, DOW, DUTREMBLE, ERWIN, MAYBURY, SEWALL, THERIAULT, TUTTLE, TWITCHELL, USHER, WEBSTER, WHITMORE, THE PRESIDENT - CHARLES P. PRAY  
 NAYS: Senators ANDREWS, BERUBE, BLACK, BRANNIGAN, BRAWN, BUSTIN, COLLINS, EMERSON, ESTES, GAUVREAU, GILL, GOULD, KANY, KERRY, LUDWIG, MATTHEWS, PEARSON, PERKINS, RANDALL

ABSENT: Senators None

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, with No Senators being absent, the motion of Senator DOW of Kennebec, to ADOPT Senate Amendment "A" (S-81), FAILED.

On motion by Senator BUSTIN of Kennebec, Senate Amendment "B" (S-88) READ.

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

Senator BUSTIN: Thank you Mr. President, I would like to explain what this amendment is all about. I discovered, as I was reading this Bill last week, that perhaps what we were doing was, and it is basically when I deliver sandwiches to the DOT building down here, I find employees outdoors smoking. I don't mind that because I obviously support this Bill and I would like no one to smoke. But I think you have a real problem when you are forcing employees out into the open air and in Maine it gets rather cold during the winter. So, I said to the MSEA, I think what you are going to do is force everybody out into the cold to smoke their cigarettes, not that I object to that, maybe that is a good thing to do and maybe that is what we should do, but for good public policy I don't really think that it is. All that this amendment does, is put a section in there that says, "if public employees'



rights provided in collective bargaining agreements are affected by this section, the employees shall have the right to reopen negotiations for the purpose of bargaining for smoking areas in nonpublic areas of publicly owned buildings." If you want to give them a small room to smoke and to get all of the second-hand smoke and just let it come down over their heads, give it to them, at least you have to give them the space to do it in.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President, men and women of the Senate. A little small room isn't a public section of a public building, is it? And consequently, it wouldn't be necessary to have the amendment.

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

Senator BUSTIN: Thank you Mr. President, from what we can determine, we need to have this amendment to just clarify. The statement of fact simply says that this amendment, "assures that public employees may reopen collective bargaining to deal with the impact of this law", reopen collective bargaining is the impact of this amendment.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President, I would like to pose a question through the Chair to any one who may care to respond. Would the reopening of this negotiation, by collective bargaining, allow them to smoke in halls of public buildings? If that were so negotiated.

THE PRESIDENT: The Senator from Penobscot, Senator Pearson, has posed a question through the Chair to any Senator who may care to respond.

The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Thank you Mr. President, it is my understanding that it does not affect the public areas, it does not gut the Bill that we are considering passing.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President, men and women of the Senate. I am confused, I don't know what the amendment does. The good Senator from Kennebec, says that it allows negotiations on the smoking issue in the buildings where they work. What portions of the building do they work? She started out by saying that it was a small room, because of the weather perhaps, that could be one of the things they are worried about. As the Bill, as I understand it, only calls for public areas of public buildings. So, I proceeded to ask, what about hallways in public areas of public buildings, the response was, from the good Senator, that it didn't effect that, so I want to know what it does effect.

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

Senator CLARK: Thank you Mr. President. Senate Amendment "B" (S-88), addresses an issue which may result from the passage of this Bill. By that, I would submit, that public employees may be precluded from smoking in those public areas of the buildings where they are now smoking. This amendment allows public employees to open collective bargaining agreements and negotiate space to provide, as I understand the amendment, smoking areas that are not currently provided. Because public employees currently smoke in many areas of our state buildings in what are called public areas. Since they can no longer smoke there, this law, should it eventually be enacted, will effect working conditions. And, that,

members of the Senate, is a legitimate item for collective bargaining. I would support the adoption of this amendment.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Kerry.

Senator KERRY: Mr. President, ladies and gentlemen of the Senate. I think that many of us, we have debated the issue of local control, we have framed the issue in accordance with the proponent and opponents of this legislation and those who have some serious concerns.

I have some legitimate concerns, I think, about this issue because having worked in the State Office Building and having negotiated various agreements with various individuals and employees within state government, I found this to be a very sensitive issue and a very critical issue.

Many people certainly want to smoke in various areas and it created heated arguments and it really effect morale at times, and in addition to that it brought out some very difficult decision making processes and stretched the negotiations between labor and management in many ways. I think we have made a statement here this morning in defeating the amendment that was proposed by the good Senator from Kennebec, Senator Dow. I think this amendment, submitted by the other good Senator from Kennebec, Senator Bustin, would create confusion and I think secondly, it would open us up to a questionable state policy. As I understand the original Bill, as was passed and would be that those who are smoking in nonpublic areas right now would be able to continue to smoke in nonpublic areas. It was state during the debate that there may be various offices off from the reasonably publicly accessible areas that people could continue to smoke. I fear that this particular amendment would create confusion and may ultimately undermine the purpose of the previously passed Bill. I think at this stage if you did accept this amendment, you would create confusion and I think it would lie bear the opportunity for a major debate after we pass it. They would not have a clear statement from the Legislature on this issue. I think if we are going to be clear, let's be clear. If we are not going to be clear, let's not be clear and I think this it the case where we are going to confuse people.

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

Senator BUSTIN: Thank you Mr. President, men and women of the Senate. I will try to clear up the unclear issue here, if I may. What has happened is that you are in negotiations now. With this Bill, which I will be supporting, whether or not anyone supports my amendment. I think the amendment is an important one and in all fairness. But, I will be supporting the Bill no matter what happens here. What I am telling you is that you are cutting out every area now, other than a private office for that person occupying that office, in all of the state municipal buildings. That is probably good, I am not saying that is not good, what I am saying is that you have a lot of smokers in the world, in Maine, or good or bad. I just bought a new house, I just moved into it and I am having a terrible time with my friends because I am not allowing smoking in my new apartment. I will do not it because I cannot stand it. So, I am telling you this because I am not going to offer an amendment that is going to gut the Bill. What you are doing is you are doing away with those nonpublic and public areas where employees were able to go and smoke. It is a good thing to get rid of those areas. It is not a good thing to not give them some office to smoke in that is a nonpublic office.

If it was my office it would not be open to the public. Of course, you wouldn't have it when you walk into the Deputy Secretary of State's office, that wouldn't be a designated smoking area.

What I am saying is, give the employees an opportunity to negotiate where they will smoke. Let's keep it out of the public areas, that is what the amendment is all about. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Mr. President, I would like to pose a question through the Chair. Now I am confused, would passage of this amendment allow union employees a smoking area and non-union employees, such as our staff perhaps, not to have a smoking area?

THE PRESIDENT: The Senator from Sagadahoc, Senator Cahill, has posed a question through the Chair to any Senator who may care to respond.

The Chair recognizes the Senator from Kennebec, Senator BUSTIN.

Senator BUSTIN: Thank you Mr. President, from what I understand, the answer is no. I also have passed this amendment by both sides of this issue. Both of them seem to agree that it is a reasonable amendment. There does not seem to be a disagreement from either the proponents or opponents of this particular Bill.

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

Senator TWITCHELL: Thank you Mr. President and members of the Senate. If I don't understand a Bill, I usually do one of two things. I either sent it out for study or I Indefinitely Postpone it. And I don't understand this amendment.

Senator TWITCHELL of Oxford moved the INDEFINITE POSTPONEMENT Senate Amendment "B" (S-88).

At the request of Senator BUSTIN of Kennebec, A Division was had. 15 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion of Senator TWITCHELL of Oxford, to INDEFINITELY POSTPONE Senate Amendment "B" (S-88), FAILED.

On motion by Senator BUSTIN of Kennebec, Senate Amendment "B" (S-88) ADOPTED.

Which was PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Sent down for concurrence.

On motion by Senator TWITCHELL of Oxford, RECESSED until 4:45 this afternoon.

After Recess

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE  
Non-concurrent Matter

Bill "An Act to Amend the Charter of the Lubec Port Authority"

H.P. 412 L.D. 546

In Senate, May 22, 1987, RECALLED from the Legislative files, pursuant to Joint Order (H.P. 1207), in concurrence.

Comes from the House, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-153) in NON-CONCURRENCE.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending FURTHER CONSIDERATION.

Non-concurrent Matter

Bill "An Act Concerning the Maine Railroad Excise Tax"

H.P. 531 L.D. 715  
(C "A" H-140)

In House, May 18, 1987, the Majority OUGHT NOT TO PASS Report READ and ACCEPTED.

In Senate, May 22, 1987, the Minority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-140) in NON-CONCURRENCE.

Comes from the House, that Body INSISTED.

On motion by Senator CLARK of Cumberland, Tabled 1 Legislative Day, pending FURTHER CONSIDERATION.

Non-concurrent Matter

Bill "An Act to Establish a Statewide Training Program for Staff of Long-term Care Facilities"

S.P. 536 L.D. 1619

In Senate, May 18, 1987, PASSED TO BE ENGROSSED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-172) in NON-CONCURRENCE.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending FURTHER CONSIDERATION.

COMMUNICATIONS

The Following Communication:

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA 04333

May 26, 1987

Honorable Joy J. O'Brien  
Secretary of the Senate  
113th Legislature  
Augusta, Maine 04333  
Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely postponed RESOLUTION, Proposing an Amendment to the Constitution of Maine to Change the Terms of Members of the Senate from 2 Years to 4 Years (S.P. 87) (L.D. 173).

Sincerely,  
S/Edwin H. Pert  
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

The Following Communication:

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA 04333

May 26, 1987

Honorable Joy J. O'Brien  
Secretary of the Senate  
113th Legislature  
Augusta, Maine 04333  
Dear Madam Secretary:

The House voted today to adhere to its former action whereby the Minority "Ought Not to Pass" Report of the Committee on State and Local Government was read and accepted on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for Staggered 4-year Terms for Representatives (S.P. 82) (L.D. 168).

Sincerely,  
S/Edwin H. Pert  
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

COMMITTEE REPORTS