

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

May 10, 1989 to June 14, 1989

Education Program" (H.P. 856) (L.D. 1188) reporting "Leave to Withdraw"

Representative NORTON from the Committee on Education on Bill "An Act to Provide Reimbursement to Municipalities for Most Costs of Special Education" (H.P. 740) (L.D. 1023) reporting "Leave to Withdraw"

Representative PARADIS from the Committee on Judiciary on Bill "An Act to Amend the Public Drinking Law to Remove the Warning Requirement" (H.P. 458) (L.D. 623) reporting "Leave to Withdraw"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Refer to the Joint Select Committee on Corrections

Representative JOSEPH from the Committee on State and Local Government on Bill "An Act to Clarify How State Reimbursement to Counties for Housing State Prisoners May Be Spent" (H.P. 324) (L.D. 440) reporting that it be referred to the Joint Select Committee on Corrections.

Report was read and accepted and the Bill referred to the Joint Select Committee on Corrections and sent up for concurrence.

Divided Report

Majority Report of the Committee on State and Local Government reporting "Ought Not to Pass" on Bill "An Act Relating to Legislation of an Emergency Nature Introduced in the 2nd Regular Session or any Special Session" (H.P. 637) (L.D. 871)

Signed:

Senators: ESTY of Cumberland
BERUBE of Androscoggin
CARPENTER of York

Representatives: JOSEPH of Waterville
LARRIVEE of Gorham
HEESCHEN of Wilton
DAGGETT of Augusta
ROTONDI of Athens

Minority report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-210) on same Bill.

Signed:

Representatives: WENTWORTH of Wells
BEGLEY of Waldoboro
HANLEY of Paris
McCORMICK of Rockport

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Joseph. Representative JOSEPH: Mr. Speaker, I move that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Garland.

Representative GARLAND: Mr. Speaker, Ladies and Gentlemen of the House: I rise today as the sponsor of this legislation. I submitted this bill because I believe the Legislative Council accepts too many after deadline requests. I believe this makes a farce of our present cloture date. I believe this legislation will make the Legislative Council more discriminating on what they accept.

I urge you to vote against the present motion and accept the Minority Report.

I would request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

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

The SPEAKER: The pending question before the House is the motion of the Representative from Waterville, Representative Joseph, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 31

YEA - Adams, Aliberti, Allen, Anthony, Bell, Boutillier, Brewer, Burke, Carroll, D.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dore, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hickey, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lisnik, Luther, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pederson, Pineau, Plourde, Priest, Rand, Richard, Richards, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, P.; Strout, D.; Swazey, Tamaro, Tardy, Townsend, Tracy, Walker, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, Begley, Butland, Carroll, J.; Curran, Dellert, Dexter, Dipietro, Donald, Farnum, Farren, Foss, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Hichborn, Hutchins, Jackson, Lebowitz, Libby, Look, Lord, MacBride, Macomber, Marsano, Marsh, McCormick, McHenry, McPherson, Merrill, Murphy, Norton, Paradis, E.; Parent, Pendleton, Pines, Reed, Seavey, Sherburne, Small, Stevens, A.; Stevenson, Strout, B.; Telow, Tupper, Webster, M.; Wentworth.

ABSENT - Duffy, Higgins, Moholland, Pouliot, Ruhlin, Whitcomb.

Yes, 91; No, 53; Absent, 6; Vacant, 1; Paired, 0; Excused, 0.

91 having voted in the affirmative and 53 in the negative with 6 being absent and 1 vacant, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Majority Report of the Committee on Human Resources reporting "Ought Not to Pass" on Bill "An Act to Amend the Laws Concerning Smoking in Public Buildings" (H.P. 439) (L.D. 604)

Signed:

Senators: GAUVREAU of Androscoggin
TITCOMB of Cumberland
RANDALL of Washington
MANNING of Portland
ROLDE of York
BOUTILIER of Lewiston
CLARK of Brunswick
BURKE of Vassalboro
PEDERSON of Bangor
DELLERT of Gardiner
CATHCART of Orono
HEPBURN of Skowhegan

Minority report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-202) on same Bill.

Signed:

Representative: PENDLETON of Scarborough

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, I move that the House accept the Majority "Ought Not to Pass" Report.

Mr. Speaker, Ladies and Gentlemen of the House: This particular legislation, if enacted, would repeal portions of the Smoking in Public Buildings Law that we passed here the last legislative session. We, as the majority, felt that it was working well and that we do not want to tamper with it at this particular time.

I will note that my seatmate will explain her views and I will sit down and let her explain those.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: I strongly urge you to vote against the motion on the floor. I feel I must explain my reason for supporting the Minority Report.

I represent all of the people in my district, not just the non-smokers. I believe in giving my people, all of my people, all taxpayers, a choice. Those who choose to smoke should be allowed to smoke in public buildings. Please vote no on this motion.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Men and Women of the House: I rise before you today to speak on reinstating designated smoking areas in public buildings. These buildings are owned and paid for by taxpayers and should be used by all taxpayers. We have before us an issue that involves "rights" -- the rights of people to choose.

I think you are all aware that any insidious erosion of the rights of people should be stopped. This is insidious, it came before us two years ago, not to State and Local Government, but to Human Resources as part of Title 22. This deals with buildings, it does not deal with the impact of smoking. This is not an issue of "you smoke, I smoke, you don't smoke, I don't smoke" -- this is an issue of, should a person be given the right to have a designated smoking area? The concerns of the people that do not smoke and who do not want to be around it have been addressed.

I think that we as legislators must remember that we represent people, all people. We also must remember the Bill of Rights. Our guarantees are there for all of us.

If you have been reading some of the letters to the editors, I would like to quote from one. I am going to use the preemption law for firearms because it was so direct and to the point. It says, "Every citizen should remember Patrick Henry's words 'Guard with jealous attention the public liberties, suspect everyone who approaches that jewel.'" That is what we are doing today ladies and gentlemen. We are guarding the public liberties and we should protect that precious jewel.

I ask you to vote against the pending motion on the floor.

I request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

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

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Martin.

Representative MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I guess you all know where I stand on this bill but I just received in my mail this morning a letter from some employees of the Department of Human Services and signed by 22 people. It says: "Being employees of the Maine State Department of Human Services in Caribou, we are being subjected to moving into a new state building and have been notified that smoking will not be allowed in the building whatsoever. While we are concerned with the rights of non-smokers, we are equally concerned with the rights of smokers."

I will reiterate what Representative Hale said, we are talking about rights and in particular the right to smoke in designated areas in government buildings as we do now.

To continue quoting from the letter that I was reading from, it says, "We urge you to seriously consider voting yes on L.D. 604. We would also appreciate anything that you can do and would hope to have a response from you informing us of your position on this issue. Any support you can offer us would be greatly appreciated. We and our fellow coworkers, smokers as well as non-smokers will be awaiting your response." You can imagine what my response is going to be. That was signed by 22 people and they will be called today.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I think we did a good job when we put into law designated smoking areas. I think everyone has a right, they have a right to sit in a restaurant where there is no smoke, they have a right to enter into a public building where there is no smoke but I believe that we will have gone too far if we abandon it completely. I think we will go against the rights of some of the people. I think we have made a class of second-class citizens and I don't think it is fair. I don't think that is right. I don't think that was what our Bill of Rights was all about. We are all first-class citizens and I would hope that you would support the Minority "Ought to Pass" Report so we can give back rights and we can keep designated areas in all buildings, not just a few.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: People are talking today about rights -- for those of you who are new to this building, I would like to take you back to a few years ago when I was a freshman sitting in the back row. When the Speaker indicated that we were at ease, it took about 6 seconds for the gentlemen in the back row to light up. Where was that smoke going? We know by the surgeon general's report and by many other reports that secondhand smoke is as bad as someone smoking themselves. That is one of the reasons why we decided a few years ago, the legislators in the 113th Legislature, to ban smoking in public buildings.

When you look around at most of your town halls and the good Representative from Sanford has told me that she has problems with those -- where in most of the town halls is there going to be a designated smoking area for the public? I know that I have been in a few of the town halls throughout this state and they are lucky if they have enough room for their employees, let alone designated smoking areas for the public. If the public is going to be in there for a long period of time, it would seem to me that the best thing for them to do would be to go outside and smoke. I don't understand where (in small buildings

and small town halls throughout the state) you are going to find room for a designated smoking area.

In this particular building, we have made arrangements for the legislature and we have made arrangements for the staff (downstairs on the first floor) for smoking. But, I remember the days when you could walk from here to the rotunda and see a cloud of smoke. That is one of the reasons we decided to put the "no smoking" in. I think it is cleaner, I think it is safer. If my memory serves me right, two years ago when we were debating this bill, the good Representative from Thomaston went out to take a phone call and on his way back, he got burned by one of the lobbyists. He came back in and reported it. That is one of the reasons why we don't have smoking in public buildings.

We talk about rights -- you know I am not against smokers, many of the smokers will go along with somebody who says "Please don't smoke in my area" but there are people who won't go along with that. There are people who are affected by smoke, one of whom is a veteran reporter in this particular institution, the reporter from Lewiston, Ed MacDonald. Ed talks about covering a public meeting and on his way home that particular night, he went off the road because of the stench in his clothing. He is affected that much. There are people like that throughout the state who are affected by smoking. I know there are people who don't believe that but I wish you would take the time sometime and talk to Mr. MacDonald about this.

I think the bill has worked well. I haven't heard any complaints from my community and I have a fairly large city hall, probably the largest city hall in the state. It is probably as large as this particular building. The citizens in my community haven't complained. It is just not allowed inside.

I can remember going to my own city council meetings where you could hardly stand it. You could hardly stand going outside because at one time they decided they wouldn't have smoking inside so they went outside to smoke. People are affected by smoke, they are affected in ways that a lot of us don't realize. If you could have gone upstairs and listened to the people testify in the last three or four years, you might understand.

On a final note, in reference to the 22 people in Human Services, I also get the same calls from the Human Services Department wanting more money. Where am I going to put the money? Am I going to put the money in the Medicaid program where hundreds and hundreds of people (who are on the program) suffer from emphysema and other lung-related diseases? Or am I going to put it into ventilation? The Governor's Commissioner on Public Administration said, if this bill went into effect, it would be very costly in state-run buildings. I think we ought to think about that, especially since we don't have much money left in the till.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: I think that this might not be just a rights issue but it also might be considered a safety issue. Years ago, when Boise Cascade was Oxford Paper Company (and I know that is not a public building but this is an example of what might happen) absolutely no smoking was allowed. Now the smokers found a place to smoke and it didn't matter where it was but they would smoke so they had a rash of fires. This is something that I would like to have you think about when you are voting on this issue.

I am going to vote with the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I will address a few remarks made by my esteemed seatmate. I can't go back as far as my seatmate but we did make an effort to clean up the air so he would not be permeated while we were in session. Since then, we have tried to protect my seatmate also.

I am not speaking just for my town and my town hall. I am speaking for all the public buildings in the State of Maine from local, county to state buildings. Many small town halls do not have their records within the facility. You go down the road and up a side road and there it is in a home. I do not expect to have the town clerks or the tax assessors residences regulated but I do feel that we have addressed the concerns of the people of the State of Maine so they do have a smoke-free area to go to. Now we ask that there be a designated area reinstated for the people who smoke in order to protect those that don't but also to protect the rights of the smokers.

The SPEAKER: The Chair recognizes the Representative from the Penobscot Nation, Representative Attean.

Representative ATTEAN: Mr. Speaker, Ladies and Gentlemen of the House: It is not often that I rise from my seat to debate an issue. However, I feel very strongly about this issue, not just because I am a smoker, which I am, but because I believe in rights of people, all people, smokers and non-smokers. I believe that we are gradually eroding the rights of our citizens. We are denying them free choice.

This bill is not asking for restitution of smoking in every area in buildings, it is simply asking for a designated area. We need not worry about walking through the halls of the House and being assaulted by secondhand smoke. Only if you choose to enter the designated smoking area will you face that.

I believe the rights of people, all the people, the taxpayers, the people who support the state buildings, county buildings, and local buildings should be recognized as well as the rights of the non-smokers. Yes, smoking is bad for you, I am the first one to acknowledge that. If the state and the federal government acknowledges that, why don't we simply ban smoking completely and outlaw tobacco? While we are outlawing tobacco, we might as well outlaw everything else that is bad for the citizens of this nation, acid rain, industrial pollution, chlorofluorocarbons, why not go all the way and ban everything that is bad for the people?

I would ask that you support the Minority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, I would like to pose a question to the Chair.

Is there is fiscal note?

The SPEAKER: The Chair would advise the Representative that Committee Amendment "A" does add a fiscal note to the bill.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heechen.

Representative HEECHEN: Mr. Speaker, Men and Women of the House: I am one of those people who are quite sensitive to smoke, perhaps not to the extent as Mr. MacDonald. I found that in practice designated smoking areas does not translate into smoke-free environment for the building as a whole. It may be a "no smoking" area but it is a not a no smoke area.

This building is a case in point. Since the establishment of the designated smoking area down behind the Samantha Smith display, that lower part of the House, gradually, increasingly spreading throughout the building, has been very polluted air. I find it extremely difficult to breathe down in the Samantha Smith lobby and since one of my committee rooms is the Housing and Economic Development room, we have to be very careful how the windows are adjusted and how the door is adjusted. There has been a steady deterioration in the atmosphere in this building and it is spreading throughout the building.

I also wonder if those people who go outside respecting the no smoking environment of inside realize that most of the air that comes into this building comes in through the lower levels and when you go outside and stand beside the door, almost all of that smoke comes back into the building.

In summary, I don't think the no smoking area does not translate into a smoke-free environment for the rest of us.

The SPEAKER: The Chair recognizes the Representative from Vassalboro, Representative Burke.

Representative BURKE: Mr. Speaker, Men and Women of the House: We as legislators are in fact protecting the rights of all the public. A number of speakers have said that already.

As a nurse with some medical understanding, I am fully aware that people who smoke can live and thrive in smokeless environments. However, there are many people and many of our constituents who cannot live in a smoke-filled environment. Because Maine is still a rural state with many small town halls, many of our public buildings are, in fact, just one room with small partitions separating the working areas and there is no feasible way to segregate the smokers from the non-smokers or to keep the smoke in one place. To install smoke filters creates a financial burden on the smaller municipalities making taxpayers, (again our constituents) pay higher taxes.

So, to protect the rights of all our citizens, we still allow smokers to smoke but not in areas that are open to the public. Unfortunately, many of our buildings are completely open to the public.

I urge you to support the Majority "Ought Not to Pass" Report.

The SPEAKER: The pending question before the House is the motion of the Representative from Portland, Representative Manning, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 32

YEA - Adams, Aikman, Aliberti, Allen, Anderson, Anthony, Ault, Bailey, Boutillier, Brewer, Burke, Butland, Carroll, D.; Carter, Cathcart, Clark, H.; Clark, M.; Constantine, Crowley, Curran, Daggett, Dellert, Dexter, Donald, Dore, Farnsworth, Foss, Foster, Garland, Graham, Greenlaw, Gwadosky, Handy, Hanley, Hastings, Heeschen, Hepburn, Hickey, Hoglund, Holt, Hutchins, Jacques, Ketover, Larrivee, Lawrence, Libby, Lisnik, Luther, MacBride, Manning, Marsano, Marsh, Marston, Mayo, McCormick, McGowan, McKeen, McPherson, Melendy, Merrill, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Pederson, Pines, Plourde, Priest, Reed, Richard, Richards, Rolde, Rydell, Seavey, Simpson, Small, Stevens, P.; Stevenson, Strout, B.; Swazey, Tracy, Tupper, Webster, M..

NAY - Begley, Bell, Carroll, J.; Cashman, Chonko, Conley, Cote, Dipietro, Dutremble, L.; Erwin, P.; Farnum, Farren, Gould, R. A.; Gurney, Hale, Hichborn, Hussey, Jackson, Jalbert, Joseph, Kilkelly, LaPointe,

Lebowitz, Look, Lord, Macomber, Mahany, Martin, H.; McHenry, McSweeney, Michaud, Mills, Murphy, Norton, Paul, Pendleton, Pineau, Rand, Ridley, Rotondi, Sheltra, Sherburne, Skoglund, Smith, Stevens, A.; Strout, D.; Tamaro, Tardy, Telow, Townsend, Walker, Wentworth.

ABSENT - Coles, Duffy, Higgins, Moholland, Pouliot, Ruhlín, Whitcomb, The Speaker.

Yes, 90; No, 52; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

90 having voted in the affirmative and 52 in the negative with 8 being absent and 1 vacant, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Later Today Assigned

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-211) on Bill "An Act to Prevent Discrimination" (H.P. 413) (L.D. 556)

Signed:

Senators:

GAUVREAU of Androscoggin

HOBBINS of York

PARADIS of Augusta

CONLEY of Portland

HASTINGS of Fryeburg

ANTHONY of South Portland

FARNSWORTH of Hallowell

STEVENS of Bangor

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

Signed:

Senator:

HOLLOWAY of Lincoln

Representatives:

RICHARDS of Hampden

HANLEY of Paris

MacBRIDE of Presque Isle

COTE of Auburn

Reports were read.

Representative Paradis of Augusta moved that the House accept the Majority "Ought to Pass" Report.

On further motion of the same Representative, tabled pending his motion and later today assigned.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H.P. 270) (L.D. 382) Bill "An Act to Mandate Notification of Emergency Medical Services Personnel at Risk for Transmission of Communicable Diseases" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-213)

(H.P. 936) (L.D. 1304) Bill "An Act to Promote Energy Conservation and Load Management by Electric Utilities" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-212)

(H.P. 607) (L.D. 831) Bill "An Act to Expand the Retired Senior Volunteer Programs, Foster Grandparent Programs and Senior Companion Program" Committee on Appropriations and Financial Affairs reporting "Ought to Pass"

(S.P. 245) (L.D. 575) Bill "An Act to Amend the Records Management Laws" Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (S-113)

(S.P. 260) (L.D. 650) Bill "An Act to Provide for the Merger of Bargaining Units Represented by a Single Bargaining Agent under the Municipal Employees Labor Relations Law" Committee on Labor reporting