

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

**One Hundred And Fourteenth Legislature**

OF THE

**State Of Maine**

**VOLUME III**

**FIRST REGULAR SESSION**  
June 15, 1989 to July 1, 1989  
Index

H.P. 956 L.D. 1324  
(H "A" H-475 to C "A"  
H-453)

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

An Act to Increase the Authority of the Department of Human Services to Assess the Medical and Active Treatment Needs of Individuals Applying for Admission to Nursing Homes

H.P. 1012 L.D. 1410  
(H "A" H-474 to C "A"  
H-461)

On motion by Senator PEARSON of Penobscot, Tabled until Later in Today's Session, pending ENACTMENT.

An Act to Amend the Overboard Discharge Laws  
H.P. 855 L.D. 1187  
(C "A" H-502)

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

Senator KANY: Thank you Mr. President. Mr. President, men and women of the Senate. I simply wanted to call your attention to this Bill before we finally Enact it. It is, "An Act to Amend the Overboard Discharge Laws". In the earlier part of the session, you may recall, that there was a great deal of discussion about overboard discharge problems, in that many people along the coast felt that they were actually being chased out of their homes by the state, because after a certain period of time they would not be allowed to continue to use their system for waste water treatment. Along the coast there is a special problem in that residences are built on bedrock, directly, so that you cannot use the usual beneath the soil waste water treatment system that are used throughout the state. It causes a problem in that there are some sort of discharge, whether clear unpolluted water or not, into the marine area. Understandably, the federal government has required that any shellfish harvesting area where there is any type of a discharge must be closed. There is some leeway, here in the State of Maine, by our three departments that have contact with this problem and with how large an area of shellfish harvesting should be closed. But, regardless, if there is any discharge at all, that area must be closed. We learned a lot about this topic and came to the conclusion that as long as you have to close an area around a discharge that you might prefer focusing any such discharge into municipal waste water treatment facilities and just have a single discharge area for a large portion of the coast.

With that in mind, we tried to provide and create a reasonable balance, helping Maine people remain in their homes and yet understanding that in the long run we want to be able to use and harvest all of our shellfish areas if at all possible. In so doing, since so many of you have constituencies along the coast and have worked hard on this problem, and I would like to cite Senator Holloway, of Lincoln, Senator Clark, of Cumberland, Senator Dutremble, of York, Senator Estes, of York, and others among you, who understand the seriousness of this problem and have spent a great deal of time and effort trying to resolve it. What the Committee came up with in this Bill, which has been reported out unanimously, is first of all trying to offer some substantial financial contribution to changing their existing chlorinated systems. One would be for somebody with a primary residence, it could be up to ninety

percent, fifty percent for a commercial facility and twenty-five percent for a seasonal resident. By the way, a separate bond issue will hopefully go out and would help finance this. Second, we will focus any such grants to eliminate the sources of contamination into the shellfish harvesting areas. Third, we will be requiring an inspections of any overboard discharges twice a year and charging one hundred dollars each for those inspections, which could be contracted out by the state. Although that sounds expensive, certainly for those who wish to remain in their residence it is a small expense when you consider the alternative. Finally, there will be some relicensing of overboard discharges allowed in homes or commercial establishments. But, for seasonal residents, they will probably be required to have holding tanks. In areas where there is municipal waste water treatment system available, they also may be required to have some association with that. So, we can limit the number of discharges along the coast. Those are some of the primary elements of this major Bill. We also will be requiring more interdepartmental coordination between the three departments; Human Resources, Marine Resources, and the Department of Environmental Protection. We will be looking at developing group systems for more waste water treatment and we will look at the ability of the sanitary and sewer districts to assist in the elimination of overboard discharges in waters of the state. I felt the need to set that aside, since there have been so many questions from so many constituents. Senator Erwin, of Oxford, and Senator Ludwig, of Aroostook, and I, have received more than just a few hundred letters on this topic. It is closer to the thousand level. So, we know, personally, that many of your constituents are interested in this topic and we hope you are satisfied with this legislation and we will certainly try to help you and them and the State of Maine further on this issue.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Holloway.

Senator HOLLOWAY: Thank you Mr. President. Mr. President, men and women of the Senate. I rise today to personally thank Senator Kany and the Energy and Natural Resources Committee for the grueling work sessions that they have held on this topic. The issue is certainly extremely complicated and it was controversial.

The citizens of the Maine coast should be very pleased by the diligent attention that has been given to them by this Committee in their pursuit of a reasonable solution to a very real and threatening problem that they had. I thank you.

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

An Act to Strengthen Maine's Restaurant Smoking Law

H.P. 966 L.D. 1344  
(C "A" H-409)

On motion by Senator BALDACCI of Penobscot, the Senate SUSPENDED THE RULES.

On further motion by same Senator, the Senate RECONSIDERED whereby the Bill was PASSED TO BE ENGROSSED AS AMENDED.

On further motion by same Senator, the Senate SUSPENDED THE RULES.

The same Senator further moved to RECONSIDER ADOPTION of Committee Amendment "A" (H-409).

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I would oppose the pending motion and I would inquire of the good Senator from Penobscot, Senator Baldacci, the purpose of which he seeks Reconsideration of the Committee Amendment under question.

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

The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Mr. President, men and women of the Senate. I explained to the good Senator from Androscoggin, Senator Gauvreau, earlier, the amendment that I was attempting to offer. For further information to the members of this Body, this Amendment S-273 only requires that the Department of Human Services shall consider the results of any survey that has been taken by the Department during a two year period, prior to the enactment of this section, pertaining to the experience encountered by restaurants in providing smoking and nonsmoking sections. In the event that no survey exists, the Department shall conduct a survey of twenty percent of the restaurants located in the state, comprising a representative sample of the types and sizes of restaurants found in the state, to determine the experience encountered by those restaurants in providing smoking and nonsmoking sections, and they shall consider the results of the survey in promulgating the rule. The results of the survey utilized by the Department and rule-making, shall be reported to the Joint Standing Committee having jurisdiction over human resources matters by January 1, 1991.

All it does is say that the Department is going to go ahead and do this and that it conduct a survey and have it report back to the Committee. It doesn't stop the promulgation of rules. That is the Amendment.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. I appreciate the explanation of the proffered Amendment by my good colleague from Penobscot, Senator Baldacci. The Joint Standing Committee on Human Resources has, of course, presented for the consideration of the Legislature, L.D. 1344, which is, as has been commonly styled, 'the no smoking in restaurants Bill'. As you may recall, the issue, which seems to be becoming an annual issue in these halls, was considered at length in the preceding Legislature. At that time, the Legislature adopted legislation which requires that each restaurant in our state have a policy on smoking which is reasonably calculated to address the needs of the nonsmoking public. I must take responsibility for those particular words, 'reasonably calculated to address the needs of the nonsmoking public'. Some people, in the year since we have adopted the legislation in question, have concerns regarding a specific definition of what the policy would be which was reasonably calculated to address the needs of the nonsmoking public. The Human Resources Committee had intentionally crafted a fairly general standard in recognition of the frank differences which exist amongst the various restaurants in our state. We thought this, and we still believe, is a very difficult and perhaps poor public policy to crystallize into statute a specific formula, i.e. whether there should be forty-five percent or seventy percent or whatever, of seats that are in a particular restaurant devoted to either the smoking or nonsmoking public. The Committee this

year has crafted L.D. 1344, which would charge the Department of Human Services with regulation of specific standards relating to what is reasonably calculated to address the needs of the nonsmoking public. I would mention that last year we did significantly increase the licensing staff of restaurants in our state. The Human Resources Committee suggests that as part of the annual or biannual licensure of restaurants that the inspectors make certain that the restaurants do, in fact, have a reasonable no smoking policy and that does, in fact, address the needs of its patrons.

I did have occasion to review, before the Human Resources Committee, the legislation under consideration and the Amendment which I believe the Senator from Penobscot, Senator Baldacci, would propose, were he granted the opportunity to further Reconsider this measure. I can indicate to the Senate that the Human Resources Committee does not believe the language would be at all helpful.

In fact, the Committee believes the Department of Human Services currently has the ability to consider any studies or surveys they have conducted in the last year or two in promulgating a standard. We certainly recognize that during the rule-making process, everyone who has an interest in this matter should be allowed to come forward, restaurateurs, patrons, people involved in the public health considerations, all these parties should have an opportunity to compete equally in the administrative process. We don't see any particular value in circumscribing the authority of the Department of Human Services in promulgating rules which would give greater definition or clarity to the term, 'reasonably calculated to address the needs of the nonsmoking public'. Because we do not believe that the offered language is at all helpful to the Department and, in fact, it might even cause some problems to this measure, because it is conceivable that if this language were added it might add a fiscal note to the Bill. We felt that the proposed language ought not to be accepted. Therefore, I stand today urging the Body to reject Senator Baldacci's request for Reconsideration. Thank you.

Senator MATTHEWS of Kennebec requested a Division.

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

Senator PEARSON: Thank you Mr. President. Mr. President, men and women of the Senate. Each morning I get a list from the Finance office of those things that cost money. This Bill does not cost money, as it presently exists. What I would like to know is if this Amendment is attached to it, does it then become a Bill that costs money and would have to go to the Appropriations Committee at that point?

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 Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you Mr. President. Mr. President, men and women of the Senate. I am in the restaurant business and I have proposed an Amendment that deals with a Bill that is going to handle a smoking law within the restaurant business. I do not have a problem with the Department of Human Services. We have a pretty good smoking policy, they said so themselves. I do not have a problem. I don't appreciate the implication of being in the restaurant business and proposing this type of an Amendment.

Senator BALDACCI of Penobscot requested and received Leave of the Senate to withdraw his motion

to RECONSIDER whereby Committee Amendment "A" (H-409) was ADOPTED.

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

Senator GAUVREAU: Thank you Mr. President. Mr. President, men and women of the Senate. With respect to the question posited by my colleague from Penobscot, Senator Pearson, as to whether or not the Amendment which was under consideration until recently, would, in fact, carry with it a fiscal note or a consequence. In my review of the Amendment, it is uncertain. I indicate that for the following reason: The Amendment, which is now not to be offered, would have required the Department of Human Services to conduct a particular survey, if one had not been done in the preceding two years. It is a potential future cost, but I am not certain whether there would have been a cost involved.

THE PRESIDENT: The pending question before the Senate is PASSAGE TO BE ENGROSSED AS AMENDED, in concurrence.

Senator WEBSTER of Franklin requested a Division.

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

Senator CLARK: Thank you Mr. President. Mr. President, men and women of the Senate. Today we have one Senator, the Senator from Penobscot, Senator Baldacci, offering an Amendment for consideration to the members of this Body. We have another member, the Chair of the Committee on Human Resources, the Senator from Androscoggin, Senator Gauvreau, who receives the Amendment gracefully suggesting that it is an Amendment which might endanger the entire Bill and so he must resist it, as we all would at this stage in the legislative process. We have a Senator from Penobscot, Senator Pearson, who, following through responsibly as he consistently does, reminds us of the every present potential of a fiscal note and, thus, the scenario is set. As a result of the exchange between these fine Senators of Maine, an Amendment (S-273) is withdrawn for fear of jeopardizing the entire Bill. If one ever so briefly even reviews this Amendment, one could see that if we didn't operate in such an artificially structured environment, that any good department could conduct this survey and should do so, if it were responsible, without ever having to request additional personnel or additional money. I only stand at this moment for I think that this represents an ever so reasonable request and I also stand in support of ultimate Enactment of the measure, and express to you the frustration that all Legislators experience. If we have one idea regardless of administration, state bureaucracy always puts a price tag to it. Ever so seldom is the occasion when the welcome words are we can do it and absorb the cost. I submit to you that the whole basic scenario really cramps our style, as Legislators. I just once would welcome the opportunity where we could freely exchange ideas and concepts without having the fear that no matter how minuscule our request, no matter how reasonable is the idea, that the threat of a few pennies or dollars would dampen our opportunity to do so. I guess it is that time in the Session. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you Mr. President. Mr. President, men and women of the Senate. As the Senator from Franklin County and as a Senator who has consistently had concern about passing laws that were unnecessary and realizing that I may not win today, I just would like to ask the members of this Chamber that before you vote on this Bill, that it seems to me that I probably frequent a restaurant as often as

many people here. I have yet to go to a restaurant in the last few years that didn't have some kind of smoking or nonsmoking area. When I walk into the restaurant I am asked whether I want to sit in a smoking area or nonsmoking area. I think that the current law works and I really wonder if I want state employees out there, in the Department of Human Services, going out and questioning every restaurateur, as to whether they have the appropriate nonsmoking or smoking requirements under law. It seems to me that this Bill is probably unnecessary and at least from where I come from I would like to not support this unnecessary, in my opinion, legislation. So, I would ask you to stand with me when the Division is taken and oppose this measure. Thank you.

Off Record Remarks

Senator BALDACCI of Penobscot, requested and received Leave of the Senate to Abstain from Voting, due to a conflict of interest.

Senate at Ease

Senate called to order by the President.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending PASSAGE TO BE ENGROSSED AS AMENDED, in concurrence. (Division requested)

Resolve

Resolve, to Request that the Board of Trustees of the University of Maine System Determine the Cost of Establishing a Training Program for Nurse Practitioners in Northern Maine

H.P. 935 L.D. 1300

(C "A" H-464)

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

Emergency

An Act to Clarify the Responsibilities of School Boards

H.P. 385 L.D. 516

(C "A" H-457)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in negative, and 30 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

An Act to Establish State Guidelines for Child Support Awards

H.P. 706 L.D. 967

(H "A" H-499 to C "A" H-349)

This being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE