

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
State of Maine

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December 6, 1996 to May 19, 1997

Pages 1 - 980

Which Report was **READ** and **ACCEPTED**.

The Bill **REFERRED** to the Committee on **JUDICIARY**.

Sent down for concurrence.

Ought to Pass

Senator **RAND** for the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Allow Members of Cooperatives to Vote by Proxy" S.P. 60 L.D. 170

Reported that the same **Ought to Pass**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Senator **LONGLEY** for the Committee on **JUDICIARY** on Bill "An Act to Adjust the Residency Requirement for District Court Judges to Include the Counties in Which They Reside" S.P. 163 L.D. 492

Reported that the same **Ought to Pass**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Senator **LONGLEY** for the Committee on **JUDICIARY** on Bill "An Act to Permit the State Court Administrator to Accept Funds from the Federal Government and Private Sources" S.P. 204 L.D. 663

Reported that the same **Ought to Pass**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

Senate

Bill "An Act to Change How the Mileage Allowance is Determined for Sheriffs and Deputies" S.P. 68 L.D. 207

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act Concerning Dangerous Buildings in the Unorganized Territories H.P. 38 L.D. 63 (H "A" H-2)

An Act to Make Technical Changes in Laws Authorizing the Sale of the Pineland Center H.P. 133 L.D. 175

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

ORDERS OF THE DAY

Unfinished Business

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (2/20/97) Assigned matter:

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Permit Municipalities to Restrict the Sale of Tobacco Products" S.P. 72 L.D. 211

Majority - **Ought to Pass** (11 members)

Minority - **Ought Not to Pass** (1 member)

Tabled - February 20, 1997, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, February 20, 1997, Reports **READ**.)

Senator **NUTTING** of Androscoggin moved to **ACCEPT** the Majority **OUGHT TO PASS** Report.

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

Senator **NUTTING:** Thank you Mr. President, men and women of the Senate. I just want to speak briefly about this eleven to one, by-partisan, Committee Report out of the State and Local Government Committee. I'm sure you've heard of this bill, the halls have been full of people trying to lobby this issue. This L.D. 211 is permissive, legislation only, it repeals the provision of the law that prohibited municipalities from enacting ordinances concerning the sale of tobacco products. Currently, in Maine, there is one community that has a local ordinance, concerning the sale of tobacco products. Life has still gone on in

that community, the sale of tobacco products has continued, and yet, that community has regulated the sale of tobacco products the way they wanted to. I'm not going to tell the community's in my Senate District, or any other part of Maine, that one community can have an ordinance, and they can't. This has been looked at, I know they just submitted a letter from the Attorney General's Office, and, I just wanted to read the last sentence, "And be clear that this Department would not discourage the legislature from enacting L.D. 211". I'm sure there's others who want to speak on this issue, but, I'd encourage your support of the Majority Ought to Pass Report, its a local control issue. Thank you.

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

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. Just like to make a couple of observations before we go on and enact this bill, if we do. I think first of all, it makes some sense to allow for home-rule under most of the conditions that we take a look at here in this Senate, excuse me, in this Body; But, in this particular case, I don't believe that it necessarily is the right thing to do. It makes more sense, under these conditions, for consistent regulations across the State, and I think that for the benefit for both retailers and wholesalers, in order for them to understand the laws as they pertain to them, I think it's important to consider the fact that if we enact this legislation, we might be facing five hundred different communities with five hundred different laws on one particular product. I think it's particularly, important to consider the ramifications of the bill, in terms of the cost on local government, and it's in this area that I have my greatest concern about the bill. I think it's important to think about what the cost will be to municipalities if we decide to enact this legislation; What will the cost be? What will happen? What will be triggered by this legislation? First of all, I think what you are going to see, and this is speculation on my part, but I think it's pretty accurate. I think what you're going to see is, whether they be anti-tobacco, or anti-smoking advocates that bring this issue to their local municipalities, or whether it just be, you know, the average citizen. I think what you're going to see is a series of public hearings, back in your local community, and that series of local hearings has a definite cost to it. A serious cost to it. It's going to take a lot of important taxpayers funds and tie it up in a process, that really, maybe, belongs in this arena, right here. Think about it for a minute. Community by Community, one by one, having a series of hearings on the regulation of tobacco, I think you're going to see a major, major cost to that, and, maybe municipalities, instead of asking for home-rule on every single issue, maybe, if you check back home with your municipalities, they may not be in favor of, community by community, having long, drawn-out hearings. What will come along with those hearings is the usual, media circus, and, I think it's important to note that as well. One by one, community by community, I can picture it in York County today. We're going to have the media coming down to your local town halls, to your local meeting places, and almost a frenzied environment, having one person after another come up and testify in favor, in favor, in favor of, enacting stricter ordinances. Then you're going to have local mom and pop stores, and some of your local grocers come up there, in a very, hostile environment and have to say, "Look, this doesn't make sense for me, it's going to cost me a lot of money, it makes a difference in my business. And, do you really want to

push my business out of this town". It's going to be a very difficult, and very costly exercise, and an exercise in futility. Now normally, in a one-twelve Committee vote, I'm not going to stand up here and take the time of the Senators, and other Legislators and say, "Look, maybe this things not worth fighting". In this case, it really is. I want you to think about what you, as a legislator's, going to have to do, going to have to be involved in, upon enactment of this measure. I think the third, very important point to consider here is; What is the desired result of this measure? What is the desired result? Is it to reduce the rate of smoking among teens, for example? Now, that's a laudable, goal, and that's a goal that I, myself, want to be involved in. And, I think there's a whole lot of ways to accomplish that goal. But, will this legislation lead to that goal? I haven't, personally, been able to make that connection yet. I don't think that enacting this legislation is going to lead to that goal. It concerns me greatly, that we've got a law that's only two years old, that established a fee, and you know, I'm not big on fees in the first place, established a fee as an agreement that we will have consistent, regulation across the board. And then, two years later, we're going to turn around, and say to all of the individuals that worked so hard in putting this prior legislation together, we're going to say to them, "Sorry, the rules have changed". So, there's an awful lot of reasons here why I think we ought to consider our position, and consider it carefully. But, the most important of all, is the cost to your municipality, of having all of these hearings, and the time it's going to take, and the difficulty of putting this together. Thank you.

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

Senator **CAREY:** Thank you Mr. President. Mr. President, Members of the Senate. I'm not going to be supporting this measure, and I'd like to tell you why. I serve as a municipal official, and the last thing we need is more division in municipality. You're just going to start having people attending the meetings, who want to get rid of cigarettes. You're going to want to have somebody come to the meeting, at the following meeting because, they support cigarettes. We, in the municipality, have a lot more to do than trying to deal with problems that are statewide.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you Mr. President, men and women of the Senate. This bill seeks to strike-out one simple, sentence from existing Maine law. A sentence that simply says that no municipality may grapple with the issue of how cigarettes are sold and marketed within our State. I can honestly, represent to you, that when that sentence went into Maine law, the four hundred and ninety-six communities that had something at stake, in that sentence, were not represented at the bargaining table here, in this building. Before that sentence was put into Maine law, there were several occasions, that I'm aware of around the State, where certain municipal groups took a local, sincere, and public-spirited, interest in addressing the issue of tobacco sales within their communities, in much the same fashion that local, public-spirited, citizens, over the years, have taken an interest, and are allowed to take an interest in the sale of alcohol, within the municipal borders. And, we have been very careful in this legislature, over the last fifty or sixty years, since

we've allowed alcohol to be sold and consumed, in this State, to prevent local options, and local choices, and to allow people in local communities to have a say in how alcohol is sold, and whether it shall be sold, and in what forms, and under what licenses within the borders of their communities. This existing, Maine law on cigarettes says that they have no voice, whatsoever, in determining the methods by which cigarettes are sold. I can't imagine what possessed us to put that sentence into Maine law, it's incredible to me. It is completely, consistent with the overall, nationwide, strategic, plan of the cigarette industry to use the device of exemptions, both at the federal level and the state level, to cut off the local debate over the issue of the sale of tobacco products. The only ordinance that exists in this State, that I'm aware of, is one that was passed in Westbrook, before this sentence went into law, and it says, I think, only two things; Basically that the people of Westbrook would prefer not to have vending machines, for sale of cigarettes, and there are no vending machines permitted in Westbrook. The other thing it says is, that tobacco products need to be sold face to face. And, there's also a requirement, in the Westbrook ordinance, that there be a sign indicating that you have to be eighteen years or older, in order to sell cigarettes. A pretty simple, straightforward, citizen-initiated measure that, as far as I know, created and imposed no great burdens on anybody and I'm not aware of anybody in Westbrook complaining about the expense of discussing this issue down at the City council chambers. When the day comes that we, as a legislature, have to act as though municipal government is a bunch of children, that the four hundred and ninety-six municipal governments in this State don't know what's good for them, and we have to protect them from themselves; That's not the democracy that I grew up in. Thank you.

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

Senator CLEVELAND: Thank you Mr. President, men and women of the Senate. I rise today because, I support the passage of this bill. As a former municipal official, as I know you are, it's abhorrent to me to suggest in the paternalistic sense, that we need to protect local officials from themselves, we need to protect local people from themselves, we need to protect local people from the exercise of democracy and the discussion of issues of interest and pertinence to them.. How arrogant. It seems to me that we allow them to make decisions about education, about economic development, about the social well-being of their community, about health issues, about traffic, but, we can't dare and let them talk about cigarettes. And, I would suggest to you the reason that we don't want them to talk about cigarettes is because the tobacco industry doesn't want them to talk about interests. The tobacco industry doesn't want to go up to a town council and talk about their product, and it's effect on the community. This tobacco industry doesn't want to talk about the access to children and the number of young people who are starting to smoke. They're the ones who don't want to have those stories in the paper day after day. We don't need to protect the local community, they're very capable of deciding on what issues they want to do. And remember, as every other speaker has said to you. This doesn't require a local community to take any action whatsoever. They can choose to take no action. It simply allows them to make a choice; It doesn't pre-empt their opportunity to make a choice in a decision which is good for their community. I would suggest to you, when we think

about costs, think about the social costs, think about the twenty-four hundred people who die, die every year in this State, as a result of the use of tobacco. Think of the cost to medicare and the health insurance industry, to treat the symptoms, as the result of tobacco use. Huge expense dwarfs any price you might pay for an ad to publicize a public meeting to discuss tobacco; Not even in the same league. I hope that as you consider this issue, that you recognize there's no pre-empted need for the State to decide for every community, despite it's size, despite it's resources, despite it's needs, despite it's unique circumstances that they have the intelligence, the where-with-all, and the right to discuss these issues and make decisions that are appropriate for themselves and the citizens within their community. I hope when the vote's taken that you will all vote for passage of the bill.

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

Senator GOLDTHWAIT: Thank you Mr. President, men and women of the Senate. This has been a long, awaited opportunity for me. When this particular piece of this bill was submitted last year, there were some objections raised, but, there was a sense that it would jeopardize a very good and very important piece of legislation, of which it was a part. And deferring to the people who had been intimately involved in examining that bill and in the debate, who had worked very hard to get that excellent piece of legislation passed, this was left in that bill at that time. Now it's in front of us, all by itself, not jeopardizing anything else, and, I think it's time that we passed this bill and repeal the section that prohibits our municipalities from regulating the sale of tobacco. It was looked at as a case of giving an inch to get a mile, but actually, we gave a mile to get an inch. This bill doesn't force municipalities to regulate tobacco sales, it allows them too. We want municipalities to do more for themselves, and then when it comes to this very important issue, we say, "We think we know better, we'll do it for you". These ordinances would still have to go through the normal municipal procedures, including public hearings. This is nothing that would happen by fiat at the local level. And, the businesses who are concerned about ordinances of this type would have every opportunity to make their case then, in front of people in their own community, who know the needs of their kids, who know the procedures of their businesses. The argument seems to be based on uniformity. We say that we have to have consistent laws or it gets too confusing for businesses to comply with them, that it would be inconvenient, it would be expensive to provide training. Well, businesses adapt to all kinds of other local ordinances. My town has a ban on the display of outdoor merchandise, it seems that businesses have been able to manage to adapt to that in my community, though they don't have to in neighboring communities. We have requirements for parking, for unloading, for packaging, for sign placement, and we manage to get our way through all of those at the local level. Why is this so different? And, even if it were confusing, even if it were expensive, we are not talking about regulating the display of toothpaste, or pretzels, we are talking about regulating a lethal product, proven to be detrimental to your health with any use at all. And I cannot think of another substance designed for human consumption which is always toxic, always, with any use at all. That's what we're talking about allowing our municipalities to regulate. And, who does this hurt the most? Our kids. Maine has one of the highest smoking rates for young people in this country, and one of the reasons, is because one of the main

sources of access to tobacco for children is shoplifting. And, that has to do a lot with where cigarettes are placed in the store. If they're near the door, in a display rack, it is ready access to young people. It's unfortunate, but that's the way it is. Healthcare costs estimated, in the State of Maine, for a year, for tobacco related illnesses, one hundred and ninety-seven million dollars, but, we don't think our municipalities should have the option to further regulate this product, if they so desire. I have a group called "PATCH" in my community, (A Planned Approach To Community Health). I have a very active kids' group in the high-school who works at controlling kids access to tobacco, and when they suggested controlling display of that product, I had to tell them that our State had voted not to let their town do that. It was embarrassing, they couldn't believe it, and I had a hard time making any kind of a decent explanation for that. Here are the questions I would like you to think about when you vote on this bill: Who convinced us to forbid municipalities to do this? Who has that kind of a hold on me? We're not Virginia, we don't grow tobacco, we don't manufacture tobacco products. Who convinced us? Who is the source of that influence? And, what is the source of that influence over this legislature, that we agree to pre-empt this authority? This is a case where an industry directed us to pre-empt home-rule, and we did it, and this is our chance to rectify it. There is absolutely no legitimate excuse not to do that. I urge you to vote for this bill, and Mr. President, when the vote is taken I ask for the yeas and nays.

Senator **GOLDTHWAIT** of Hancock, requested a Roll Call.

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

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. I rise for a second time to speak on this bill, to discuss some of the issues that have been raised. First of all I think it's important to note that, and I know you all realize this, that any municipality that has an issue, or a concern on the regulation of tobacco products, at the retail store for example, has every opportunity to come to the legislature, participate in hearings, submit bills through us, submit bills through members of the other Body, they have all kinds of opportunity to enact standards that are stricter than current law. They are not being denied that opportunity. Anyone that says they are being denied that opportunity, I would have to vehemently, disagree, that's what I'm up here for. I also want to bring up another important point, I think it's important that the legislature, and I try to put this as kindly as I can, it's important that we don't speak out of both sides of our mouths. I just learned the hard way, through a couple of other issues, the spreading of sludge, and also the sale of alcoholic beverages in retail stores, that there are lots of areas that we say, we cannot enact standards stricter than, and I'm talking about the municipality and the home-rule issue here, we say that all the time. And, I just, for example, had discussed a bill on the spreading of sludge, and I only bring it up here because it relates, to discuss that with the Committee of Jurisdiction, and I found out the hard way that sometimes it's necessary and important to govern these issues at the State level. Especially when you're talking about cost of doing business in Maine, which is already high, and the cost of running a municipality, which is also very high. In terms of the shoplifting issue, I just want to say that I agree that shoplifting is a problem and it was a part of the decision that I made in voting against this proposal. I do agree that something needs to be done, and I

think that we can do it. I think that we can come together as a legislature, and take action on the issue and the problem of shoplifting, and I think we need to do that. We need to submit separate legislation and discuss what can be done. And, I also want to note that there are federal rules that are going to be coming into play, here in the State of Maine, that will help do just that. And I think we need to let those rules take affect, and see what the significance of, and what the affect of those rules will be. So, while I think this is the politically, expedient thing to do, you know, voting in favor of this bill, and talking about home-rule, I just don't think it makes a lot of sense, in my opinion. Thank you.

THE PRESIDENT: The Chair would inquire how many more members intend to speak on this issue?

Off Record Remarks

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

Senator **FERGUSON** of Oxford moved to **TABLE** until Later Today, pending the motion by Senator **NUTTING** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS** Report.

The Chair ordered a Division. 13 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **FERGUSON** of Oxford, to **TABLE** until Later Today, **FAILED**.

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

Senator **FERGUSON:** Thank you Mr. President, ladies and gentlemen of the Senate. This is an issue that was put into legislation last year, it's a compromise issue, it was an issue that had the support of the legislature. Some of the considerations were economic in nature, that the mom and pop stores in our State, and indeed some of the chain stores that are in various municipalities, do receive funds for allowing cigarette displays, they have to be displayed in a manner so that they are observed by the clerks in these stores. And, a lot of these mom and pop stores are struggling to make a living, and when you're talking hundreds of dollars, and I've been informed that it may be in the thousands of dollars, this is maybe a break or go situation for those stores. I would, in the sake of time, I know we have to be down in the other Body, shortly, and quite a lot has been said on this bill, but, I would urge you to vote against the pending motion. This is something like motherhood, I hate to be on this side of the issue. I'm not a smoker, I never have smoked. I have smoked a cigarette, on occasion, Mr. President. I never inhaled, not like you Mr. President, but like our President Clinton, but, nevertheless I will urge you to vote against the pending motion. Thank you Mr. President.

On motion by Senator **GOLDTHWAIT** of Hancock, supported by a Division of at least one-fifth of the members present and voting a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result.

ROLL CALL

YEAS: Senators: ABROMSON, AMERO, CASSIDY,
CATHCART, CLEVELAND, DAGGETT,
GOLDTHWAIT, HALL, HARRIMAN, KIEFFER,
KILKELLY, LAFOUNTAIN, LONGLEY, MILLS,
MITCHELL, MURRAY, NUTTING, O'GARA,
PARADIS, PENDLETON, RAND, SMALL, TREAT,
PINGREE, PRESIDENT MARK W. LAWRENCE

NAYS: Senators: BENNETT, BENOIT, FERGUSON,
LIBBY, MICHAUD

ABSENT: Senators: BUTLAND, CAREY, JENKINS,
MACKINNON, RUHLIN

25 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 5 Senators being absent, the motion by Senator **NUTTING** of Androscoggin, to **ACCEPT** the Majority **OUGHT TO PASS** Report **PREVAILED**.

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Off Record Remarks

On motion by Senator **KIEFFER** of Aroostook, **RECESSED** until the sound of the bell.

At this point, the Senate retired to the Hall of the House, where a Joint Convention was formed.

AFTER CONVENTION

IN SENATE

Senate called to order by the President

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, until Thursday, February 27, 1997, at 3:00 in the afternoon.