

MAINE STATE LEGISLATURE

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Senate Legislative Record
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Pages 1 - 746

An Act to Clarify the Membership of the Somerset County Budget Committee

H.P. 416 L.D. 558

An Act to Clarify the Duty of Insurance Agencies to Keep Records

H.P. 438 L.D. 601
(C "A" H-46)

An Act to Rename the Harassment Based on Characteristic Law Corporation to Construct Dams and Fishways

H.P. 582 L.D. 822

An Act to Repeal the Authorization of Lucerne-in-Maine Village Corporation to Construct Dams and Fishways

H.P. 717 L.D. 1007

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

An Act to Establish the Endowment Incentive Fund

H.P. 77 L.D. 90
(C "A" H-47)

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

An Act to Increase the Amount of State Contribution to Out-of-district Placements

S.P. 96 L.D. 235
(C "A" S-21)

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

Senator **PINGREE** of Knox was granted unanimous consent to address the Senate off the Record.

Senator **AMERO** of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator **LIBBY** of York, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

Unfinished Business

The following matters 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 (3/23/99) Assigned matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act to Require Legislative Approval to Lease Land to the Federal Government"
H.P. 275 L.D. 383

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-35)** (12 members)

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

Tabled - March 23, 1999, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 18, 1999, Bill and Accompanying Papers **RULED NOT PROPERLY BEFORE THE BODY.**)

(In Senate, March 23, 1999, Reports **READ.**)

Senator **PINGREE** of Knox posed a parliamentary inquiry as to whether the Bill was **PROPERLY BEFORE THE BODY.**

TABLED pending **RULING OF THE CHAIR.**

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

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Protect Citizens from the Detrimental Effects of Tobacco"

H.P. 951 L.D. 1349

Majority - **Ought to Pass** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - March 24, 1999, by Senator **PINGREE** of Knox.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence

(In House, March 23, 1999, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED.**)

(In Senate, March 24, 1999, Reports **READ.**)

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

Senator **HARRIMAN:** Thank you Mr. President. Good afternoon ladies and gentlemen of the Senate. I noticed in the Ought to Pass Report that there are several pieces of so-called smoking debate. I'm wondering if someone could answer for me why this was not included in the Report before us.

More specifically Mr. President, I've come to understand that this legislation has evolved over time from one of rights of smokers to one of work place safety. Certainly we all can embrace the need for our work places in Maine to be as safe as they possibly can be. So I'm wondering if someone can explain to me why the legislation that we're being asked to vote on today does not take into account the fact that Maine citizens in the work place working in taverns and lounges, are not included in this Report. It seems to me that if we are going to take a firm strong stand on work place safety, and second hand smoke is one of those areas that we need to pay particular attention to, then why are we discriminating against people who work for employers who operate taverns and lounges. Thank you Mr. President.

THE PRESIDENT: The Senator from Cumberland, Senator Harriman poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President. Men and women of the Chamber, it's a very easy question to answer. We have been working on these issues incrementally. We do as much as we can, when we can do it. We did not think that a Bill that would ban smoking in taverns would pass. So we are taking a half of loaf instead of the full loaf.

If I may continue Mr. President, the testimony in front of us, we had dozens and dozens of people coming in to testify for the ban, many, many of the individuals this year in addition to all the health care professionals that took the time out of their day to come, were the employees themselves. One of the big issues that we absolutely are dealing with is the fact that I know that many of them are going to be looking at workers' comp. They were told by some of our Committee members that they should go find another job if they don't like the circumstances that they are working under. They took umbrage at that, they said, this is their profession, they had chosen this career. They just were trying to mitigate at this point, being forced to inhale a class A carcinogen.

We need not lose the big picture here. The numbers are overwhelming. We have 39% of our high school students and there are a lot of younger students who are smoking. We have 13% of our young males chewing smokeless tobacco. The children who are exposed to second hand smoke in the home is 79,000. Many, many times in our Health and Human Services Committee we freely feel we're a status quo Committee, because we have been 30% of the budget of this whole State of Maine. We have really diligently tried to change that reality.

The bills from our very ill cancer patients are rolling in and we're paying that. In addition to that, because they are so completely disabled, the taxpayers have to pick up their whole living expense. Let's not lose the big picture of this. If there are issues, we're going to continue working on the issues. I urge you, my colleagues, to support this ban. Thank you very much.

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

Senator **MILLS:** Mr. President and men and women of the Senate, in brief supplemental response to the good Senator's inquiry, it seems to me that the Bill that lies before the Chamber at this time makes a very sensible and appropriate line. In that it would prohibit smoking in public areas where children are permitted entry and where children are permitted to work.

The distinction between restaurants and class A restaurants included on the one hand and taverns and bars on the other, is that people under age are freely permitted both to work and to patronize the places which we propose to ban in the Bill that lies before you. Thank you.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, I thank my good friends from Aroostook, Senator Paradis and from Somerset, Senator Mills for their helpful explanations. I think what I've heard today, men and women of the Senate, is that this is a journey of a thousand miles and there's a few more steps to take. We will address the issue of smoking in the work place in taverns and lounges, presumably at another time.

I hope you will keep an open mind if this Report Passes, as I suspect it will, that we can come back and have the courage to visit these issues now, because if this is a work place safety issue than we have the opportunity before us to fix it. I hope you'll join me in doing that. Thank you Mr. President.

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

Senator **MITCHELL:** Thank you Mr. President. I do rise to answer again, Senator Harriman's question and concern. I think that it's only appropriate that when the vote in the Committee was 7 to 6 that I explain to our good Senators in our congressing here the reason it was so close was not because any of us were against reducing the number of people that smoked. Six people who voted against the ban were all in favor of changing the behavior and working diligently and putting money into eliminating the number of people that smoke in our state. What we were opposed to was the unfairness of the way the Bill was written, which addresses Senator Harriman's concerns.

What are we doing to the businesses there is a conflict in the law. It is not clear as to what fair competition would be in the arena. This is why we were trying to address Amendments or have a Study Group, with representatives from the City of Portland, who have observed the local option of putting a law into effect, which is working with the businesses that have both restaurants and bars and addresses the many Bills that allow smoking in taverns and closes the doors at 5:00 pm to minors and allows smoking and food to be served for their smoking environment.

We were encouraged, perhaps, to have a study to look at people from both restaurants who have smoking and restaurants who don't have smoking. Also some of the general public as well as representatives from the towns and municipalities that have already implemented laws to ban smoking. To look at which is better, do we want this state again put on regulation or overcoming what the towns and cities have already made an

effort to accomplish? Do we want to continue to hold the position of being the number one state in this Nation for our legislation on regulating health services? So I do feel that health care is very important, and we have many Bills this Session, that we're working very diligently, to improve our state. I do feel that there is a concern for business. However, we're not addressing it at this time. Thank you.

The Chair ordered a Division. 26 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator PINGREE of Knox to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence, **PREVAILED**.

READ ONCE.

TOMORROW ASSIGNED FOR SECOND READING.

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

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Prohibit Sale of Tobacco from Vending Machines"

S.P. 14 L.D. 10

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass** (4 members)

Tabled - March 24, 1999, by Senator **PINGREE** of Knox.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS** Report.

(In Senate, March 24, 1999, Reports **READ**.)

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

Senator **MITCHELL:** Thank you Mr. President. I would ask you to join me and members of the Senate to vote against this Bill, so that we can then vote for the Majority Report. The reason being that in our Committee, as you can see from the vote in Committee, the majority of the people were very understanding to the fact that vending machines actually keep children from stealing cigarettes off counters. They have to have money to put them into the machines. The current law already specifies that vending machines must be in a supervised location and they are posted that minors are restricted from purchasing cigarettes from those vending machines.

We had testimony from owners of vending machine companies and from many small businesses that would be greatly hurt by us putting this Bill through and eliminating the sale of cigarettes through vending machines.

It's an effort for us to micro manage business and for us to put our hands into the decision making of businesses when they elect to have vending machines. It's probably more profitable for them than having people man the counters and selling the cigarettes over the counters in certain situations. It also monitors the sales and it does give a profit margin of a great degree to

small businesses who decree most of their profits are from either cigarettes or alcohol. I would encourage you to join me in voting against this motion at this time, so that we can vote for the Majority Report.

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

Senator **PARADIS:** Thank you Mr. President. Men and women of the Senate, again this was one way that we're trying to get to teen smokers. We know that most adults started smoking when they were teens. A Minnesota study showed us that 79% of the time young people were able to access cigarettes from machines.

When someone gets a vending machine it's a one time license. We have said that the vending machine should be in an area that is supervised. That is not always possible. Young people can come into these establishments where these machines are with adults. There are children accessing cigarettes in vending machines. That was the message that the Committee was sending. That is another loop hole where children can get their hands on cigarettes. Thank you.

Off Record Remarks

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

Senator **MILLS:** Mr. President and men and women of the Senate, I've been asking what the situation is in regard to vending machines. How many there are, and what sort of presence they have in this state. My understanding is there are 460 machines that are licensed. They may not all be in service, so the number may actually be considerably smaller than 460. I would suggest on the basis of those figures that this is not an issue that has a very large economic impact.

My understanding is that the businesses that do sell these products also sell many other products through vending machines. It's not an exclusive line for any one business.

The question that I have always asked when this issue has come up is if it is a requirement that a vending machine be located only in a place that an adult is near by. Typically someone tending the bar or otherwise servicing the area. What could possibly be the harm in requiring that the same cigarettes be sold by that person? Why not create a situation where there is a need for an in-person sale? Why not put the cigarettes behind the bar? Let the bartender sell them and make change. Do it that way rather than have a machine in some remote corner that may be within sight of the bartender, but not in a place where it would be free from use by minors. That's the point. I urge you to support the pending motion. Thank you.

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

Senator **BERUBE:** Thank you Mr. President and ladies and gentlemen of this Chamber. Banning smoking in an eating establishment is a little different than the Bill that confronts us right now. I supported the other one wholeheartedly because in