

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twentieth Legislature
State of Maine

Volume I

First Regular Session

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Pages 1-889

or 10 signatures. There is no limitation on us that in order to submit it, we have to have three other counties endorse that bill before it can be considered. One legislator can put in the bill with one signature. That is the rule for us. That is the rule that should exist in the initiative process for our citizens.

We got low turnout in the gubernatorial. That is a problem that as members of the parties, we need to change. Basically what has happened over the last few years is that there is one person who is a burr under everyone else's saddle. They are an irritation. We have had to fight public policy issues in the public, nothing wrong with that, speaking directly to the electorate and they have voted repeatedly. Like us, they listen to the facts. They think hard. They digest and then they come to the polls and vote. Because we have one irritant, one burr under the saddle, why should we restrict the rights of all Maine citizens when it comes to the initiative? Thank you.

Representative TRACY of Rome moved that the Resolution and all accompanying papers be **INDEFINITELY POSTPONED**.

The same Representative **REQUESTED** a roll call on his motion to **INDEFINITELY POSTPONE** the Resolution and all accompanying papers.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Resolution and all Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 154

YEA - Andrews, Annis, Ash, Berry DP, Berry RL, Blanchette, Bliss, Bouffard, Brannigan, Brooks, Bryant, Buck, Bull, Bumps, Bunker, Canavan, Carr, Chick, Collins, Colwell, Cote, Cowger, Cummings, Davis, Dorr, Dudley, Duplessie, Duprey, Estes, Etnier, Foster, Fuller, Gagne, Gerzofsky, Glynn, Green, Hall, Haskell, Hatch, Hawes, Heidrich, Honey, Hutton, Jacobs, Jones, Kane, Kasprzak, Laverriere-Boucher, Lemoine, Lessard, Lovett, Lundeen, MacDougall, Marley, Marrache, Mayo, McGlocklin, McGowan, McKenney, McLaughlin, Mendros, Michael, Mitchell, Murphy E, Murphy T, Muse C, Muse K, Nass, Norbert, Norton, Nutting, O'Brien LL, O'Neil, Patrick, Perkins, Perry, Pineau, Povich, Quint, Richard, Richardson, Savage, Schneider, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Thomas, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Twomey, Usher, Volenik, Waterhouse, Watson, Wheeler GJ, Winsor, Mr. Speaker.

NAY - Belanger, Bowles, Bruno, Chizmar, Clark, Clough, Crabtree, Cressey, Daigle, Desmond, Dugay, Duncan, Dunlap, Fisher, Goodwin, Gooley, Jodrey, Labrecque, LaVerdiere, Ledwin, Madore, Mailhot, McDonough, Michaud, Morrison, O'Brien JA, Paradis, Pinkham, Rines, Rosen, Sherman, Shields, Tessier, Tuttle, Weston, Young.

ABSENT - Bagley, Baker, Chase, Koffman, Landry, Matthews, McKee, McNeil, Peavey, Stedman, Wheeler EM.

Yes, 104; No, 36; Absent, 11; Excused, 0.

104 having voted in the affirmative and 36 voted in the negative, with 11 being absent, and accordingly the Resolution and all accompanying papers were **INDEFINITELY POSTPONED** and sent for concurrence.

An Act to Eliminate the Use of Tobacco in Maine Schools and on School Grounds

(H.P. 482) (L.D. 622)
(C. "A" H-123)

- In House, Bill and accompanying papers **INDEFINITELY POSTPONED** on May 2, 2001.

- In Senate, **PASSED TO BE ENACTED** in **NON-CONCURRENCE**.

TABLED - May 4, 2001 (Till Later Today) by Representative COLWELL of Gardiner.

PENDING - **FURTHER CONSIDERATION**.

Representative SKOGLUND of St. George moved that the House **ADHERE**.

Representative RICHARD of Madison moved that the House **RECEDE AND CONCUR**.

Representative DUNLAP of Old Town **REQUESTED** a division on the motion to **RECEDE AND CONCUR**.

Representative SKOGLUND of St. George **REQUESTED** a roll call on the motion to **RECEDE AND CONCUR**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Saco, Representative Kane.

Representative KANE: Madam Speaker, Men and Women of the House. The LD 622, "An Act to Eliminate Smoking in Maine Schools and on School Grounds" is a children's health care bill. Make no mistake about it. It is children's health care. Last week or the week before, I am not sure when, our esteemed colleague from St. George regaled us with an eloquent soliloquy about the inconvenience that might be imposed on workers while they are working on school grounds. This bill is not about accommodating workers who may spend part of their day on school grounds and who may be occasionally inconvenienced. It is about protecting the health of our children who spend a good part of their lives on school grounds. It is about protecting the health of our children and grandchildren who attend elementary, junior and high school. It is about sending a message to them that smoking is not something that ought to be part of their normal lives.

I urge you, if you haven't already, to take a look at the handout that was circulated, the orange handout, which gives some very substantial facts promoted by the Maine Coalition on Smoking or Health. We have passed legislation and allocated millions of dollars from our tobacco funds to inform, educate and treat children regarding the hazards of smoking. We are spending hundreds of thousands of dollars on TV ads, literature and smoking cessation programs to protect our children. It seems to me that the temporary inconvenience that may be imposed on adults who work occasionally on school grounds, that same inconvenience that applies to all smoking restricted from public places, that this restriction is a small price to pay for protecting the health of our children. Let us be consistent in the message that we send our children. Smoking is to be discouraged. We already have laws that prohibit smoking in most public places. The space where our children spend so much of their lives is at least as important as these other public places. We are all accustomed to adapting to restrictions regarding smoking. Please let us not back off from our commitments to kids. This is very serious business. Please support the motion of the Education chair to Recede and Concur. Thank you Madam Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Biddeford, Representative Sullivan.

Representative SULLIVAN: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose her question.

Representative SULLIVAN: Madam Speaker, Men and Women of the House. This is a serious question. In some communities the recreation department is responsible for the baseball and softball fields and the recreation department will

keep up all of the grounds and line the fields, do they become school property or municipality property?

Representative **BROOKS** of Winterport **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from St. George, Representative Skoglund.

Representative **SKOGLUND**: Madam Speaker, Ladies and Gentlemen of the House. In the absence of the other descending member on the Education Committee, the good Representative from Hartland, Representative Stedman, as many of you know, he was an outstanding athlete and champion of rights for children and children's safety and health. He and I were the descending members. I can't speak entirely for Mr. Stedman, but speaking for myself, if I could discourage children from taking up smoking by setting a better example, I would. I don't think that children learn necessarily their bad habits from examples. They don't need examples. They can make up their own bad habits. Where do they learn to put those rings in their eyebrows, noses and tattoos all over their bodies? That didn't have to look at disreputable adults to learn to do that. No. I think we have taken somewhat of the wrong turn when it comes to discouraging children from smoking. Through education we have cut down amazingly on the number of adults who smoke. The more we pressure children to stop, it seems the more they do it. It is the children's jobs, the job of young people, to be as rebellious as possible and to push as much as they can. The more we stress, no, no, no, you must not do that, I think the more we are going to lose on that. I think it pays to let up a little bit, take it easy and make progress gradually. We don't have to stamp everything out all at once at the same time. I hope that you will vote to follow my light. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Madam Speaker, Ladies and Gentlemen of the House. I don't know what ever happened to allowing school districts to make their own rules on smoking. That is what I would favor.

To anyone who can answer, if anyone drives onto the school grounds smoking a cigarette in their car or if they are waiting for their child, are they in violation of this law? Thank you.

The **SPEAKER PRO TEM**: The Representative from Winterport, Representative Brooks has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Madam Speaker, Men and Women of the House. I think it is important for us to take a look at the overall intent of this bill, which is to deliver a message to kids that smoking ought not be a normal part of their lives. There may be somebody driving on school grounds or waiting for a child that is the exception. I am sure somebody is not going to be prosecuted every time they go on school grounds with a cigarette.

When we passed the law prohibiting smoking in restaurants, we weren't sending everybody to jail because they walked into a restaurant with cigarettes. Look what has happened over just a short period of time after all of our restaurants were determined to be smoke free. Everybody is now thriving. My colleague from St. George mentioned that education is critical in educating and teaching our children. Let's not pretend that modeling behavior is not a significant part of education for children. We happen to have in Maine right now the worst record for teenage smoking. Anything that we can do to prevent children, to stop children from being enticed to begin that first cigarette, is going to encourage them not to take up the habit, protect their health and protect all of us who are spending millions of dollars now in attempting to

treat and help kids stop smoking. Let's not underestimate the power of example. Thank you Madam Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative **DUNLAP**: Madam Speaker, Ladies and Gentlemen of the House. I think to paraphrase one of the closing statements of my friend from St. George, Representative Skoglund, that it is better not to ban everything outright. I think I would probably be a little bit more comfortable with this bill if it was that honest and sought to ban smoking outright, because that is essentially what this is about. It has nothing really to do with kid's health because as the Representative from Saco, Representative Kane, intimated, it is questionable whether somebody sitting in a car smoking could or could not be subject to prosecution under this legislation? It would probably be up to the discretion of an enforcement officer and I think that would be somewhat of an item for the newspapers to take care of. I think it really is not anything to do with smoking by children. Children are already prohibited from smoking by law. Thinking about the snowplow driver plowing the parking lot at 5 o'clock in the morning, under this proposed legislation, that person would be in violation of the law if they were smoking on school grounds in their truck. When we did the restaurant smoking bill a couple of years ago, I was remarking somewhat facetiously to one of our former colleagues at the time that if I went through a drive thru at MacDonalds and got myself some food and was smoking, would I be in violation of the restaurant smoking law, because essentially I was on restaurant grounds? The reply was, someday you might be. I think we are edging closer to that. I agree that we should do everything we can to prevent children from smoking, but let's call this bill what it is. It really has nothing to do with children smoking. It is really about whether or not we think anybody should be smoking. I think that is the subject of probably a different piece of legislation. I would urge you to vote against the pending motion. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Mapleton, Representative Desmond.

Representative **DESMOND**: Madam Speaker, Colleagues of the House. I rise to say that our good Representative Skoglund and I don't always vote the same way. We do have some things in common. We do a lot of thinking on issues and we do meditate. We do this so that we can come to our conclusions. One of these confusions is smoking on school grounds. Students on the soccer fields, students playing baseball, usually have good audiences. That means parents and friends come. I have actually witnessed the fact that they do a lot of smoking. What is left are butts on the school grounds and this is what the students see when they leave their games. I think that is not a good example for any adult to set for the students. The more they see that we, as adults, don't care about this, the more they won't care. I do think it is a health issue, but it is also a moral issue. I hope we take that into consideration.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Cumberland, Representative McKenney.

Representative **MCKENNEY**: Madam Speaker, Ladies and Gentlemen of the House. No one in this body would argue that smoking is good for you. We all know that is bad for you. In our zeal to stamp out smoking everywhere in typical fashion, we have gone too far. We have over reached. This bill would ban smoking in buildings that are owned or leased or contracted for by an elementary or secondary school. That means private property. The Cony High School Hockey Team plays over here at a privately owned rink. They wouldn't be allowed to smoke in that building if it was leased or contracted for by Cony High School. I think this is a matter to leave up to local control. In

fact, I think it is probably already being done. Let's let local school boards and local towns decide this issue. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Arundel, Representative Daigle.

Representative **DAIGLE**: Madam Speaker, Ladies and Gentlemen of the House. Listening to the debate on this issue reminds me very much of an experience of mine several years ago as a member of the operating committee for a large manufacturing facility. We wanted to ban smoking at our location. There was much hand wringing and agonizing over this decision about all the implications with contractors and workers and visitors and so forth. At the end of the day we just decided to be bold and to be what we were supposed to be, the bosses. I hope that is what do here, is the policymakers for the state. Just ban smoking. Those facilities are our facilities. We don't think smoking is a good idea so we just flat out ban it. If a contractor has a problem with that, fine, don't bid the job. Don't work for the school district. It is that simple. It is just a question of boldness and clarity and not be hand wringing any more than necessary about how upset people will be. Just do it. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative **TRACY**: Madam Speaker, Ladies and Gentlemen of the House. I would just like to let you know what happens in SAD 47 where my wife works and which is our school district. The school board has already prohibited smoking on the grounds. This has, over the years, made the janitors and the secretaries have to go out into the public way so that they are actually off the school property to smoke. That is what we call local control. If they are doing it there and it is locally being done, furthermore, I would say that the children when they are out on recess could probably see the janitor or the secretary or whatever who has gone across the street into the public way to smoke, I don't think that this bill is really going to do anything to prohibit children from smoking. I would say that we should leave it at the local level. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Madam Speaker, Ladies and Gentlemen of the House. Once again I guess I had to come to my feet to say this is a local control issue. The school boards that are in most of our towns are elected bodies, much as we are. The people go to the polls and they elect them and they put their faith in these people that they are going to protect their children as long as their children are on the grounds of the school. I have to make a correction that we own these buildings. It is my contention in most of my school districts in my area that the municipalities, in fact, own the school buildings. That means that the taxpayers in that municipality own the school buildings. The same taxpayers and the same voters that went to the polls and elected their duly elected representatives to the school board. My school board has banned smoking at all sports functions on any part of the school ground in the whole City of Bangor and it works very well. Nobody is going to be incarcerated and thrown in jail forever and the key thrown away if they are caught smoking in their car leaving the premises. A little common sense needs to come into play in this bill. We cannot play God to everybody. I know that we would like to stop smoking altogether. It is very evident what has happened in this House. We have been moved out to the very entrance that all of our school children come into this building to play pages and to see what happens in state government. Those of us sinners in this House that still choose to smoke are regulated to go out there so we have the pleasure of blowing smoke on every child that comes by. Common sense needs to prevail. Let local government rule local government. Thank you Madam Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative **MENDROS**: Madam Speaker, Ladies and Gentlemen of the House. It wasn't that long ago when I was a teenager. Some in this chamber probably think I still am. We all remember our teen years. We still remember kids that we had or currently have that are teenagers. My nephew is a teenager. I know the shortest way to get a teenager to do something is to tell them not to. The harder you push them, the more likely they are to do it. If you don't believe that, take a look at the State of Maine and the messages that we have sent. We have the strictest laws when it comes to teen smoking. We have the most aggressive enforcement to go after selling cigarettes to minors. We have the most expensive tax on cigarettes and we also have the highest rate of teen smoking. These messages are working, but I don't think they are working the way we want them too. Let's try to really solve the problem and stop sending messages. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Old Orchard Beach, Representative Lemoine.

Representative **LEMOINE**: Madam Speaker, Men and Women of the House. It is with great pleasure that I rise today to support the Representative from Saco, Representative Kane, on a smoking bill. The ride home will be much easier, I suspect. As many of you may have noticed, we are in the process, as a body and of a state, of regulating tobacco use. We are struggling with that. Many of us when we were growing up, smoking took place anywhere and everywhere. It was completely unregulated. We learned of the consequences of that. What we are doing now in this session is adding some of the contours to a policy we are moving towards of having smoking be available in some areas and unavailable in others. I was not in favor of taking smoking out of gambling halls, but I am in favor of taking it off the school grounds. It seems to me that if we are trying to pass out a reasonable state policy for how to handle cigarette smoke, a smoke-free zone in schools, is reasonable and I will support it. I hope you do as well.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative **PERKINS**: Madam Speaker, Colleagues of the House. I wish I could come up with a catchy acronym here for what I see as a syndrome to try to pass a state law when vast numbers of smart people all over the state are already doing something. We have already heard today that several of the school districts have elected officials who have already banned smoking on school grounds. Obviously, in my opinion, it doesn't need to be a state law. To anybody proponent of this bill that could answer, since we have heard that there are several districts that are already doing this very thing, why does it need to be a state law?

The **SPEAKER PRO TEM**: The Representative from Penobscot, Representative Perkins has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative **O'NEIL**: Madam Speaker, Men and Women of the House. I very rarely would ever rise on a bill that comes not from my committee, but since the question was asked, I will take a stab. I have in front of me the cost of health care in Maine for the year 2000 blue ribbon commission on health care. The report that they put out in which they cite poor personal choices and the overall health care in the State of Maine as one of the biggest drivers in the high cost of health care that we have. While the report does not come up with any silver bullet to answer to the high cost of health care in Maine, it certainly does

point as the low level of health status in Maine. As we know, there are a handful of big causes, smoking, diet and fitness that are contributing to the high cost of health care because of the low level of fitness in Maine. In my estimation, Madam Speaker, in answer to the Representative from Penobscot's question, we, as a state, are in a position to set forth policy. We have at least since 1996 when I arrived here to set forth policy that does more than send a message. It sets forth real and concrete policy that says that this is where Maine should go. We have a concrete problem in that we are struggling with the cost of health care in Maine. One of the things we can do is to discourage smoking. This measure, this 11 to 2 report that we have before us, clearly discourages smoking. The Little League in Saco where my son Max plays came out with a new rule this spring. We all get a newsletter as parents at the beginning of the season. Be a good sport. We are here to learn. In the new rule was no smoking on the grounds of the Little League field. I thought that was neat. The local people got together and they had a collective decision to not smoke around the kids. I must say that I find it offensive when somebody near me smokes, more so than I did 20 years ago, because my consciousness has been raised on it. However, it did not come easily. There were people who dragged their feet on it. In fact there was dissent. In my estimation it is easier for a community to follow the lead of the state as a policy maker by citing the state as a policy maker and saying that if it is good for the state, then it must be good for us too. I will go along with this 11 to 2 report very easily, Madam Speaker.

The Speaker resumed the Chair.
The House was called to order by the Speaker.

The SPEAKER: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative FULLER: Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of the current motion to Recede and Concur. The question was raised about why do we need to pass this law because some of the school districts are already doing it? I have been informed that 75 percent of our school districts already prohibit smoking on school grounds. It is the other 25 percent that are allowing smoking on the school grounds that sets a real poor example for our students in the schools. We need to do everything we can to reduce teenage smoking in the State of Maine. I urge you to vote for the current motion to Recede and Concur.

The SPEAKER: A roll call has been ordered. The pending question before the House is to Recede and Concur. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 155

YEA - Andrews, Belanger, Berry RL, Bliss, Bouffard, Brannigan, Bruno, Bull, Bunker, Chick, Chizmar, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Desmond, Dorr, Dudley, Duncan, Estes, Etnier, Fuller, Gagne, Gerzofsky, Gooley, Green, Hawes, Honey, Hutton, Jacobs, Jones, Kane, LaVerdiere, Ledwin, Lemoine, Lessard, Mailhot, Marley, Mayo, McDonough, Murphy E, Muse C, Norbert, Norton, O'Neil, Patrick, Perry, Pineau, Povich, Quint, Richard, Richardson, Savage, Shields, Simpson, Stanley, Sullivan, Tuttle, Twomey, Watson, Weston, Young, Mr. Speaker.

NAY - Annis, Ash, Berry DP, Blanchette, Bowles, Brooks, Bryant, Buck, Bumps, Canavan, Carr, Clark, Clough, Collins, Crabtree, Cressey, Dugay, Dunlap, Duplessie, Duprey, Fisher, Foster, Glynn, Goodwin, Hall, Haskell, Hatch, Heidrich, Jodrey, Kasprzak, Labrecque, Lovett, Lundeen, MacDougall, Madore,

Marrache, McGlocklin, McGowan, McKenney, McLaughlin, Mendros, Michael, Michaud, Mitchell, Morrison, Murphy T, Muse K, Nass, Nutting, O'Brien JA, O'Brien LL, Paradis, Perkins, Pinkham, Rines, Rosen, Schneider, Sherman, Skoglund, Smith, Snowe-Mello, Tarazewich, Thomas, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Usher, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Bagley, Baker, Chase, Koffman, Landry, Laverriere-Boucher, Matthews, McKee, McNeil, Peavey, Stedman, Tessier.

Yes, 65; No, 74; Absent, 12; Excused, 0.

65 having voted in the affirmative and 74 voted in the negative, with 12 being absent, and accordingly the motion to **RECEDE AND CONCUR FAILED**.

Subsequently, the House voted to **ADHERE**.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The following items were taken up out of order by unanimous consent:

SENATE PAPERS

The following Joint Order: (S.P. 621)

ORDERED, the House concurring, that Bill, "An Act to Establish the Maine Firefighter Training Fund," H.P. 804, L.D. 1048, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

Came from the Senate, **READ** and **PASSED**.

READ and **PASSED** in concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 559) (L.D. 1721) Bill "An Act to Allow Expressly Authorized Persons to Conduct Investigations for the Chief Medical Examiner" Committee on **JUDICIARY** reporting **Ought to Pass**

(S.P. 492) (L.D. 1581) Bill "An Act to Allow the Department of Human Services Abuse and Neglect Investigators Access to Certain Baxter School for the Deaf Records" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-177)**

(S.P. 568) (L.D. 1732) Bill "An Act to Establish for an Additional Two Years the Commission to Study the Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine" (EMERGENCY) Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-180)**

(H.P. 326) (L.D. 416) Bill "An Act to Improve the Services of the Saco River Corridor Commission" Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought to Pass**

(H.P. 1232) (L.D. 1679) Bill "An Act to Increase the Penalties for Animal Cruelty" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-423)**