

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Second Legislature
State of Maine

Volume II

First Special Session

May 26, 2005 – June 17, 2005

Second Special Session

July 29, 2005

Second Regular Session

January 4, 2006 - April 6, 2006

Pages 737-1487

The Bill was **READ ONCE**. **Committee Amendment "A" (H-821)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Tuesday, March 21, 2006.

Majority Report of the Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act To Require the Commission on Governmental Ethics and Election Practices To Produce a Register of All Registered Lobbyists"

(H.P. 1262) (L.D. 1822)

Signed:

Senators:

PLOWMAN of Penobscot

GAGNON of Kennebec

Representatives:

FISHER of Brewer

OTT of York

PINKHAM of Lexington Township

MOORE of Standish

NASS of Acton

BROWN of South Berwick

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-822)** on same Bill.

Signed:

Senator:

MITCHELL of Kennebec

Representatives:

VALENTINO of Saco

PATRICK of Rumford

TUTTLE of Sanford

READ.

Representative PATRICK of Rumford moved that the House **ACCEPT** the Minority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Minority **Ought to Pass as Amended** Report and later today assigned.

CONSENT CALENDAR

First Day

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

(H.P. 1404) (L.D. 2002) Bill "An Act To Give Superior Court Clerks and Deputy Clerks the Authority To Issue Process for the Arrest of Persons Charged with Crimes" (EMERGENCY) Committee on **JUDICIARY** reporting **Ought to Pass**

(H.P. 1206) (L.D. 1699) Bill "An Act To Improve Workplace Safety" Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-828)**

(H.P. 1314) (L.D. 1874) Bill "An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships" Committee on **JUDICIARY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-831)**

(H.P. 1340) (L.D. 1899) Bill "An Act To Allow the Display of POW-MIA Flags at Courthouses" Committee on **LEGAL AND VETERANS AFFAIRS** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-827)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

(H.P. 1342) (L.D. 1901) Bill "An Act To Amend the Law Regarding Smoking in Private Clubs" (EMERGENCY) Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-830)**

On motion of Representative PATRICK of Rumford, was **REMOVED** from the First Day Consent Calendar.

The same Representative **REQUESTED** a roll call on the motion to **ACCEPT** the Unanimous **Ought to Pass as Amended** Committee Report.

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

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

Representative **PATRICK**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. First of all I want to apologize to the committee chair and to the Republican lead for getting up and speaking on this motion. Basically, I am going to ask you to overturn a 13 to nothing decision. This is one issue that we had last year and it is technically a clarification of what we passed last year. I have belonged to non-profits for many years – it's actually 33 years I believe – and I have believed in everything that they have stood for, but this is one issue that I had always told them I would never support. I would never support a full ban on smoking, which I had never voted for. Last year the vote out of committee was also a unanimous vote. It was to basically do a similar thing, but it was to allow the club to take a vote and it was going to be a majority of 50 percent, plus one of the membership. This bill is going to basically do 50 percent of one plus one of those that vote. They probably had 50 to 75 people get up and speak and they said that it was totally undemocratic and I basically believe that it is sort of undemocratic because if I was to have to run for the Legislature and get 50 percent plus one of all of the people in my district the chances are that I wouldn't be here and probably very few people would be because, in half the districts, probably 50 percent of the people don't even vote.

I had a situation at work. We decided as to whether or not we wanted to go to 12 hour shifts and the stipulation was that if you wanted 12 hour shifts then you had to get 66 percent of the people to support that motion and I said that we could do that no problem. Well, I got all the people to go and got them to vote and we only got 58 percent and I was totally disheartened because we really wanted that and it took me probably four votes in a year and a half to finally convince them, but we worked and worked and worked to make sure that something happened. It turns out that people would never go back because they love and enjoy the 12-hour shifts and the extra time off.

Seventy nine or eighty percent of the veterans that testified don't even smoke, but because of the issue they thought that it was undemocratic. They thought that we should change what we did last year and it had huge support last year. It was 13-0 out of committee and it had a big vote in the House and the Senate and it was passed, but the bill wasn't 100 percent clear. I guess there was something between the summary and what was in the bill. They couldn't enforce it. Many of the clubs now in my community have gone with the bill that says that you have to get a vote of 50 percent plus one of your membership and are wondering if they are going to have to have another vote and now that they finally realize the benefits of not smoking in the organization they are going to have to go back to the chance that if the minority has an opportunity to take over then they are going to now have a chance to get smoking back.

In my organization I would have to think that about 70 percent do not smoke and, as in most places statewide, close to 79 percent of the people don't smoke. I can't remember the exact figures right off hand, but I would ask you to consider overturning this and if we have to, reclarify what we had last time and go back to what we had last year, which is what we all supported. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from North Haven, Representative Pingree.

Representative PINGREE: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I certainly appreciate the comments of my good colleague from Rumford, Representative Patrick. I know that this has been a very challenging issue for our committee. I think as many will remember, last year we passed a bill that said if private clubs want to continue smoking then they had to have a vote. In the course of this last year this whole voting process became very, very complicated and if you have an Elks Club or a Legion Hall or something else in your district I have a feeling that you probably got a phone call.

The good Representative from Woolwich, Representative Grose, put in a bill to try and clarify the process. The bill that we passed last year required a majority of all members to vote to allow smoking in their club. Many of these organizations came to testify and they said that this year they have 200 members who are members of the club and who never show up and aren't involved, so to get 101 of those 200 members to vote in favor of smoking would not have been possible. They made the argument that if, as Representative Patrick said, we all had to get the majority of our voters to vote for us in order to win, not just those voting, then we would have a hard time. So, after a lot of back and forth, this was an incredibly complicated and difficult bill. We ended up getting a Unanimous Report out of our committee to clarify that the majority of those voting would be acceptable. For those clubs that have already gone about allowing smoking or banning smoking or whatever their vote ended up being they can keep that vote. They were in a transition period and we said that clubs had to vote every three years so if they have already done it and the process was fair and good that vote will last for another three years. If they didn't end up having a vote – some clubs haven't voted yet – they would have to go by this new process. The amendment sets certain standards for the vote just to make it very clear saying that they have to have a 30-day notice that they will be voting and they have to allow absentee ballots etc.

I think that this is a fair solution and I am sure that the Elks and the Legions were upset about this and about us telling them what to do. We tried to find some middle ground. I think that we have done it. Our committee has made very positive strides to try to remove smoking from public places as much as possible. This was a challenging one and I think that we have come about the fairest solution up to this point. I urge you to support the Unanimous Ought to Pass as Amended Report. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative CAMPBELL: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The ones that testified in front of our committee were mostly veterans. The one that was leading this group was in a wheel chair and I talked to him after, but I also said over there, and I will say it here, if they were willing to go to war to fight for this country to protect me then who am I to tell them that they can't smoke in their own club. Thank you.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative GROSE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am the troublemaker; I brought this bill forward. I want you to know that I am not a smoker. I have never smoked. I tried it and thought that I was going to die gagging with it. I brought this bill because of my constituents. I belong to the Elks Club and to the American Legion Club in my area. I knew when I joined those clubs that there was smoking inside so when I put my card in to go into the clubs I know that I am probably going to stink when I come out. That is the choice that I made. I joined the clubs and I pay dues. Everyone who joins the clubs knows this. People go in that don't smoke and people go in that do smoke. That is their right.

When we brought this bill forward last year it was a tough bill, like Representative Pingree said. I am not for smoking. My dad died of cancer from smoking, but my constituents expressed to me their concern about the private clubs. I believe in a fair vote and that is something that didn't happen to all of the clubs because our law was so unclear. Even the Attorney General's Office told me, after several calls to them that they didn't even really understand it and that it was unconstitutional. From then on we worked on this at the Legion. All of the clubs in the state worked on this. There are thousands of members and all that my bill asks is that we have the right to have a fair vote either way. If there is smoking or non smoking that is the way that it goes. If you make a vote that is the way it should be. The way it was is that if you didn't vote than it was counted as a no vote. That is unconstitutional. That is not right. That is taking the rights away from us and I just really want to thank my committee for working with me so closely on this bill and I have some really tough committee members who actually voted for this and with the unanimous vote I think that says a lot. Thank you.

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

Representative DAIGLE: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative DAIGLE: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. Has a roll call been ordered?

The SPEAKER: A roll call has been ordered. The Chair recognizes the Representative from Lewiston, Representative Walcott.

Representative WALCOTT: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. As one of those more difficult members when it comes to smoking bills that Representative Grose referred to, I would like to point out that this is a Unanimous bill, which means that even as an anti-smoker I supported it, the reason being that it is important to point out that if we don't pass this the current law is still in effect, which is, as the Representative from Woolwich, Representative Grose, pointed out as very confusing and unfair. It was not my intent as a member of the committee to make it as unfair as it was last year. To get 50 percent of all of your members to vote is a daunting task for any group and I am sure that all of us are members of groups that have members that may or may not show up at various times and I think that it is important to point out that this is the fix for the problem and if we don't pass the fix to the problem then the problem still exists. Thank you Mr. Speaker.

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

Representative CLOUGH: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **CLOUGH**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As I read the wording in the amendment, which replaces the bill, it says that a qualifying club means a veteran's service organization chartered under 36 United States Code, subtitle II Part B, 2004 that is not open to the public or to any other club that was not open to the public and that was in operation prior to January 1, 2004. I would just like verification that it is not only for veterans and that this covers all clubs in the same manner - all private clubs?

The SPEAKER: The Representative from Scarborough, Representative Clough has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from North Haven, Representative Pingree.

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. To answer the good Representative's question the bill does apply to veteran services clubs as well as all other private clubs like the Elks - I can't remember all of the names of them, but I am sure you have them in your towns. The reason that there was some discussion two years ago was that it was about clubs that were popping up that were not really clubs; they were just sort of organizations to allow smoking that were competing with bars and we didn't think that that was fair and so we only put this to existing clubs.

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

Representative **BRANNIGAN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just wanted to comment on some of the earlier discussion when people said that if everybody voted in their district then they would be in trouble. If everybody voted in my district I would be doing a lot better.

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

Representative **PATRICK**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I don't want to belabor this anymore, but I also commend the 13-0 decision. I have no problem with that and I probably could live with that although I am going to be a little bit disappointed. I have the utmost respect for what they did last year and what they did this year, but I will bring up a couple of other factors. We banned smoking in bars. I would have to say that most clubs now have probably got between 10 to 20 percent more people as members because you can't smoke in bars. We have made our bars non-competitive and every dog-gone bar in my vicinity has chastised me.

What does a vote from a club actually mean? You have a bylaw change, you have a building that is going to have renovations, you have voting for offices. If you have got one half of one percent of most members to go there to say whether or not they want to rebuild a building or vote for their offices you are lucky. In my club for instance, we have 1,800 members. If we got 80 members to show up to have an important vote than that is huge. 80 members out of 1,800, yet 77 to 79 percent of the people don't smoke.

I testified, I think three or four years ago, on the no smoking in bingo and beano halls bill and one of the figures that stuck out in my head was that whether you are a veteran or not a veteran, 65 percent of every healthcare dollar is directly or indirectly related to smoking - 65 percent of every healthcare dollar is directly related to smoking. So, when 77 to 80 percent of the State of Maine doesn't smoke you are basically telling me that we got a choice to not do it in a dog gone club if it smokes. You don't really have much of a chance to have a fair shake in voting against it, but that is all I am going to say. You can look at fairness in more than one way as far as I am concerned in 80

percent of the people. I just can't live with that either. Thank you.

The SPEAKER: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative **CAMPBELL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I suggest that Representative Patrick take a stroll down here by the Governor's entrance if he is so concerned about smokers and stop the smoking that is going on out there and never mind worrying about the clubs.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative **CLARK**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. When I signed onto this bill I had an original bill, but when a bunch of us put bills in we came under one. I didn't sign onto this bill because I was a smoker. I have never been a smoker; I detest smoking. But the process is what I had a problem with. I think that most people had a problem with the process. It was not so much the smoking as the way the organizations had to vote. I belong to most of these organizations: the DAV, the VFW, the American Legion, the Knights of Columbus, and the Elks. I know that when I go into those organizations they smoke and if I don't want to go in I don't go in, but I know it and I don't go in. I pay my dues. I am a member. I stay away. I go to functions, but the process is what I am voting on. The process put in place with this bill was totally wrong and that is what we wanted to change. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Old Orchard, Representative Hogan.

Representative **HOGAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am sorry to delay this, but this bill talks about fairness to clubs. There is no fairness when you talk about private bars. I have a lot of private bars in my community, as you may know. These people are actually getting killed by this type of bill and they are hounding me with phone calls about how we can allow private clubs to smoke or to not smoke by a vote and say that they can't have smoking in their club at all. There should be no smoking for anybody as far as I am concerned. I hate it. But, that is my concern. What about the private owners of clubs? What are they supposed to do?

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Other stipulations in this amendment and in this bill say that a private club cannot do this without the consent of the employees. There is no smoking in a private club if you open it to the public. If you have a bean supper and open it to the public than there is no smoking, so it is only a private club that can do this. Again, to clarify the other point, this bill is an amendment to a previous law and it is a little bit confusing in the amendment and it does apply to all clubs and not just veteran's clubs. The clubs can make their own decision. The thing that we were faced with was that after all of these organizations agreed to a majority vote of all members, they found that they couldn't find all of the members. They are scattered all over the world among other things. They decided that since there is a certain group of people within the club who do the work and show up for the meetings and make the decisions and really take care of the thing then the ballot must be offered to everyone, there must be an option for absentee ballot, but only those who bother to vote are going to make the decision. That is the way that it is coming down.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Unanimous Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 377

YEA - Annis, Ash, Austin, Babbidge, Barstow, Beaudette, Berube, Bierman, Bishop, Blanchard, Blanchette, Bliss, Bowles, Brannigan, Brautigam, Brown R, Browne W, Bryant, Burns, Campbell, Carr, Cebra, Churchill, Clark, Clough, Collins, Craven, Cressey, Crosby, Cummings, Curley, Curtis, Davis G, Davis K, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Duprey, Eberle, Eder, Edgecomb, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Fletcher, Flood, Glynn, Goldman, Greeley, Grose, Hall, Hamper, Hanley B, Hanley S, Harlow, Hutton, Jackson, Jacobsen, Jennings, Jodrey, Joy, Koffman, Lansley, Lerman, Lewin, Lindell, Lundeen, Makas, Marean, Marley, Marraché, Mazurek, McCormick, McFadden, McKane, McKenney, McLeod, Merrill, Miller, Millett, Mills, Moulton, Muse, Nass, Norton, Nutting, O'Brien, Ott, Percy, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Rines, Robinson, Rosen, Sampson, Schatz, Seavey, Sherman, Shields, Simpson, Smith N, Stedman, Sykes, Tardy, Thomas, Tuttle, Twomey, Vaughan, Walcott, Webster, Woodbury, Mr. Speaker.

NAY - Adams, Cain, Canavan, Crosthwaite, Daigle, Hogan, Moody, Paradis, Patrick, Perry, Pilon, Saviello, Smith W, Thompson, Valentino.

ABSENT - Bowen, Bryant-Deschenes, Dugay, Emery, Gerzofsky, Hotham, Kaelin, Moore G, Trahan, Watson, Wheeler.
Yes, 125; No, 15; Absent, 11; Excused, 0.

125 having voted in the affirmative and 15 voted in the negative, with 11 being absent, and accordingly the Unanimous Ought to Pass as Amended Committee Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-830)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Tuesday, March 21, 2006.

**CONSENT CALENDAR
Second Day**

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

(S.P. 687) (L.D. 1770) Bill "An Act To Amend the Laws Governing Licensure of Workers in the Field of Radiologic Technology" (EMERGENCY)

(S.P. 375) (L.D. 1058) Bill "An Act To Regulate the Use of Batteries Containing Mercury" (C. "A" S-483)

(S.P. 755) (L.D. 1965) Bill "An Act To Ensure the Ability of Municipalities To Provide Assistance to Their Citizens" (EMERGENCY) (C. "A" S-481)

(H.P. 1246) (L.D. 1806) Bill "An Act To Clarify Maine State Retirement System Benefits for Certain Legislators" (C. "A" H-824)

(H.P. 1294) (L.D. 1854) Bill "An Act To Expand the Alternative Aid Program" (C. "A" H-820)

(H.P. 1339) (L.D. 1898) Bill "An Act To Protect the Employment Rights of Military Reserve and National Guard Personnel" (C. "A" H-823)

(H.P. 1391) (L.D. 1985) Bill "An Act To Make Revisions to the Maine Revised Statutes Relating to Agricultural Fairs" (C. "A" H-825)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED AS AMENDED**

in concurrence and the House Papers were **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence.

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

**BILLS IN THE SECOND READING
Senate as Amended**

Bill "An Act To Limit Human Exposure to Mercury"
(S.P. 465) (L.D. 1338)
(C. "A" S-477)

Bill "An Act To Sustain Good Local Planning Practices"
(EMERGENCY)
(S.P. 719) (L.D. 1802)
(S. "A" S-474 to C. "A" S-470)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Papers were **PASSED TO BE ENGROSSED AS AMENDED** in concurrence. **ORDERED SENT FORTHWITH**.

RESOLUTION, Amending the Constitution of Maine To Lower the Age of Eligibility for Election to the House of Representatives
(H.P. 1353) (L.D. 1912)
(C. "A" H-809)

Was reported by the Committee on **Bills in the Second Reading** and **READ** the second time.

On motion of Representative BARSTOW of Gorham, was **SET ASIDE**.

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENGROSSED as Amended**.

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

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cain.

Representative **CAIN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. This is my bill and I am very proud to bring it forward to you today with a very bipartisan, yet very mixed 7-6 committee report. This bill came from a dedicated group of students that I know at the University of Maine who came to me and said, "I want to do more for my state, but I am not 21 and therefore I am not eligible to run like you have, Emily, for the House of Representatives in Maine." I am old basically.

Mr. Speaker before we take this vote I just want to outline a few of the reasons that were brought forward to the committee in a very compelling case that was made by the students. Students from the University of Maine, the University of Southern Maine, Saco, Gorham, Portland, Lincolnville, all showed up to testify on this bill. Young people, Mr. Speaker, who are very passionate about the State of Maine, like all of us. The reasons that they brought forward are very simple. If you can vote then you should be able to vote for yourself. If you can be tried as an adult in the court of law you should be able to shape the laws under which you will be tried. If you can serve your country in the military and even die for your country in war than you should be able to, at least, have the opportunity to run for office.

A few facts for the men and women of the House: 34 percent of states have 18 as the age to run for office, that is seventeen states. Of those 17 states, 14 have the age of 18 to run for the Senate. I looked at those states, Mr. Speaker. Take Montana for example. They have had 18 on the books for as long as they have been a state and have had a constitution to run for office and in all of that time there have only been two people who have