

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

Senate Legislative Record  
One Hundred and Twenty-Second Legislature

State of Maine

Daily Edition

Second Regular Session  
January 4, 2006 to May 24, 2006

Pages 1382 - 2139

On motion by Senator **GAGNON** of Kennebec, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in **NON-CONCURRENCE**. (Roll Call Ordered)

---

**Senate**

Resolve, Authorizing the Department of Conservation, Bureau of Parks and Lands To Convey Certain Lands  
S.P. 827 L.D. 2095

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

Sent down for concurrence.

---

**Senate As Amended**

Bill "An Act Limiting Clean Election Candidates' Campaign Soliciting"

S.P. 570 L.D. 1596  
(C "A" S-521)

Bill "An Act To Provide State Funding for the Fingerprinting of School Personnel"

S.P. 662 L.D. 1745  
(C "A" S-520)

Bill "An Act To Ensure the Authority of 'Do Not Resuscitate' Orders in Advance Health-care Directives" (EMERGENCY)

S.P. 680 L.D. 1763  
(C "A" S-522)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

---

All matters thus acted upon were ordered sent down forthwith for concurrence.

---

**ENACTORS**

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

**Constitutional Amendment**

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)

Comes From the House, **FAILED FINAL PASSAGE**.

On motion by Senator **ROTUNDO** of Androscoggin, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in **NON-CONCURRENCE**.

---

**Emergency Measure**

An Act To Prohibit Parking in Access Aisles  
H.P. 1213 L.D. 1706  
(C "B" H-765)

This being an Emergency Measure and having received the affirmative vote of 33 Members of the Senate, with no Senators having voted in the negative, and 33 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

---

**Emergency Measure**

An Act To Amend the Law Regarding Smoking in Private Clubs  
H.P. 1342 L.D. 1901  
(C "A" H-830)

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. This is the second of the bills dealing with smoking in private clubs. This is the bill that, if you enact it, would actually weaken the laws that deal with smoking in private clubs. I would urge that you not support this matter and that we vote against it.

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. While the good Senator from Cumberland, Senator Turner, is correct and this is a change, I'm not sure that we could classify it as a weakening of the situation seeing that the current situation under which we operate, and was approved a year ago, is not currently being enforced by the Attorney General, as the sheet that was distributed by the good Senator from Cumberland, Senator Turner, indicates. It does indicate that there is a question with regard to the Constitutionality of this particular issue. It is coming before this Body as a unanimous report of the Health and Human Services Committee. I would urge that this Body support that committee and vote for this.

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

Senator **STRIMLING:** Thank you, Madame President. I would just reiterate that what we are doing today, if we support this, is rolling back. We are, I think, the only state to receive all A's in the work that we are doing in terms of health around smoking. If we vote for this we will be rolling back something that we have done

to protect the workers of the state of Maine. I also would like to make sure that you do recognize, because I think there was some misinformation that was going around in our last debate, that it was not ruled by the Attorney General that they couldn't implement the current law. They only said that they wanted to wait to see what the Legislature was going to do because they knew there was pending legislation after they had received questions. As soon as we are done, if this bill passes or doesn't pass, the Attorney General will then implement whatever the law is that we have put in place. The current law that is in place is the best law to protect the workers of the state of Maine from second-hand smoke. I would encourage you to defeat the pending motion.

Senator **GAGNON** of Kennebec requested a Division.

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

Senator **MILLS:** Thank you, Madame President and men and women of the Senate. Since reviewing this matter the other day, I think the situation has been clarified, in my own mind. It seems to me that the law that we passed, and I assume was written by the technical staff at OPLA, a year or so ago made it very clear that you had to have a majority vote of all of the dues paying members of the club in order to support smoking within the club. That is a legitimate policy. It seems to me appropriate, simple, and straightforward. I think some of the people that had to live under that rule were unhappy with it and they went to the Attorney General to ask if the law really meant what it plainly says. The Attorney General saw that there was further legislative activity, possibly new laws coming out of the committee, and said, 'Why don't we defer ruling on it until the committee has acted.' It seems to me that if we defeat this measure today we will very simply be reinforcing the policy that was established and the law that is currently on the books that says, 'Look, if you want to permit smoking in the club you can, but you need to get 51% of all of the dues paying members to agree to that proposition.' I don't see anything hard, difficult, problematic, or confusing and certainly not unconstitutional about that simple proposition. I would urge that we vote against the pending motion in this division.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I do believe the issue regarding the legality or constitutionality has been properly addressed by other members of the Body. I would simply reiterate a few things for you that were in the chamber when we first discussed L.D. 1926, the bill that would have provided an outright ban, which subsequently failed in this chamber. It is important to understand that, as a state, we have been an absolute leader in restricting smoking and the implications that this has on the health of workers. I would remind you that we are the only state to get an all A report card from the American Lung Association for the great work we've done over the years in restricting smoking and protecting employees. We are no longer at the vanguard of this effort. In our own New England, two states, Vermont and Rhode Island, have propositions that are now part of their law that are more restrictive than our existing law that this bill would change.

Six of the provinces in Canada are in the same steps and just recently that bastion of smoking in bars and other private and public places Great Britain, including Scotland, England, and Ireland, have banned smoking in all venues, private and public. I think it's time for us to stay the course and continue to work and improve the health of workers. Voting against this bill will do that. Thank you very much.

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I would clarify for the good Senator from Franklin the issue with regard to the voting. That is that there were mailed ballots involved. That was the interpretation of the legislation that I and the good Senator from Penobscot were much involved with a year ago. However, those who did not return ballots, in all cases that have come before the committee, were counted as a no vote without having voted. That is the issue with what we did a year ago. That is the issue upon which the Attorney General has had problems and that is why he set aside the enforcement until this legislature decided what to do about the two bills that were before it; one by the good Senator from Cumberland and the other by a member of the other Body. I would urge, as I said a few minutes ago, that this Body repeat what it has done previously on this particular piece of legislation and approve it. Thank you.

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

Senator **ROSEN:** Thank you, Madame President and members of the Senate. I'd like to concur with the good committee Chair from Sagadahoc. L.D. 1901 is about voting, not smoking. L.D. 1901 clarifies and improves a voting mechanism. The mechanism on the books, as you have heard, that currently exists requires a majority vote of all of the club members. All the club members as opposed to all of those who are notified and chose to vote. The effect would be as though we, in our election efforts, were instructed that we would have to receive a majority vote of all registered voters. All registered voters, not those who chose to come to the polls and vote. L.D. 1901 corrects that very difficult to implement piece of statute and makes some modifications. It requires that all of the club members receive written notification. It provides for an absentee voting mechanism. In the end, it allows the simple majority of those that have voted to make the decision. That's what many of the club members have asked for. That's what the veteran's membership asked for. A standard that is no different from the standard that we all deal when we run. I ask you to support the bill.

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

Senator **COWGER:** Thank you, Madame President and colleagues in the Senate. I'm going to be voting against the pending motion and I just want to let people know that the Attorney General's Office was definitely enforcing the existing law prior to this bill coming forward. I know this because I had a club in my district that did voting. They voted by a majority of the members who showed up to vote. I had complaints from other constituents and the Attorney General's Office, indeed, took

action. I just want to clarify, for the record, that they were, in fact, enforcing the current law before this bill came forward and I'm sure, given what they said in the purple memo before us, will be able to go back to enforcing that law. Thank you.

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

Senator **STRIMLING:** Thank you, Madame President. I just want to clarify a couple points. One, again from the Attorney General's Office, the Attorney General did not put this aside because they thought there was a problem with it. We have it in their own words that they put it aside because they wanted to see what we were going to do. That's all. Not because they saw that this was a problem. They got questions about it. They began to think about how to answer them. They then realized the legislature was about to, perhaps, take some new action. They said, 'Let's wait for the legislature to do what it's going to do.'

In terms of the issue about this threshold, the whole purpose of the threshold was to make it hard because we want to protect workers from second hand smoke. Just like it is my understanding, with most stockholders if you don't vote that is counted as a no. It's the same thing. We wanted to create a hard standard. We wanted to protect Maine workers and that's what we've done. That's why I would ask that you keep this law in place. Thank you, Madame President.

**THE PRESIDENT:** The Senator from Cumberland, Senator Turner, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. At the risk of being accused of repeating something that I said earlier, I would like to remind you that three of the Senators here serve on a committee called Health and Human Services. With respect to this bill, they parked health in the backyard and ignored it. This is not about electioneering and how to craft ballots. It's about health. That's what it is always about. Health. Always been about health and always should be about health. I think it's regrettable that this committee chose to think about something other than the health of Maine's citizens. Again, I urge you to not support this bill. Thank you.

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

Senator **PERRY:** Thank you, Madame President. May I pose a question through the Chair?

**THE PRESIDENT:** The Senator may pose his question.

Senator **PERRY:** Thank you, Madame President. I'm torn on this. I've been listening as closely as I can. The one thing I haven't picked up yet is that a vote that is not returned is a no vote. Is that a no vote meaning no smoking? What does a no vote mean?

**THE PRESIDENT:** The Senator from Penobscot, Senator Perry poses a question through the Chair to anyone who may wish to

answer. The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. As a member of the committee, I was going to stay out of this debate but obviously the good Senator from Cumberland has decided to include me in the discussions. I will be more than happy to respond to his tirade to some degree.

Let me just say, first of all, that the no vote is the issue. A ballot that is sent out to someone who may live in California but a member of the Eagle Lake American Legion would be counted as a no vote. He may chose to be a member simply because he has a long-standing commitment to the organization and feels friendly to it. However, what interest does he have as to whether or not someone smokes or doesn't smoke? That was the issue that we ended up discussing. What this bill attempts to do is, basically, figure out if you are an active member. If you are paying your dues, you are active. What we are trying to do with this bill is try to figure out who is the voting population. I am still in favor of the triple A that we got. I'm not trying to roll back, contrary to what some people are saying. It is an attempt to provide a valid method of determining who is voting and what the results are. It's really that simple. Obviously it is a tremendous advantage if you have organizations that have 1,000 members paying dues simply because they want to belong, but yet 500 never show up and never return a ballot. For example, I'm a member of the Calumet Club in Augusta. I pay my dues. Actually I won't have to next year because I've reached the retirement age and it will be free. They send me stuff and I buy things and give donations through the mail. I must admit that I didn't return my ballot. Was that fair to either side? This is what we did so it's not a sell out as to what some people would have you admit.

On motion by Senator **MAYO** of Sagadahoc, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

On motion by Senator **GAGNON** of Kennebec, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence. (Roll Call Ordered)

---

### Emergency Measure

An Act To Give Superior Court Clerks and Deputy Clerks the Authority To Issue Process for the Arrest of Persons Charged with Crimes

H.P. 1404 L.D. 2002

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

---